
(2002) 12 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : CWP No. 535 of 2002

Desh Raj Sood	Vs	APPELLANT
The Chief Justice and Others		RESPONDENT

Date of Decision : 02-12-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 229
Himachal Pradesh (Recruitment, Conditions of Service and Conduct) Rules, 1997 —
Order 1 Rule 10, Order 1 Rule 12, Order 1 Rule 2, Order 1 Rule 7, Order 1 Rule 9

Citation : (2002) 3 ShimLC 370

Hon'ble Judges : Kuldeep Chand Sood, J; Arun Kumar Goel, J

Bench : Division Bench

Advocate : Rajiv Sharma and Rakesh Dhaulta, for the Appellant; Shrawan Dogra, for the Respondent 1 and 2, D.D. Sood and D. Dhadwal, for the Respondent No. 3; Bipin Negi, for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Goel, J.—Petitioner who is presently working as Secretary in the Registry of this Court since 4.7.1995 has filed this writ petition for the grant of following relief's:

(I) the impugned Annexure PE dated 6.4.2002 may be quashed and set aside;

(II) the Respondents may be directed to consider the case of the Petitioner for promotion to the post of Deputy Registrar from the day, that is, March 1, 2002, when the post of Deputy Registrar fell vacant with all consequential benefits, like arrears of salary and seniority etc. etc.

(III) Any other writ, direction or order as may be deemed fit and proper in the facts and circumstances of the case, may kindly be issued and granted to the Petitioner; and

Costs of the writ petition may kindly be awarded to the Petitioner against the Respondents.

2. He initially joined as Clerk in the Court of District Judge, Kangra. After his selection, he was appointed as Senior Scale Stenographer in the Registry of this Court on 22.11.1984. In course of time, he was promoted to different posts. And as already noted presently he is working as Secretary. According to him, being eligible for promotion to the post of Deputy Registrar in accordance with the High Court of Himachal Pradesh (Recruitment, Conditions of Service and Conduct) Rules, 1997 (here in after referred as 1997 Rules), he has thus prayed for the grant of aforesaid relief's. In order to properly understand the contentions urged on behalf of the parties at the time of hearing of this writ petition by the learned Counsel, it is necessary to notice a few facts.

3. As per Schedule III of 1997 Rules, Post of Deputy Registrar finds mention at Sr. No. 7. This Schedule was amended with effect from 22.7.2000. For ready reference entry No. 7 of this Schedule as it stood prior to its amendment and thereafter, both are extracted here in below:

----- Sr. No. Name of Post Classification. Method of recruitment
qualification for the post/grade from which pro- motion is to be made -----

----- 7. Deputy Registrar. Gazetted Class-I The Post of Deputy Registrar shall be
filled in by selection from amongst the Assistant Registrars, Court Secre-
taries, Secretaries having at least five years service as such and from Mar-
riage Counsellor having at least 10 years service as such in the ratio of 50%
(Assistant Registrars and Mar- riage Counsellor) and 50% (Secretar- ies and
Court Secretaries. Note:-The promotions made under the repealed rules will
be taken into account for the purpose of above ratio.

Amendment Made on 22.7.2000

7. Deputy Registrar. Gazetted Class-I By selection from amongst the Assistant Registrars, Secretaries and Court Secretaries by rotation having atleast five years service as such. -----

4. Unlamented and amended provisions show that earlier specific quota " was fixed whereas this has been done away after its amendment. It may be noted in this behalf that at the time of hearing of this writ petition, this position was not disputed on behalf of the parties.

5. Averments made in the writ petition indicate that when Mr. K.S, Kanwar, Deputy Registrar retired, he was given extension in service of two years prior to his superannuation by employing him as Officer on Special Duty. Thus when the post of Deputy Registrar held by Mr. Kanwar fell vacant, it was not filled up, because his pay was being drawn against that post. Petitioner thus pleaded that the appointment of Shri Kanwar as Officer on special duty being improper and illegal should not have been continued.

6. Regarding Respondent No. 4, Petitioner's case is that he is the senior, most person in the category of Court Secretaries having been promoted as such somewhere in September, 1997, he would become eligible in September, 2002 for being considered for promotion to the post of Deputy Registrar.

7. These grievances were made by the Petitioner vide Annexure PB, his representation addressed to Respondent No. 1 is dated 17.10.2001. Vide Annexure PC, Petitioner was informed that his representation has become infructuous because of acceptance of resignation of Mr. K.S. Kanwar, Officer on Special Duty w.e.f. 10.1.2002 (AN).

8. Petitioner submitted another representation on 6.3.2002 Annexure PD. The same was rejected by the Official Respondents. Petitioner was informed in that behalf vide Annexure PE.

9. Further facts as revealed from the writ petition are that after the acceptance of resignation of Mr. Kanwar on 10.1.2002 (AN), next person to be considered for promotion to the post of Deputy Registrar was from the category of Court Secretaries and the senior most person i.e. Respondent No. 4 being not eligible on that date therefore, High Court issued two notifications on 11.1.2002. Both notifications are extracted here in below for ready reference:

High Court of Himachal Pradesh at Shimla No. HHC/GAZ-I-I/74-VII-Dated Shimla Jan. 11, 2002.

Notification

In exercise of the powers vested in her Under Article 229 of the Constitution of India, read with Rule 12 of the High Court of Himachal Pradesh (Recruitment, Conditions of Service and Conduct) Rules, 1997, the Hon'ble Acting Chief Justice is pleased to appoint Shri L.R. Chandel, Assistant Registrar (Administration), High Court of Himachal Pradesh, as Deputy Registrar, purely on ad hoc basis, with immediate effect.

BY ORDER (Surjit Singh) Registrar General.

High Court of Himachal Pradesh, Shimla No. HHC/GAZ-I-I/74-VII Dated : Shimla, the Jan. 11, 2002.

Corrigendum

In partial modification of this Registry Notification No. HHC/GAZ/ 1-1/75-VII-913-24, dated Jan. 11,2002, it is ordered that in the aforesaid notification, before the word "appointed", words "promoted and" and after the words "Deputy Registrar", the words and figures "in the pay scale of Rs. 12000-375-13500-400-15500 plus Rs. 800 as Secretariat Allowance" be read.

BY ORDER Registrar General.

10. Vide first notification Shri L.R. Chandel, Assistant Registrar (Admn.) was promoted and appointed as Deputy Registrar on ad hoc basis and vide

subsequent notification certain amendments were made to the first notification. During the pendency of his representation Annexure PB, Petitioner submitted the representation Annexure PD making grievance against Respondent No. 4. His main grievance was that because Respondent No. 4 was not eligible, therefore, on superannuation of Shri L.R. Chandel w.e.f. 28.2.2002, he was the only eligible person and thus he ought to have been considered and promoted keeping in view the rotation as per entry No. 7 of Schedule III of 1997 rules supra.

11. It is in this background that the Petitioner has filed this writ petition and has prayed for the grant of aforesaid relief's. Along with this writ petition an application for grant of interim relief was also filed. No orders were passed on it, though notices had been issued. Reason for not passing any order on this application was that when the matter was heard, Respondent No. 4 was not eligible.

12. In this behalf it may also be noted that Respondent No. 3 is admittedly senior to the Petitioner. Record of the case shows that because of his ill health, said Respondent was superseded when one Mr. Inder Singh was promoted as Deputy Registrar. Petitioner maintains qua Respondent No. 3 that since he is suffering from some mental ailment, as such he being senior to him (Petitioner) is immaterial. He has also challenged Annexure PC and PE being non-speaking orders and thus violative of Articles 14 and 16 of the Constitution of India and has also prayed that to the post of Deputy Registrar that was lying vacant, he needs to be considered and thereafter promoted to that post.

13. Initially Respondents No. 3 and 4 were not arrayed as party in the writ petition. An application was filed being CMP No. 778 of 2002, Under Order 1 Rule 10 CPC This was allowed and Respondents No. 3 and 4 were added as Respondents in this writ petition.

14. Respondents No. 1 and 2 while admitting the claim of the Petitioner from his joining at Dharamshala and then having been selected Notification In exercise of the powers vested in her Under Article 229 of the Constitution of India, read with Rule 12 of the High Court of Himachal Pradesh (Recruitment, Conditions of Service and Conduct) Rules, 1997, the Hon'ble Acting Chief Justice is pleased to appoint Shri L.R. Chandel, Assistant Registrar (Administration), High Court of Himachal Pradesh, as Deputy Registrar, purely on ad hoc basis, with immediate effect. BY ORDER (Surjit Singh) Registrar General." in the Registry of this Court and also presently working as Secretary in the High Court, has denied the rest of his claim being wrong and incorrect." It has been further stated by them that after promotions of S/Shri G.D. Misra, Amar Nath and Inder Singh, post of Deputy Registrar was to be filled in from the category of Court Secretaries. This position is not even disputed by the" Petitioner.

15. Further as per official Respondents, Shri L.R. Chandel was promoted on purely ad hoc basis. Their further case is that his such promotion was not intended to disturb the rotation. Therefore, as and when some Court Secretary

became eligible, he was to be considered against the roster point. Also that the promotion of Mr. L.R. Chandel was not to affect the chances of others. Therefore, according to these Respondents, Petitioner was not eligible for being considered and promoted to the post of Deputy Registrar according to rotation. This stand is reiterated by these Respondents in different paras of their reply to the writ petition. Representations were also made by Respondent No. 3 and S/Shri M.L. Sharma and K.S. Himalvi besides the Petitioner who were promoted as secretaries on 4.7.1995. It is also admitted by these Respondents that Mr. R.K. Sood was superseded when his junior Mr. Inder Singh was promoted as Deputy Registrar.

16. Respondents No. 1 and 2 denied the allegations of their actions being arbitrary, discriminatory or illegal muchless unjust and being violative of Articles 14 and 16 of the Constitution of India. It was further stated by these Respondents that the Petitioner will be considered for being promoted to the post of Deputy Registrar when the roster point falls to the category of Secretaries.

17. It is also the case of Respondents No. 1 and 2 that record will be produced for perusal when directed by the Court to show as to how the matter was dealt with when promotion of Mr. L.R. Chandel was ordered by the competent Authority. Record had, in fact, been produced along with the personal files of the Petitioner, Respondents No. 3 and 4 and of Mr. L.R. Chandel which we have examined.

18. It is reiterated by the Petitioner in rejoinder to the reply of Respondents No. 1 and 2 that by promoting Mr. L.R. Chandel, Assistant Registrar to the post of Deputy Registrar, the roster point meant for the category of Court Secretary stood exhausted. Thus, the Petitioner was entitled to the relief's prayed for in the writ petition. Further ground set up for allowing the writ petition was that for all intents and purposes, Mr. L.R. Chandel was given all the benefits available to a regular appointee against the post of Deputy Registrar. Therefore, his promotion and appointment on ad hoc basis could not have been there. While challenging the stand of Respondents No. 1 and 2, it was pleaded that in October, 2002, only Respondent No. 4, Court Secretary alone will be eligible for being considered. This clearly indicated that Respondents No. 1 and 2 had already decided to promote Respondent No. 4 as Deputy Registrar.

19. So far Respondent No. 3 is concerned, his stand is that it is he who has to be considered and appointed to the post of Deputy Registrar being senior to the Petitioner. (So far seniority is concerned, it is not even disputed by the Petitioner). But for unknown reasons, no action has been taken for filling up such post and finally he stated that the Court may be pleased to pass appropriate orders in the case.

20. Respondent No. 4 while filing his reply has submitted preliminary objections. These are that when promotions are to be made from one source, then rules must be followed. Honest and serious efforts have to be made in this regard. Per

him, case of filling up of the vacancy in hand was not an administrative necessity as its filling could wait. Thus, there was no valid ground for departure from the rules in question. He reiterated that the promotion made against the post meant for the category of Court Secretaries was made on ad hoc basis and the same did not disturb the rule of rotation. He further submitted that the Petitioner has no right to be considered against a vacancy meant for the category of this Respondent. He also submitted that to the post of Deputy Registrar, promotion is to be made as per entry 7 of Schedule III of 1997 Rules supra. Per him, he made representations for relaxation pertaining to the length of service on 16.3.2001, 21.8.2001 and 1.2.2002. These were rejected.

21. Further case of the Respondent No. 4 is that S/Shri G.D. Misra and Inder Singh had filed C.W.P. No. 233 of 2000. Both of them were working as secretaries. They were allowed to withdraw the writ petition reserving liberty to them to make representations to Respondent No. 1 on administrative side. After considering their such representations, Mr. G.D. Misra was promoted as Deputy Registrar followed by Mr. Amar Nath Sharma. He belonged to the category of Assistant Registrar. Inder Singh was promoted as Deputy Registrar from the category of Secretaries. Therefore, the next vacancy as per admitted case of the parties was to be filled in from the category of Court Secretaries. Because none of the Court Secretaries being eligible, per Respondent No. 4, Mr. L.R. Chandel was promoted to the post of Deputy Registrar as pointed out hereinabove.

22. So far Rules of 1997 are concerned, besides providing definitions in Rule 2, eligibility criteria, representation to Scheduled Castes/Scheduled Tribes/Backward Classes, Ex. Servicemen, qualifications for appointment etc. are mentioned in these rules. Rule 22 deals with residuary powers and Rule 23 speaks of power to relax the rules. For ready reference, both these rules are extracted here in below:

Residuary powers:

22. Nothing in these rules shall be deemed to affect the powers of the Chief Justice to make such orders from time to time as he may deem fit in regard to all matters incidental or ancillary to these rules not specifically provided for herein or in regard to matters as have not been provided for or not sufficiently provided for or for removal of any difficulty which may arise in giving effect to any of the provisions of these rules.

Relaxation:

23. Where the Chief Justice is satisfied that the operation of any provision of these rules causes undue hardship in any particular case, he may by order dispense with or relax the requirement (s) of the concerned rule to such extent and subject to such condition(s) as he may consider necessary for dealing with the case in a just and equitable manner with due regard to the provisions of these rules relating to qualification and seniority.

23. In the aforesaid factual as well as rule position, learned Senior Counsel for

the Petitioner submitted that promotion of Mr. L.R. Chandel after acceptance of resignation of Mr. K.S. Kanwar, was for all purposes on regular basis. Therefore, once the point meant for the Court Secretaries against which Mr. Chandel was promoted was exhausted, its natural consequence is that the post which, fell vacant w.e.f. 1.3.2002 (and Assistant Registrar Shri A.N. Sharma having already been promoted), was required to be filled in from the next category i.e. Secretaries. As such case of eligible candidates had to be considered from this category. Thus, in no circumstances much-less situation, promotion of Mr. Chandel can be termed as "ad hoc". He further submitted that when eligible person was not available and the post was admittedly available, the Petitioner ought to have been considered at least for ad hoc promotion as was ordered in case of Mr. Chandel. This was an alternative submission made without in any manner admitting or conceding that the promotion of Mr. Chandel was not on regular basis. At least on 1.3.2002 the Petitioner was discriminated by being not promoted on ad hoc basis. He further urged that Annexure PC and PE both have been issued without assigning any reason which is well known process indicating the application of mind.

24. Lastly, it was urged that the Registry cannot be permitted to keep the post vacant indefinitely so as to enable the person like Respondent No. 4 to become eligible for being considered to be promoted after superannuation of Mr. L.R. Chandel on 28.2.2002. According to him, when quota is fixed, then continuity has to be maintained and point meant for consideration of the case of promotion to the post of Deputy Registrar so far category of Court Secretaries is concerned, having been exhausted, the process was to continue by considering the next category which as per Entry No. 7 is of Secretaries. This is what is meant by rotation in this entry i.e. to mean continuity.

25. All these pleas have been controverted by the learned Counsel for the Respondents. According to them, quota is inbuilt in the Rules of 1997 and rotation may not be as per vacancy position. Therefore, when schedule is followed keeping in view the two notifications dated 11.1.2002, no exception can be taken to these notifications. Thus, the Petitioner had no right of being considered and particularly in view of the decision by the competent authority in accordance with rules and law which evident from the official files. Per Mr. Dogra, with a view to maintain balance in the three categories i.e. of Assistant Registrars, Court Secretaries and Secretaries, rule permits the employer to deal with the matter. Per him, roster is maintained by Respondent No. 1. He further submitted that so far his clients are concerned, they have proceeded in the matter in accordance with the rules as such the action deserves to be upheld by dismissing the writ petition. Mr. Dogra had produced the record as noted hereinabove.

26. Mr. D.D. Sood, learned Senior Counsel for Respondent No. 3 submitted that no quota can be read in Rules of 1997 i.e. Schedule III, Entry No. 7 supra. So far reliance on Rule 12 is concerned, according to him, this was meant to allow the

work going on and power vests with Respondent No. 1 to deal with a situation, as and when it arises.

27. On the other hand, Mr. Negi, learned Counsel for Respondent No. 4 submitted that Rules 9 and 12 authorises Respondent No. 1 to deal with the matter where suitable candidates are not available. Per him, claim made in the writ petition is ill-founded and thus he has proved for its dismissal.

28. So far plea urged on behalf of the Petitioner that the impugned Annexures PC and PE suffer from the vice of non-application of mind for want of reasons (because both annexures do not contain these or at least reasons having not been communicated to his client) is concerned, this, in our view, need not detain us. Reason being that situation will be different where there are no reasons at all either on record or in order. Record of the High Court shows that when promotion of Shri L.R. Chandel on ad hoc basis was ordered, there is specific mention of rights of eligible persons for being protected and not being in any manner affected by such promotion. Similarly, while dealing with the representations of the Petitioner and other persons, Respondent No. 1 has dealt with the matter by a speaking and reasoned order. In the face of this position, it cannot be said that these annexures are not based on reasons. Simply because those were not communicated to the Petitioner is no ground to uphold this plea. As such the same is rejected.

29. On the question that the Petitioner should have been considered for promotion at least on ad hoc basis w.e.f. 1.3.2002 when Mr. Chandel retired, reference was made by Mr. Sharma to a decision of this Court reported in Dr. V.K. Bhargava v. State of H.P. and others ILR 1985(HP)14, 358. Here the stand of High Court also needs to be noticed. Mr. L.R. Chandel on his superannuation was engaged as Officer on Special Duty from which post he retired on 31.7.2002. Record further shows that after his superannuation, he continued to discharge the functions and duties those he was discharging prior to his superannuation. In these circumstances, looking to the evidence of work, Respondent Nos. 1 and 2 were justified in not considering the case of the Petitioner for ad hoc promotion w.e.f. 1.3.2002. Therefore, no benefit can be derived by the Petitioner from the decision of this Court in the case of Dr. V.K. Bhargava supra.

Now, we refer to further decisions relied upon on behalf of the parties.

30. In Rudra Kumar Sain and Others Vs. Union of India and Others, a Constitution Bench while dealing with the terms "ad hoc", "stopgap" and "fortuitous" held as under:

16. The three terms "ad hoc" "stopgap" and "fortuitous" are in frequent use in service jurisprudence. In the absence of definition of these terms in the Rules in question we have to look to the dictionary meaning of the words and meaning commonly assigned to them in service matters. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is "accident or fortuitous casualty". This should obviously connote that if an appointment is made

accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either Under 16 or 17 of the Recruitment Rules, after due consultation with the High Court, and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to be "fortuitous". In Black's Law Dictionary, the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortunate". It thus, indicates that it occurs only by chance or accident which could not have been reasonably foreseen. The expression "ad hoc" in Black's Law Dictionary, means "something which is formed for a particular purpose". The expression "stopgap" as per Oxford Dictionary, means "a temporary way of dealing with a problem or satisfying a need".

17. In Oxford Dictionary, the word "ad hoc" means for a particular purpose; specifically. In the same dictionary, the word "fortuitous" means happening by accident or chance rather than design.

18. In R Ramanatha Aiyar's Law Lexicon (2nd Edn.) the word "ad hoc" is described as: "For particular purpose. Made, established acting or concerned with a particular (sic) and or purpose." The meaning of word "fortuitous event" is given as "an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God.

19. The meaning to be assigned to these terms while interpreting provisions of a service rule will depend on the provisions of that rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as "act hoc" or "stopgap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as "fortuitous" in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a "stopgap" arrangement and appointment in the post as "ad hoc" appointment. It is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stopgap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come

within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the questions of inter se seniority of officers in the cadre.

20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ad hoc/ stopgap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.

So far this decision is concerned, in our view, it does not advance the case of the Petitioner particularly when the orders dated 11.1.2002 supra and facts on the office file are looked into.

31. In Sanjay Dhar Vs. J and K Public Service Commn. and Another, Supreme Court was dealing with a case of rejection of certificate furnished by the Appellant while appearing for selection and appointment to the post of Munsif under the Jammu and Kashmir Civil Service (Judicial) Recruitment Rules, 1967. In those circumstances, while allowing the claim of the Appellant, who was selected in the earlier examination as also in the subsequent examination, but was appointed on the basis of the latter. After accepting the certificate submitted by the Appellant when he had earlier qualified both in written and in viva voce but was not appointed, action of official Respondents was set aside and appointment was ordered to be considered on the basis of his earlier examination and he was allowed benefit of seniority only on the basis of his earlier selection. We fail to understand how this decision advances the case of the Petitioner. It is not attracted to the facts of this case.

32. In Munna Roy Vs. Union of India (UOI) and Others, Supreme Court while considering the scope of judicial review held as under:

2. The Appellant, pursuant to an advertisement issued by the Railway Recruitment Board for the post of Craft Teacher (Bengali Medium), applied for the same. She possesses qualifications of a graduate. On the basis of a written test held thereafter, she was successful, and then was called for the interview. But after the interview was over and a select list was published wherein her name also appeared but as no appointment letter was issued, she moved the Central Administrative Tribunal. While the application was pending before the Tribunal, the Railway Recruitment Board cancelled the panel by order dated 5.9.1996 on the ground that there has been sufficient irregularities in the matter of selection. The Appellant, therefore, filed an application before the Tribunal for setting aside the order of cancellation and directing the Board to complete the recruitment process. The Tribunal allowed the said application. Against the order

of the Tribunal, the matter was taken to the High Court and the High Court having interfered with the order of the Tribunal, the Appellant has approached this Court. The High Court while interfering with the order of the Tribunal, has taken into consideration the fact that mere inclusion of a person's name in the list does not confer any right and therefore mandamus cannot be issued. The aforesaid enunciation as a proposition of law cannot be disputed. However, if the administrative authority takes a decision and the reasons for such decision are erroneous then such a decision can be interfered with by a court of law. In the case in hand the Appellant pursuant to an advertisement had applied for and she had the requisite qualification. She became successful in the written test as well as in the viva voce. The list of successful candidates included her name but the ground for cancellation of the entire list without even informing the Appellant was that though the minimum qualification required was a matriculate she was a graduate and thus dubious method has been adopted for being selected. We really fail to understand that if a candidate possesses a qualification higher than the required qualification and the advertisement itself had prescribed the same then how can the authority come to a conclusion that selection has been made by adopting a dubious method. In the aforesaid premises, we have no hesitation to come to a conclusion that the reasons which weighed with the authorities to quash the selection are not germane and must be held to be arbitrary and irrational. We, therefore, set aside the impugned order of the High Court as well as the order of the authorities concerned quashing the selection panel and direct that the order of the Tribunal be implemented.

This decision also does not advance the case of the Petitioner in any manner.

33. So far the decision in *Shri L. Chandrakishore Singh Vs. State of Manipur and Others*, is concerned, in our view, it also does not support the case of the Petitioner. In this case question that was considered by the Supreme Court was, the criteria while considering the matter of seniority. It was held that probation or officiating appointment followed by confirmation cannot be ignored unless there was a rule to the contrary.

34. Reliance was also placed on the decision of Supreme Court in the case of *Ajit Singh and Others Vs. The State of Punjab and Others*, , to show that employment also includes promotions. There can be hardly any dispute so far law declared in this decision, is concerned. So far *Shri L.R. Chandel's* promotion is concerned, it was on ad hoc basis. Therefore, no benefit can be derived by the Petitioner either from the said order or from this decision.

35. In *G.S. Lamba and Others Vs. Union of India (UOI) and Others*, amongst others, it was held that in case of seniority and promotion as per quota and rota rule, and where there being departure from quota rule, it results in breaking down of rota rule, in such a situation continuation of service would prevail. It was further held that where promotees were inducted consistently in derogation of mandatory quota rule, it can be presumed that the rule stood relaxed in exercise of power conferred under relaxation rule. This decision, in our view, does not

advance the case of the Petitioner because firstly there was no violation of rota rule in this case. Rather it is kept in tact while promoting Mr. Chndel as noted above.

36. Next decision relied upon on behalf of the Petitioner was Rajendra Narain Singh and Others Vs. State of Bihar and Others, The matter being examined in this case was relating to the seniority and promotion between direct recruits and promotes. While determining their inter se seniority on the basis of officiating service. Admittedly, that is not the situation in the present case. Therefore, it does not advance the case of the Petitioner. Similarly, reliance placed by the Petitioner on the decision of Apex Court reported in P.S. Mahal and Others Vs. Union of India (UOI) and Others, also does not advance his case.

37. In AIR 1977 251 (SC) the matter under consideration was of appointment from amongst direct recruits and promotes where rule prescribed 50: 50 quota as far as practicable. In this case, amongst other things, while considering the appointment amongst direct recruits and promotes on the basis of quota rule, it was hold that rotational mechanics was not necessarily to apply in the quota system. It was further held as under:

While laying down a quota when filling up vacancies in a cad more than one source, it is open to Government, subject Under Article 16, to choose "a year" or other period of the v. by vacancy basis to work out the quota among the source once the Court is satisfied examining for constitutionality them proposed, that there is no invalidity, administrative tech may have free play in choosing one or other of the familiar procedure of implementing the quota rule.

However, when a reference is made to this decision, as well to No. 7 of Schedule III supra, we find that quota was done away by amon the rule. And further with a view to ensure that rights of a person Respondent No. 4 who would become eligible in future are protected are not affected Respondent No. 1 has passed the necessary orders. In view, this decision does not advance the case of the Petitioner.

38. Similarly, reference to the decision of the Supreme Court in A.K. Subraman and Others Vs. Union of India (UOI) and Others, also of no consequence keeping in view the facts of the present case. As no benefit can be derived from all these decisions to advance the case the Petitioner.

39. At the risk of repetition, it may be noted that after the motion of Mr. Inder Singh, as is the admitted case of the parties, person to be considered for promotion to the post of Deputy Regi was from the category of Court Secretaries and Respondent No. 4 the not completed the period of five years as such. Therefore the next per from the category of Assistant Registrars was promoted, but on basis and as per orders passed by Respondent No. 1 without affect the right of the Court Secretary as and when he becomes eligible being considered for such promotion. Therefore, the plea urged on behave of the Petitioner that for all purposes, Mr. L.R. Chandel was promptly on regular basis against the post

meant for the category of Court source retaries has been raised simply to be rejected.

40. So far power of Respondent No. 1 Under Article 229 of the Constitution of India is concerned, there is no dispute as it is his exclusive prerogative. Rules of 1997 have also been framed in exercise of such constitutional power vested in him.

41. As far as residuary power to relax is concerned, that is also exclusive prerogative of Respondent No. 1. No challenge has been made to any of these rules. Similarly, power to make temporary appointment is also there Under Rule 12 with Respondent No. 1. Thus, appointment, Shri Chandel having not been challenged when it was made on 11.1. in terms of notifications extracted hereinabove. Petitioner is now precluded from claiming that his promotion was on regular basis and also that point meant for promotion of Court Secretary stood exhausted with (Mr. Chandel's) promotion. For all purposes, Petitioner accepted the motion of Shri L.R. Chandel on ad hoc basis by his acts of omission and commission. What preceded the issuance of his promotion order of 11.1.2002 has been examined by us from the official record. On its perusal we are satisfied that it was never intended by Respondent No. 1 to exhaust the point meant for the category of Court Secretary. Rather it was expressly and in no uncertain terms intended to be protected and appropriate orders had been passed to that effect.

42. So far grievance of Respondent No. 4 regarding rejection of his representation for giving relaxation of six months Under Rule 23 of 1997 Rules is concerned; record shows that Respondent No. 1 had dealt with the matter while rejecting the same on his subjective satisfaction. In case he was aggrieved, then nothing stopped him to have such recourse as available to him. But he accepted the order of rejection. Suffice it to say that relaxation cannot be claimed as a matter of right. It is always for the competent authority to consider the case of each one of the applicant when such a concession is claimed. Since Respondent No. 4 is not before the Court challenging the action of Respondent No. 1 declining relaxation in his case, we are not examining his grievance.

43. Examining the case of the Petitioner in the light of the facts and circumstances referred to hereinabove as also in the face of the Rules of 1997 and above all order of the appropriate authority passed while ordering the ad hoc promotion of Mr. L.R. Chandel on the acceptance of resignation of Mr. K.S. Kanwar w.e.f. 10.1.2002, it cannot be said on facts or on interpretation of Rules of 1997 that either it was intended to exhaust point meant for Court Secretary on his (Shri Chandel's) promotion or to impair the right of such category on candidate belonging to it being not eligible for consideration. This is also what follows from the aforesaid discussion.

44. No other point is urged.

45. Before passing final order, we may notice that in this writ petition arguments

were heard and Petitioner was reserved. CMP No. 2278 of 2002 was filed by the Petitioner thereafter for stay of operation of Annexure PR This is the notification No. HHC/GAZ/I-I/74-VIII dated 24.10.2002 issued by Respondent No. 2. By means of this notification besides Respondent No. 4, number of other persons were promoted. Our Respondent No. 4, as an interim measure it was ordered that position as it existed before issuance of notification dated 24.10.2002 shall be restored by the concerned Respondents. This interim order also does not now survive in view of the disposal of the main matter. Consequently it shall stand vacated and as a further consequence of it the aforesaid notification dated 24.10.2002 shall stand restored forthwith. This direction is necessary keeping in view the record that was produced because of consequential orders passed by Respondents No. 1 and 2 after interim order by this Court was passed on 1.11.2002. Thus, the said notification dated;24.10.2002 will stand restored in its entirety and consequential action shall be taken by Respondents No. 1 and 2 forth with.

46. Subject to what has been said in the preceding para of this Jud there is no merit in this writ petition and the same is dismissed account with no order as to costs. All interim applications shall stand finally dis of in the light of disposal of the main matter. Record produced by Dogra has been returned to him.