

(2016) 02 MP CK 0073

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 20003, 20110, 20111, 20117, 20192, 20196, 20204, 20609, 20611, 20612, 20614, 20655, 20726, 21014, 21015 of 2015 with 61, 1495, 1737, 1813 and 1936 of 2016

Dinesh Kumar Jaata and others

APPELLANT

Vs

Municipal Corporation and others

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2016) 2 MPLJ 574

Hon'ble Judges : Alok Aradhe, J.

Bench : Single Bench

Advocate : Shobha Menon, Senior Advocate, D.K. Dixit, Manoj Sharma, Shashank Shekhar, Vipin Yadav, N.P. Dwivedi, Bhoopesh Tiwari, Ashish Agrawal, Deepak Singh, Rajeshwar Rao and Rahul Choubey, Advocates, for the Appellant; Anshuman Singh, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Alok Aradhe, J.—In this bunch of writ petitions, the petitioners have assailed the validity of the orders dated 19.11.2015, by which, the orders of regularization of services of the petitioners who are employees of Municipal Corporation, Jabalpur, have been cancelled. Though common questions of law arise for consideration in this bunch of petitions, yet in different factual scenario, therefore, it is necessary to refer to the facts of each of the writ petitions, which are stated infra.

2. The petitioner in Writ Petition No.20003/2015 had passed Higher Secondary Examination and had obtained Diploma in Domestic Electrical Installation. Sometime in the year 1983 the petitioner was appointed as Daily Wage employee on the post of Wireman. The petitioner filed Writ Petition No.1265/2003 seeking regularization of his services, which was disposed of by the High Court vide order dated 03.9.2003 with a direction to respondent to consider the case of the

petitioner for regularization of his services. The petitioner by order dated 12.1.2004 was regularized on the post of Vaccinator in the pay scale of Rs.3050-3200/-. Thereafter, by order dated 10.8.2005 the order of regularization of services of 74 employees including the petitioner was cancelled, which was the subject matter of challenge in a bunch of writ petition, which was disposed of by a Bench of this Court vide order dated 1.9.2005, by which, the order dated 10.8.2005 directing cancellation of order of regularization was quashed and the respondent was granted liberty to prepare seniority list and to hear the petitioners and thereafter to pass an order of de-regularisation, if warranted. In compliance of order passed by the High Court, the order dated 10.8.2005 was cancelled vide order dated 19.9.2005.

Thereafter, a show-cause notice dated 27.8.2011 was issued which was challenged in a bunch of writ petitions before this Court which was disposed of on 06.10.2015 with directions to the Commissioner to decide the matters after considering the response given by the petitioner expeditiously and giving due opportunity of hearing to the petitioners within a period of four months and to communicate the decision thereof to the petitioners within same time. The petitioners in the Bunch were also granted liberty to challenge the decision if the same is adverse to their interest, by way of appropriate proceeding, which will be decided on its own merits. In pursuance of aforesaid order, impugned orders of de-regularisation of services of the petitioners have been passed.

3. The petitioner in Writ Petition No.20110/2015 was appointed as daily wage employee on the post of Peon in the year 1981. He filed Writ Petition No.1266/2003, in which, he sought the relief of regularization of his services.

The said writ petition was disposed of with a direction to consider the case of the petitioner for regularization of his services. Thereafter, by order dated 12.1.2004 the services of petitioner were regularized on the post of Peon. On 28.10.2015 an information was sought from the petitioner with regard to regularization of his services and he was given 3 days" time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015. Thereafter, impugned order was passed by which the services of the petitioner from the post of Peon was de-regularised.

4. The petitioner in Writ Petition No.20111/2015 was appointed on the post of Helper (Assistant Wireman) on 13.3.1985. He filed W.P.No.1266/2003 seeking regularization which was disposed of on 03.9.2003. Thereafter, by order dated 12.1.2004 the services of the petitioner were regularized. On 28.10.2015, information was sought from the petitioner with regard to regularization of his services and he was given 3 days" time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015.

Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner from the post of Peon was cancelled.

5. In Writ Petition No.20117/2015 the petitioner was appointed as daily wage

employee on the post of Gas Welder on 01.6.1981. He filed Writ Petition No.5153/1998 seeking regularization of his services. The said writ petition was disposed of by order dated 08.2.2001 with a direction to respondent to consider the case of petitioner for regularization. Accordingly, the services of the petitioner were regularized on the post of Gas Welder vide order dated 28.5.2003. Thereafter, the aforesaid order was amended on 30.1.2004. On 28.10.2015, information was sought from the petitioner with regard to regularization of his services and he was given 3 days" time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner from the post of Gas Welder was cancelled.

6. The petitioner in Writ Petition No.20192/2015 was appointed as daily wage employee on 01.8.1984 on the post of Peon. He filed Writ Petition No.1266/2003 seeking regularization of his services. The said writ petition was disposed of by order dated 03.9.2003 with a direction to respondent to consider the case of petitioner for regularization. Accordingly, the services of the petitioner were regularized on the post of Peon vide order dated 12.1.2004. On 28.10.2015, information was sought from the petitioner with regard to regularization of his services and he was given 3 days" time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015.

Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner from the post of Peon of OBC category was cancelled.

7. The petitioner in Writ Petition No.20614/2015 was appointed as Daily Wage employee on 01.1.1989 on Class IV post. The petitioner filed Writ Petition No.3460/1994 seeking regularization of his services. During pendency of aforesaid petition the respondents took policy decision of framing a scheme to regularize incumbents who are working prior to 31.12.1988. However, no decision was taken with regard to employees working after 01.1.1989.

The Writ Petition No.3460/1994 was disposed of on 27.02.2003. Pursuant to decision of High Court the respondent regularized the services of petitioner on the post of Lineman (Water Department) on 28.1.2004. A show cause notice dated 28.10.2015 was issued to petitioner. However, impugned order has been passed by which the order of regularization of services of the petitioner has been cancelled.

8. The petitioner in Writ Petition No.20196/2015 was appointed as daily wage employee on the post of Bullock Shed Chowkidar on 01.3.1995. He filed Writ Petition No.1266/2003 seeking regularization of his services. The said writ petition was disposed of by order dated 03.9.2003 with direction to respondent to consider the case of petitioner for regularization. Accordingly, the services of the petitioner were regularized on the post of "Kulgade" Chowkidar vide order dated 12.1.2004. On 28.10.2015, information was sought from the petitioner with regard to regularization of his services and he was given 3 days" time to

submit explanation. The petitioner submitted reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner was cancelled.

9. The petitioner in Writ Petition No.20204/2015 was appointed as daily wage employee on the post of Helper (Assistant Wireman) on 01.6.1982. He filed Writ Petition No.1266/2003 seeking regularization of his services. The said writ petition was disposed of by order dated 03.9.2003 with a direction to respondent to consider the case of petitioner for regularization. Accordingly, the services of the petitioner were regularized on the post of "Gadivaan" vide order dated 12.1.2004. On 28.10.2015, information was sought from the petitioner with regard to regularization of his services and he was given 3 days" time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner was cancelled.

10. The petitioner in Writ Petition No.21015/2015 was appointed as daily wage employee on the post of Helper (Assistant Wireman) on 21.11.1982. He filed Writ Petition No.1266/2003, in which, he sought the relief of regularization of his services. The said writ petition was disposed of with a direction to consider the case of the petitioner for regularization of his services. Thereafter, by order dated 12.1.2004 the services of petitioner were regularized on the post of Bin Card Attendant. On 28.10.2015 information was sought from the petitioner with regard to regularization of his services and he was given 3 days" time to submit explanation. The petitioner submitted reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner from the post of Peon was cancelled.

11. The petitioners in Writ Petition No.20609/2015 were appointed as Sub Engineers (Technical) on daily wage basis prior to 31.12.1988. During the pendency of Writ Petition No.3460/1994, the issue relating to regularization of services of the employees of Municipal Corporation was pending consideration before High Court, the Corporation took a decision to frame a scheme to regularize the services of the employees who were appointed prior to 31.12.1988. The aforesaid writ petition was disposed of by order dated 27.2.2003, inter alia, with the direction that Corporation shall regularize the services of daily rated employees strictly as per the seniority and eligibility subject to availability of the post. In compliance of the order passed by High Court vide orders dated 23.4.2003, 22.5.2003 and 28.5.2003 the services of the petitioners were regularized on the post of Sub Engineers. While passing the order of regularization in the note-sheet, it was, inter alia, held that petitioners were working as Sub Engineers (Technical) prior to 31.12.1988. The petitioners fulfilled the requisite qualification of holding three years Diploma in Engineering and the case of petitioners for regularization can be considered against three vacant posts. Thereafter, by order dated 10.8.2005 the order of regularization of services of 74 employees including petitioner was cancelled, which was the

subject matter of challenge in Writ Petition No.8359/2005, which was disposed of by order dated 01.9.2005, by which, the order dated 10.8.2005 directing cancellation of order of regularization was quashed and the respondent was granted liberty to prepare seniority list and to hear the petitioners and thereafter to pass an order of de-regularization, if warranted. In compliance of order passed by High Court, the order dated 10.8.2005 was cancelled by order dated 19.9.2005. Thereafter, a show-cause notice dated 27.8.2011 was issued which was the subject matter of challenge in Writ Petition No.10260/2012 before this Court which was disposed of on 06.10.2015 with a direction to the Commissioner to decide the matters after considering the response given by the petitioner expeditiously and giving due opportunity of hearing to the petitioners within a period of four years and to communicate the decision thereof to petitioner within same time. The petitioners in the Bunch were also granted liberty to challenge the decision if the same is adverse to their interest, by way of appropriate proceeding, which will be decided on its own merits. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days" time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015.

Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner were cancelled.

12. The petitioners in Writ Petition No.20611/2015 were appointed on daily wage basis on Class IV post prior to 31.12.1988. During the pendency of Writ Petition No.3460/1994, in which the issue relating to regularization of services of the employees of Municipal Corporation was pending consideration before High Court, the Corporation took a decision to frame a scheme to regularize the services of the employees who were appointed prior to 31.12.1988. The aforesaid writ petition was disposed of by order dated 27.2.2003, inter alia, with the direction that Corporation shall regularize the services of daily rated employees strictly as per the seniority and eligibility subject to availability of the post. In compliance of the order passed by High Court, the services of the petitioner No.1 were regularized on the post of Notice Writer, whereas that of respondent No.2 on the post of Pump Attendant vide order dated 25.12.2003. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days" time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the orders of regularization of services of the petitioners were cancelled.

13. The petitioners in Writ Petition No.20612/2015 were appointed as Lower Division Clerk on daily wage basis on 01.1.1989. During the pendency of Writ Petition No.3460/1994, in which the issue relating to regularization of services of the employees of Municipal Corporation was pending consideration before High Court, the Corporation took a decision to frame a scheme to regularize the services of the employees who were appointed prior to 31.12.1988. The

aforesaid writ petition was disposed of by order dated 27.2.2003, inter alia, with the direction that Corporation shall regularize the services of daily rate employees strictly as per the seniority and eligibility subject to availability of the post. In compliance of the order passed by High Court, the services of the petitioner No.1 were regularized on the post of Lower Division Clerks vide order dated 12.2.2004. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days" time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015.

Thereafter, by impugned order dated 19.11.2015 the orders of regularization of services of the petitioners were cancelled.

14. In Writ Petition No.21014/2015 the petitioners no.1 & 2 were appointed on daily wage basis on consolidated pay in the year 1988. In pursuance of the resolution, the services of petitioners No.1 & 2 were regularized on the post of Lower Division Clerk vide order dated 10.10.2003.

Whereas the services of petitioners no.3, 4 & 5 were regularized on the post of Pump Attendant vide order dated 12.1.2004. The services of petitioner No.6 was regularized vide order dated 12.1.2004. The services of petitioners No.7 & 8 were regularized by order dated 12.1.2004 on the post of Vaccinators. The services of petitioner No.9 were regularized on the post of Ward Supervisor, whereas the petitioner no.10 was regularized on the post of Ward Clerk and petitioner No.11 was regularized on the post of Peon vide order dated 25.12.2003. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days" time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the orders of regularization of services of the petitioners were cancelled.

15. In Writ Petition No.20655/2015 had passed Higher Secondary School examination in the year 1983 and was appointed on daily wage basis on 19.6.1986 on the post of peon. Thereafter, he was appointed on fixed pay of Class IV in year 1996. The services of the petitioner were regularized by order dated 25.12.2003 on the post of Peon.

Thereafter, the petitioner was served with notice dated 28.10.2015 and information was sought from the petitioner with regard to regularization of his services and he was given 3 days" time to submit explanation.

The petitioner submitted his reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the orders of regularization of services of the petitioners were cancelled.

16. The petitioners in Writ Petition No.20726/2015 the petitioner No.1 was appointed as daily wage employee in the year 1988 and thereafter vide order dated 28.1.2004 his services were regularized on the post of Moharrir. The

petitioner No.2 was appointed on daily wage basis in the year 1992 and his services were regularized on 31.1.2004 on the post of Notice Server in the Revenue Department of the Corporation. The petitioner no.3 was appointed on daily wage basis in the year 1992 and his services were regularized on the post of Notice Server vide order dated 31.1.2004. The petitioner No.4 was appointed as daily wage employee in the year 1990 and his services were regularized on the post of Ward Clerk vide order dated 25.12.2003. The petitioner No.5 was appointed on daily wage basis in 1988 and was regularized on the post of Ward Clerk vide order dated 10.10.2003. The petitioner No.6 was appointed on daily wage basis in 1991 and vide order dated 25.12.2003 he was regularized in Haka Gang.

On 28.10.2015, information was sought from the petitioner with regard to regularization of their services and they were given 3 days" time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner was cancelled.

17. The petitioner in Writ Petition No.61 of 2016 was appointed as daily wage employee in 1987. Thereafter, he was appointed in fixed pay on the post of Time Keeper vide order dated 07.12.1995. The petitioner filed W.P.no.4520/1997 claiming regularization on the post. The said writ petition was disposed of by order dated 17.2.2003 with a direction to consider the case of petitioner for regularization. Thereafter, vide order dated 25.12.2003 the services of petitioner were regularized on the post of Time Keeper. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days" time to submit explanation.

The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioners was cancelled.

18. In Writ Petition No.1495/2016 was appointed in 1988 on daily wage basis. Thereafter, his services were regularized on 17.9.2003 as he had passing Typing Test.

Thereafter, on 28.10.2015, information was sought from the petitioner with regard to regularization of his services and he was given 3 days" time to submit explanation.

The petitioner submitted his reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner was cancelled.

19. In Writ Petition No.1737/2016 were appointed on daily wage basis on the post of Driver prior to 1988. The services of the petitioners No.1 to 9 were regularized on the post of Driver vide order dated 16.12.2003. The services of petitioners No.10 & 11 were regularized on the post of Driver vide order dated

19.1.2004. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days" time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the orders of regularization of services of the petitioners were cancelled.

20. The petitioners in Writ Petition No.1813/2016 the petitioners were appointed on daily wage basis in the year 1983. Thereafter, there services were regularized vide order dated 12.1.2004 on the post of Pump Operators. On 28.10.2015, information was sought from the petitioners with regard to regularization of their services and they were given 3 days" time to submit explanation. The petitioners submitted their reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the orders of regularization of services of the petitioners were cancelled.

21. The petitioner in Writ Petition No.1936/2016 the petitioner was appointed on daily wage basis on 31.1.1987 in Fire Brigade Department. The services of the petitioner were regularized vide order dated 28.1.2004. On 28.10.2015, information was sought from the petitioner with regard to regularization of their services and he was given 3 days" time to submit explanation. The petitioner submitted his reply to letter dated 28.10.2015. Thereafter, by impugned order dated 19.11.2015 the order of regularization of services of the petitioner was cancelled.

22. Mrs.Shobha Menon, learned senior counsel for the petitioners submitted that impugned orders directing deregularisation of services of petitioner have been passed in contravention of the order dated 27.2.2003 passed in Writ Petition No.3460 of 1994 as well as order dated 01.9.2005 passed in Writ Petition No.8359 of 2005. It is further submitted that seniority list was required to be prepared after inviting objections, which has not been done. It has also been submitted that cyclostyled orders have been passed which reflect non-application of mind. It is further submitted that while passing impugned orders the material on the basis of which original orders of regularization were passed, has not been taken into account. It is also contended that services of the petitioners, who are regular employees of the respondent-Corporation, cannot be deregularized without holding an enquiry. It is urged that petitioners, have put in more than 12 years of service as regular employees and, therefore, the Corporation committed manifest error in un-settling the settled things.

It is further submitted that reasons spelt out in the show cause notice do not find place in the impugned orders, therefore, the same have been passed in violation of principles of natural justice. While inviting the attention of this Court to order dated 25.7.2012 passed in W.P.no.10263/2012 it is submitted that, in fact, no seniority list was prepared till 2012 and the action of respondents in de-regularising the services of the petitioners is contemptuous. It is also submitted that respondents ought to have taken into account the principle of fair play while considering the qualification/eligibility while deciding the question of

regularization of services of the petitioners. In support of her submissions, learned senior counsel has placed reliance on order dated 30.8.1997 passed in Writ Petition No.2040 of 1997 Prabhudayal Pandey v. M.P. State Agricultural Marketing Board and another.

23. Mr. D.K. Dixit, learned counsel for the petitioner submitted that impugned order of de-regualrisation of services of petitioner is arbitrary as the Supreme Court in the case of State of Karnataka v. Uma Devi, (2006) 4 SCC 1 has held that the services of persons who have been regularized, cannot be de-regularized. It is further submitted that in the case of U.P. State Electricity Board v. Pooran Chandra Pandey and others [Civil Appeal No.3765 of 2001 decided on 09.10.2007] it has been held that even if Uma Devi's case is to be applied, the protection contained in Article 14 of the Constitution of India cannot be overlooked and all the petitioners who have rendered their services for past about 10 years are entitled to the benefit of regularization.

24. Mr. Manoj Sharma, learned counsel for the petitioner submitted that petitioner No.6 in W.P. No.20726/2015 was never served with the show-cause notice, but straight away the impugned order dated 19.11.2015 has been passed. Thus, the petitioner No.6, in the aforesaid writ petition has been condemned unheard. It is also submitted that show cause notice does not fulfil the requirement of show-cause and no effective opportunity of hearing was afforded to petitioner as only 3 days' time is given by respondent to the petitioner to show cause. It is further submitted that action of de-regularisation of services of the petitioners is vitiated on account of non-preparation of seniority list. It is also urged that it is nobody's case that petitioners are not entitled for regularization. The only issue which requires to be adjudicated is, whether they have been regularized in the order of seniority against the posts which befit their qualification. It is also submitted that issue with regard to non-availability of posts, especially that of not following the reservation and roster, cannot be made a ground after a decade, as long experience has been acquired by the petitioners on the post on which they are regularized and the same takes care of qualification. In this connection reference has been made to the decision in the case of Bhagwati Prasad v. Delhi Mineral Development Corporation, (1990) 1 SCC 361. Lastly, it is urged that the impugned orders have the effect of unsettling the settled things after a decade by taking recourse to casual process.

25. Mr.Shashank Shekhar, learned counsel for the petitioner has submitted that action of respondent demonstrates pre-determination and prejudice inasmuch as impugned orders have been passed in utter contravention of the settled proposition of service jurisprudence. It is further submitted that administrative decisions are expected to be taken reasonably and within reasonable time. In the instant case, the impugned decision has been taken after a period of 12 years.

25-A. Mr.Vipin Yadav, learned counsel for the petitioners submitted that letter dated 28.10.2015 purported to be show-cause notice cannot be termed as "show-cause notice" as it requires the grounds to be stated, according to which the

action is necessitated, particularly the penalty/action which is proposed to be taken. In support of aforesaid submission he has placed reliance on the decision in the case of *Gorkha Security Services v. Government (NCT of Delhi) and others*, (2014) 9 SCC 105. While referring to paragraph 44 of the decision in the case of *Uma Devi (supra)* it is contended that if regularization is already made and is not subjudice, the same need not be re-opened. Therefore, the impugned orders of deregularisation are contrary to the decision in the case of *Uma Devi's* case. It is further submitted that since the order of regularization has been cancelled after 11 years, therefore, the same is bad in law. In support of aforesaid submission reliance has been placed on the decision in the cases of *Buddhi Nath Chaudhary and others v. Abahi Kumar and others*, (2001) 3 SCC 328, *Rajendra v. State of Maharashtra*, AIR 2008 SCW 2877 and *Radha Mohan Goswami v. State of M.P.*, (2004) 2 MPHT 49.

26. Mr. Ashish Agrawal, learned counsel for the petitioner in Writ Petition No.1936/2016 and Mr. Deepak Singh, learned counsel for petitioner in Writ Petition No.61/2016 have adopted the submissions made by learned counsel for the petitioners in other writ petitions.

27. On the other hand, Mr. Anshuman Singh, learned counsel while opposing the submissions made on behalf of learned counsel for the petitioners, has submitted that impugned orders have been passed in compliance with principles of natural justice. It is further submitted that it is well settled in law that principles of natural justice cannot be put in straight jacket formula and non-observance does not automatically result in setting aside any administrative action. It is also submitted that party alleging violation of principles of natural justice has to show prejudice and has to demonstrate how the action could have been different if opportunity would have been granted. In support of aforesaid submission reference has been made to decision of Supreme Court in the cases of *Managing Director, ECIL v. B. Karunakar*, (1993) 4 SCC 727 and *Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise*, (2015) 8 SCC 519. It is contended that none of the petitioners have been able to demonstrate as to whether the post were, in fact, vacant or juniors to them have been regularized or they fulfil the qualification or that reservation roster was followed. It is urged that none of the petitioners have been able to demonstrate prejudice, therefore, the submission with regard to non-compliance of principles of natural justice deserves to be rejected. It is argued by him that contention of petitioners that since seniority lists have not been prepared, therefore, the orders with regard to de-regularisation cannot be passed, also does not deserve acceptance as the respondents have prepared separate gradation lists for four categories, namely, daily wagers of technical post engaged prior to 31.12.1988; daily wagers of technical post engaged subsequent to 01.1.1989; daily wage of non-technical post engaged prior to 31.12.1988 and daily wage of nontechnical post engaged subsequent to 01.1.1989. It is also argued that aforesaid gradation lists were prepared as on 01.1.2009. It is submitted that since petitioners were continuing in regular establishment, therefore, their names were not mentioned in the

aforesaid gradation lists and they only contain the names of daily wage employees. It is also urged that contention raised on behalf of petitioners that even till 2012 the gradation list was not prepared deserves to be rejected as gradation list was prepared in the year 2009 itself. It was further argued that respondent-Corporation was not represented at the time when the order dated 25.7.2012 was passed, as the said fact could not be brought to the notice of the High Court. It is also submitted that even non-existence of names of petitioners in the gradation list is inconsequential as petitioners have failed to demonstrate any prejudice to them.

It is urged that doctrine of severability applies in respect of administrative orders as well and in case an order which contains many reasons, and some reasons are severable from another, the order can be justified on the basis of sustainable reasons, notwithstanding that Court may not agree with the unsustainable reasons. In this connection, reference is made to the decision of Supreme Court in the cases of *P.D.Agrawal v. State Bank of India*, (2006) 8 SCC 776 and *Krishnakali Tea Estate v. Akhil Bharatiya Chah Majdoor Sangh*, (2004) 8 SCC 200. It is also contended that impugned order of de-regularisation has been passed on the basis of non-fulfilment of educational qualification, non-availability of vacant post and non following of reservation roster and not following the principle of seniority. The aforesaid grounds are sufficient to justify the orders of de-regularisation. It is further submitted that regularization of services of the petitioners falls in the category of illegal appointment as per law laid down in the case of *Uma Devi (supra)* and, therefore, the respondent is fully justified in deregularising the services of the petitioners. It is also urged that submission of petitioners that long existing position cannot be unsettled runs contrary to recent decision of Division Bench in the case of *Manukhlal Saraf v. Arun Kumar Tiwari and others*, W.P.No.198 of 1999. It is also argued that petitioner No.6 in W.P.No.20726/2015 has been transferred to Municipal Corporation, Satna, therefore, he has not received any notice or order.

However, aforesaid fact has not been mentioned in the writ petition. Lastly, it is urged that impugned orders have been passed on the basis of grounds which are mentioned in the show-cause notice and in every case there are justifiable reasons which makes the appointment illegal and which has its foundation in the show-cause notice. Therefore, the impugned orders of deregularisation of services of the petitioners are justified and do not call for any interference of this Court.

28. I have considered the respective submissions on both sides. The Supreme Court in the case of *Swadeshi Cotton Mills v. Union of India*, AIR 1981 SC 818, while recognizing the rule of fair play as a necessary concomitant of principle of natural justice, has held that this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands.

The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. In *Maneka Gandhi v. Union of*

India, AIR 1978 SC 597 it was held that natural justice is a great humanizing principle and the soul of natural justice is fair play in action. It is further held that it is well established that rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and background of statutory provisions, nature of right, which may be affected, and the consequences which may entail.

Its application depends upon the facts and circumstances of each case. The necessary facet of principles of natural justice before the process of adjudication starts, is that the authority concerned give to the affected a notice of the case against him and action proposed to be taken against him, so that he may adequately defend himself. A notice is regarded as the minimum obligatory condition. It is the sine qua non of fair hearing. [See: East India Commercial Co. v. Collector of Customs, AIR 1962 SC 1893 and Raymond Woollen Mills Ltd. v. D.G.(Investigation and Registration), (2008) 12 SCC 73. It is equally well settled principle that notice must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet and should give adequate time.

In the absence of notice of any kind and reasonable opportunity, the order passed becomes wholly vitiated.

[See: Canara Bank v. Debasis Das, (2003) 4 SCC 557 and Canara Bank v. V.K.Awasthy, (2005) 6 SCC 321.

The notice must be effective and must be adequate as regards the details of the case, so that the noticee gets an adequate opportunity to represent against the impugned action. A notice in order to be valid has to fulfil following two attributes viz. (i) it must be adequate and (ii) it should fully mention all the grounds, on which, the action is proposed to be taken against the noticee. The grounds given in the notice, on which the action is proposed to be taken, should be couched in clear, specific and unambiguous terms and not in vague or general terms. [See: Board of Technical Education, U.P. v. Dhanwantare Kumar, AIR 1991 SC 271]. It is equally well settled legal proposition that if notice mentions one ground and the action is taken on some other ground or action is taken on some additional ground, which is not mentioned in notice, such notice suffers from vagueness and would amount to violation of principles of natural justice. [See: J. Vilanagandan v. Executive Engineer, AIR 1978 SC 930 and Nasir Ahmed v. Assistant Custodian-General, Evacuee Property, AIR 1980 SC 1157 A hearing to be fair must fulfil several conditions: (i) The adjudicating authority should receive all the relevant material which the individual wishes to produce. (ii) It should disclose all information, evidence or material which the authority wishes to use against the individual concerned in arriving at its decision. (iii) It should give to the individual concerned an opportunity to rebut such information or material. Reasonable time should be granted to submit reply to the show-cause notice. [See: (2008) 13 SCC 689].

It is equally well settled legal proposition that grounds in the show-cause notice

must be ones which are relied on in the impugned order. Otherwise, the action would be held to be in violation of principles of natural justice. [See: Tarlochan Dev Sharma v. State of Punjab and others, (2001) 6 SCC 261 and CCE v. Sheetal International, (2011) 1 SCC 109. The principles of natural justice are grounded in procedural fairness which ensures taking of correct decisions and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate and appropriate outcomes.

[See: Dharampal Satyapal Ltd.(supra)]

29. In the backdrop of aforesaid well settled legal position, the facts of the cases may be taken note of. Admittedly, the petitioners had filed writ petitions seeking their regularization which were disposed of by order dated 27.2.2002 passed in Writ Petition No.1464 of 2001 Ramadhar Kushwaha v. State of M.P. and others. The relevant extract of the said order reads as under:-

"4. As the Corporation itself has decided to regularize the services of employees who are working prior to 31st December, 1988, by which every employee will get his right according to his seniority on availability of post and on fulfilling the eligibility. In the circumstances, contention of the learned counsel appearing for the Corporation, that the Corporation is regularizing the services of employees as per policy decision which is in the uniform policy, is accepted and in respect of those employees who are working prior to 31st December,1988, following directions are issued:-

(a) Respondent Corporation who has already prepared the seniority list of daily rated employees who are working prior to 31st December, 1988 will regularize the services of daily rate employees strictly as per their seniority and eligibility subject to availability of post.

(b) The respondent-Corporation has prepared aforesaid seniority list in two heads, technical and non-technical, will be at liberty to fill up the technical post on availability of technical post from daily rated worker who possesses requisite qualification. If the technical post is not available and the employee comes in the seniority criteria then respondent Corporation will be at liberty to regularize that person even on non-technical post, if such employee so chooses or opts such regularization.

(c) So far as non-technical persons are concerned, all the daily rated workmen will get their regularization as soon as the posts become available as per his seniority and eligibility.

(d) This order will not affect those employees who have already been regularized because of the order passed by the High court or by Labour Court and the aforesaid order has reached its finality. But so far as the other employees are concerned, their services will be regularized as per the direction issued today including those whose regularization are under challenge before this Court.

(e) As the employees are to be regularized or classified on particular post on the

availability of vacant post, as has been held in Full Bench decision by this Court in *Superintending Engineer v. State of M.P. and others*, 1999 (1) MPJR 1., in the circumstances, if any litigation in respect of employee who is working prior to 31-12-1988 or after 1-1-1989 respondent-Corporation will place this order before the Labour Court in that case and labour courts will strictly follow the decision of Full Bench Judgment and directions issued today in this case.

(f) In respect of those cases in which any junior person has been regularized ignoring seniority of other daily rate employees and if presently the order is under challenge before this Court, the aforesaid order of regularization by the labour court stand modified, as per this order.

(g) Those employees who are not satisfied with their seniority in the seniority list will file fresh representation before respondent Municipal Corporation within a period of sixty days from today and Municipal Corporation will decide the seniority of those unsatisfied employees within a period of ninety days thereafter.

(h) So far as the regularization of the employees working prior to 31-12-1988 are concerned, the respondent will consider the cases for regularization as and when the posts are available strictly according to their seniority.

5. In respect of employees who are engaged after 1-1-1989 is concerned, following directions are issued:-

(a) Respondent will prepare a fresh seniority list of all those employees who are continuously working in the Corporation and have achieved the status of permanent workman. This shall be done within 90 days from today.

(b) The aforesaid list will be duly published by the Corporation and after considering objections of the employees, the aforesaid seniority list will be finalized.

(c) The respondent Corporation on availability of post, after exhausting the list of employees working prior to 31-12-88 will regularize the services of all those employees strictly in accordance with their seniority and as per policy Annexure-R-4.

(d) The policy Annexure R-4 will also be applicable in respect of employees who are working after 1.1.89 and have achieved a permanent status as per provisions of standing order.

(e) For regularizing the services of workmen working after 1-1-1989, respondent-Corporation will also observe the reservation as has been mentioned in the Policy Annexure R-4 and in case daily rated employees are available of reserved quota then respondent will fill up the aforesaid quota by regularizing the services of those employees who belongs to reserved category on priority basis and if any such post remains vacant then they will follow the provisions of reservation by the State of M.P.

With the aforesaid directions, the petitions are finally disposed of."

30. Thereafter, the services of the petitioners were deregularised by order dated 10.8.2005, which was assailed in a bunch of writ petition, which was disposed of by order dated 01.9.2005. The relevant extract of the order reads as under:-

"In these writ petitions an order dated 10.8.2005 has been assailed, by which regularization of the petitioners has been cancelled without giving them an opportunity of hearing. The services of the petitioners were regularized after they have rendered the service for consideration period. Order of regularization was passed after petitioners have rendered the services for long period, is not in dispute. Opportunity of hearing has not been afforded, is also not in dispute. The ground on which the order of regularization has been cancelled behind the back of the petitioners is that correct gradation list was not prepared, as such some of the incumbents may have been illegally regularized by the Municipal Corporation, Jabalpur.

After hearing learned counsel for the parties at length, in my opinion, the Corporation is not sure at this stage which of the incumbents have been wrongly regularized. As the Corporation is still preparing the gradation list, on the basis of which it has to be determined by the Corporation that which of the incumbents were not entitled for regularization. May be that seniority list which was earlier prepared was incorrect, once regularization was made the petitioners were required to be heard by the Municipal Corporation before passing order of deregularisation and in case their case was not in the seniority of the employees which is the correct seniority as per the Municipal Corporation, only in that case the order of regularization should have been cancelled only in consonance of principle of natural justice after hearing the petitioners. Thus, the order dt. 10.8.2005 which has been passed without hearing the petitioners, without apprising them of the cause of de-regularisation cannot be allowed to sustain, once the order of regularization has been passed after serving for considerable period, order derogatory to the interest of civil rights of the employees could not have been passed without hearing them as per law laid down by the Apex Court in *Ku. Neelima Mishra v. Harinder Kaur Paintal and others*, AIR 1990 SC 1402. Thus, the order dt. 10.8.2005 is hereby set aside with liberty to the Municipal Corporation to prepare the seniority list, to hear the petitioners and thereafter pass order of de-regularisation if warranted. There were Contempt Petition No.70/04 filed, in which, in accordance with the direction given in the contempt petition, seniority list has to be prepared afresh. However, that does not absolve the Corporation from hearing the petitioners and passing appropriate order in accordance with law. Let the seniority list be prepared as directed in the Contempt Petition.

Writ petitions are allowed to the extent indicated above. Parties to bear their own costs.

(Emphasis supplied)

31. Thereafter, in a bunch of writ petitions, in which challenge was made to the

validity of the show-cause notice dated 27.8.2011, was disposed of with the following directions:-

"As a result, without expressing any opinion on the merits of the controversy, we dispose of these petitions with direction to the Commissioner to decide the matter after considering the response given by the petitioners expeditiously by giving due opportunity to the writ petitioners, in any case, not later than four weeks from today and communicate the decision so taken to the petitioners within the same time. If the decision is adverse, the petitioners will be free to challenge the same by way of appropriate proceedings. That will be decided on its own merits."

32. It is pertinent to note that Corporation itself had framed a scheme for regularisation of services of the daily wage employees and the orders of the regularisation of services of the petitioners have been passed in the year 2003 i.e. prior to decision in Umadevi's case (supra). A comparative chart to indicate the grounds mentioned in the show-cause notices and in the impugned orders in order to ascertain whether there is compliance with the principles of natural justice, is reproduced below:-

W.P.No.

Petitioner

Show-cause notice

Impugned order

Remark

20003 of 2015

Dinesh Kumar Jaat

a) Did not have requisite qualification as he has not passed Vaccination exam

b) In seniority list of 9.12.03 name of petitioner is at Sr.No.32

a) Not possessing requisite qualification as Exam of vaccination not passed

b) Seniority principle not followed

a) The defence of the petitioner that services were regularized in clerical cadre and he is performing duties of clerk, and further that services were regularized against the vacant post of Vaccinator to facilitate withdrawal of salary, has not been considered

b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

20110 of 2015

Ashok Kumar Dubey

Since name of petitioner in seniority list of 09.12.03 at Sr.No.11, therefore, principle of seniority not followed

a) Regularised on post of peon on 12.1.04 on the said date no post of driver in general category was vacant

b) No document for qualification filed

c) Seniority principle was not followed

a) The fact that on 12.1.2004 no post of Driver was vacant in general category not mentioned in the show cause notice.

b) In the show-cause notice it is stated that petitioner had requisite qualification whereas in the impugned order it is stated that petitioner had not filed any document to show-cause that he had the requisite qualification. However, the requisite qualification has neither been prescribed in the show-cause notice nor in the impugned order.

c) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

20111 of 2015

Sushil Shukla

a) Regularised on 12.1.04 against post of peon

b) Name in seniority list of 09.12.03 at Sr.no.49, therefore, seniority principle not followed

a) Post of peon in general category was not vacant

b) No document for educational qualification was filed

c) Seniority principle was not followed.

a) The fact that no post of peon was vacant in general category was not mentioned in the show-cause notice. However, the same finds in the impugned order.

b) In the show-cause notice it is stated that the petitioner has the requisite qualification, whereas in the impugned order it is stated that no document with regard to educational qualification filed by the petitioner.

c) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in

2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

20117 of 2015

Rustam Khan

a) Regularised on 28.5.03

b) Regularised as Gas Welder on which date there were vacant posts (1-ST, 1-OBC, 2-UR)

c) Since passed 7th did not have requisite qualification of ITI Diploma

a) Post of Gas Welder was not vacant

b) Educational qualification document not filed in respect post of Gas Welder

c) Principle of seniority not followed as his name appears at Sr.no.09 of seniority list dt.09.12.03

a) The fact that post of Gas Welder was not vacant, not mentioned in the show-cause notice.

b) The defence of the petitioner that in case the order of de-regularisation is passed the same would tantamount to violation of order dated 27.02.2002 passed in Writ Petition No.1464/2001, has not been considered.

c) The petitioner was not required by show-cause notice to file any document with regard to his educational qualification.

d) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

20192 of 2015

Hasan Mehndi

a) Regularised on 12.1.04 as peon

b) Principle of seniority was not followed while regularizing the petitioner since his name was at sr.No.38 of seniority list dt.09.12.03

a) Relevant time post of OBC peon was not vacant

b) No document for qualification filed along with reply

c) Seniority principle was not followed as his name was at sr.no.11 of seniority list dt.09.12.03

a) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in

2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

b) The fact that no post of peon belonging to OBC category was vacant was not mentioned in the show-cause notice.

c) The fact that petitioner did not have the requisite qualification was not mentioned in the show-cause notice, whereas the same was made the ground for passing the impugned order of de-regularisation.

20614 of 2015

Lakhan Prasad Sen

a) Regularised on 28.1.04 against post of Lineman

b) His name does not find place in seniority list dt. 09.12.03.

c) He is higher secondary whereas requisite qualification is 8 th pass and experience

d) He is not found appointed as daily wage employee

a) He was not entitled for being regularisation on the date of regularisation on the post of Lineman (OBC)

b) Since name does not find place in seniority list dt. 09.12.03, therefore, seniority list not followed

c) He has not filed document to show that he possessed requisite qualification and experience for Lineman

a) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

b) In the show-cause notice it is stated that educational qualification for the post in question was 8th pass, whereas the petitioner has passed Higher Secondary Examination, therefore, the conclusion in the impugned order that petitioner did not have the requisite qualification is perverse and further the same suffers from vice of non-application of mind.

c) In the absence of any seniority list prepared in pursuance of direction of this Court in Writ Petition No.8565/2005 it cannot be said that petitioner was not entitled for regularization on the post of Lineman.

20196 of 2015

Dheeraj Prasad Tripathi

a) Regularised on 12.1.04 on post of Bullock Shed Chowkidar on which 2 posts were vacant (1-ST, 1-UR)

b) His name was at sr.no.169 in seniority list dt.09.12.03

c) Requisite qualification of 8 th pass did not possess as petitioner has passed Class 7 th

a) He has not filed any document indicating that he was entitled to be regularized on the date of regularisation on the post of Bullock shed chowkidar

b) His name was at Sr.No.169 of seniority list dt. 09.12.03

c) He did not file any document in respect of possessing requisite qualification for post of Bullockshed chowkidar

a) From the order of regularization of the petitioner it is evident that petitioner was regularized as "Kulgade Chowkidar", whereas the conclusion with regard to nonavailability of post has been arrived on record with reference to the post of Bullock Shed Watchman, which is unsustainable.

b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) The defence of the petitioner with regard to educational qualification that at the relevant time the candidate should have passed Class Vth examination for appointment on the post against Class IV was not considered in the impugned order.

d) The petitioner was not asked to furnish any document with regard to his educational qualification by the show-cause notice, whereas in the impugned order an inference has been drawn against the petitioner that he does not possess the requisite qualification merely on the ground that petitioner failed to annex any document with regard to his educational qualification.

20204 of 2015

Rajulal Patel

a) Petitioner(OBC) regularized on 12.1.04 as Gadivaan on which date 1 post of ST category was vacant

b) Since petitioner is 4 th pass, therefore, did not possess requisite qualification of Class 8th

a) Petitioner not found to be appointed on daily wage basis

b) He has not filed document indicating that he was entitled to be regularized on the date of regularisation on the post of Gadivaan

c) He did not file any document showing possession of requisite qualification for the post of Gadivaan

- a) The defence of the petitioner was not considered.
- b) The show-cause notice does not mention that petitioner was never regularized and not asked to produce document of educational qualification.
- c) In the show-cause notice it is not required to show that petitioner was not entitled to be regularized on the post of "Gaadivan" on the date of regularization.

21015 of 2015

Sanat Kumar Shukla

- a) Regularised on 12.1.04 on post of Vin Card Attendant, on which date, 1 post under ST category was vacant
- b) His educational qualification is 8 th whereas requisite qualification was Higher Secondary
- a) No post in unreserved category of Vin Card Attendant was vacant
- b) Name of petitioner finds place at sr.no.15, therefore, principle of seniority list was followed
- c) He did not file any document to show that on date of regularisation he possess requisite qualification for Vin Cart Attendant

a) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

b) The fact that principle of seniority was not followed, was not mentioned in the show-cause notice.

c) The defence with regard to educational qualification has not been considered.

20609 of 2015

Madan Singh Thakur (Petitioner No.1)

a) On 28.5.03 i.e. date of regularisation as Sub Engineer, 2 posts (1-SC & 1-ST) were vacant and no post of general category was vacant

a) No post of general category of Sub engineer was vacant on date of regularisation

b) Principles of seniority not followed

a) The note-sheet dated 22.4.2003, pursuant to which, the order of regularization was passed, was not considered while concluding that no post of Sub Engineer belonging to general category was vacant.

b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in

2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) In the show-cause notice it was not mentioned that regularization of petitioners has been made in violation of principles of seniority. However, the same has been made a ground for passing the impugned order

Vijay Kumar Dubey (Petitioner No.2)

On 1.10.03 i.e. date of regularisation as Sub Engineer, 2 posts (1-SC & 1-ST) were vacant and no post of general category was vacant

a) No post of general category of Sub engineer was vacant on date of regularisation

b) Principles of seniority not followed

a) The note-sheet dated 22.4.2003, pursuant to which, the order of regularization was passed, was not considered while concluding that no post of Sub Engineer belonging to general category was vacant.

b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) In the show-cause notice it was not mentioned that regularization of petitioners has been made in violation of principles of seniority. However, the same has been made a ground for passing the impugned order

Anurag Pathak(Petitioner No.3)

a) On 15.11.03 i.e. date of regularisation as Sub-Engineer, 2 posts (1-SC & 1-ST) were vacant and no post of general category was vacant

b) No reservation roster was followed while regularizing

c) On date of appointment as daily wage employee he was 17 years of age

a) No post of general category of Sub engineer was vacant on date of regularisation

b) Principles of seniority not followed

a) The note-sheet dated 22.4.2003, pursuant to which, the order of regularization was passed, was not considered while concluding that no post of Sub Engineer belonging to general category was vacant.

b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) In the show-cause notice it was not mentioned that regularization of petitioners has been made in violation of principles of seniority. However, the same has been made a ground for passing the impugned order

20611 of 2015

Ramraj Kushwaha (Petitioner No.1)

On date of regularisation on the post of Notice Writer i.e. on 25.12.03 only 1 post in ST category was vacant

a) He did not file document in his reply to indicate that on date of regularisation the post of Notice Writer, such post under OBC category was vacant

b) His name was at sr.no.28 of seniority list 09.12.03, therefore, seniority principle not followed

a) The petitioner in his reply has made a reference to note-sheet dated 12.1.1996 of Commissioner to point out that 7 posts were vacant. However, the aforesaid fact has not been considered while recording the conclusion that no post of Notice Writer was vacant at the time when the services of the petitioner were regularized.

b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) The show-cause notice does not mention that seniority principle was not followed. Therefore, the order of de-regularisation has been passed on the ground, which was not mentioned in the show-cause notice.

Kailash Singh Chouhan(Petitioner No.2)

a) Regularised on 25.12.03 as Pump Attendant

b) His qualification was indicated as Nil whereas requisite qualification for the post was ITI Diploma

c) Roster reservation not followed

a) No post of Pump Attendant (general) was vacant on date of regularization i.e. 25.12.03 as his name was at Sr.No.45 of seniority list of illiterates

b) Since his name was at sr.No.45 of seniority list relating to illiterates and persons below 8th standard, therefore, no seniority principle followed

c) No document has been filed to show that he possessed requisite qualification for pump attendant on date of regularisation

a) In the show-cause notice it is not stated that post of Pump Attendant was not vacant. However, in the impugned order a ground has been taken that at the

time of regularisation of services of the petitioner the post of Pump Attendant was not vacant.

b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) The petitioner in his reply had referred to resolution dated 31.1.1994 passed by the Municipal Corporation, by which, it was provided that requirement of passing ITI Examination shall be relaxed in case of Pump Attendant who has rendered 10 years of service. The petitioner had already rendered more than 12 years of service. However, the aforesaid aspect of the matter was not considered while passing the impugned order.

20612 of 2015

Anil Shukla (Petitioner No.1)

a) Regularised as Clerk on 12.2.04

b) 09.12.03 his name was not in seniority list

c) He is B.A. pass, whereas requisite qualification is Higher Secondary and Typing Exam Pass

d) No reservation roster followed

e) He is not found appointed on daily wage basis.

a) No vacant post of Clerk in general category on date of regularisation

b) His name is not in Seniority list dt. 09.12.03. He filed appointment order dt. 19.8.99, therefore, his regularisation is against principle of seniority

a) The fact that no post of L.D.C. was vacant, was not mentioned in the show-cause notice. However, the impugned order of de-regularisation has been passed on the ground that no post was vacant at the time when regularisation was made. The order of de-regularisation has been passed on the ground not mentioned in the show-cause notice.

b) Reply of petitioner to the show cause notice was considered.

c) Since the case of petitioners was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

Manoj Tiwari (Petitioner No.2)

a) Regularised as Clerk on 12.2.04

b) On 09.12.03 his name was not in seniority list

c) He has passed Higher Secondary, whereas requisite qualification is Higher Secondary and Typing Exam Pass

d) No reservation roster followed

e) He is not found appointed on daily wage basis.

a) No vacant post of Clerk in general category on date of regularisation

b) His name is not in Seniority list dt. 09.12.03. He filed appointment order dt. 19.8.99, therefore, his regularisation is against principle of seniority

a) The fact that no post of L.D.C. was vacant, was not mentioned in the show-cause notice. However, the impugned order of de-regularisation has been passed on the ground that no post was vacant at the time when regularisation was made. The order of de-regularisation has been passed on the ground not mentioned in the show-cause notice.

b) Reply of petitioner to the show cause notice was considered.

c) Since the case of petitioners was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

21014 of 2015

Surendra Ingwasia(Petitioner No.1)

a) Regularised on 10.10.03 as Clerk (General). Total 6 posts (3-ST, 2-SC, 1 & A.Ja.Vi.-1) were vacant on date of regularisation but not of general category

b) He is B.Com. whereas requisite qualification is Higher Secondary and Typing, therefore, he did not possess requisite qualification

a) No document filed with reply indicating that on the date of regularisation the post of Ward Clerk (General) was vacant.

b) His name in seniority list dt.09.12.03, therefore, seniority principle not followed while regularisation

c) He has not filed document indicating that he passed B.Com. He had not passed Hindi Typing Test

a) The petitioner had referred to in the reply about the resolution dated 24.3.1988 passed by the Municipal Corporation by which 100 posts of Ward Clerks were created and the matter was forwarded to the State Government for approval, which was also granted on 12.3.1997. However, the aforesaid fact in the reply has not been considered while passing the impugned order.

b) The principles of seniority has been violated, has not been mentioned in the show-cause notice, therefore, the order has been passed on the ground not

mentioned in the show-cause notice.

c) While recording conclusion in the impugned order, the petitioner had not passed Hindi Typing Test, the defence of the petitioner has not been considered that since he was more than 40 years of age, therefore, under circular of the State Government dated 15.11.1984, he was not required to pass Hindi Typing Test.

Kapil Anand Dubey(Petitioner No.2)

a) Regularised on 10.10.03 as Clerk (General). Total 6 posts (3-ST, 2-SC, 1 & A.Ja.Vi.-1) were vacant on date of regularisation but not of general category

b) He is Higher Secondary, whereas requisite qualification is Higher Secondary and Typing, therefore, he did not possess requisite qualification

c) No Reservation roster followed

d) Since appointee after 31.12.88, therefore, not entitled for regularisation

a) He has not filed any document indicating that post of Ward Clerk (General) was vacant on 10.10.03.

b) His name in seniority list was at sr.no. 284, therefore, seniority was not followed

c) Not filed any document indicating that on date of regularisation he possessed qualification of Higher Secondary and Hindi typing pass

a) The petitioner had referred to in the reply about the resolution dated 24.3.1988 passed by the Municipal Corporation by which 100 posts of Ward Clerks were created and the matter was forwarded to the State Government for approval, which was also granted on 12.3.1997. However, the aforesaid fact in the reply has not been considered while passing the impugned order.

b) The principle of seniority was not followed while regularization, was not mentioned in the show-cause notice. However, the same was made the ground in the impugned order.

c) The petitioner was not asked to submit the document with regard to his educational qualification. However, inference has been drawn that since the petitioner has not produced the document with regard to his educational qualification, therefore, he does not possess the same.

Manoj Kumar Sharma(Petitioner No.3)

a) Regularised as Pump Attendant of general category on which 7 posts of other categories were vacant.

b) His name was not in seniority list of 09.12.03

c) He is Class VIII passed, whereas requisite qualification was ITI diploma

d) Not found appointed as daily wage employee

a) He was not found appointed on daily wage basis. He did not file document to show that on date of regularisation post of Pump Attendant (General) was vacant.

b) Document not filed indicating on date of regularisation he was working as daily wage employee and his name was not in seniority list dt. 09.12.03

c) Not filed document showing possessing of requisite qualification of Pump Attendant on date of regularisation

a) The fact that petitioner did not possess educational qualification, was not mentioned in the show-cause notice. However, the impugned order has been passed on the ground that petitioner does not possess the requisite qualification for the post of Pump Attendant.

b) The services of the petitioner were regularized on 12.1.2004. The impugned order has been passed on the ground that petitioner has failed to show that he was entitled for regularization. In fact, the respondent-Corporation should have mentioned as to on what grounds the petitioner was not entitled for regularization.

c) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

Deepak Khatri(Petitioner No.4)

a) Regularised as Pump Attendant of general category on which date 7 posts of other categories were vacant.

b) His name was not in seniority list of 09.12.03

c) He is Class VIII passed, whereas requisite qualification was ITI diploma

d) Not found appointed as daily wage employee

a) Document not filed showing entitlement for regularisation as Pump Attendant (General). His name was not in seniority list.

b) Name not found in seniority list dt. 09.12.03. Document not filed showing working as daily wagger on date of regularisation

c) Not filed document showing possessing of requisite qualification of Pump Attendant on date of regularisation

a) The fact that petitioner did not possess educational qualification, was not mentioned in the show-cause notice. However, the impugned order has been passed on the ground that petitioner does not possess the requisite qualification for the post of Pump Attendant.

b) The services of the petitioner were regularized on 12.1.2004. The impugned order has been passed on the ground that petitioner has failed to show that he was entitled for regularization. In fact, the respondent-Corporation should have mentioned as to on what grounds the petitioner was not entitled for regularization.

c) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

Ghanshyam Vishwakarma (Petitioner No.5)

a) He was regularized as Pump Attendant (OBC) on 12.1.04.

b) His name was not in seniority list dt. 09.12.2003

c) He is Higher Secondary passed, whereas requisite qualification was ITI diploma

d) Not found appointed as daily wage employee

a) No post of Pump Attendant (OBC) vacant on date of regularisation. Document not filed by petitioner in this regard.

b) Name not in seniority list dt. 09.12.03 and document not filed showing working as daily wager on date of regularisation

c) Not filed document showing possessing of requisite qualification of Pump Attendant on date of regularisation

a) The fact that petitioner did not possess educational qualification, was not mentioned in the show-cause notice. However, the impugned order has been passed on the ground that petitioner does not possess the requisite qualification for the post of Pump Attendant.

b) The services of the petitioner were regularized on 12.1.2004. The impugned order has been passed on the ground that petitioner has failed to show that he was entitled for regularization. In fact, the respondent-Corporation should have mentioned as to on what grounds the petitioner was not entitled for regularization.

c) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

(Omkar Prasad Mishra)Petitioner No.6

a) Regularised as peon in general category on 12.1.04.

b) His name was not in seniority list dt.09.12.03

c) He is passed Higher Secondary whereas requisite qualification was 8th pass and as such he did not possess the same.

d) Reservation roster not followed.

e) Not appointed as daily wage employee

a) Did not file document with reply indicating his entitlement for regularisation on the post of peon in general category. His name was not in seniority list and found not appointed on daily wage basis.

b) Name not in seniority list dt. 09.12.03 and document not filed showing working as daily wagger on date of regularisation.

c) Document not filed showing that he possessed requisite qualification for being regularized as peon (general).

a) The fact that petitioner did not possess educational qualification, was not mentioned in the show-cause notice. However, the impugned order has been passed on the ground that petitioner does not possess the requisite qualification for the post of Pump Attendant.

b) The services of the petitioner were regularized on 12.1.2004. The impugned order has been passed on the ground that petitioner has failed to show that he was entitled for regularization. In fact, the respondent-Corporation should have mentioned as to on what grounds the petitioner was not entitled for regularization.

c) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

Akhilesh Mishra(Petitioner No.7)

a) Regularised as Vaccinator (General).

b) His name was not in seniority list.

c) He is passed Higher Secondary, whereas requisite qualification is is passing Vaccination Exam, therefore, did not posses requisite qualification.

d) He is not found appointed on daily wage basis.

a) His regularisation was on post of Vaccinator (General) dated Nil, which indicates that no order was passed.

b) No document filed showing that on date of regularisation he was working on daily wage basis. His name was not in seniority list dt. 09.12.03.

c) No document filed showing requisite qualification for being regularized as Vaccinator

a) The fact that petitioner did not possess educational qualification, was not mentioned in the show-cause notice. However, the impugned order has been passed on the ground that petitioner does not possess requisite qualification for the post of Pump Attendant.

b) The services of the petitioner were regularized on 12.1.2004. The impugned order has been passed on the ground that petitioner has failed to show that he was entitled for regularization. In fact, the respondent-Corporation should have mentioned as to on what grounds the petitioner was not entitled for regularization.

c) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

d) The petitioner was not asked to produce the document with regard to his educational qualification.

Atul Anand Dubey(Petitioner No.8

a) Regularised as Vaccinator (General)

b) His name was not in seniority list dt.09.12.03

c) He is higher secondary, whereas requisite qualification was Vaccination Exam Pass

d) He was not found appointed on daily wage basis

a) His regularisation was on post of Vaccinator (General) dated Nil, which indicates that no order was passed.

b) No document filed showing that on date of regularisation he was working on daily wage basis. His name was not in seniority list dt. 09.12.03.

c) No document filed showing requisite qualification for being regularized as Vaccinator

a) The conclusion that petitioner's regularization was contrary to the rules, is in contravention of the grounds taken in the show-cause notice.

b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) The petitioner was not asked to produce the document with regard to his educational qualification

d) No explanation, worth the name, was offered by the Corporation to show if the petitioner was not appointed on daily wage basis, then how his services were

regularized.

Umashankar Tiwari(Petitioner No.9)

a) He was regularized on 25.12.03 on Ward Supervisor (Promotional Post), on which date post was not vacant.

b) He was not entitled for regularisation on promotional post

c) He was appointed after 31.12.88, therefore, not entitled for regularisation

a) No document filed indicating that on date of regularisation post of Ward Supervisor in general category was vacant.

b) His name was at sr.no.175 of seniority list dt.09.12.03, therefore, seniority was not followed.

c) No document filed indicating possessing of requisite qualification on the date of regularisation

a) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

b) The petitioner was not asked to produce the document with regard to his educational qualification.

Rahul Anand Dubey (Petitioner No.10)

a) Regularised as Ward Clerk (General), whereas on such date 6 posts of other categories were vacant.

b) He is Passed Higher Secondary, whereas requisite qualification is Higher Secondary and Typing Pass, therefore, do not possess same

c) He was 12 years of age on appointing date as daily wage employee i.e. 31.12.88

a) Not filed document in reply showing that on date of regularisation i.e. 25.12.03 post of Ward Clerk (general) was vacant

b) His name at sr.no.125 of seniority list dt.09.12.03. His age was 12 years on date of appointment.

c) Did not file document in reply showing possessing of requisite qualification on date of regularisation

a) The petitioner had referred to in the reply about the resolution dated 24.3.1988 passed by the Municipal Corporation by which 100 posts of Ward Clerks were created and the matter was forwarded to the State Government for approval, which was also granted on 12.3.1997. However, the aforesaid fact in the reply has not been considered while passing the impugned order.

b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) The petitioner in the show-cause notice was not asked to produce the document with regard to his educational qualification.

Zaleel Ahmad(Petitioner No.11)

a) Regularised as Peon (OBC) on 25.12.03.

b) In seniority list dt. 09.12.03 his name was at sr.no.369, therefore, seniority principle not followed while regularisation

c) Reservation Roster not followed

d) Daily wage appointee after 31.12.88, therefore, not entitled for regularisation

a) Being of OBC his name in sr.no.369 and, therefore, on date of regularisation as peon on 25.12.03, no post of OBC was vacant.

b) No document filed with reply showing his regularisation was valid even if seniority was not followed.

c) No document filed showing possessing of requisite qualification for post of peon on the date of regularisation

a) The fact that no post of peon was vacant, was not mentioned in the show-cause notice.

b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) The fact that petitioner does not possess educational qualification was not mentioned in the show-cause notice, yet the same is made the ground for passing the order of deregularisation.

20655 of 2015

Vishnu Kant Tripathy

a) Regularised on 25.12.03 as Peon(General).

b) His name in seniority list dt. 09.12.03 was at sr.no.241, therefore, while regularisation no seniority principle was followed

c) He possess requisite qualification for the post in question

a) On 25.12.03 no post of peon (general) was vacant and no document filed in this regard in reply.

b) Since his name at sr.no.241 of seniority list dt. 09.12.03, therefore, seniority was not followed. He did not file document that his regularisation without following seniority was valid.

c) No document filed showing that he did not possess requisite qualification on date of regularisation

a) The fact that no post was vacant, was not mentioned in the show-cause notice, yet the same was made the ground for passing the order of deregularisation.

b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) The fact that petitioner does not possess educational qualification, was not mentioned in the show-cause notice, yet the same is made the ground for passing the order of deregularisation.

20726 of 2015

Ashok Pathak (Petitioner No.1)

a) Regularisd on 28.1.04 as Moharrir on which date only 2 posts of ST were vacant

b) His name was at seniority list dt. 09.12.03 at sr.no.147, therefore, principle of seniority was not followed

c) No reservation roster was followed

d) Since he was Higher secondary, therefore, possessed requisite qualification

a) On date of regularisation no post of Moharrir (General) was vacant and no document filed in reply by petitioner in this regard

b) In seniority list of 09.12.03 his name was at sr.no.147, therefore, seniority principle not followed. No document filed with reply showing that his regularisation without following seniority was valid

a) The fact that no post of Moharrir belonging to general category was vacant, was not mentioned in the show-cause notice, yet the same was made the ground for passing the order of de-regularisation of services of petitioner.

b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

Sanjay Mishra(Petitioner No.2)

- a) Regularised as Notice Server (General) on 31.1.04.
- b) His name was at sr.No.226 of seniority list, therefore, seniority was not followed
- c) Since he passed M.A. therefore, possessed requisite qualification of 8 th pass.
- d) Appointed as daily wager after 31.12.88, therefore, not eligible on the date of regularisation

a) He was regularized on 31.1.04 as Notice Server, whereas in note sheet there is mention of regularisation on post of Notice Writer. Thus, no post of notice writer. Thus, regularisation was against the rules.

b) In seniority list dt. 09.12.03 his name was at sr.no.226. He not filed document with reply showing his regularisation without following seniority was valid.

a) The fact that no post of Notice Writer, was vacant was not mentioned in the show-cause notice, yet the same was made the ground for passing the order of de-regularisation of services of petitioner.

b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

Ravindranath Singh(Petitioner No.3)

- a) Regularised as peon (general) on 31.1.04
- b) His name at sr.no.263 of seniority list 09.12.03, therefore, seniority was not followed
- c) Since Higher Secondary, therefore possessed requisite qualification of Class 8th
- d) Reservation roster not followed while regularisation
- e) Since appointed as daily wager after 31.12.88, therefore, not eligible on the date of regularisation

a) Regularised as Notice Server on 31.1.04, whereas notesheet mentions regularisation on post of Notice Writer. Thus, no post of Notice Writer was vacant and regularisation was against rules.

b) In seniority list dt. 09.12.03 his name was at sr.no.263, therefore, seniority was not followed. He did not file that without following seniority his regularisation was valid

a) The fact that no post of Notice Server was vacant, was not mentioned in the show-cause notice, yet the same was made the ground for passing the order of de-regularisation of services of petitioner.

b) Since the case of petitioners was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

Ravishankar/Mohanlal(Petitioner No.4)

a) Regularised as Ward Clerk (General) on 25.12.03 on which date 6 posts (3-ST, 2- SC & 1 OBC) were vacant

b) He was higher secondary, therefore, did not possess requisite qualification of Higher Secondary & Typing Pass

c) Appointed as daily wager after 31.12.88, therefore, not eligible for regularisation

a) Regularised on 25.12.03 on the post of Ward Clerk (OBC), on which date no post was vacant and no document filed in this regard in reply.

b) In seniority list dt. 09.12.03 his name was at sr.no.186. Seniority was not followed. No document filed showing regularisation without following seniority was valid

c) He is higher secondary. He did file any document showing that he possessed Hindi Typing pass certificate.

a) The petitioner had referred to in the reply about the resolution dated 24.3.1988 passed by the Municipal Corporation by which 100 posts of Ward Clerks were created and the matter was forwarded to the State Government for approval, which was also granted on 12.3.1997. However, the aforesaid fact in the reply has not been considered while passing the impugned order.

b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) The fact that post of Ward Clerk of general category was not vacant is not mentioned in the show-cause notice.

d) The fact that petitioner did not possess the requisite educational qualification, was not mentioned in the show-cause notice, yet the same is made the ground for passing the order of de-regularisation.

Chandrashekhar Patel(Petitioner No.5)

a) Regularised as Ward Clerk (OBC) on 10.10.03, on which 6 posts of other category were vacant, therefore, he did not come under vacant posts.

b) He was higher secondary, therefore, did not possess requisite qualification of Higher Secondary & Typing Pass

c) On 31.12.88 when he was appointed as daily wager, he was 14 years of age.

a) No post of Ward Clerk (OBC) was vacant on the date of regularisation. Not filed any proof with reply showing that post was vacant on the date of regularisation

b) In seniority list dt.09.12.03 his name was sr.no.163. No document filed showing that his regularisation without following seniority was valid

c) Requisite qualification is Higher Secondary, whereas he filed certificate of Hindi Typing of Maharashtra State of 1994 with reply

a) The petitioner had referred to in the reply about the resolution dated 24.3.1988 passed by the Municipal Corporation by which 100 posts of Ward Clerks were created and the matter was forwarded to the State Government for approval, which was also granted on 12.3.1997. However, the aforesaid fact in the reply has not been considered while passing the impugned order.

b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) No reason has been assigned as to why the petitioner did not possess the requisite educational qualification.

Ramakant Dwivedi(Petitioner No.6)

a) Regularised as Haka Gang (general) whereas 4 posts of other categories were vacant.

b) In seniority list of 09.12.03 his name was at sr.No.202, therefore, principle of seniority not followed

c) Requisite qualification for the post was 8th pass.

a) Since appointed date 1991, no general category post of Hakagang was vacant

b) In seniority list dt. 09.12.03, his name was sr.no.202, therefore, no document filed showing that his senior has not been regularized

c) No document filed showing on the date of regularisation he possessed requisite qualification of post of Hakagang

a) The fact that post in Hakagang cadre belonging to general category was not vacant, not mentioned in the show-cause notice.

b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

c) The fact that petitioner did not possess the requisite educational qualification was not mentioned in the show-cause notice, yet the same is made the ground for passing the order of de-regularisation of services of petitioner.

61 of 2016

Rakesh Shukla

a) Regularised as Time Keeper (general) on 25.12.03, on which date, 2 posts (1-ST & 1-SC) were vacant.

b) He is B.Com., whereas requisite qualification was Higher Secondary (Mathematics), therefore, did not possess requisite qualification.

a) No document filed with reply showing that on 25.12.03 post of Ward Supervisor (General) was vacant

b) In seniority list his name is at sr.no.164, therefore, seniority was not followed. No document filed with reply showing his regularisation without following seniority was valid.

a) The fact that post of Time Keeper of general category was not vacant, not mentioned in the show-cause notice. However, the same was made the ground for passing the order of de-regularisation.

b) Since the case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

1495 of 2016

Amit Yadav

a) Regularised as Ward Clerk (OBC) on 23.9.03, on which date, OBC category post was not vacant

b) His qualification was higher secondary, whereas requisite qualification was Higher Secondary & Typing Test

a) He had not filed document with reply showing that on date of regularisation post of Ward Clerk (OBC) was vacant.

b) In seniority list of 09.12.03 his name was at sr.no.154. No document filed with reply that his regularisation without following seniority was valid.

c) Requisite qualification is Higher Secondary whereas with reply he filed certificate showing Hindi Typing pass from Maharashtra State on 31.1.04. Thus, not possessing requisite qualification on date of regularisation

a) The petitioner had referred to in the reply about the resolution dated 24.3.1988 passed by the Municipal Corporation by which 100 posts of Ward

Clerks were created and the matter was forwarded to the State Government for approval, which was also granted on 12.3.1997. However, the aforesaid fact in the reply has not been considered while passing the impugned order.

b) No reason has been assigned as to why the petitioner did not possess the requisite educational qualification.

c) In the show-cause notice it was not mentioned that order of deregularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of deregularisation.

1737 of 2016

Santosh Gautam(Petitioner No.1)

a) Regularised on 16.12.03 as Driver (General). On date of regularisation only 8 (general) posts were vacant, therefore, being below in list, therefore, not entitled for regularisation

b) In seniority list dt. 09.12.03 his name was at sr.no.13

c) He is Class 10th, whereas requisite qualification was Higher Secondary & Driving Licence

a) On 16.12.03 8 posts of Driver (General) were vacant and his name in seniority list was at 13, therefore for him post was not vacant. No document filed by petitioner with reply showing that post was vacant.

b) No document filed with reply showing that his regularization without following seniority was valid

c) No document filed with reply indicating that on 16.12.03 he was possessing requisite qualification for the post of Driver.

a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant.

b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence.

c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition.

d) In the show-cause notice it was not mentioned that order of deregularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of deregularisation.

Ganesh Singh(Petitioner No.2)

a) Regularised on 16.12.03 as Driver (General). On date of regularisation only 8

(general) posts were vacant, therefore, being below in list, therefore, not entitled for regularisation

b) In seniority list dt. 09.12.03 his name was at sr.no.26

c) He is Class 8 th pass whereas requisite qualification was Higher Secondary & Driving Licence

d) Reservation roster not followed

e) Appointed as daily wager after 31.12.88, therefore, not entitled to be regularised.

a) On 16.12.03 8 posts of Driver (General) were vacant and his name in seniority list was at 26, therefore for him post was not vacant. No document filed by petitioner with reply showing that post of Driver was vacant.

b) No document filed with reply showing that his regularisation without following seniority was valid

c) His educational qualification is 8 th, whereas with reply he filed driving licence of 19.11.1996, from which it is clear that on 16.12.03 he did not possess requisite qualification

a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant.

b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence.

c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition.

d) In the show-cause notice it was not mentioned that order of deregularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of deregularisation.

Vijay Kumar(Petitioner No.3)

a) Regularised on 16.12.03 as Driver (General). On date of regularisation only 8 (general) posts were vacant, therefore, being below in list, therefore, not entitled for regularisation

b) In seniority list dt. 09.12.03 his name was at sr.no.11

c) He is Class 9 th, pass whereas requisite qualification was Higher Secondary & Driving Licence

a) On 16.12.03 8 posts of Driver (General) were vacant and his name in seniority list was at 11, therefore for him post was not vacant. No document filed by

petitioner with reply showing that post was vacant.

b) No document filed with reply showing that his regularisation without following seniority was valid

c) His educational qualification is 9th, whereas with reply he filed HTV driving licence of 13.7.06, from which it is clear that on 16.12.03 he did not possess requisite qualification

a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant.

b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence.

c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition.

d) In the show-cause notice it was not mentioned that order of deregularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of deregularisation.

Shyam Lal Patel(Petitioner No.4)

Regularised on 16.12.03 as Driver (OBC). On date of regularisation only 3 (OBC) posts were vacant, therefore, being below in list, was not entitled for regularisation & In seniority list dt. 09.12.03 his name was at sr.no.3 & His educational qualification was nil, whereas requisite qualification was Higher Secondary and Driving Licence

a) On 16.12.03 3 posts of Driver (OBC) were vacant. No document filed by petitioner with reply showing that post of Driver (OBC) was vacant.

b) No document filed with reply showing that his regularisation without following seniority was valid

c) His educational qualification is 3rd, whereas with reply he filed HTV driving licence of 31.7.07, from which it is clear that on 16.12.03 he did not possess requisite qualification

a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant.

b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence.

c) The petitioner has driving licence which is evident from the respective driving

licence annexed with the writ petition.

d) In the show-cause notice it was not mentioned that order of deregularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of deregularisation.

Ratan Patel(Petitioner No.5)

a) Regularised on 16.12.03 as Driver (OBC). On date of regularisation only 3 (OBC) posts were vacant, therefore, being below in list, not entitled for regularisation

b) In seniority list dt. 09.12.03 his name was at sr.no.22

c) He is Class 8 th, pass whereas requisite qualification was Higher Secondary & Driving Licence

a) On 16.12.03 3 posts of Driver (OBC) were vacant and his name in seniority list was at 22, therefore for him post was not vacant. No document filed by petitioner with reply showing that post of Driver (OBC) was vacant.

b) No document filed with reply showing that his regulariation without following seniority was valid

c) His educational qualification is 8 th, whereas with reply he filed driving licence of 18.12.03, from which it is clear that on 16.12.03 he did not possess requisite qualification

a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant.

b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence.

c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition.

d) In the show-cause notice it was not mentioned that order of deregularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of deregularisation.

Saleem Khan(Petitioner No.6)

a) Regularised on 16.12.03 as Driver (OBC). On date of regularisation only 3 (OBC) posts were vacant, therefore, being below in list, was not entitled for regularisation

b) In seniority list dt. 09.12.03 his name was at sr.no.20

c) His educational qualification was 7th pass, whereas requisite qualification was

Higher Secondary & Driving Licence

a) On 16.12.03 3 posts of Driver (OBC) were vacant and his name in seniority list was at 20, therefore for him post was not vacant. No document filed by petitioner with reply showing that post of Driver (OBC) was vacant.

b) No document filed with reply showing that his regularisation without following seniority was valid

c) His educational qualification is 7 th, whereas with reply he filed HTV driving licence of 20.2.07, from which it is clear that on 16.12.03 he did not possess requisite qualification

a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant.

b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence.

c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition.

d) In the show-cause notice it was not mentioned that order of deregularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of deregularisation.

Rajesh Shukla(Petitioner No.8)

a) Regularised on 16.12.03 as Driver (General). On date of regularisation only 8 (general) posts were vacant, therefore, being below in list, not entitled for regularisation

b) In seniority list dt. 09.12.03 his name was at sr.no.10

c) He is Higher Secondary, pass whereas requisite qualification was Higher Secondary & Driving Licence

a) On 16.12.03 8 posts of Driver (General) were vacant and his name in seniority list was at 10, therefore for him post was not vacant. No document filed by petitioner with reply showing that post was vacant.

b) No document filed with reply showing that his regularisation without following seniority was valid

a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant.

b) The petitioner was not asked by way of show-cause notice to furnish copy of

driving licence.

c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition.

d) In the show-cause notice it was not mentioned that order of deregularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of deregularisation.

Shashikant Hazari(Petitioner No.9)

a) Regularised on 16.12.03 as Driver (General). On date of regularisation only 8 (general) posts were vacant, therefore, being below in list, not entitled for regularisation

b) In seniority list dt. 09.12.03 his name was at sr.no.19

c) He is Class 8 th pass whereas requisite qualification was Higher Secondary & Driving Licence

a) On 16.12.03 8 posts of Driver (General) were vacant and his name in seniority list was at 19, therefore for him post was not vacant. No document filed by petitioner with reply showing that post was vacant.

b) No document filed with reply showing that his regularisation without following

c) His educational qualification is 8 th, whereas with reply he filed HTV driving licence of 27.12.03, from which it is clear that on 16.12.03 he did not possess requisite qualification

a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant.

b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence. seniority was valid

c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition.

d) In the show-cause notice it was not mentioned that order of deregularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of deregularisation.

Ravindra Sharma(Petitioner No.10)

a) Regularised on 19.1.04 as Driver (General). On date of regularisation only 8 (general) posts were vacant, therefore, being below in list, not entitled for regularisation

b) In seniority list dt. 09.12.03 his name was at sr.no.12

c) He is Higher Secondary, pass whereas requisite qualification was Higher Secondary & Driving Licence

a) On 19.1.04 8 posts of Driver (General) were vacant and his name in seniority list was at 12, therefore for him post was not vacant. No document filed by petitioner with reply showing that post was vacant.

b) No document filed with reply showing that his regularisation without following seniority was valid

c) His educational qualification is Higher Secondary and HTV driving licence dt. 12.12.2006, from which it is clear that on 19.1.04 he did not possess requisite qualification

a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant.

b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence.

c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition.

d) In the show-cause notice it was not mentioned that order of deregularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of deregularisation.

Munna Lal Patel(Petitioner No.11)

a) Regularised on 19.1.04 as Driver (OBC). On date of regularisation only 3 (OBC) posts were vacant, therefore, being below in list, not entitled for regularisation

b) In seniority list dt. 09.12.03 his name was at sr.no.18

c) He is Class 4 th, pass whereas requisite qualification was Higher Secondary & Driving Licence

a) On 16.12.03 3 posts of Driver (OBC) were vacant and his name in seniority list was at 18, therefore for him post was not vacant. No document filed by petitioner with reply showing that post of Driver (OBC) was vacant.

b) No document filed with reply showing that his regularisation without following seniority was valid

c) His educational qualification is 4 th, whereas with reply he filed driving licence of 07.2.07, from which it is clear that on 19.1.04 he did not possess requisite

a) The petitioner in his reply has stated that 20 posts of Driver were vacant when his services were regularized. However, the stand taken by the petitioner in the

reply was not considered while recording the conclusion that on the date of regularization, no post of Driver was vacant.

b) The petitioner was not asked by way of show-cause notice to furnish copy of driving licence.

c) The petitioner has driving licence which is evident from the respective driving licence annexed with the writ petition.

d) In the show-cause notice it was not mentioned that order of deregularisation was passed in violation of principle of seniority, however, the same has been made the ground for passing the order of deregularisation.

1813 of 2016

Rakesh Tiwari(Petitioner No.1)

a) Regularised on 28.1.04 as Pump Operator (General) on which date 8 post of other categories were vacant.

b) In seniority list of 09.12.03 his name was at sr.no.18, therefore, regularized without following principle of seniority.

c) His seniority was nil, whereas requisite qualification was ITI/Diploma

a) Did not file document with reply to show that on date of regularisation i.e. 28.1.04 post of Pump Operator (General) was vacant.

b) In seniority list dt. 09.12.03 his name was at sr.no.18. Did not file any document showing that his regularisation without following seniority was valid.

c) Did not file document to show that on date of regularisation he possessed requisite qualification of pump operator

a) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

b) The petitioner in his reply had referred to resolution dated 31.1.1994 passed by the Municipal Corporation, by which, it was provided that requirement of passing ITI Examination will be relaxed in the case of Pump Attendant who has rendered 10 years of service. The petitioner had already rendered more than 12 years of service. However, the aforesaid aspect of the matter was not considered while passing the impugned order.

c) In the show-cause notice it is not stated that post of Pump Attendant was not vacant. However, in the impugned order, ground has been taken that at the time of regularization of services of the petitioner, the post of Pump Attendant was not vacant.

Rajendra Kashyap(Petitioner No.2)

a) Regularised as Pump Operator (OBC) on 28.1.04. On said date 8 posts of other categories were vacant.

b) 09.12.03 in seniority list his name was at sr.no.64, therefore, seniority principle was not followed.

c) His educational qualification was Higher Secondary, whereas requisite qualification was ITI Diploma

a) Regularised on 28.1.2004 as Pump Operator on vacant post of Pump Operator (OBC). On said date no post under said category was vacant.

b) In seniority list dt.09.12.03 his name was at sr.no.64, therefore, seniority was not followed while regularisation. He had not filed any document to indicate that his regularisation without following principle of seniority was valid.

c) He has not filed document to show that on the date of regularisation he was possessing requisite qualification

a) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

b) The petitioner in his reply had referred to resolution dated 31.1.1994 passed by the Municipal Corporation, by which, it was provided that requirement of passing ITI Examination will be relaxed in the case of Pump Attendant who has rendered 10 years of service. The petitioner had already rendered more than 12 years of service. However, the aforesaid aspect of the matter was not considered while passing the impugned order.

c) In the show-cause notice it is not stated that post of Pump Attendant was not vacant. However, in the impugned order, ground has been taken that at the time of regularization of services of the petitioner, the post of Pump Attendant was not vacant.

1936 of 2016

Bal Krishna Patel

a) Regularised on 28.1.04 as Peon (OBC).

b) 09.12.13 his name in seniority list was at sr.no.92 and he was regularized without following principle of seniority.

c) His educational qualification was higher secondary and requisite qualification was 8th, therefore, possess requisite qualification.

a) Regularised on 28.1.04 as Peon (OBC). His name in seniority list at sr.no.92. He did not file any document to show that on date of regularisation post of peon (OBC) vacant.

b) He did not file any document with reply indicating that his regularisation without following principle of seniority was valid.

a) The fact that post of peon at the time of regularization was not vacant, was not mentioned in the show-cause notice, yet the same has been made the ground while passing the order of de-regularisation.

b) Since case of petitioner was considered with reference to gradation list prepared on 09.12.2003 and not with reference to gradation list prepared in 2009, in which the name of the petitioner does not appear, therefore, it is not possible to infer whether principle of seniority was violated.

33. From perusal of the above chart, it is evident that action against the petitioners have been taken in violation of principles of natural justice for the following reasons:-

(a) From perusal of order dated 01.9.2005 passed in Writ Petition No.8359/2005 it is axiomatic that respondent Corporation was granted liberty to prepare the seniority list after affording an opportunity of hearing to the petitioners and thereafter pass an orders of deregularisation, if warranted

(b) From perusal of impugned orders it is evident that respondent-Corporation has concluded that principle of seniority has not been violated on the basis of seniority list prepared in the year 2003, whereas in the return as well as in the written synopsis produced before this Court, a stand has been taken that seniority list has been prepared in the year 2009. In the seniority list prepared in the year 2009, the names of petitioners do not find place, as the orders of regularization of services of petitioners were already passed.

(c) Thus, it is evident that a consolidated seniority list including the names of petitioners in compliance of order dated 01.9.2005 passed by this Court has not been prepared. Therefore, in the absence of the same it is not possible for the Corporation to conclude that the principle of seniority has not been followed.

(d) The grounds mentioned in the show-cause notices in most of the cases are different than the ones, on which, the impugned orders have been passed, which is evident from the chart reproduced above.

(e) In the impugned orders it has been recorded that petitioners have failed to produce any document to show their educational qualification, whereas by way of show cause notices the petitioners were never asked to submit document with regard to their educational qualifications along with the reply.

(f) The defence set up by the petitioners in their replies has not been considered while passing the impugned orders;

(g) Since the case of the petitioners were considered with reference to the gradation list prepared on 09.12.2003 and not with reference to the gradation list prepared in the year 2009, in which the names of the petitioners do not appear, therefore, it is not possible to infer whether any vacant posts were available in

the year 2003.

(h) The petitioners were granted only three days" time to submit their replies, which was inadequate in the fact situation of the case.

Thus, from the facts narrated supra, it is evident that orders of de-regularisation have been passed in violation of principles of natural justice, which cannot be sustained in the eye of law.

34. The contention raised by learned counsel for respondent-Corporation that impugned orders have been passed in compliance of principles of natural justice, therefore, cannot be accepted in the fact situation of the case. Similarly, the contention that petitioners have failed to demonstrate any prejudice also cannot be accepted, as the prejudice is writ large in the fact situation of the case, as show-cause notices have been issued on one ground and impugned orders have been passed on other grounds. The petitioners have not been given sufficient time to respond to the show-cause notice and the petitioners were not even asked to submit documents along with the reply. However, an adverse inference has been drawn on account of non submission of documents. The defence of the petitioners has also not been considered while passing the impugned orders. The respondent-Corporation was under an obligation to prepare the seniority list containing the names of the petitioners to ascertain whether or not the principle of seniority has been violated. From perusal of chart, it is evident that doctrine of severability does not apply to the fact situation of the case.

35. In view of preceding analysis, the impugned orders of de-regularisation of services of the petitioners dated 19.11.2015 are hereby quashed. The Corporation may take action for de-regularisation of services of the petitioners, if so advised, in the light of law laid down by the Supreme Court in the case of Umadevi"s (supra) particularly in the light of observations made in paragraph 53 of the decision. Needless to state, the respondent-Corporation shall first prepare the seniority list containing the names of petitioners as directed vide order dated 01.9.2005 passed by a Bench of this Court in Writ Petition No.8359/2005, after inviting objections, and thereafter may issue show cause notices to the petitioners containing precise grounds,

on which, action of de-regularisation of services of petitioners is sought to be taken. The show-cause notices shall clearly state the documents which the petitioners, in the opinion of respondent, are required to produce in support of their claim. Needless to state, the respondent Corporation shall pass speaking orders.

36. With the aforesaid directions, the writ petitions stand disposed of.