

**(2011) 05 DEL CK 0020**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 178 of 2011**

Dr. Prem Lata

APPELLANT

Vs

GNCT of Delhi and Others

RESPONDENT

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**Date of Decision :** 03-05-2011

**Acts Referred:**

Constitution of India, 1950 — Article 217, 226, 233  
Consumer Protection Act, 1986 — Section 10(1A), 16(1A), 20  
Consumer Protection Rules, 1987 — Rule 12A(8)

**Citation :** (2011) 180 DLT 191 : (2011) 4 ILR Delhi 208 : (2011) 4 RCR(Civil)  
39 : (2011) 4 RCR(Civil) 39

**Hon'ble Judges :** Rajiv Sahai Endlaw, J

**Bench :** Single Bench

**Advocate :** R.K. Saini and Sitab Ali Chaudhary, for the Appellant; Najmi Waziri, Standing Counsel (Civil), GNCTD and Zeenat Masoodi, Om Prakash, for R4 and 5 and Reeta Chaudhary, for R6, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Rajiv Sahai Endlaw, J.—The petition concerns appointment to the Office of the President of District Consumer Disputes Redressal Forum (District Forum), Delhi; advertisements inviting applications to the said post were published in the newspapers on 18th March, 2010 by the Food Supplies and Consumer Affairs Department of Government of NCT of Delhi. Seventy Two (72) applications including that of the Petitioner were received. In accordance with Section 10(1A) of the Consumer Protection Act, 1986 (Consumer Act) a Selection Committee was constituted. The Selection Committee made its recommendation for filling up the vacancies in the Office of five District Fora in Delhi by preparing a panel, valid for one year. The said recommendation also provided:

In case the candidates selected fail to join within 45 days of offer of appointment, the appointment will lapse and the second or third person as the case may be in preference will be offered the appointment.

During the course of interview on our query the candidates already serving had candidly expressed before us that in case they are selected and offered appointment, they will join immediately.

2. The name of the Petitioner did not figure in the name of the five (5) selected candidates in the said recommendation. However the name of the Petitioner was mentioned as the "second person" in the event of Mr. M.C. Mehra whose name figured at serial No. 4 in the list of selected candidates, not joining.

3. The Petitioner claims that the panel was subsequently revised and inspite of the Petitioner, being a candidate in waiting in the event of Mr. M.C. Mehra not joining, the name of the Petitioner was placed at serial No. 6 i.e. entitled to join in the event of any of the first five selected candidates not joining within 45 days of offer of appointment.

4. It is further the case of the Petitioner that the Respondents No. 4, 5 & 6 whose name appeared at number 1, 2 & 5 respectively of the selected candidates, did not join within 45 days of offer of appointment to them and thus as per the recommendation aforesaid of the Selection Committee, the offer to them of appointment, automatically lapsed and the Petitioner being the next person on the panel became entitled to appointment. Upon the representation of the Petitioner seeking such appointment meeting with no success, this writ petition was filed seeking quashing of the extension if any granted to the Respondents No. 4 to 6 to join and mandamus declaring appointment of the Respondents No. 4 to 6 to the said post as illegal and void and mandamus directing appointment of the Petitioner to the said post w.e.f. 1st December, 2010 with all consequential benefits. The writ petition was filed in or about the beginning of January, 2011 and came up before this Court first on 12th January, 2011 when the Petitioner appearing in person sought time to file the advertisement inviting applications and certain other documents.

5. The petition thereafter came up before this Court on 28th January, 2011 when the following order was passed.

The Petitioner, who is a sitting member of the District Consumer Disputes Redressal Forum, Janak Puri, West Delhi, appears in person. She states that she does not wish to engage an advocate. Her grievance is in relation to an advertisement stated to have been issued by the Department of Food, Civil Supplies and Consumer Forums on 18.03.2010 inviting applications for appointment to the post of President of Consumer Disputes Redressal Forum of Delhi.

I have suggested to her that perhaps it might be more appropriate for her to engage counsel so that the matter may be handled with professional, dispassionate objectivity and, at the same time permit her to attend to her duties at the consumer forum. She, however, wishes to exercise her right to appear in person.

After some preliminary hearing, I consider it appropriate to request Mr. R.K. Saini, Advocate, who happens to be present in Court, to discuss the matter with the Petitioner, and to thereafter assist the Court in this matter. In seeking an earlier date, the Petitioner first said that public interest is suffering since the post of President in various forums in Delhi has been lying vacant since long, and the Respondents are not taking any steps to fill them up. When it was pointed out that hers was not a public interest litigation, she then said that she apprehends that the Respondents will appoint someone else in the meanwhile, thus defeating her claim.

Initially, keeping in mind the fact that the Petitioner is appearing in person, and is also a member of a Consumer Disputes Redressal Forum, I had tried to take a very lenient view of her approach and manner in addressing this Court. But it appears that my indulgence is taken either as a sign of weakness, or a licence to the Petitioner to address this Court in an intemperate manner saying that she has been denied justice and that her filing of the writ petition will be of no consequence whatsoever, in case other people are appointed by the Respondents.

The Petitioner appears to be under the impression that by creating a spectacle and haranguing the Court, she would somehow be able to compel the Court to pass some favourable orders.

All efforts of other counsel present in Court to advise the Petitioner to restrain herself; and even the efforts of Mr. R.K. Saini, Advocate, in this regard, made no impact on her. It is only when I have, thereafter, made it very clear that I intend to take a stern view of her conduct that she has tendered an apology. I, therefore, do not take this matter any further.

List on 4th March, 2011 for further preliminary consideration. SUDERSHAN KUMAR MISRA, J.

6. The Petitioner thereafter applied for amendment of the petition, which was allowed on 10th March, 2011 and notice of the amended petition was issued for 19th April, 2011 and the Respondents No. 1 to 3 (Respondents No. 2 & 3 being the Secretary-cum-Commissioner, Department of Food Supplies & Consumer Affairs and the Lt. Governor, Delhi respectively) directed to produce the relevant record. On 19th April, 2011, Mr. Najmi Waziri counsel for the Respondents No. 1 to 3 produced the record relating to the appointment for the post of President, District Forum and Mr. R.K. Saini, Advocate appointed as a Amicus Curiae, Mr. Waziri and the counsel for the Respondents No. 4 & 5 were heard. The Petitioner on that date chose not to address herself and expressed full confidence in Mr. Saini. Mr. Waziri on enquiry on the basis of the record brought has disclosed that while the Respondents No. 5 & 6 joined the post on 25th February, 2011, the Respondent No. 4 joined on 28th February, 2011 i.e. before the date of issuance of the notice of this petition.

7. The contention of Mr. Saini is that, u/s 10(1A) of the Consumer Act which is as under:

(1A) Every appointment under Sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:

- (i) President of the State Commission -Chairman.
- (ii) Secretary, Law Department of the State -Member.
- (iii) Secretary, incharge of the Department -Member.

dealing with consumer affairs in the State

the appointment has to be made as per the recommendation of the Selection Committee; that the Selection Committee having recommended that the appointment of the five selected candidates would automatically lapse if do not join within 45 days of offer of appointment, the Respondent No. 1 as appointing authority was bound by the said recommendation and could not have extended the time for appointment and the Petitioner in accordance with the recommendation of the Selection Committee became the "selected candidate" on the 46th day and has thus a right to appointment. He contends that the mandate of the Selection Committee is binding on the appointing authority.

8. Attention of the counsel for the Petitioner was invited to the recent judgment of the undersigned in Acharya Gyan Ayurved College Vs. Department of Ayush and Others in para 10 whereof the following judgments on the value/nature of recommendations were noticed;-

(i) Dr. Ashok K. Mittal v. University of Delhi ILR (1996) Del 489 where a Division Bench of this Court held that the Governing Body of the college was the appointing and the deciding authority and no error could be found in its decision while considering the report of the Selection Committee, to re-advertise the post;

(ii) M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. and Another, holding that even though Pay Commission is an expert body, it is still open to the State to accept or not to accept its recommendations;

(iii) Union of India Vs. Telecom Regulatory, laying down that to hold the recommendations of the Regulatory Authority to be binding on the licensing authority i.e. the Government would amount to changing the basic structure of the Telegraph Act and to putting the Government under the control of the Regulatory Authority thereby curtaining, restricting and circumscribing the power of the Government;

(iv) MTNL Vs. Telecom Regulatory Authority of Delhi, in which the Division Bench did not differ from the aforesaid dicta;

(v) Dr. H. Mukherjee Vs. Union of India and Others, holding that Government as appointing authority has absolute power to approve or disapprove list of recommendations and that the Government can take into consideration the developments subsequent to the selection made by the UPSC and to hold

otherwise would not be in public interest and may lead to serious complications if the Government is enjoined to act notwithstanding serious matters having come to its notice subsequent to the recommendation made by the UPSC.

(vi) Sethi Auto Service Station (A partnership of Mr. B.R. Sethi and Mr. Rohit Sethi) Vs. Delhi Development Authority and Indian Oil Corporation, where also a Division Bench of this Court held that if the recommendatory body is not the final authority to take the decision, merely because some favourable recommendations are made at some level of decision making process, that will not bind the superior or higher authority;

(vii) Lakhwinder Singh Vs. Union of India (UOI) and Others, where also the assessment of the Selection Board was held to be purely recommendatory in character and the power of the appointing authority to accept or vary the recommendation of the Selection Board was held to be implicit;

(viii) State of Kerala Vs. Smt. A. Lakshmikutty and others, where the recommendations of the High Court for appointment of District Judges were held to be not binding though the circumstances in which the State could differ were laid down;

9. Mr. Saini however contends that Section 10(1A) supra of the Consumer Act does not leave any such discretion in the State Government and mandates the appointment to be in accordance with the recommendations of the Selection Committee.

10. I am unable to agree and to read Section 10(1A) supra as contended. The legislature while making the State Government the appointing authority for the post of the President of the District Forum has merely provided the mode of appointment. Had the intent been to appoint the candidates selected by the Selection Committee, the legislature would not have used the word "recommendation". The word "recommendation" as aforesaid has definite connotation in law and it can safely be presumed that the legislature when enacting Section 10(1A) intended what is ordinarily understood by use of the word "recommendation". Even if the appointments were to be necessarily made by the State Government, had the legislature intended the recommendations of the Selection Committee to be binding, language of Section 10(1A) would have been "every appointment under Sub-section (1) shall be made by the State Government of the candidate selected by the Selection Committee consisting of the following..."

11. I may notice that Section 20 of the Consumer Act uses language identical to that of Section 10(1A) qua appointment of members of the National Consumer Disputes Redressal Forum (National Commission). However, Rule 12A(8) of the Consumer Protection Rules, 1987 provides for the Central Government, which is the appointing authority verifying credentials and antecedents of candidates selected by the Selection Committee and satisfying itself as to their suitability. The same is also indicative of the language used in Section 20 or Section 10(1A)

meaning not what is attributed to it by Mr. Saini.

12. Mr. Saini after the close of hearing has submitted copies of the following judgments:

a) S. Chandramohan Nair v. George Joseph 2010 (10) SCALE 507 - this case concerned the appointment to the post of the Member of the Kerala State Consumer Disputes Redressal Commission Section 16(1A) of the Consumer Act relating to the said appointment similarly provides the appointment to be made by the State Government on the recommendation of the Selection Committee. The Supreme Court in para 16 of the said judgment also held:

An analysis of these provisions shows that.... though, the State Government is not bound to accept the recommendations made by the Selection Committee, if it does not want to accept the recommendations, then reasons for doing so have to be recorded. The State Government cannot arbitrarily ignore or reject the recommendations of the Selection Committee. If the appointment made by the State Government is subjected to judicial scrutiny, then it is duty bound to produce the relevant records including recommendation of the Selection Committee before the Court to show that there were valid reasons for not accepting the recommendation.

I am unable to see as to how the said judgment can be of any assistance to the Petitioner. In fact the Apex Court in relation to the same Act i.e. the Consumer Act has reiterated that notwithstanding the language of Section 16(1A) and which is identical to 10(1A), the State Government is not bound to accept the recommendations made by the Selection Committee. All that it lays down is that deviation from the recommendations has to be for valid reasons and which can be subject to judicial scrutiny.

(b) Shesh Mani Shukla v. D.I.O.S. Deoria 2009 (10) SCALE 457 which was however a case of appointment without complying with the prescribed procedure and thus has no application to the present case;

(c) Dr. Basavaiah Vs. Dr. H.L. Ramesh and Others, which is a judgment on limits of judicial review and the Courts in exercise of power under Article 226 of the Constitution of India refraining from interference in Expert Committee's recommendations. Here this Court is not being called upon to interfere in the recommendations of candidates made by the Selection Committee but the question involved is of the powers of the appointing authority;

(d) judgment dated 18th February, 2009 of the Kerala High Court in W.P.(C) No. 16915/2005 (L) titled James K. Joseph v. Government of India relating to appointment of Administrative Member in Central Administrative Tribunal, Ernakulam Bench. In this case, the Selection Committee had withdrawn its earlier recommendation of the Petitioner. It was held that in exercise of judicial review the High Court cannot sit in appeal over report of Intelligence Bureau and as to the choice of candidates. I fail to see how this judgment either helps the

Petitioner.

13. The Supreme Court in *R.S. Mittal Vs. Union of India (UOI)*, held that though there is no vested right to be appointed to the post for which a candidate has been selected but the appointing authority cannot ignore the panel or decline to make the appointment and when a person has been selected then ordinarily there is no justification to ignore him for appointment unless there is a justifiable reason to decline to appoint a person who is on the selection panel. Similarly in *State of U.P. and Others Vs. Rajkumar Sharma and Others*, it was held that mere inclusion in the select list does not confer any right to be selected even if some of the vacancies remain unfilled.

14. The Constitution Bench in *Shankarsan Dash Vs. Union of India*, held that the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post and that unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. It was however held that the same does not imply that the State has the license of acting arbitrarily and is bound to respect the comparative merit as reflected in the recruitment test.

15. The Supreme Court in *Ashwani Kumar Singh Vs. U.P. Public Service Commission and Others*, also while holding that vacancies which exist on account of some selected candidates not joining need not perforce be filled up from the merit list and much would depend upon the statutory provisions governing the field. In the present case, as aforesaid, the statutory provision does not even provide for preparation of such a panel or of a list of candidates in waiting.

16. Reference may also be made to *Union of India, etc. etc. Vs. N.P. Dhamania, etc. etc.*, laying down that the appointing authority can choose to differ from the recommendations but must give reasons for the same. To the same effect is the judgment in *S.M. Bose Vs. All India Institute of Medical Sciences and Others*, .

17. Before referring to the records produced by the Government to find whether any reasons existed for the appointing authority to relax the period of 45 days laid down in the recommendation of the Selection Committee, it is apposite to refer to another question put during the course of hearing to the *Ld. Amicus Curiae*. The Consumer Act does not provide for preparation of a panel of candidates or for the selected candidate being required to join within 45 days of offer of appointment and the appointment automatically lapsing upon not so joining and the candidate in waiting becoming the "selected candidate". No rules also in this regard were cited. It was as such enquired as to what was the power of the Selection Committee to, besides naming the selected candidates, provide a period of 45 days for joining or for automatic lapsing of appointment or to prepare a panel of others in waiting.

18. No answer was forthcoming from Mr. Saini. He rather suggested that it was for the Government to explain. He also contended that the appointing authority being the Lt. Governor having accepted the said recommendation of the

Selection Committee, the said question did not arise. I may however notice that the advertisement inviting applications did provide that the appointing authority reserved the right to form a panel, "without any obligation of appointment to the wait listed candidates". In certain other matters, I have come across the Office Memorandum dated 30th July, 2007 of the Ministry of Personnel, Govt. of India providing for preparation of a panel, valid for a period of one year. I suspect that the panel in the present case was prepared as per the said Office Memorandum. I also find that the Supreme Court in *Dr. Uma Kant Vs. Dr. Bhika Lal Jain and others*, observed that a reserve list is prepared to meet the contingency of anticipated or future vacancies caused on account of resignation, retirement, promotion or otherwise, because it takes a long time in constituting fresh Selection Committee and in order to avoid ad hoc appointment.

19. It has thus to be necessarily held that the Petitioner does not have any right of appointment. However, since it appears that the recommendation of the Selection Committee even though not as per the statute and without any mandate, was accepted by the appointing authority. This Court is to only satisfy itself whether the extension granted to the selected candidates to join was for reasons or arbitrary.

20. I have perused the records produced by the Government to find whether the Selection Committee had the mandate to besides recommending the name of the most suitable candidates for appointment, also lay down the terms of appointment. The language of Section 10(1A) requires the Selection Committee to only recommend the names of the selected candidates and not the conditions of appointment.

21. Neither the record produced nor the office notings therein show that any such mandate was issued to the Selection Committee. The advertisement inviting applications also did not contain any such condition that the selected candidate was required to join within 45 days. It was in contemplation at the time of inviting applications that those already in service may also apply and be selected and the advertisement required such persons to obtain the clearance/ sponsorship of their department/employer and route their applications through proper channel. At this stage, I may also notice that though it is the case of the Petitioner that pursuant to the initial recommendation, a consolidated panel in which she was placed at serial No. 6 was prepared but the record and/or the office notings do not support such case. The record and the office notings contain only the one recommendation of the Selection Committee and in which the Petitioner had a right of appointment only in the event of Shri M.C. Mehra not joining within 45 days. It is not the case of the Petitioner that Shri M.C. Mehra did not join within 45 days; Shri M.C. Mehra is not even impleaded as a party to this petition. Rather the record shows that Mr. M.C. Mehra joined within 45 days. Thus as per the recommendation on record, the Petitioner had no right of appointment upon delay by the Respondents No. 4 to 6 in joining.

22. The record shows that offer of appointment was made to the Respondents



No. 4 to 6 vide letters dated 13th October, 2010. The said letters also, though required acceptance to be intimated within 10 days and though containing other terms & conditions, did not provide that upon appointment the incumbents will have to join within 45 days. The record further shows that the Respondents No. 4 to 6 vide their letters dated 21st October, 2010, 20th October, 2010 & 21st October, 2010 respectively conveyed their acceptance thereto. The acceptance letter of only the Respondent No. 6 also states that he "shall join within the time framed by the department". The appointment orders dated 25th October, 2010 of the Respondents No. 4 to 6 were issued. The same also did not contain any term(s) of the appointees i.e. the Respondents No. 4 to 6 being required to join within 45 days. However the office noting dated 8th November, 2010 shows a decision to inform the Respondents No. 4 to 6 of the recommendation of the Selection Committee of the selected candidates being required to join within 45 days and the appointment lapsing on failure to so join. In pursuance thereto letters dated 9th November, 2010 were issued to the Respondents No. 4 to 6 informing them that if they were unable to join by 27th November, 2010, the offer of appointment will automatically lapse and the next candidate on the panel will be considered for appointment to the post.

23. In this regard it may be stated that the Respondent No. 4 Shri Rakesh Kapoor was then the Principal District & Sessions Judge of Delhi and the Respondent No. 5 Shri C.K. Chaturvedi, District Judge-II, Delhi and the Respondent No. 6 Shri S.N.A. Zaidi, Addl. District Judge, Mathura. They had written to the High Court of Delhi and the High Court of Judicature at Allahabad respectively to be relieved.

24. In response letters dated 9th November, 2010 (supra), the Respondent No. 4 vide his letter dated 23rd November, 2010 informed that he had written to the High Court of Delhi requesting to be relieved at the earliest and shall join immediately on being relieved. Similar letters dated 19th November, 2010 and 20th November, 2010 were also sent by the Respondents No. 5&6 respectively.

25. Mr. Saini has argued that the date on which the Respondents No. 4 to 6 asked to be relieved would be relevant; that they were required to immediately after issuance of the appointment letter dated 25th October, 2010 take steps with their respective employers for being relieved and if are not shown to have so taken the steps, would be guilty of delay/laches and would forfeit their appointment. Upon the counsel for the Respondents No. 4 & 5 contending that the orders dated 25th October, 2010 do not even contain any such stipulation of 45 days, Mr. Saini contends that as per the recommendation aforesaid of the Selection Committee, the candidates at the time of interview had assured that they will join immediately and could not be permitted to, while continuing on their existing post, hold up other post. In fact he had sought affidavits to be filed by the Respondents in this regard and a right to rejoin.

26. The record shows that though the Respondent No. 6 had applied to the High Court of Judicature at Allahabad for being relieved on 28th October, 2010, the

Respondents No. 4&5 applied for being relieved only after receipt of the letters dated 9th November, 2010. To my mind, however the said aspect is irrelevant for the reason that the record shows that each of the Respondents No. 4 to 6 joined immediately i.e. either the very next date or the same date of being relieved.

27. As aforesaid, applications were invited from those in service/employment elsewhere also and it was thus in the contemplation of the appointing authority as well as the Selection Committee that the selected candidates would not be able to join till being relieved from their existing employers and which was not in their own hands. Mr. Saini has of course argued that the Respondents No. 4 to 6 if not being relieved by their employer(s) should have gone to Court against their employer(s) but I am unable to accept such far-fetched argument.

28. Mr. Waziri from the record has also shown a letter dated 24th November, 2010 written by the High Court of Delhi to the Lt. Governor, Delhi informing that the Hon"ble Chief Justice of Delhi High Court had desired that three months more time be given to the Respondents No. 4 & 5 to join as they could be relieved by the Delhi High Court only after selection of their replacements in a Full Court meeting. The office notings show that the Lt. Governor on 4th February, 2011 considered the proposal for granting three months extension but sanctioned issuance of a final notice to the selected candidates then yet to join, to join within 15 days from the date of receipt of notice or three weeks from the date of issuance of notice failing which the offer of appointment will be given to the candidates kept on the panel. A request was also made to the Registrar, Delhi High Court to consider relieving the Respondents No. 4&5 immediately. In pursuance to the said decision of the Lt. Governor, letters dated 7th February, 2011 were issued to Respondents No. 4 to 6 asking them to join as aforesaid and informing them that on default, offer of appointment will be given to the candidates kept on panel.

29. As aforesaid, the Respondents No. 4 to 6 joined within the time aforesaid.

30. In accordance with the judgment of the Apex Court in S. Chandramohan Nair (supra) the Lt. Governor as the appointing authority was entitled to vary the recommendation of the Selection Committee for reasons to be recorded. The record contains the reasons aforesaid for the Lt. Governor to have relaxed the period of 45 days recommended by the Selection Committee.

31. I find no reason for judicial review of the decision so taken by the appointing authority for relaxing the time of 45 days. Undoubtedly, the Respondents No. 4 to 6 were the first choice for appointment and the Petitioner only the second choice. I have repeatedly asked from Mr. Saini as to why should the appointing authority be not interested in taking the best candidate available and/or the first choice even if at the cost of some delay. No satisfactory answer has been forthcoming. The Supreme Court in Union of India (UOI) and Others Vs. Kali Dass Batish and Another, also reiterated the limits of judicial review in the matters of appointment.

32. There is another aspect of the matter. The order dated 28th January, 2011 in the present petition re-produced herein above reflects the conduct and behaviour of the Petitioner before this Court. I have enquired from Mr. Saini as to whether in the light thereof, the Petitioner can be said to be a fit person for occupying the post of the President and/or to be entitled to any equitable relief under Article 226 of the Constitution of India. Mr. Saini has contended that the Petitioner, only committed the mistake of contrary to settled practice, appearing in person and was swayed owing to her personal involvement.

33. Philip Allen Lacovara, a distinguished practitioner in an article in the American Bar Association Journal observed that a perfect Judge is an abstraction.....he will never exist in fact...but then every cosmology has its ethics. There is no judicial discretion allowing a Judge to lose his sangfroid. Hot-button temperaments mar judgments and barbs demean the Courts. True, at times there may be judicial necessity to point to the right path. Even judicial pain may impel an appellate Court in some cases to provide proper direction, but, while dealing with peccadilloes suggesting the failings of individuals, the judges have to exhibit high intellectual, professional and literary skills. A Judge can neither afford to be unfair nor vituperative.

34. The Petitioner is a long serving member of the District Forum and is expected to be conversant with the Court procedures and the behaviour of the Petitioner recorded in the order aforesaid, in my opinion certainly disentitles the Petitioner from the relief claimed in the present petition though with the clarification that the same is not intended to come in the way of the Petitioner seeking any appointment/post in future. The counsel for the Respondent No. 4&5 has in this regard after the close of hearing also handed over photocopy of Hoshiar Singh v. State of Haryana 1993 Supp. (4) SCC 377 laying down that non-selection on the ground of misbehaviour at the time of interview is justified.

35. Mr. Saini has also argued that even though the Respondents No. 4 to 6 have since joined but after the filing of this writ petition on 7th January, 2011 and thus the principle of lis pendens would apply and the Petitioner upon succeeding would be entitled to an order for removal of the Respondents No. 4 to 6 and to an order of appointment. It is also contended that the procedure adopted is mala fide, intended to deprive the Petitioner of appointment and to favour the Respondents No. 4 to 6. He also contends that the extension allowed of 90 days is disproportionate to the initial time granted of 45 days.

36. I am unable to accept any of the contentions aforesaid. The petition though filed on 7th January, 2011 remained deadwood till 4th March, 2011 when it was amended and before which date the Respondents No. 4 to 6 had already joined. No basis for the pleas of mala fide or favouritism have also been found on record.

37. Mr. Waziri has urged that the Petitioner has no locus to maintain the present petition because she is not qualified for appointment. Strong objection was taken by Mr. Saini to the said argument contending that the Petitioner having been

selected and the recommendations of the Selection Committee having been accepted, no such ground can now be urged. He had also contended that if the Respondents were to be permitted to urge the said ground, an opportunity ought to be also given to the Petitioner to meet the same. Mr. Saini was assured at the close of hearing that this Court did not intend to return any finding on the said argument but the same would be recorded.

38. The contention of Mr. Waziri is that the eligibility provided u/s 10(1)(a) of the Consumer Act , for the post of the President of the District Forum is of a person who is, or has been, or is qualified to be a District Judge. He contends that admittedly the Petitioner was not and has not been a District Judge. On the question of whether the Petitioner is qualified to be a District Judge, attention is invited to Article 233 of the Constitution of India providing for a person to be eligible to be appointed as a District Judge, if he is recommended by the High Court for appointment. It is urged that the Petitioner having never been recommended by the High Court for appointment as the District Judge could not be eligible to be appointed as the President. Reliance in this regard is also placed on the recent dicta dated 8th April, 2011 of the Division Bench of this Court in W.P.(C) No. 2231/2011 titled D.K. Sharma v. Union of India drawing a distinction between Article 233 and Article 217 relating to the appointment of a High Court Judge. It is contended that Article 217 while laying down eligibility for appointment as a Judge of the High Court, does not provide for recommendation of the High Court or the Supreme Court. On enquiry as to to what class of persons the eligibility prescribed in Section 10(1)(a) of "qualified to be a District Judge" would apply, he states that it would apply to either serving judicial officers eligible to be District Judge or to Advocates recommended for appointment by the High Court but not appointed or not joining.

39. As assured at the close of hearing, this Court in this proceeding is not to adjudicate the aforesaid controversy.

40. The counsel for the Respondents No. 4&5 with reference to the CCS Rules applicable to the Subordinate Judiciary has contended that Respondents No. 4&5 could not have joined without being relieved and joined immediately upon being relieved by this Court. They have also denied that they were at the time of interview communicated that they would be required to join within 45 days. It is also contended that the Bio Data of the Petitioner does not even show requisite experience of the Petitioner as Advocate or a Pleader for eligibility for appointment as a District Judge. After close of hearing, copies of the following judgments were handed over:

A. District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, laying down that appointment in disregard of prescribed qualification is not a matter between appointing authority and appointee alone but amounts to fraud on public, to contend that Respondents are entitled to raise the plea of eligibility of the Petitioner.

B. Miss Shainda Hasan Vs. State of Uttar Pradesh and others, to canvass that Selection Committee could not have relaxed the qualifying criteria for the Petitioner.

C. Sunil Kumar Goyal Vs. Rajasthan Public Service Commission, laying down that those Advocates who had joined service, even though representing their Department before Tribunal, could not appear before the Court like lawyers, to contend that the Petitioner did not have requisite experience as Advocate.

D. Divisional Forests Officers and Others Vs. M. Ramalinga Reddy, laying down that a selected candidate has no legal right to be appointed automatically.

The Court must express appreciation for Mr. Saini who, at the request of the Court, has at short notice placed the case of the Petitioner in the best possible perspective and rendered exemplary assistance to this Court.

The petition therefore fails and is dismissed. No order as to costs.