
(1974) 05 DEL CK 0015

In the Delhi High Court

Case No : Civil Writ Petition No. 1110 of 1972

H.K. Agnihotri

APPELLANT

Vs

Delhi High Court and Others

RESPONDENT

Date of Decision : 14-05-1974

Acts Referred:

Citation : (1974) ILR Delhi 450

Hon'ble Judges : S.N. Shankar, J;H.L. Anand, J

Bench : Division Bench

Advocate : L.C. Vats, M.C. Bhandare, Arun Kumar, S.L. Bhatia and D.P. Wadhawa, for the Appellant;

Judgement

H.L. Anand, J.

(1) By this petition under Article 226 of the Constitution of India, the petitioner, a permanent Assistant Superintendent] to the District and Sessions Judge, Delhi who, on the date of the presentation of the petition was posted as Head Copyist. in charge Copying Agency (Sessions) Delhi, challenges an order made by the then Chief Justice of this Court, appointing respondents Nos. 3 and 4 as Superintendents to the District and Sessions Judge on the ground that the then Chief Justice of this Court was not competent to make the appointments and that the appointment was made in disregard of the material provisions of the Rules framed in that behalf and the questions that this petition raises is as to the correct interpretation of the term "Hon'ble Judges of the High Court" and the true effect and import of the system of enrolment of candidates and constitution of a panel provided for by the said Rules.

(2) The facts and circumstances leading to the present petition are not in dispute and may be briefly stated. The petitioner has been on the rolls of the Civil Court Establishment of the erstwhile State of Punjab, later of East Punjab and after the High Court of Delhi was constituted of Delhi and has been in service for over 30 years. At the material time the petitioner was a permanent Assistant

Superintendent to the District and Sessions Judge, Delhi. u/s 241(1) of the Government of India Act, 1935, except as expressly provided by that Act, all appointments to the civil services of. and civil posts under the Crown in India, shall be made in the case old services of the Federation and posts connected with the affairs of the Federation, by the Governor-General or "such person as he may direct" and in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor "or such person as he may direct-" Sub-section (2) further provided that, except as expressly provided by that Act, the conditions of service of persons serving in a civil capacity in India shall, subject to the provisions of this Section, be such as may be prescribed in the case of persons serving in connection with the affairs of the Federation by the Governor-General and in the case of persons serving in connection with the affairs of a Province by the Governor, by rules "of by some person or persons authorised" by them. By sub-section (3) of Section 313 of the said Act, it was provided that the references in the provisions of that Act to the Governor-General, as regards matters with respect to which the Governor-General was required by the said provision to act in his discretion, be construed as references to the Governor-General in Council. In exercise of the powers conferred by sub-sections (1) & (2) of Section 241 read with sub-section (3) of Section 313 of the said Act, the Governor-General in Council by notification of February 17. 1941, copy of which is annexure PI/A to the petition directed that, subject to such general rules as may be made by the "Hon"ble Judges of the High Court of Judicature at Lahore", appointments to posts on the establishment of the Civil Court at Delhi specified in the first column of the schedule to the notification shall be made by the officer specified in the corresponding entry in the second column of the schedule and authorised the "Hon"ble Judges of the High Court of Judicature at Lahore" to make "subject to the previous approval of the Central Government" rules prescribing the conditions of service of all persons appointed to the said post. In the schedule to the notification, Item No. 1 dealt with the District Court and the authority named in the corresponding entry in the second column was the District and Sessions Judge. There is no material on the record to indicate if any general rules were made by the Hon"ble Judges of the High Court of Judicature at Lahore pursuant to the delegation of the authority conferred in that behalf in the said notification. The aforesaid notification was apparently issued by the Governor-General in Council in the wake of a similar notification by the Governor of Punjab empowering the "Hon"ble Judges of the High Court of Judicature at Lahore" to frame general rules with regard to the appointment to the posts on the establishment of the Civil Courts in Punjab which the District and Sessions Judges in Punjab were empowered to make. It appears that subsequently, the power conferred on the District Judges to make appointments to the said posts were withdrawn to the extent they related to the appointment of Clerks of Courts to the District Judges in Punjab, now called the Superintendents and the power was in term delegated to the Hon"ble Judges of the High Court of Judicature at Lahore in exercise of the same powers under the aforesaid provisions, by the Governor of Punjab. It further appears that pursuant to the powers conferred on

the Hon"ble Judges of the High Court of Judicature at Lahoure, Rules, copy of which is annexure P I to the petition, were framed. As the then Chief Commissioner's Province of Delhi, was within the jurisdiction of the Lahore High Court, the said High Court by its letter of February 17, 1941 forwarded to the then Chief Commissioner of Delhi copy of the aforesaid Rules approved by the Governor of Punjab relating to the appointment of Clerks of Courts to District and Sessions Judges in Punjab and informed the Chief Commissioner that the powers of appointment and control of the Clerks of Court in the Punjab had been delegated to the Hon"ble Judges of the High Court and requested the Chief Commissioner to obtain approval of the Central Government to : "(i) the delegation to the Judges of the power to appoint the Clerk of Court to the District and Sessions Judge. Delhi; and (ii) the application of the Punjab Rules to that post". It was further pointed out that the substance of these rules will be incorporated in the rules to be made under the Government of India Act for the establishment of the Civil & Sessions Courts at Delhi. The communication further pointed out that the Hon"ble Judges had received complaints of corruption against these officials and felt that the position of Clerk of Court afforded considerable opportunity for corruption and "the Hon"ble Judges consider it necessary that they should appoint Clerks of Court to District and Sessions Judges chosen by selection from the establishment of Subordinate Courts in general to a provincial cadre whose members will be liable to serve throughout Punjab and Delhi". A copy of this letter is annexure P1/C to the petition. Copy of the aforesaid rules which are identical to annexure Pi was enclosed with the communication. Pursuant to this order in exercise of power conferred on him by sub-section (1) of Section 241 of the Act, the Governor-General in Council by a notification of June 18, 1942 directed that "appointments to the posts of the Clerk of Court to the District and Sessions Judge, Delhi shall be made by the Hon"ble Judges of the High Court of Judicature at Lahore". Copy of this notification is annexure P1/E to the petition. By a separate communication of the same date, the Home Department to the Chief Commissioner, Delhi informed the High Court that the Government of India had approved "the application to the post o Clerk of Court to the District and Sessions Judge, Delhi of the Rules relating to the appointment and control of Clerks of Court to the District and Sessions Judges in the Punjab. "The copy of this communication is annexure PI/ D, to the petition, and the rules to which it refers are the same of which a copy is annexure Pi to the petition. The Rules were later amended and the amendments were similarly approved by the Central Government. It appears that pursuant to Rule 3 of the said Rules, the High Court of Judicature at Lahore used to maintain a list of candidates for appointment to the said posts and the names of the candidates used to be enlisted on the basis of the recommendation which was called for from the District Judges all over the State of Punjab and the then Province of Delhi. On the partition of India, the notifications, as indeed, the Rules continued to be applicable to the East Punjab High Court which was set up by the High Courts (Punjab) Order. 1947, issued in exercise of power conferred by Section 9 of the Indian Independence Act, 1947 and later the Punjab High Court

and still later when the High Court of Delhi was set up under the Delhi High Court Act, 1966 of the various persons who were on the said list were described by the Registrar of the then Punjab High Court as "persons considered fit to be tried as Superintendents", three were from the staff of the Civil & Sessions Court, Delhi and the name of the petitioner was on the top of this list. According to the communication of October 31, 1966 from the Registrar of the then Punjab High Court to the Registrar of this Court, it was pointed out that "the Shankar Committee have advised us that the Personnel on the approved list of persons considered fit to be tried as Superintendents to the District and Session Judges should be divided by the High Court itself". The letter then proceeded to give the names mentioned above and it was suggested that they can "profitably be absorbed in the re-organized judicial set up of Delhi". It is not clear if any steps were taken by this court pursuant to the said notification and any list of such persons was drawn or not. It, however, appears that although no fresh panel was constituted, the applications received from time to time for the post of Superintendents were forwarded by the District Judge to the High Court but without any recommendation. When two posts of the Superintendent to the District Judge fell vacant, the Registrar of this Court addressed a communication to the District and Sessions Judge, Delhi requesting him to examine the claim of all the applicants whose names were set out in the communication and included respondents No. 3 and 4 whose applications were forwarded to the High Court from time to time and "also consider the names of Sarvshri Hari Krishan Agnihotri and Amrao Singh whose names were borne on the panel, for the posts of Superintendent, framed as far back as 1963". The learned District and Sessions Judge was requested to "recommend a panel of 5 or 6 names to this Court". A copy of this communication is annexure P/5 to the petition. In reply to this communication, learned District and Sessions Judge, Delhi recommended the names of the petitioner and the said Amrao Singh, two of the original panelists, the third having meanwhile been absorbed elsewhere, and expressed his inability to recommend any other member of the staff, for being considered for the said post on which by his communication of the then Chief Justice, who was pleased to direct that the service records of the applicants whose applications had been forwarded from time to time and that of the petitioner and Amrao Singh, the only two persons who had been left on the panel to be forwarded to the High Court be called for interview. These candidates were interviewed by the then Chief Justice who was pleased to appoint respondents No. 3 and 4 as Superintendents against the two vacant posts and an intimation of it was sent by the Registrar of this Court to the District and Sessions Judge, Delhi by his communication of April 5, 1972, copy of which is Anx. P/6.

(3) Aggrieved by the aforesaid appointment and feeling that the petitioner had thereby been deprived of the right to the appointment to one of the said posts, the petitioner challenges the validity of the appointment of respondents No. 3 and 4 to the said posts on the grounds that, in the first instance by virtue of the delegation made by the Governor General in Council and of the Rules copy of

which is annexure Pi, the power to make the appointment was conferred on "the Hon"ble Judges of the High Court of Judicature at Lahore" and Therefore, of this Court and Hon"ble the Chief Justice, Therefore, was not competent to make the appointment and in the second instance, that the appointment militates against the provisions of the aforesaid Rules inasmuch as the claims of persons other than those who were on the panel constituted under the Rules for appointments to the said posts were also considered thereby impliedly negating the right of the petitioner to be considered for appointment to the posts only Along with the persons on the panel and to the exclusion of those who were either not on the panel or whose names had not been recommended by the District Judge in terms of the Rules. The petitioner, Therefore, prayed for the order of appointment of respondents No. 3 and 4 being quashed by appropriate writs and/or a direction that the petitioner be appointed to one of the posts and in the alternative that the two posts be filled in accordance with the aforesaid Rules and "practices and procedure" as detailed in the communication of the Registrar, Punjab High Court, Chandigarh, dated March 31, 1966 addressed to the District and Sessions Judges, Punjab and Delhi, copy of which is annexure P 2, to the petition. The petitioner has also prayed for such orders of further directions as may appear to this Court to be just and proper in the circumstances of this case.

(4) In the return to the Rule issued in the said petition by this Court, the Registrar of this court, and the two appointees No. 3 and 4 have filed affidavits which are by and large on identical lines.

(5) In the affidavit of the Registrar, a preliminary objection has been raised that inasmuch as the post was a selection post and the petitioner's candidature for the post had been duly considered, the petition was liable to be dismissed. On merits, of the controversy, the affidavit by and large, admits the various allegations of fact made in the petition which are also consistent with the record. It is not disputed that the appointment to the said posts had to be governed by the aforesaid Rules but it is pointed out that some of the Rules, made when the jurisdiction of the then Lahore High Court extended to the province of Delhi and appointments had to be made of Clerks of Court of District and Sessions Judges in all the districts of Punjab and Delhi, had lost their relevance and in particular the Rule regarding the preparation of the panel had become redundant and obsolete because this Court had to make appointment of Clerk of Court only in relation to the Court of the District and Sessions Judges at Delhi and that the appointment had been made in the present case in material compliance of the said Rules inasmuch as the candidature of all the panelists including the petitioner and other aspirants to the posts who were otherwise eligible, had been duly considered by the then Chief Justice after the learned District and Sessions Judge had made whatever recommendation he was able to with regard to the various candidates. It is further stated that the then Chief Justice, being the appointing authority, was not bound to accept the recommendation of the learned District and Sessions Judge, Delhi and was free" to make the appointment after considering the seniority and merit of the candidates and the

recommendation, if any, of the learned District and Sessions Judge, Delhi. It was further stated that the learned District and Sessions Judge had been asked to recommend the names of 5 or 6 persons as the previous panel had been constituted as early as in 1963 and since the learned District and Sessions Judge was unable to recommend any other names, the then Chief Justice was entitled to consider the candidature of all the persons including the petitioner and other panelists and to make the appointment. It was further stated that in terms of Chapter 9A of the Rules and Orders of the Punjab High Court, Volume V. which were applicable to the High Court of Delhi, by virtue of Section 7 of the Delhi High Court Act, Hon"ble the Chief Justice was competent to make the appointment as the appointment to the post of Clerk of Court was not one of the business which was required to be transacted by the said Rules at a meeting of the Hon"ble Judges of this Court. It was further stated that by virtue of Rule I of the said Chapter, the control of administrative and executive work of the High Court had been assigned to the Hon"ble the Chief Justice and that in exercise of such power, Hon"ble the Chief Justice alone was competent to make the appointments.

(6) In the affidavit of respondent No- 3, an additional contention was raised that there was nothing on the record to show that the Rules, copy of which is annexure PI/A, were ever made applicable to this Court and that on the promulgation of the Constitution, the said Rules had become void as they were based on communal consideration, and were, Therefore, wholly repugnant, to the Constitution. Reliance was placed on Chapter 9A of the Rules and Orders of the Punjab High Court as applicable to Delhi by virtue of Section 7 of the Delhi High Court Act, 1966 as enabling the Hon"ble the Chief Justice to exercise the administrative and executive power of this Court and it was contended that such a power was consistent with the provisions of Article 229 of the Constitution of India under which the appointment of all the officers and servants of this Court were to be made by the Hon"ble the Chief Justice or by any such Judge or officer of this Court as he may direct. The appointments were also sought to be justified on the ground of better qualification of the deponent, and it was stated that on the setting up of this Court in the year 1966, the panel constituted in 1963 lost its validity.

(7) In his affidavit, respondent No. 4 besides reiterating the contentions raised by the other deponents justified his appointment on the merits on the basis of his superior educational qualifications and record of service.

(8) In his rejoinder to the said affidavits, the petitioner, by and large, reiterated the averments made in the petition.

(9) It may be stated at the outset that although there was some controversy before us as to whether the Rules relied upon by the petitioner (Annexure PI), as well as the Rules contained in Chapter 9A the Rules and Orders of the Punjab High Court, Volume with regard to the executive and administrative functions of this Court continued to be applicable either by virtue of the provisions of Article

315 of the Constitution of India or by Section 7 of the Delhi High Court Act, 1966, the parties were agreed that the rival contentions with regard to the true meaning and scope of the delegation and authority for appointment, as indeed, the interpretation and scope of the said Rules be considered on the basis that these Rules continued to be applicable to Delhi by virtue of all or any of the said provisions even though none of these Rules could in term's of Article 313 of the Constitution of India, as indeed. Section 7 of the Delhi High Court Act perhaps be considered as relating to "practices and procedure" of this Court we do not feel called upon to consider that question in the present petition and proceed to consider the rival contentions on the basis that the said Rules would govern the transaction of administrative and executive business of this Court and the said Rules (annexure P1) would regulate the appointment and control of the post of Superintendents to the District and Sessions Judge, Delhi.

(10) Shri Lal Chand Vatsa, learned counsel or the petitioner assailed the validity of appointment of respondents No. 3 and 4 on two grounds. The first ground was based on the alleged incompetence of the Hon''ble the Chief Justice of this Court to make the appointment while the second ground was based on the alleged noncompliance of the requirements of the Rules regulating the appointment which were described by the learned Counsel as being mandatory. On the first question, learned counsel contended that the notification by which the power of appointment was delegated by the Governor General in Council, as indeed, the Governor earlier to that in the then Province of Punjab, the delegation had been made to "the Hon''ble Judges of the High Court of Judicature at Lahore" and that the term "Hon''ble Judges of the High Court" was not synonymous to either the High Court or the Chief Justice of a High Court or any Judge or a group of Judges of that Court, and being a delegation of an executive power must be strictly construed and given a meaning which would be consistent with the object that was sought to be achieved by the delegation and that, Therefore, it must be held that the appointment could be made only by all the Hon''ble Judges of this Court and not by any individual Judge including the Hon''ble the Chief Justice. Learned counsel further contended that the Rules relating to the appointment and control of the said posts clearly reinforced the aforesaid contention and invited particular attention to Rule 6(2) and Rule 7 of the said Rules which provide that certain matters relating to disciplinary proceedings and appeals shall be dealt with by one or some of the Judges. Learned counsel also sought to seek support from the comparative phraseology of the relevant provisions with regard to the High Court in the Government of India Act, 1935, the Constitution of India and the Rules and Orders of the Punjab High Court, Volume V. Learned counsel further contended that neither Chapter 9A nor Chapter 18 of the High Court Rules and Orders nor the language of Article 229 of the Constitution of India could possibly lend colour to the phraseology used both in the notification delegating the authority to the Hon''ble Judges of the High Court, as indeed, the Rules relating to the appointment having regard to the distinction between the sources of the two powers i.e., the power under Article 229, and indeed, Chapter 9A of the High

Court to regulate and control all appointments to the various posts "in the High Court" and the delegated nature of the power of the Governor-General in Council and of the Governor of Punjab in the case of appointment to the post of Clerk of Court of the District Judge. In support of his contention, learned counsel also sought reinforcement from the historical background in which the power to appoint Clerk of Court to the District Judges in Punjab and Delhi, which at one time had been delegated to the District Judges concerned, had been withdrawn from them and was entrusted to the Hon"ble Judges of the High Court not only with a view to eliminate chances of corruption but also to ensure appropriate communal representation which in the Punjab of those days had led to sharp political dissention and contended that even though the situation had since then considerably changed in the new set up of India, the Rules having not been amended, would apply with full force. Learned counsel further contended that the power conferred by the notification and the Rules on the Hon"ble Judges of the Lahore High Court and, Therefore, of this Court was the power of the Governor-General in Council which had been delegated to the Hon"ble Judges and the delegates, who were empowered to make the appointment, and the manner in which such an appointment was to be made, had been specifically laid down both in the notification and the Rules, it was not open to the Hon"ble Judges of this Court, even if they wanted, to make a sub-delegation of it to the Hon"ble the Chief Justice or to any other individual Judge of this Court except in so far as such delegation could be permissible under the terms of the notification or the Rules. Lastly, learned counsel contended that, in any event, no delegation had been made by the Hon"ble Judges of this Court in favor of the Hon"ble the Chief Justice, assuming that such a delegation was competent, and asserted that the Rules appearing in Chapter 9A of the Rules and Orders of the Punjab High Court would not constitute a valid delegation in favor of the Hon"ble the Chief Justice of the delegated authority as the said Rules were intended and in fact purport to regulate the executive and administrative functions and powers of the High Court with regard to the matters relating to the affairs of this Court. In support of his second ground, learned counsel for the petitioner contended that the Rules with regard to the appointment referred to above laid down a manner in which the appointments were to be made and Rule 3 in particular envisaged the maintenance of a list or a panel according to the procedure laid down under the Rules, that the inclusion in the panel after the selection by the District and Sessions Judges conferred a valuable right on the enlisted candidates to be considered for appointment only in competition" with the other enlisted persons but to the exclusion of all those persons who may otherwise be eligible but has not been so enlisted and contended that the petitioner, having been duly placed in the panel after due compliance of the said Rules, had acquired a valuable right of being considered for appointment to the exclusion of the non-panelists. He further contended that even otherwise, the learned District Judge having refused to recommend any other person, the then Chief Justice had no option but to appoint the petitioner and the other panelist to the two posts to which appointment had to be made and in calling the non-panelists for interview and

thereby widening the scope of competition and eventually appointing respondents No. 3 and 4 in disregard of the right of the petitioner by virtue of inclusion in the panel, the then Chief Justice acted contrary to the said Rules.

(11) Shri M. C. Bhandare and Shri S. L. Bhatia appearing for respondents No. 1 and 2 and respondents No. 3 and 4- respectively, on the other hand, defended the validity of the appointment on the ground that the delegation of power in favor of the Hon"ble Judges of this Court as indeed of the Hon"ble Judges of the High Court of Judicature at Lahore must be construed in the context of the constitutional provisions with regard to the administrative and executive functions of the High Court as indeed Rule I in Chapter 9A of the Rules and Orders of the High Court, Volume V to mean the Hon"ble Chief Justice of this Court. On the second ground, learned counsel contended that the Rules in question had been framed to meet an entirely different situation and any rigid condition in the Rules had lost its validity with the change in the context inasmuch as the appointment which had then to be made to the posts all over the province of Punjab and Delhi and, Therefore, justified the maintenance of a panel well ahead of time, did not arise because this court had only to make appointment of the Clerk of Court to the District and Sessions Judge, Delhi and it was, Therefore, unnecessary to maintain a panel. It was further contended that the panel prepared in 1963 before the constitution of the High Court of Delhi had lost its relevance because it did not reflect the aspirations of the staff who had since become eligible of being considered for the appointment to the said post and that in any event, the reference by the High Court to the learned District and Sessions Judge, Delhi seeking a recommendation for the enlargement of the panel and on the learned District Judge's failure to recommend any person other than the two existing panelists, the consideration by the then Chief Justice of the candidature of the various aspirants to the posts including the petitioner and the other panelists was a substantial compliance with the requirement of the Rules. Learned counsel further contended that in any event, the candidature of the panelists including the petitioner had been duly considered and the only right that the petitioner, as indeed the other panelist, may have had was of being considered for the appointment and that Hon"ble the Chief Justice was neither bound to accept the recommendation of the District Judge, Delhi nor to appoint any particular person to the post and the petitioner would, Therefore, not be entitled to any relief. Learned counsel for the respondents discountenanced the suggestion made on behalf of the petitioner that the power had been delegated to the Hon"ble Judges alone and could not be conferred on any individual Judge including the Hon"ble the Chief Justice either by delegation by the Hon"ble Judges of otherwise on the ground that the delegation was not of a judicial function and that Courts in England and in India have progressively made a distinction between the power of a delegate to red legate authority in judicial and executive matters and contended that the trend of judicial authority in England would show that an action taken by a sub-delegate of a delegate of executive authority would not be invalidated and that appointments made in such cases

would nevertheless be deemed to be appointments by the delegate and that the appointment could, Therefore, be legitimately made in the present case on that basis.

(12) The Rules relating to the appointment and control of Clerks of Courts to the District and Sessions Judges, which fall for consideration, are in the following terms :

"1.Post of Clerks of Courts to District and Sessions Judge shall be classed as selection posts and shall be on a provincial cadre."

2.Authority competent to appoint: Appointments to the post of Clerk of Court to District & Sessions Judges, whether permanent or officiating, shall be made by the Hon"ble Judges of the High Court.

Provided that the District & Sessions Judge concerned made an officiating appointment to the post of C.O.C. in a leave vacancy for a period not exceeding three months, subject to confirmation by the Hon"ble Judges of the High Court.

3.Enrolment of Candidates.-A list of candidates accepted for appointment as Clerks of Court to District & Sessions Judges shall be maintained by the High Court. This list shall contain only such number of candidates as can be absorbed within two or three years. The list shall be confidential and it shall not be necessary to inform any person that his name has been added to or removed from it. Before any person is considered for acceptance as a candidate he shall sign a declaration in the following terms :

" IF appointed C.O.C. to a District & Sessions Judge I shall be prepared to be posted anywhere in the Punjab and I recognise that if I shall protest against the transfer, I shall be liable to disciplinary action".

4.Qualifications.-Appointment to the post of C.O.C. to a District & Sessions Judge shall be made only from the list of accepted candidates maintained under Rule 3. These candidates shall be chosen by selection from the clerical staff employed in subordinate Courts in the proportion of 50 per cent Muslim, 30 per cent Hindus and other 20 per cent Sikhs.

5.Conditions of Service.-Clerks of Court to District & Sessions Judges will be liable to transfer under the order of the Hon"ble Judges of the High Court from the Sessions Division to another within the Punjab.

6.Punishments: (i) A C.O.C. to a District & Sessions Judge shall in matters relating to discipline, punishments and appeal be subject to the Punjab Subordinate Services (Punishment and Appeal) Rules, 1930, or such other Rules as the Punjab Government may hereafter make in this behalf, and shall also be subject to the punishment of fine u/s 36 of the Punjab Court's Act, 1918.

(II)A District and Sessions Judge may impose on his C.O.C. the punishments of fine, censure, or stoppage of increment- All other punishments shall be imposed by order of the Hon"ble Judges of the High Court. The order of the Hon"ble

Judges of High Court in this behalf shall be passed by the Judge in Charge of the administrative business of the High Court.

7.Appeals.-(i) An appeal shall lie to the Hon"ble Judges of the High Court against an order of a District & Sessions Judge imposing any penalty on his C.O.C. The orders of the Hon"ble Judges shall be passed by the Judges in charge of the administrative business of the High Court.

(II)An appeal shall lie to a Bench of two Judges of the High Court against an order of the Judge in charge of the Administrative Business of the Court imposing any penalty of C.O.C. to a District and Sessions Judge".

(13) The notification of June 18, 1942 by which the power of appointment was delegated is in the following terms:

"GOVERNMENTOF INDIA

HOMEDEPARTMENT

PARTI

PUBLIC

NEW Delhi ,the 18th June, 1942

NO.55/3/42-In exercise of the powers conferred by sub-section (1) of section 241 read with sub-section (3) of section 313 of the Government of India Act, 1935 and in partial modification of clause (1) of the notification of the Government of India in the Home Department No. 84/40-Judicial dated the 17th February, 1941, the Governor General in Council is pleased to direct that appointments to the post of the Clerk of Court to the District and Sessions Judge, Delhi shall be made by the Honourable Judges of the High Court of Judicature at Lahore.

E.COHRAN Smith, SECRETARY to the Government of India.

(14) The first question that, Therefore, requires consideration is as to the true meaning of the term "Hon"ble Judges" occurring in the notification, annexure PI/ E, and the Rules, annexure Pi, in the context of the constitutional provisions relating to the administrative and executive powers of this Court, as indeed, the Rules contained in Chapter 9A of the High Court Rules and Orders and the other Rules and Orders of the Punjab High Court applicable to Delhi, to the extent they could be invoked.

(15) The Chief Court of the Punjab was established by an Act of the Governor-General of India in Council being Act No. Xxiii of 1865 for the then provinces of the Punjab and Delhi after enactment of the Government of India Act, 1858 by which the Government of the territories, and all powers in relation to that which vested in or was exercised by the said Company in trust for Her Majesty, ceased to be so vested. The said Court was continued by latter enactments until the setting up of the High Court of Judicature at Lahore for the said provinces of the

Punjab and Delhi by the Letters Patent of March 21, 1919 by virtue of the provisions of the Government of India Act, 1915. Part IX of the Government of India Act, 1915 dealt with, inter alia, the constitution and jurisdiction of the Indian High Courts. Section 106 dealt with the jurisdiction of the various High Courts and, inter alia, provided that several High Courts would have such jurisdiction and all such powers and authority over and in relation to the administration of justice "including power to appoint clerks and other ministerial officers of the Court" as are vested in them by letters patent and, subject to the provisions of any such letters patent all such jurisdictions, powers and authority as are vested in those courts respectively on the commencement of this Act. Since the High Court of Judicature at Lahore was set up under the Government of India Act, 1915, it could not be said to have any jurisdiction, power or authority on the commencement of this Act but the jurisdiction, power and authority of its predecessor i.e. the Chief Court of Punjab would be found in Act No. XXIII of 1865. It would be interesting to notice that when referring to the jurisdiction, power and authority of the High Court, Section 106 refers to the term "High Court" and not "Hon'ble Judges of the Court". Clause 6 of the Letters Patent of March 21, 1919, which constituted the High Court of Judicature at Lahore, authorised and empowered the Chief Justice of the High Court of Judicature at Lahore, subject to any rules and restrictions which may be prescribed from time to time by the Lieutenant-Governor of the Punjab, to appoint such clerks and other ministerial officers as may be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the High Court by the Letters Patent. The various powers of the High Court under the Letters Patent were enumerated with reference to the term "High Court" as such. Clause 26, however, provided that any function which was directed to be performed by the High Court in exercise of its original or appellate jurisdiction "may be performed by any Judge or by any Division Court thereof". It would, thus be seen that the Letters Patent empowered the Chief Justice of the High Court to appoint clerks and other ministerial officers for the administration of justice and due execution of all the powers and authorities granted to the High Court by the Letters Patent subject to any rules and restrictions which may be prescribed from time to time by the Lieutenant-Governor. Section 33 of the Act provided that, subject to the provisions of the Act and the Rules made there under, the superintendence, direction and control of the civil and military government of India shall be vested in the Governor-General in Council. The Government of India Act, 1935 for the first time introduced a federal form of Government. Part IX dealt with the judiciary and Chapter II of this Part dealt with High Courts in British India while Chapter II of Part X dealt with the civil services. Section 219 in Chapter II of Part IX provided that the High Courts mentioned in sub-section (1) including the High Court of Judicature at Lahore would be deemed to be the High Courts. Section 223 provided that, subject to the provisions of the said Part and to the provisions of any Order in Council made under that or any other Act, the jurisdiction of and the law administered in, any existing High Court and the respective powers of the "judges" thereof in relation

to the administration of justice in the Court including the power to make Rules of the Court and to regulate the sittings of the Court and of members thereof sitting alone shall be the same as immediately before the commencement of Part Iii of the Act. Section 241 in Chapter Ii of Part X of the Act provided that, except as expressly provided by the Act, appointments to the civil services and civil posts under the Crown shall be made in the case of services of the Federation and posts in connection with the affairs of the Federation by the Governor-General or "such person as he may direct" and in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or "such person as he may direct". The various Rules framed by the High Court of Judicature at Lahore from time to time under the Letters Patent and various statutes including the Rules for the disposal of executive and administrative business which are contained in Chapter 9A, volume V of the Rules and Orders of the Punjab High Court, employ the term "High Court" with reference to the powers, and functions or of Single or Division Benches or of "Judges" in a meeting. Rule I in Chapter 9-A, provides that the Honourable the Chief Justice shall be in control of the administrative and executive work of the High Court and its distribution "amongst the Honourable Judges". Rule 2, however, is an exception to that rule and provided that certain matters set out in the sub-rule "shall invariably be taken up and disposed of at a meeting of the Honourable Judges". Rules 4, 5, 6, 8 and 11 in the said Chapter also use in different context the expression "Honourable Judges". Rules 4 and 5 refer to the meetings of all the Honourable Judges and the quorum in such meetings. Rule 6 deals with the difference of opinion in such meetings. Rule 8 deals with the signing of the proceedings of such meetings while Rule 11 deals with administrative business during vacation. It is important to notice that in all the other rules dealing with practice and procedure of the Court, references are to the High Court and not to the Honourable Judges of the Court. It is also significant to notice that in the numerous statutes which empower the High Court to frame rules, the references are also to the High Court and not to the Honourable Judges or to the Chief Justice of the Court. Chapter V of Part Vi of the Constitution of India deals with the State High Courts. Article 214 provides that there shall be a High Court for each State Article 216 provides that the High Court shall consist of a Chief Justice and such other Judges as the President may appoint. Article 217 deals with the appointment and conditions of the office of a Judge. Article 221 deals with the salaries of Judges of every High Court. Article 225 defines the jurisdiction of existing High Courts and provides that subject to the provisions of the constitution and to the provisions of any law of the appropriate Legislature, the jurisdiction of, and the law administered in, any existing High Court, "and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts" shall be the same as immediately before the commencement of the Constitution. Article 226 and 227 confer power on the High Court to issue writs, and of superintendence respectively. Article 229 deals with the power of

appointment of officers and servants of the High Court and the relevant portion of it is in the following terms :

"229.(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose;

(16) Chapter Vi of Part Vi of the Constitution deals with the Subordinate Courts and while it deals with the appointments, posting, promotions etc. of persons belonging to the judicial service of a State, it makes no provision with regard to the appointment and control or other persons in the Subordinate Courts, apparently because the power to make appointments to civil services at the Centre vests under the Constitution in the President while the executive authority of a State vests in the Governor including the power of appointment except to the extent the same may be delegated under the rules.

(17) It may be useful in this connection to refer to the various provisions of the CPC which provide for appeals and revisions to the High Court and confer rule making powers on such Courts. Part Vii of the Code which deals with appeals as well as part Viii which, inter alia, deals with power of revision of the High Court employ the term "High Court". Similarly parts Ix and X of the Code, which deal with the High Courts and its rule making power respectively use the term "High Court" with reference to the application of that part of the Code to the High Courts. In Part X, however, while Section 122 empowers the High Court to make rules regulating the practice and procedure of the Civil Courts, the reference in Section 123 is to Hon"ble Judges, body of Judges or the Chief Justice. Section 124 also empowers the High Court as such to make rules. Section 133 of the Code, however, which provides for exemption from personal appearance in Court confers the exemption on "the Honourable Judges of the High Court". The other provisions in Part Xt, however, refer to the term "High Court" and not to "the Judges of the Court" although the appeals and revisions are filed and have to be heard by the High Court in accordance with its rules to regulate its practice and procedure in the hearing of causes. The High Court has framed rules for the distribution of business among the Hon"ble Judges of the Court, which are applicable to Delhi. These provide for the roster, the Benches competent to hear certain type of matters and matters relating thereto. It also provides for the Jurisdiction of a Single Judge and of the Benches of the Court. It further provide", that the Roster would be prepared by the Deputy Registrar with the approval of the "Honourable the Chief Justice". It would, thus, appear that but for these rules the various appeals and revisions which lie to the High Court would have to be heard by the High Court and not by any Single Judge or a

Bench of Judges and that is why these rules were necessary to regulate the practice of the Court for the hearing of the matters and to determine the jurisdiction of a Single Judge and of the Benches of the Judges. Delhi High Court Act, 1966, inter alia, provides for the setting up of the High Court of Delhi. Section 7 provides that, subject to the provisions of the Act, the law in force immediately before the appointed day with respect to "practice and procedure" in the High Court of Punjab shall, with the necessary modifications, apply in relation to the High Court of Delhi and the High Court of Delhi shall have all such powers to make rules and orders with respect to "practice and procedure" as also for the practice and procedure for the exercise of its ordinary jurisdiction. Section 10 refers to the power of an Honourable Judge of the High Court for exercising his original jurisdiction and for appeal against his judgment to a Division Bench of the Court.

(18) A review of the aforesaid statutes, Orders and Rules indicates that wherever the appeal was provided to the High Court or power was conferred on the High Court, a provision was at the same time made for the conduct of the business of the High Court or power was conferred on the High Court to regulate its practice and procedure in relation to the power. Wherever the intention was that the power may be exercised by the Chief Justice or by any other judge who may be nominated for the purpose or a group of Judges, it was so stated. In none of these was the expression "Honourable Judges of the Court" used with reference to the power. Why is it, Therefore, that the Governor-General in Council while delegating its authority to appoint Clerks of Court to the District and Sessions Judge, Delhi and the Governor of Punjab while delegating similar authority in respect of appointment of Clerks of Court to the District and Sessions Judges of Punjab and Delhi used the unusual term "Honourable Judges of the High Court" rather than the "High Court" or "the Chief Justice" even though the latter terms had been used extensively in the various statutes and rules which existed at that time. It appears to us that this was intended to delegate the power to make the appointment to the Hon'ble Judges and the only intention in conferring power in the Honourable Judges of the High Court was to ensure that they alone would be the repository of the power and it would be exercised by them alone and this becomes clear in the absence of any further authority in the notification for the power being delegated by the Honourable Judges to one of them including the Honourable the Chief Justice. Such an intention further appears to be clear when one refers to the Rules framed in that behalf which contain no provision for the delegation of the authority by the Honourable Judges to any one of them. On the contrary, Rule 2 reiterates the contents of the notification that the appointment shall be made by "the Honourable Judges of the High Court" and the term "Honourable Judges" is repeated in clause 5 as well which deals with transfer. The intention in using the term "Honourable Judges" becomes clear if reference is made to the provisions of Rules 6 and 7 of these Rules. Rule 6 provides for punishment and under clause (ii) of that rule, a District and Sessions Judge is competent to impose on the Clerk of Court certain penalties while the power to

impose other penalties and inflict other punishments are left again to the "Honourable Judges of the High Court". Clause (ii) of that Rule further provides that "the order of the Hon'ble Judges of High Court in this behalf shall be passed by the Judge in Charge of the administrative business of the High Court". Rule 7 which deals with appeals also provides that the appeals shall lie to the "Hon'ble Judges of the High Court" against an order of a District and Sessions Judge imposing any penalty on the Clerk of Court and that "the orders of the Hon'ble Judges shall be passed by the Judge in charge of the administrative business of the High Court". Clause (ii) of Rule 7 further provides for an appeal to a Bench of two Judges of the High Court against an order of the Judge in Charge of the administrative business. It is, thus clear that the power under the rules has been conferred on the Hon'ble Judges of the Court but where the intention was that the order need not be made by all the Hon'ble Judges but by any individual Judge it was made clear, in Rules 6 and 7, implying clearly thereby that so far as the power of appointment and transfer is concerned it was exclusively conferred on the Hon'ble Judges of the High Court without any further power to make a sub-delegation. The distinction between the term "High Court" and "the Hon'ble Judges of the High Court" is brought out more clearly by Rule 3 of the Rules which provides that the list of candidates accepted for appointment at Clerks of Court to District and Sessions Judges shall be maintained "by the High Court" although other powers namely that of appointment and transfer are conferred on the "Hon'ble Judges of the High Court". The intention of this Rule apparently was that the task of maintaining the list may be carried out by the High Court according to its normal rules of business performed through the various functionaries and need not be exercised by the Hon'ble Judges.

(19) It is well settled principle that a delegate is incapable of making further delegation of the delegated authority and is based on the maxim, *delegatus non potest delegare*.

(20) In *Manindra Nath Vs. Anil Chandra and Others*, , it was held that it was the first principle of law that a delegated authority could not be further delegated unless a delegate had been given power to delegate such delegated authority.

(21) In *Mangulal Chunilal Vs. Manilal Maganlal and Another*, , the Supreme Court was dealing with the case in which the Commissioner of the Ahmedabad Municipal Corporation had delegated his powers and functions u/s 481(1) (a) of the Bombay Provincial Municipal Corporation Act (59 of 1949) to a municipal officer and it was held that in such a case, it was that officer alone who could launch proceedings against the person charged with offences under the Act or the Rules, Regulations or bye-laws framed under it and that the officer to whom these functions had been delegated could not further delegate the same to another.

(22) Faced with this obvious difficulty, Shri Bhandare, learned counsel for the respondents No. 1 and 2 made a feeble attempt to justify the exercise of the delegated authority of the Hon'ble Judges by the then Chief Justice on the

ground that the aforesaid maxim was subject to an exception in the case where the subject matter of the delegation was an administrative function or power and that the aforesaid maxim, which was applicable with full fury in case of delegation of legislative or judicial authority, would not apply with the same rigour to the delegation of administrative functions and urged that in the case of delegation of administrative authority, function or power, the delegate would be competent to make sub-delegation of such authorities, functions or powers to give effect to the object sought to be achieved by such delegation and placed reliance on certain observations made in 1943 (2) All England Reports 560, 1955 (1) Queens Bench Division 103 and 1942 Queens Bench Division 608,

(23) In 1943 (2) All England Report 560 the question before the Court related to the validity of an order of the Commissioner of WorlyS in requisitioning a certain premises under defense (General) Regulations and the contention raised was that the requisitionary authority never brought their mind to bear upon the question and it was held that Parliament had committed to the executive the discretion of deciding when an order for the requisition of a premises should be made under the relevant regulation and that no court would interfere with that discretion if it was bonafide exercised. It was observed that the functions entrusted to ministers being so multifarious that no minister could ever personally attend to them and that duties imposed upon ministers and the powers given to them were normally exercised under the authority of the ministers by responsible officials of the department concerned. We do not see how this case can be of any assistance to the respondents in support of the proposition that the test for the sub-delegation of any delegated authority would be any different in the case of an executive authority than that which would regulate the sub-delegation of judicial or legislative powers. No question of exercise of any delegated authority either by the delegate or a sub-delegate arise.

(24) In 1955 (1) Q.B.D. 103, the Cour

(25) In Metropolitan Borough and Town Clerk of Lewisham v. Roberts, (1949) 2 K. B. 608, it was held that the delegation of power to re-requisition the house if inter virus was valid. It was further held that the minister was entitled to act by an authorised official of his department and there was no necessity that it is shown that the minister had given his mind to the matter personally and that no question of delegation arose as between the minister and the official concerned so that maxim, delegatus non potest delegare, did not arise. This case obviously did not involve the question of any sub-delegation by a delegate and could not, Therefore, be of any assistance to the respondents.

(26) This contention of the respondents must, Therefore, be rejected.

(27) The next contention raised on behalf of the respondent that by virtue of the provisions of Section 13 of the General Clauses Act, the singular would include a plural and vice-versa and that the term "Hon"ble Judges of the High Court"

would, Therefore, include reference to any learned Judge of that Court including the Hon"ble the Chief Justice appears to be unsustainable because Section 13 of the General Clauses Act is inapplicable where the context would indicate to the contrary and a reference to the legislative history referred to above and the contrast between the phraseology" used in the said provisions and the notification in question and the rules referred to above clearly indicates that there is a definite indication to the contrary in the context in which the phrase "Hon"ble Judges of the High Court"" was used both in the notification and the rules, and it is. Therefore, not possible to hold that the term "Hon"ble Judges of the High Court" could be construed as Hon"ble the Chief Justice or any Hon"ble Single Judge of this Court.

(28) Mr. S. L. Bhatia", learned counsel for respondents No. 3 and 4 cited Rameshwar Prasad Golwara and Others Vs. Keshab Prasad Bhagat and Others, in support of his contention that the plural would include singular but it is unnecessary to discuss any of these decisions because Section 13 of the General Clauses Act leaves no manner of doubt that the singular would include the plural and the vice versa provided there is anything in the context which may indicate to the contrary. This principle is not in doubt. In view, however, of our conclusion that having regard to the historical background in which the notification was made and the repugnancy in the context, it is not possible for us to hold that the plural in this case would still include the singular.

(29) The further contention raised on behalf of the respondents that the term "Hon"ble Judges of the High Court" should be construed in the light of the corresponding provisions made in the Constitution of India notably Article 229 of the Constitution of India which empowers Hon"ble the Chief Justice of the High Court or any other Hon"ble Judge or officer as he may direct to make appointment of officers and servants of the High Court and empowers Hon"ble the Chief Justice or any nominee Judge to make rules to regulate the conditions of service of officers and servants of a High Court is clearly untenable in that Article 229 deals with the powers of the High Court as such to make appointments and the power conferred on Hon"ble the Chief Justice and his nominee in that behalf could not possibly regulate the power of the Governor General in Council or the Governor of a Province under the Government of India Act, 1935, as indeed, the corresponding power of the President and the Governor under the Constitution of India and had been delegated by the Governor General in Council and the Governor in Punjab to the Hon"ble Judges. The two powers have distinct sources. The power of the High Court to make appointments of its officers and servants and to frame rules to regulate the conditions of their service is a constitutional power conferred on the High Court and the Constitution itself provides that such power can be exercised by Hon"ble the Chief Justice of the Court or his nominee Judge. The power conferred on the Hon"ble Judges of the High Court being a delegated power of the Governor or the Governor General in Council, as the case may be, could not be further delegated because a delegate was incapable of further delegating the delegated authority and such

delegated powers must be exercised by the delegate alone and only in the manner laid down in the Charter or the instrument by which the delegation had been made.

(30) It was next pointed out that, in any event, having regard to the provisions contained in Chapter 9A of Volume V of the Rules and Orders of the Punjab High Court, applicable to Delhi, the Hon''ble the Chief Justice was to be in the control of the administrative and executive work of the High Court and its distribution among the Hon''ble Judges and it was, Therefore, contended that by the said Rules, the Hon''ble Judges who had made these Rules, would be deemed to have delegated the said authority to Hon''ble the Chief Justice and in any event the power so conferred on the Hon''ble Judges was synonymous to the conferment of the power on the High Court and the exercise of that power by the Hon''ble the Chief Justice would be consistent with Rule I in Chapter 9A of the said Rules and since the power to appoint Clerk of Court to the District and Sessions Judge was not one of the matters which had to be disposed of at the meeting of the Hon''ble Judges in terms of Rule 2 of the said Chapter, Hon''ble the" Chief Justice was competent to exercise that power. This contention is untenable, in the first instance, for the reason that being a delegated authority of the Governor and the Governor General in Council, there was no question of any further delegation by the Hon''ble Judges particularly in the absence of any authority by the sovereign to the delegate to delegate the authority further and secondly, for the reason that Chapter 9A regulates the administrative and executive work of the High Court, and has no relation to the power of the High Court, and has no relation to the power of the delegated authority of the Hon''ble Judges because in exercising that power the Hon''ble Judges were not exercising administrative and executive work of the "High Court" but were acting as the delegate or agent of the Governor or the Governor General in Council and these Rules could not. Therefore, be of any assistance in validating the appointments made by the then Chief Justice. If anything, the Rules contained in Chapter 9A lend support to the contention of the petitioner that the Hon''ble Judges of the High Court are distinct from Hon''ble the Chief Justice or an individual Judge because reference in the said chapter to the High Court, the Hon''ble Judges of the High Court and Chief Justice clearly indicates that where the term "High Court" was used, it may mean the High Court but subject to the power of the Chief Justice to transact business as the administrative head of the High Court and where the references are to the Hon''ble Judges, it is for all the Judges in a meeting and some of the functions referred to in Rule 2 to the said Chapter have to be transacted in the meeting of the Hon''ble Judges.

(31) It may be useful to consider some of the decisions bearing on the question.

(32) In Chandra Mohan v. State of Uttar Pradesh and others, Air 1966 Supreme Court 1957 (4), which was relied upon on behalf of the respondents, the question before the Supreme Court was as to the construction of Article 233 of the Constitution of India and as to the validity of the U.P. Higher Judicial Service

Rules and it was held that the exercise of the power of appointment by the Governor of District Judges under Article 233 of the Constitution of India was conditioned by his consultation with the High Court and that the duty to consult "was so integrated with the exercise of the power that the power could be exercised only in consultation with the person or persons designated therein. It was, Therefore, held that the U.P. Higher Judicial Service Rules which provide for the recruitment of District Judges were constitutionally void as they clearly contravened the constitutional mandate of Article 233(1) and (2) of the Constitution of India and under those rules the consultation of the High Court was an empty formality and the Governor in effect and substance neither consulted the High Court nor acted on its recommendation. It was further held, on the question of construction, that the fundamental rule of interpretation is that the Court will have to find out the expressed intention from the words of the statute and that in case two constructions were possible then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory.

(33) Learned counsel for the respondents invoked the aforesaid principle of interpretation and urged that the conclusion that the appointments in question to be valid must be made by the Hon'ble Judges of the Court and not by the Hon'ble the Chief Justice would cause practical difficulties and inconvenience because it would be cumbersome for the Hon'ble Judges to make appointments to the post of Clerks of Court to District & Sessions Judge even while more important appointments in the High Court could be made by virtue of Article 229 of the Constitution of India by Hon'ble the Chief Justice by himself or by a nominee Judge.

(34) This contention is devoid of any force because the need to ensure smooth and harmonious working of statute or to avoid absurdity or practical inconvenience would arise only if two constructions are possible in a given case either of statute or of a statutory order or a notification as in the present case. But we see no such ambiguity in the present case in the notification which appears to us to point to the only conclusion that the power to make appointment is conferred on the Hon'ble Judges of this Court and there is, Therefore, no occasion for the invocation of the above principle of interpretation.

(35) In *Farzand Vs. Mohan Singh and Others*, , the contention that the term "High Court" under Article 234 of the Constitution of India must be construed to mean all the Judges of the High Court was repelled by a learned Single Judge of that Court on the ground that the Constitution itself preserved power of its Judges in relation to the administration of justice in the Court including the power to make rules and the High Court having framed rules with regard to the allocation of administrative and other business, the transaction of such business by one or some of the Judges in accordance with the rules would be tantamount to the transaction of business by the High Court. The allegation that the

consultation in that case under Article 234 of the Constitution of India had been with only one or some of the Judges of the Court was rejected on the ground that there was no factual foundation for the allegation. This case is not an authority for the construction of the term "Hon"ble Judges of the Court" in the notification and the rules with which we are concerned because, as pointed out above, High Court's power in relation to the administration of justice recognised by Article 225 of the Constitution of India are different in nature than delegated authority of the Governor General in Council to make appointment. The foundation of the two powers is distinct, and the power to frame rules with regard to the administration of justice which has been vested by the Constitution in the High Court or the rules that may be framed by the High Court pursuant to that power could not possibly regulate the exercise by the Hon"ble Judges of the High Court of a specific delegated authority to make appointment. There is a reference in the judgment to the practical difficulty that would arise if the term "High Court" in Articles 234, 235 and 233(2) of the Constitution were to be construed as meaning all the Judges of the Court but the decision of the learned Judge is not based on that difficulty but on the reasons mentioned above which with respect, appear to us to be sound.

(36) In *Prem Nath and others v. State of Rajasthan and others*, Air 1966 Raj 26, it was held that consultation with the High Court under article 233 of the constitution of India must mean consultation with the Full Court and not with a committee consisting of the Chief Justice and a few Judges. It, however, does not appear from the judgment if the High Court had framed rules pursuant to its power under Article 225 of the Constitution of India in respect of allocation of its administrative and other business among the Judges for its convenience. "This decision was, however, not followed by the Allahabad High Court in the aforesaid case on the ground that the judgment did not contain any discussion.

(37) We have, Therefore, no hesitation in holding that the Governor- General in Council had delegated the authority u/s 214 of the Government of India Act, 1935 to the Hon"ble Judges of the High Court of Lahore and it could only be exercised by the Hon"ble Judges and since the said notification was continued in force after the commencement of the Constitution of India by virtue of Article 313 of the Constitution of India and the reference in the notification to the Hon"ble Judges of Lahore High Court would, by virtue of the provisions of the aforesaid Article and of Sections 7 and 18 of Delhi High Court Act, be to the Hon"ble Judges of this Court such a power could not and had not been delegated to the Hon"ble the Chief Justice and the then Chief Justice had, Therefore, no power to make the impugned appointments and the said appointments could not, Therefore, be validated either with reference to the constitutional powers of the High Court to make appointments of officers and servants to the High Court or by virtue of the Rules contained in Chapter 9A of the Rules and Orders of the Punjab High Court which relate to the administrative and executive work of the High Court as distinct from the delegated authority of the Hon"ble Judges of this Court.

(38) That takes us to the consideration of the second question whether the impugned appointments were contrary to the said Rules inasmuch as the requirement of Rule 3 of the said Rules was not complied with in that the appointments were made from outside the panel maintained by the Punjab High Court and out of the candidates whose names did not figure in any such panel and whose candidature had not been supported by the recommendation of the District and Sessions Judge. Delhi.

(39) It appears to us that this contention of the petitioner must fail.

(40) It is true, that Rule 3 provides that a list of candidates accepted for appointment as Clerks of Court to District and Sessions Judge shall be maintained by the High Court and the practice throughout has been that such a list was maintained on the basis of the recommendation of the District and Sessions Judges of the various districts in Punjab as indeed the Province of Delhi. It is, however, not possible to hold on a plain reading of the said Rule that the inclusion of the name of a candidate in the list would entitle the candidate to the appointment or that even where the inclusion is based on the recommendation of the District and Sessions Judge and the candidature of a person is supported by such a recommendation, the Hon''ble Judges of the High Court were bound to appoint such a person or were bound to consider such candidates to the exclusion of all other candidates who may otherwise be competent and eligible for appointment as Clerks of Court but had not been included in the panel. The Rule merely lays down a procedure for the convenience of the Hon''ble Judges in that it provides for the maintenance of a panel based on the recommendation of the District and Sessions Judges, who had occasion to supervise the work of various employees who may be eligible for appointment. But that procedure does not either in terms of the Rule or in terms of the practice in any way place any fetter on the Hon''ble Judges of the High Court to make appointment to the posts particularly where there were number of candidates in the field whose cases had not been considered for inclusion in the panel since the panel had been prepared in the year 1963 and three panel's, including the petitioner, who had opted for Delhi after the setting up of the High Court at Delhi continued to be treated as being on the panel and the District and Sessions Judge for reasons which are not relevant expressed his inability to recommend any person other than the two panelists including the petitioner. The grievance of the petitioner on this score would have been understandable if the claim of the petitioner to be considered for the appointment had been ignored or glossed over but the petitioner, having been duly considered Along with other candidates, it could not be said that the appointment was bad for that reason. It is well settled that no civil servant has a right to be appointed to a selection grade or to any promotion and the fundamental right with regard to service under Article 16 of the Constitution in relation to such appointment to a higher grade or selection grade or promotion is confined to the right to be considered for it, and that consideration was bestowed in the present case even though by an authority which was not competent with regard to the candidature of the petitioner and the contention of the petitioner in

that behalf is, Therefore, untenable.

(41) In view, however, of our conclusion on the first question, the impugned appointments are liable to be set aside and the same are hereby quashed. The appointments to the said posts would be made afresh according to law by the competent authority.

(42) The petitioner would also have his costs.