

(1968) 08 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Petition No's. 508, 530 and 543 of 1968

H.L. Rodhey and Others

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 14-08-1968

Acts Referred:

Citation : AIR 1969 Delhi 246

Hon'ble Judges : V.S. Deshpande, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : Frank Anthony and B.P. Mauriya, for the Appellant; Parkash Narain and A.B. Saharya, for the Respondent

Judgement

1. This Writ Petition along with the connected Writ Petitions, 530/68 (Darshan Kumar Puri v. Delhi Administration) and 508/1968 (M. Prasad v. Delhi Administration) has been tiled by certain Ministerial employees of the Delhi Administration, against the constitution of the two separate Central Civil Services, to be known as the Subordinate Ministerial Service and the Subordinate Executive Service of the Delhi Administration by the Promulgation and enforcement of the Delhi Administration Subordinate Ministerial/Executive Service Rules, 1967 (hereinafter called the 1967 Rules), from the 10th February, 1967. The facts are briefly as follows;--

2. Prior to the promulgation of the 1967 Rules the Delhi Administration did not have a unified subordinate service or services. The Administration was divided into several departments, each of which had ministerial as well as executive posts under it. The appointments to the subordinate executive posts were governed by two notifications. The notification dated 8th August, 1960, at page 49 of the record of C. W. No. 508/1968 (hereinafter called the 1960 Rules), regulated appointments of Inspectors of Sales Tax, Excise Inspectors and Sub-Inspectors of Excise. Another notification dated 6th December 1962, at page 16 of the record of C. W. No. 543/1968 (hereinafter called the 1962 Rules) regulated the appointments to the Class Iii posts of Inspectors of minimum wages/

complaints. Shop Inspectors and Labour Inspectors/Labour Welfare Supervisor

3. Except petitioners 1 and 2, viz., Shri H. L. Rodney and Shri Kishen Singh in C. W. No. 543/1968 all the other petitioners in all the three Writ Petitions were originally recruited to Ministerial posts as distinguished from executive posts. Petitioners 1 and 2, Rodney and Kishen Singh I C. W. 543/1968, were initially appointed to the posts of Labour Welfare Supervisor. Rodhey was promoted to the post of Inspector of Shops and Establishments and confirmed in that post in 1965. He was promoted to officiate in the post of complaint Inspector/Minimum Wages Inspector when the 1967 Rules came into force, Kishen Singh was confirmed as Labour Welfare Supervisor and was promoted to the post of Inspector of Shops and Establishments in an officiating capacity and was further promoted to the post of Minimum Wages Inspector in an officiating capacity and was in that post when the 1967 Rules came into force,

Rodhey and Kishen Singh ought not to have joined as petitioners 1 and 2 along with the other petitioners 3 to 7 in C. W. 543/68, inasmuch as they being confirmed in the Executive posts were not absorbed in the Subordinate Ministerial Service on the promulgation of the 1967 Rules, The rest of the petitioners except Nos. 11 to 16 in C. W. 508/1968 in all the Writ Petitions had been recruited as Ministerial employees and were not appointed in a regular manner and were not confirmed in any executive posts. They were; Therefore, absorbed in the Subordinate Ministerial Service, when the 1967 Rules came into force. In this background, let us see the individual facts regarding each of the petitioners in these three writ petitions,

4. C. W. 543 of 1968 :-- Petitioner No, 1, H. L. Rodhey, was appointed as temporary Labour Welfare Supervisor on 30-9-1953 as per annexure R-1 to the return made by the Delhi Administration, He was provisionally appointed to work as Labour Inspector for three months and the rules were finalised by annexure R-2 dated 9-12-1959. He was promoted as Inspector of Shops on a purely temporary stop-gap basis without any right and benefit for the purposes of seniority and without any claim for regular appointment by annexure R-3 dated 24-12-1960. For the first time on the 18th March, 1961 on the recommendation of the Departmental Promotion Committee, the provisional promotion of Shri Rodhey to the post of Inspector of Shops was regularised. The word "regularised" apparently means that the appointment from the date of regularisation was regarded as having satisfied the conditions of the Recruit- Rules of 1962. On 23rd August, 1965, Rodhey was promoted on a purely temporary and ad hoc basis as Complaint Inspector, after it was made clear that this appointment would not give him any benefit for regular appointment in this or any other post or for the purpose of seniority by R. 5,

5. Petitioner No, 2, Shri Kishen Singh was appointed as a temporary Labour Welfare Supervisor on 23rd December, 1955 by R 6. He was promoted as Inspector of Shops on an ad hoc basis without any claim to regular appointment and Seniority on 9th November, 1962 by R. 7, He was given an officiating

promotion temporarily on ad hoc basis till further orders as Minimum Wages Inspector on 20-10-1966 by R. 8.

6. After the promulgation of the 1967 Rules the petitioners 1 and 2 Rodhey and Kishen Singh were considered by the Departmental Promotion Committee for appointment in Grade II of the Subordinate Executive Service, newly formed by the 1967 Rules, but were not found fit to be absorbed in Grade II. They were, Therefore reverted from 1st July, 1968 to Grade III of the Subordinate Executive Service by R. 9. They Therefore, continued to remain in subordinate Executive Service unlike the other petitioners who were absorbed in the Subordinate Ministerial Service under the 1967 Rules.

7. Petitioners 3 to 7 were initially appointed to the posts of lower division clerks in 1947, 1951, 1942, 1955 and 1950 respectively. Petitioner No. 7, Govind Ram, was appointed as Inspector of Shops on 15th November, 1967, pending selection of a suitable candidate by the Departmental Promotion Committee to the post of Head Clerk. This appointment was purely on ad hoc basis. Petitioners 3 to 6 have also been holding posts of Inspectors of Shops and Establishments when the 1967 Rules came into force, though their promotions have been temporary and ad hoc.

8." Rule 5 of 1967 Rules lays down the criterion for initial appointments of persons to the Subordinate Executive or Subordinate Ministerial Service. For such" absorption, it was necessary that a person holds a post specified in Schedule II of the Rules. Schedule II gives the details of posts in various offices, the incumbents of which are eligible for appointments against the particular grade at the time of initial constitution of Subordinate Executive and Subordinate Ministerial Services of the Delhi Administration. The person to be qualified for absorption must hold the post in a regular manner in accordance with the requirements of the Rules of recruitment, which were in force prior to the constitution of the service. That is to say, such a person should have satisfied all the requirements of the 1962 Rules.

Some of these requirements related to educational qualifications, promotion by Departmental Promotion Committee, satisfying one year's period of probation, etc. None of the petitioners 3 to 7 satisfied all the requirements of 1962 Rules and Therefore, none of them was regarded as having been appointed in a regular manner under the 1962 Rules to any post. Which was later on Included in the Subordinate Executive Service under the 1967 Rules. Their appointments to the posts, which were later on included in the Subordinate Executive Service, having been temporary and ad hoc, did not give them any right to hold those posts. They were, Therefore, absorbed in the Ministerial Service as per R-12 and R-13. The petitioner, K. L. Suri being under suspension, his orders were to be issued separately,

9. C. W. 530 of 1968:--Petitioners 1 to 4 were also recruited as Ministerial employees in the Excise department. They were promoted on an ad hoc basis for

three months as Excise Inspectors, but continued to officiate as such even after the expiry of three months. In course of the implementation of the Constitution of the new Central Civil Services viz. the Subordinate Ministerial and Subordinate Executive Service, however, the petitioners were absorbed in the Ministerial services and not in the executive services. The reason according to respondent No. 1 was that none of the petitioners had been appointed to the executive posts in a regular manner. Inasmuch as none of them was put on probation for one year as required by the 1960 Rules.

10. C. W. 508 of 1968:--The petitioners In this case fall Into two categories: (a) petitioners 1 to 10 were originally recruited as Ministerial employees, but were later on promoted as Sales Tax Inspectors, (b) petitioners 11 to 16 were directly recruited as Sales Tax Inspectors. The appointments of all the petitioners as Sales Tax Inspectors were for a short period of time and provisional. They were not to confer on them any right to seniority or regular appointment to the said post as would be seen by a perusal of R. 1 to R. 5 being annexure to the return filed by the respondents. On the constitution of the new Central Civil Services, v. Subordinate Ministerial Service and Subordinate Executive Service, the petitioners 1 to 10 were absorbed in the Subordinate Ministerial Service, inasmuch as none of them had been appointed in a regular manner in an Executive post as required by the 1962 Rules. Petitioners 11 to 16, whose appointments were purely temporary were discharged from service altogether as there were no posts to which they could be appointed.

11. The reversion of the petitioners 1 and 2 in C. W. 543/68, the discharge of petitioners 11 to 16 in C. W. 508/68 and the absorption of all the other petitioners in the Subordinate Ministerial Service and their exclusion from the Subordinate Executive Service, has been challenged in these Writ Petitions on the following grounds,

I. (a) The Delhi Administration Subordinate Service Rules 1967 have been made by the Administrator, Delhi, in exercise of the power to frame Rules under Article 309 of the Constitution delegated to him by the President. The power to make rules under Article 309 was a legislative power. It could not, Therefore, be delegated. The purported delegation is, Therefore, invalid.

(b) The rule-making power under Article 309 was vested in the President as such as distinguished from the Union of India. It could not, Therefore, be delegated at all.

(c) At any rate, the delegation had to be signed by the President himself. The order of delegation being signed by a Deputy Secretary is invalid.

II. The Administrative instructions in the Hand-book for the use of establishment officers issued by the Ministry of Home Affairs laid down that ad hoc appointments and promotions could be made only in short term vacancies for not more than three months. The ad hoc appointments of the petitioners lasted for more than three months. Their appointment Therefore, ceased to be ad hoc and

became regular appointments though in an officiating capacity. The petitioners were, Therefore, entitled to be absorbed in the Subordinate Executive Service. They had a right to hold the executive posts and their exclusion from the Subordinate Executive Service amounted to dismissal, removal or reduction in rank contrary to Article 311(2) of the Constitution.

III. The petitioners and respondents 3 to 10 in C. W. 543/68, respondents 4 to 14 in C. W. 530/68 and respondents 4 to 22 in C. W. 508/68 stood in the same class as all of them were holding executive posts. They should have, Therefore, been treated equally. The claims of the petitioners to be absorbed in the Subordinate Executive Service were as good or some times even better than the claims of the respondents, and the petitioners have been unjustly discriminated against and excluded from the Subordinate Executive Service in contravention of Articles 14 and 16 of the Constitution.

IV. The Delhi Administration Subordinate Service Rules, 1967 were not retrospective in operation, but were given a retrospective operation against the petitioners, which was illegal.

V. The Delhi Administration dealt with the petitioners in bad faith and their orders against the petitioners were, Therefore, liable to be set aside on this ground.

12. In presenting the first ground of attack in all its aspects, Smt. Shyamla Pappu has relied on certain observations in the majority decision of the Supreme Court in Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others, . The question in that case was whether the order of the President made under Article 258(1) of the Constitution entrusting the functions of the Central Government under the Land Acquisition Act, with the consent of the State Government, to the Divisional Commissioner, in the State was "law" within the meaning of Section 87 of the Bombay Reorganisation Act, 1960. In answering the question in the affirmative, Shah J. speaking for the majority divided the Presidential powers under the Constitution into two groups:

(a) Those vested in the Union of India and exercisable by the President as the Head of the Union of India; and

(b) Those vested in the President as such and not exercised by him on behalf of the Union of India.

The Court held that under Article 258(1) the functions (a), but not (b) could be entrusted to the State Government or their officers by the President. The power to make rules under Article 309 was regarded as a function of the President, as such and not of the Union of India. The reference to Article 309 was clearly obiter (it is respectfully submitted) inasmuch as the ratio of the decision was that the entrustment of the power in the particular case was valid under Article 258(1) and that the notification of entrustment was "law". The said entrustment was by the President as the head of the Union of India. It was not, Therefore, strictly necessary for the purpose of that decision to consider the constitutional functions

of the President, which were not exercised by him on behalf of the Union of India. Even the obiter of the Supreme Court does not, really bear on the context of the cases before us.

Firstly in the three Writ Petitions before us, there was no entrustment of any functions by the President to the State Government or officers of the State Government under Article 258(1). As will be seen later, the Union Territory is not a State for the purpose of Article 258(1). This Supreme Court decision does not, Therefore, apply to the three Writ Petitions before us. Secondly, the delegation by the President to the Administrator of Delhi was expressly made in exercise of the powers conferred on the President by Article 309 of the Constitution. It is the language of Article 309 and not any abstract question as to whether the power under Article 309 is a legislative power and whether such power was incapable of being delegated, that is to be considered. Article 309 primarily contemplates that the appropriate legislature may regulate the recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the Union or any State. The Delhi Administration Subordinate Service Rules 1967 constituted by Rule 3 thereof two Central Civil Services.

It is clear, Therefore, that the Rules| dealt with services in connection with the affairs of the Union. It was argued, however, that the Subordinate Executive Service and Subordinate Ministerial Service constituted by the 1967 Rules were actually the services of the Delhi Administration and not of the Central Government. The Delhi Administration or the Union Territory of Delhi was, it was argued, a State in view of the definition of "State" in Section 3 of the General Clauses Act. Rules for the services of the Union Territory could not, I Therefore, be made it was argued, by the President under the proviso of Article 309.

13. The observations of the Supreme Court in Ram Kishore Sen and Others Vs. Union of India and Others (UOI), paragraph (8) were relied upon. This decision, with great respect also does not help the petitioners. For, it was concerned with the construction of Article 3 of the Constitution with which we are not concerned here. The reliance by the learned counsel for the petitioners on the definition of "State" in Section 3(58)(b) of the General Clauses Act was however, based upon a fundamental misconception. It is necessary to clarify the same.

14. Article 367(1) provides that the General Clauses Act would apply to the interpretation of the Constitution subject only to the adaptation and modification that may be made in the General Clauses Act under Art. 372 of the Constitution within three years of the commencement of the Constitution. These adaptations in the General Clauses Act were made by the Adaptation of Laws Order, 1950. The definition of "State" in the General Clauses Act adapted under Article 372 of the Constitution, and Therefore, applicable to the interpretation of the Constitution was as follows:

" "State" shall mean a Part A State, a Part B State, or a Part C State."

It would be seen, Therefore, that the General Clauses Act can be used to

interpret the word "State" used in the Constitution, only when the State meant Part A, Part B, or Part C. The reason is obvious. In 1950, when the Adaptation of Laws Order 1950, was made, there were three types of States comprised in the Constitution. The Union Territories did not then figure in the Constitution.

15. The Constitution 7th Amendment Act, 1956, however, swept off the Part B and Part C States and divided the Territories of India only into two classes, i. e. (a) Territories of the States and (b) The Union Territories. Consequently, the Adaptation of Laws Order, 1956 had to be issued under Article 372-A of the Constitution. It is to be noted, however, that the adaptations made in the General Clauses Act under Art. 372-A were not to apply to the interpretation of the Constitution, inasmuch as Article 367(1) of the Constitution permits the use of the General Clauses Act as adapted under Article 372 only for such purposes. It follows, Therefore, that the definition of "State" as introduced in the General Clauses Act for the first time by the Adaptation of Laws Order 1956, is not to be used to interpret the word "State" as used in the Constitution. The existing definition of "State" in Section 3(58)(b) of the General Clauses Act is not, Therefore, to be applied to the interpretation of the Constitution at all for the purposes of the cases before us. If the above legal position had been brought to the notice of the Supreme Court in T.M. Kannian Vs. Income Tax Officer, Pondicherry and Another, , their Lordships would have (it is respectfully submitted) felt even stronger in arriving at the decision that they did.

16. The learned counsel for the petitioners further relied upon Satya Dev Bushahri Vs. Padam Dev and Others, which was partly reviewed by the Supreme Court in Satya Dev Bushahri Vs. Padam Dev and Others, in support of the proposition that a Union Territory is a State, and Therefore, the President could not frame rules regarding its services and also could not delegate the powers to frame such rules to the Administrator. These decisions were concerned with Part C States and not Union Territories. The later decision of the Supreme Court in The State of Madhya Pradesh Vs. Shri Moula Bux and Others, was also concerned with Part C States, Part C States were not identical in all respects with Union Territories. It would not be proper, Therefore, to try to apply these decisions to Union Territories.

Already, the Government of Union Territories Act, 1963 has in Section 55 thereof enacted that all contracts in connection with the Administration of a Union Territory are contracts made in the exercise of the Executive power of the Union and that all suits and proceedings in connection with the Administration of a Union Territory shall be instituted by or against the Government of India. The Supreme Court decisions. dealing with the status of the Part C States, would not, Therefore, be applicable to the Union Territories. Section 55 of the Government of Union Territories Act, 1963 was enacted only "for the removal of doubts", these being the opening words of the said Section. Parliament thereby implied that the position even before the enactment of Section 55 was the same as it was stated there.

17. Before, a Union Territory is said to be a legal entity, it must possess certain attributes of a legal person. It does not possess the Chief attribute of a legal person of power to enter into contracts in its own name, nor can it institute suits in its own name. The contracts and suits are regarded as being made and filed in the exercise of the Executive power of the Union. It is true that Section 47 of the Government of India Union Territories Act establishes a separate consolidated fund for the Union Territories, but this fund is composed of all revenues received in any Union Territory by the Government of India and all grants and loans made and advanced to the Union Territory from the consolidated fund of India and all other money received by the Union Territory. The custody of this fund is to be regulated by rules made by the Administrator with the approval of the President. Further, the Union Territory of Delhi has been excluded from the definition of "Union Territories" in Section 2(1)(h) of the Government of Union Territories Act, with the result that the provisions of that Act do not apply to Delhi. While some of the other Union Territories have their Legislative Assemblies with limited powers of legislation. Delhi does not have them. Delhi is, Therefore, devoid of even this feature of possessing a legal personality.

18. In Article 309 of the Constitution, there are only two entities for which rules may be made by the Governor of a State, viz. The Union of India and the, States. It is clear that Union Territories are not included in the States, inasmuch as there are no Governors of Union Territories. Article 1(3) of the Constitution specifically says that the Territories of India shall comprise (a) Territories of the States and (b) the Union Territories, This would show that the Union Territories are not included in the States. The expression "Union Territories" simply means Territory of the Union. This is, why Article 239 of the Constitution provides that such a Territory is to be administered by the President, who is the executive head of the Union. The Administrator, who may be appointed by the President to administer the Union Territory is simply an officer or an agent of the President. He is not an entity in his own right. He merely acts for the President. The power of the President to authorise the Administrator to make rules for the Central Services functioning in a particular Union Territory is expressly derivable from the proviso to Article 309, which says that "it shall be competent for the President or such person as he may direct" to make such rules.

It would appear, however, that Article 239 in its amplitude would also enable the President to make such rules as making of such rules is included in the Administration of the Union Territories, which can be carried on by the President through the Administrator. It is to be noted that in *Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others*, , paragraph (12). a fairly exhaustive enumeration of the powers exercisable by the President on his own behalf, as distinguished from those exercisable by him on behalf of the Union of India has been made. But this list does not include the powers exercisable by the President under Article 239 of the Constitution. It would follow, Therefore, that the powers under Article 239 are exercisable by the President as the head and on behalf of the Union of India, In *Gobalowsamy v. Union Territory of Pondicherry*, Air 1966 Mad 298, a Division

Bench of the Madras High Court has put the legal position as follows. Parliament has power to make laws for Union Territories, including Central Services functioning in the Union Territories (Mithan Lal Vs. The State of Delhi and Another,). The President has, Therefore, obviously the power to make rules for such services so long as the Parliament does not make laws regarding them. In Jai Chand v. Union of India, C. W. 14 of 1967 (Delhi), one of us sitting in the Himachal Pradesh Bench of our High Court had occasion to consider whether the President could make Rules under Article 309 to constitute a Central Civil Service, known as Delhi & Himachal Pradesh Service (in 1961) and to constitute Delhi, Himachal Pradesh and Andaman & Nicobar Islands Service (in 1965) by making rules under Article 309. The petitioners in the Himachal case also contended that the President did not have the authority to make rules for the services functioning in the Union Territories. The arguments put forward by the petitioners were similar to those put forward by the petitioners in this case. These arguments were rejected by the Himachal Bench and it was held that the President had the necessary rule-making power in respect of Union Territories. One important aspect of the matter which was not referred to In the arguments of the learned counsel for the petitioners in this case, but was dealt with in the Himachal case may be referred to in the words used in Himachal decision which were as follows:--

"When the attention of the learned counsel was drawn to the fact that on his Interpretation, there would be no author -rity which would make rules in the case of services and posts in connection with the affairs of the Union Territories because the only two authorities contemplated by Article 309 of the Constitution are the President in case of services and posts in connection with the affairs of the Union, and the Governor of a State in the case of services and posts in connection with the affairs of the State, the learned counsel replied that if that was a necessary effect of his argument it was obvious that there was a lacuna in the Constitution. In any event, Mr. Gujral argued that it was quite conceivable that in the case of services of such territories the framers of the Constitution had deliberately left the matter in the hands of the Legislature of those territories. It was put to Mr. Gujral whether this interpretation would deprive the members of Civil Service in Himachal Pradesh of the protection of Article 311 of the Constitution. He said it might and attributed it to legislative imperfection. It is obvious that any further argument on this point would have meant just going round and round the mulberry bush and would not have led us anywhere."

19. In fact, the validity of all the arguments can be decided by one sure test, which seems to have been ignored in the discussion, which has so far taken place on this subject. The test is of sovereignty. A State is distinguished from other organisations mainly by the fact that it possesses sovereignty. By sovereignty we mean the ultimate authority, an authority from which there is no appeal-It is well known that in a Federal State, the sovereignty is firstly divided into external and internal. The external sovereignty is with the Federal Government while the internal sovereignty Is divided between the Federal

Government and the Governments of the States. Under the Indian Constitution, the internal sovereignty is divided between the Union of India and the States.

It is well known that there is no third political entity sharing in the internal sovereignty of India. The Union Territories are not, therefore, a third political entity. The sovereignty in respect of a Union Territory resides in the Union of India. It is clear, therefore, that the President could make rules for the central services functioning in the Union Territory of Delhi, under the proviso to Article 309 of the Constitution. This could also be done by the Administrator of the Union Territory. Delhi, in view of the express direction to him in this behalf by the President, in exercise of the power given to the President by the proviso to Article 309.

20. The authentication of the order of delegation by a Deputy Secretary was valid, inasmuch as this was done in the manner specified in the rules made by the President under Article 77(2) of the Constitution. (K. Anandan Nambiar and Another Vs. Chief Secretary, Government of Madras and Others,). The validity of an order so authenticated shall not be called in question on the ground that it is not an order or an instrument made or executed by the President

21. The second point for consideration, is whether the petitioners, who were appointed expressly on ad hoc basis in temporary capacity without any right to hold the posts or any claim to seniority by officiating in them could be considered as having acquired a right to hold those posts merely because ad hoc appointments were ordinarily to be restricted to a short term of three months, according to the instructions for the guidance of establishment officers, contained in the Hand Book published by the Ministry of Home Affairs. It is pertinent to quote the following observations of the Supreme Court in the State of Punjab Vs. Dharam Singh, .

"This Court has consistently held that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only, in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. In such a case, an express order of confirmation is necessary to give the employee a substantive right to the post, and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation it is not possible to hold that he should be deemed to have been confirmed. This view was taken in Sukhbans Singh Vs. State of Punjab, , G.S. Ramaswamy and Others Vs. Inspector-general of Police, Mysore, , Accountant General Madhya Pradesh, Gwalior v. Beni Prasad Bhatnagar, C. S, No. 548 of 1962, D/- 23-1-1964(SC), D. A. Lyall v. Chief Conservator of Forests, U. P., C. A. No. 259 of 1963, D/- 24-2-1965 (SC), and State of Uttar Pradesh Vs. Akbar Ali Khan, . The reason for this conclusion is that where on the completion of the specified period of probation the employee is allowed to continue in the post without an order of confirmation, the only possible view to

take in the absence of anything to the contrary in the original order of appointment or promotion or the service rules, is that the initial period of probation has been extended by necessary implication . In all these cases, the conditions of service of the employee permitted extension of the probationary period for an indefinite time and there was no service rule forbidding its extension beyond a certain maximum period."

22. In *State of Punjab Vs. Dharam Singh*, however, the proviso to the Statutory Rule 6(3) of the Punjab Educational Service (Provincialised Cadre) Class Iii, Rules, 1961 specifically stated that the total period of probation including extensions, if any, shall not exceed three year The Supreme Court Therefore, held that a person continuing to hold the post beyond the period of three years could not be deemed to continue on probation. Such implication was negated by a Statutory Service Rule.

23. The facts in *State of Punjab Vs. Dharam Singh*, are clearly distinguishable from the facts in the cases before us. The instructions to the establishment officers are only rules of guidance and prudence. The establishment officers are told that they should not appoint people or promote them to posts in an ad hoc capacity unless such an appointment is to last for not more than three months. If an appointment is made to last more than three; months, in fact, though orders of extension, etc. may have been issued from time to time, as was done in the cases before us, there is a breach of these rules of prudence. The appointing authority may, Therefore, be taken to task by his superiors for such a breach. The breach will, however, not invalidate the appointment, inasmuch as no law or statutory rule has been broken thereby. For the same reason, the breach will not convert an ad hoc appointment into a regular appointment. The reason is obvious. An appointment cannot be said to be done in a regular manner unless it could satisfy all the requirements of the 1960 or 1962 Rules positively. The mere fact that an appointment has been allowed to continue for more than three months would not mean that it was exempted from the obligation to comply with the statutory rules of the 1960 or 1962 Rules.

It is clear to us, Therefore, that such ad hoc appointments continue to be ad hoc and temporary even though the petitioners were allowed to continue in them for more than three months.

24. As none of the petitioners had right to hold the posts in which they were officiating, the reversion, of petitioners Nos. 1 and 2 in C. W. 543 of 1968 from Grade Ii to Grade Iii of the Sub-ordinate Executive Service, the discharge of petitioners Nos., 11 to 16 in C. W. 508 of 1968 and the exclusion of all the other petitioners from the Subordinate Executive Service by being absorbed in the Subordinate Ministerial Service would not amount to dismissal, removal or reduction in rank within the meaning of Article 311(2) of the Constitution. Consequently, the decisions in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, , does not help the petitioners and has no application to this case. Therefore, the question whether the 1967 Rules are

opposed to Article 311(2) simply does not arise,

25. Those petitioners, whose claims to hold the posts in which they were officiating, were considered by the Departmental Promotion Committee, or by other proper authorities and who were found not fit to hold those posts, cannot complain that the assessment of the authorities that the petitioners were not fit to hold those posts amounted to any stigma on the career or character of the petitioners. Such an assessment has to be made by all Administrative authorities from time to time. It is not made by way of punishment. Unless such an assessment is made, it would be impossible to decide whether a person should be confirmed or not or whether he should be promoted or not, or whether he should be reverted from the officiating appointment or not. Secondly, the assessment is not contained in the orders of reversion communicated to the petitioners. The Supreme Court has, time and again, held in numerous decisions most of which have been recapitulated in their latest decisions in *Jasbir Singh v. Union of India*, C. A. 1272/1966, D/-12-1-1968 (SC) that in such a case, the order of reversion does not amount to punishment. Consequently, it could be passed without resorting to the disciplinary procedure prescribed in Article 311(2).

26. We now come to the third point concerning the alleged discrimination against the petitioners contrary to Articles 14 and 16 of the Constitution, The first thing to be considered in this connection is whether the petitioners and the respondents belonged to the same class, and if so, whether the absorption of the respondents in the Subordinate Executive Service and the absorption of the petitioners in the Subordinate Ministerial Service amounted to discrimination against the petitioners contrary to Articles 14 and 16 of the Constitution.

The following considerations would show that the petitioners and the respondents could not be said to have belonged to one class. Firstly, all the petitioners were recruited originally to Ministerial posts and presumably they were to remain in Ministerial service with such promotions as are normally available to Ministerial employees. The question of consolidating the departments of the Delhi Administration and to amalgamate all the Ministerial posts in one Ministerial service and all the executive posts in one Executive service was apparently under consideration. Till the scheme could be finally announced and enforced, however, the work of the executive posts had to be carried on and short term appointments to these posts had to be made. Some of the short term appointments had to be made from the Ministerial employees, including the petitioners. As these appointments were made pending the proposed consolidation of the services to be bifurcated into a separate Ministerial service and a separate Executive service, these appointments were expressly made on an ad hoc and temporary basis, making it clear that the petitioners would not acquire any right or seniority in respect of the posts so held by them.

On the contrary, most of the respondents were either recruited directly to the Executive posts or were selected from the Ministerial service to these posts with

a view to being absorbed on the executive side. The petitioners and the respondents, thus, formed from the very beginning two separate classes. The distinction between them was rational, inasmuch as the Ministerial and the Executive work formed two different classes of work and the suitability of the employees for each class of the work is also to be assessed differently. The bifurcation of the consolidated service into Ministerial and Executive was directly connected with the efficient functioning of the services. The distinction was thus based on a rational consideration and a rational connection with the object of the efficient functioning of the public service. The classification being reasonable does not appear to contravene Articles 14 and 16 of the Constitution.

27. Secondly, Rule 5 of the 1967 Rules laid down certain conditions to be satisfied for being absorbed in the newly constituted services. The chief condition was that a person was not fit to be appointed to a post on the initial constitution of the service unless he had been appointed to that post in a regular manner according to the 1960 or 1962 Rules. It was found that none of the petitioners was appointed to the Executive posts held by them at the constitution of the new service by the 1967 Rules, after satisfying all the requirements of the 1960 or 1962 Rules. The petitioners had to succeed on the merits of their own case. As none of them had any right to remain in the Executive posts, they were not entitled to be absorbed in the executive service on its initial constitution. It would appear that the respondents had either been appointed in a regular manner to the executive posts under the 1960 or 1962 Rules or were recruited specifically to those posts under the 1967 Rules.

28. Two conclusions follow from the foregoing discussion. Firstly, the petitioners and the respondents belonged to two separate classes. Same treatment could not, Therefore, be meted out to both of them. Secondly, the mere fact that the petitioners were absorbed in the Ministerial service while the respondents were absorbed in the Executive service does not mean that unequal treatment had been meted out to them. The Subordinate Ministerial Service and the Subordinate Executive Service are completely parallel with each other, having the same grades in each of them. The scales of pay are the same. Therefore, it cannot be said that the Subordinate Executive Service is superior to the Subordinate Ministerial Service, The assessment as to which officials were suitable to the Ministerial Service and which of them are suitable to the Executive Service had to be made by the Government according to their subjective satisfaction.

The petitioners having been primarily recruited for Ministerial jobs were naturally considered suitable by the Government for absorption in the Ministerial Service. On the other hand, the respondents having been primarily earmarked for the Executive jobs were considered more suitable to be absorbed in the Sub ordinate Executive Service. This process of bifurcation did not mean that the respondents superseded the petitioners in any way. On the other hand, the bifurcation was a rationalization measure, which the Government was entitled to take. If any

petitioners were reverted from a job carrying more pay to a job carrying less pay, that was because such petitioners had no right to stay in the higher posts to which their appointments had been ad hoc and temporary pending the making of regular appointments on the constitution of the new Services. No petitioner was reverted merely because any respondent had to be promoted over them. The question of discrimination in favor of the respondents and against the petitioners Therefore, did not arise at all.

29. The process of absorbing the petitioners into Ministerial Service and the respondents into the Executive Service took a little time after the promulgation of the 1967 Rules. This was why a combined seniority list including some of the petitioners and some of the respondents was issued. But this did not have the effect of absorbing the petitioners into the Executive Service. The mere inclusion in the seniority list did not mean that the petitioners had become appointed to the Executive posts in a regular manner, inasmuch as, the petitioners had not fulfilled the requirements of either 1960 or 1962 Rules or of the 1967 Rules. Their appointments to the Executive posts could not Therefore, be said to be regular. Their subsequent absorption in "the Ministerial service did not, Therefore, amount to any discrimination against them.

30. In C. W. 543 of 1968, the Delhi Administration has averred in paragraph (2) of their return at page 33 of the record that the petitioners were considered by the Departmental Promotion Committee for appointments in Grade Ii of the Subordinate Executive Service, but were not found fit and so petitioners Nos. 1 and 2 were reverted to Grade Iii of the Subordinate Executive Service. The other petitioners were absorbed in the Ministerial Service. The petitioners not being regularly appointed did not really have the right to be considered. Even so, they were actually considered and were not found fit. They cannot, Therefore, complain if they are not absorbed in the Subordinate Executive Service. An application was made on behalf of the petitioners in C. W. 543/1968, for the production of the files and minutes of the Delhi Administration, in which the petitioners were considered and found to be not fit. The application was resisted by Delhi Administration on the ground of privilege both under Sections 123 and 124 of the Evidence Act. It is clear that the documents belong to a class, the non-disclosure of which was necessary for the proper functioning of the public service and the disclosure of which would affect the freedom and candor of expression of public servants and would, thus, cause injury to public interest. The reason why such documents are not allowed to be| disclosed was expressed by the Supreme Court in The State of Punjab Vs. Sodhi Sukhdev Singh, towards the end of paragraph (15):

"There may be another class of documents which could claim the said privilege not by reason of their contents as such but by reason of the fact that, if the said documents were disclosed, they would materially affect the freedom and candour of expression of opinion in the determination and execution of public policies. In this class may legitimately be included notes and minutes made by

the respective officers on the relevant files, opinions expressed, or reports made, and gist of official decisions " reached in the course of the determination of the said questions of policy. In the efficient administration of public affairs Governments may reasonably treat such a class of documents as confidential and urge that its disclosure should be prevented on the ground of possible injury to public interest. In other words, if the proper functioning of the public service would be impaired by the disclosure of any document or class of documents such document or such class of documents may also claim the status of documents relating to public affairs."

We did not, Therefore, order the production of the documents by the Delhi Administration. In *Mervyn Coutindo and Others Vs. Collector of Customs, Bombay and Others*, , the Supreme Court held that the seniority of the principal appraisers should be from the date of promotion when the merger of the candidates from two sources of recruitment had already taken place in the grade of appraisers. But the same principle could not be applied to the grade of appraisers in which candidates were recruited from the petitioners, who fall into a class distinguished from that of the respondents could not claim equality with the latter.

In *Govind Dattatray Kelkar and Others Vs. Chief Controller of Imports and Exports and Others*, , the Supreme Court held that an ad hoc appointment does not give any right to hold the post and, Therefore, the petitioners who have continued to hold posts on an ad hoc basis for as long a period as of nine years, were still liable to be reverted and that in doing so, Articles 14 and 16 were not violated. The equality in the matter of promotion can be predicated only when the promotees were drawn from the same source, but not when they are drawn from two different classes as in the cases before us. In *Roshan Lal Tandon Vs. Union of India (UOI)*, , the Supreme Court held that the members of the same class must be treated similarly. In the cases before us, the petitioners did not belong to the same class as the respondents and had no right to be absorbed in the Executive Service along with the respondents.

31. In dealing with the fourth point as to whether the status and the prospects of the petitioners could be affected retrospectively by 1967 Rules, the following decisions of the Supreme Court are relevant. *Roshan Lal Tandon Vs. Union of India (UOI)*, already referred to above is an authority for the proposition that though the origin of Government service may be in a contract, the Government servant after appointment acquires a status and his rights and obligations thereafter are determined not by consent of parties, but by the statutes and statutory rules, which may be framed and altered unilaterally by the Government, The Government had full authority to change the conditions of service of the Government servants and the latter had no vested or contractual right in regard to the terms of their service.

In *B.S. Vadera Vs. Union of India (UOI) and Others*, , the temporary and ad hoc promotions of the petitioners were held not to give them any right to those

posts. The Government framed a new scheme and the promotions had to be strictly according to the scheme. Once it is held that the petitioner did not satisfy the requirement of the scheme he was not entitled to promotions and there was no question of any discrimination under Article 14 or violation of Article 16 arising for consideration at all. The rules made by the President in this behalf could have effect both prospectively and retrospectively. The 1967 Rules in the cases before us are prospective. Rule 5 thereof prescribed conditions for absorption on the initial constitution of the new service. It is on the date of the absorption into the new service and not at any time before that the candidate has to fulfill the requirements of Rule 5. Neither Rule 5, nor any other part of the 1967 Rules thus, had any retrospective operation.

32. The last point is whether the Delhi Administration dealt with the petitioners in bad faith. It is difficult to say about this point that there was neither any specific pleading and statement of facts much less any proof of mala fides on the part of the Delhi Administration. The mala fides was presumably to be inferred from the way the petitioners were dealt with. We have found that the petitioners were dealt with in accordance with the rules and nothing has been brought to our notice to show that there has been any malice or mala fides, either in fact or in law in the treatment given to them by the Delhi Administration.

33. On the findings given above all the Writ petitions fail and are, Therefore, dismissed. In the circumstances of these cases, however, we make no order as to costs.

34. Petitions dismissed.