

(2002) 07 KAR CK 0051
In the Karnataka High Court
Case No : Writ Petition No. 22908 of 2002

Jayaganesh Beedu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-07-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Major Port Trusts Act, 1963 — Section 124, 28

New Mangalore Port Trust (Recruitment of Heads of Department) Regulations, 2001 — Regulation 12

Citation : (2002) ILR (Kar) 3689 : (2002) 4 KarLJ 446 : (2002) 4 KCCR 300 SN

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : B.S. Patil, for the Appellant; Ashok Harnahalli, Senior Central Government Standing Counsel for Respondents 1 and 2 and Venugopala Gowda, for Respondent 5, for the Respondent

Final Decision : Dismissed

Judgement

P. Vishwanatha Shetty, J.—The petitioner in this petition is working as Superintending Engineer (Mechanical) in the 3rd respondent-New Mangalore Port Trust (hereinafter referred to as the Tort Trust"). In this petition he has made three prayers. Firstly, he has prayed for striking down "New Mangalore Port Trust (Recruitment of Heads of Department) Regulations, 2001" (hereinafter referred to as the regulations") insofar as it provides for the method of selection by "composite recruitment" to the post of Chief Mechanical Engineer on the ground that it is arbitrary and ultra vires of Constitution of India. Secondly, he has prayed for a declaration that the selection of the 5th respondent to the post of Chief Mechanical Engineer on the establishment of the 3rd respondent-Port Trust as illegal; and thirdly, he has prayed for a direction to the Selection Committee constituted for selection to the post of Chief Mechanical Engineer to consider the case of the petitioner for appointment.

Facts in brief, which are not in serious dispute, may be stated as hereunder:

2. According to the case set out by the petitioner, the petitioner is a B.E. (Mechanical) by qualification and has passed from Karnataka Regional Engineering College, Suratkal in first class obtaining 13th Rank in Engineering Graduate Examination; and thereafter he was appointed as a Section Officer (Class-III) on 26th December, 1967 in which post he continued till he was promoted to the post of Assistant Engineer (Class-11) on 19th April, 1973; and on 12th January, 1986 he was promoted to the cadre of Assistant Executive Engineer (Junior Class-I) and thereafter again he was promoted to the post of Assistant Executive Engineer (Mechanical) and Deputy Controller of Stores which is a Senior Class-I post; and Subsequently, the petitioner was promoted as Superintending Engineer on 28th April, 1997. It is his further case that he has been holding the post of Chief Mechanical Engineer on in charge basis since June 1997. It is the case of the petitioner that in the various positions held by him, he had the occasion to hold and discharge various types of works in the 3rd respondent-Port Trust, and had gained experience to effectively function as Chief Mechanical Engineer in the 3rd respondent-Port Trust and he has discharged his functions blemishlessly and has earned his promotions from time to time to higher positions as and when the vacancy arose purely on the basis of merit and high quality of efficiency exercised by him in discharge of his duties. It is his further case that it is the aspiration of every employee who joins at a particular cadre in the ladder of Mechanical Engineering to reach, the highest position of the Head of Department in the 3rd respondent-Port Trust before he retires; and the petitioner had the similar ambition; and when he joined the 3rd respondent-Port Trust, the feeder cadre to the post of Chief Mechanical Engineer was from the cadre of Mechanical Engineering only.

3. The recruitment, seniority and promotion of the employees of the 3rd respondent-Port Trust is governed by the Regulations framed by the Port Trust in exercise of the powers conferred on it u/s 28 read with Section 124 of the major port Trusts Act, 1963 (hereinafter referred to as "the Act"). The Central Government in exercise of the powers conferred on it under Sub-section (i) of Section 124 read with Sub-section (i) of Section 132 of the Act approved the amendment made to the regulations by means of its notification dated 5th December, 2001, framed by the Port Trust. The next higher post from the cadre of the post of Superintending Engineer (Mechanical) is the post of "Chief Mechanical Engineer". As it could be seen from the Schedule given to the regulations, the post of Chief Mechanical Engineer is made as a selection post and the method of recruitment is made both by direct recruitment and by way of promotion/transfer/deputation. The qualification in the case of recruitment by promotion/transfer/deputation prescribed is that the candidate should be a Superintending Engineer (Mechanical/Electrical) with five years of regular service in the grade of Marine Engineer with MOT First Class Certificate with five years regular service in the grade/analogous posts from the major ports failing which by transfer or deputation of officers holding same or analogous posts in Government/semi-Government Organizations/Public Sector Undertakings or

Autonomous Bodies. It is further provided that the selection is by merit, for which the bench-mark in the overall grading in the ACRs should not be below "Very Good".

4. It is the grievance of the petitioner in this petition that the regulations which provide for composite selection by way of promotion/transfer/deputation is illegal and unconstitutional and though the petitioner possess the requisite qualification, unjustifiably his case was not considered for selection and therefore, the selection of the 5th respondent deserves to be struck down by this Court.

5. However, the respondents have resisted the claim of the petitioner. In the statement of objections inter alia it is contended that the regulations framed are valid and not liable to be struck down on any ground and the composite method of selection has been adopted by all major ports in the country and several appointments have been made in accordance with the similar regulations. It is further stated that on the basis of comparative merit, the Selection Committee, having found that the 5th respondent as a most suitable candidate, recommended his case for appointment as Chief Mechanical Engineer and on the basis of the said recommendation the Government of India, which is the Appointing Authority, issued an order of appointment on 6th June, 2002. It is useful to refer to the statement made in the statement of objections at paragraph 2 which reads as follows:

"The post of Chief Mechanical Engineer is a Head of Department post and it is the Central Government who can make appointment to this post as per Section 24(1) (a) of the major port Trusts Act, 1963 thereafter referred to as the "Act" for short). Section 28 of the Act provides that the Board can make regulation providing for matters relating to the appointment, promotion, suspension and other matters. In exercise of this power, the Board has framed the New Mangalore Port Trust (Recruitment of Heads of Department) Regulations, 1991. This regulation has now been amended by issue of notification dated 5-12-2001, by which it is provided that the method of recruitment to the post of Chief Mechanical Engineer is by promotion/transfer/deputation from major ports. It is further reiterated that a Composite Recruitment Method should be adopted for selection to the post. In other words, the Appointing Authority should take into consideration all eligible candidates having the requisite qualification and select the candidate only on the basis of the merit. In other words, all persons working as Superintending Engineer (Mechanical/Electrical) with five years of service in the grade of Marine Engineer with MOT First Class Certificate with five years of regular service in the grade analogous posts are eligible to be considered for the post of Chief Mechanical Engineer of New Mangalore Port Trust ("NMPT for short). This system is being followed by the NMPT. In this regard, the Government of India issued a circular on 3-11-2000 to the Chairman of all major ports stating that the Port Trusts should endeavour to select the best person suitable for the job, who can bring in innovation by his experience at other Ports. The Government of India has further issued a direction that all Port Trusts should

adopt uniform composite method of recruitment for filling the post of Head of Department".

6. Sri B.S. Patil, learned Counsel appearing for the petitioner in support of the prayer of the petitioner made two submissions. Firstly, he submitted that the non-consideration of the case of the petitioner to the post of Chief Mechanical Engineer on the ground that the petitioner does not possess five years of "Regular Service" in the cadre of the Superintending Engineer (Mechanical) is erroneous in law. Elaborating this submission, the learned Counsel pointed out that the authorities have seriously erred in law in not treating the period of the service of the petitioner rendered for the period from 28-4-1997 to 27-5-1997 and from 1-7-1997 till he was regularly appointed as Superintending Engineer (Mechanical) with effect from 12th August, 1997, only on the ground that the said service rendered by him was on ad, hoc basis and not a regular service and therefore he did not possess the requisite qualification. It is his further submission that whether the petitioner holds the requisite qualification or not, it is the question which is required to be considered by the Selection Committee and in the instant case since the Chairman of the Port Trust and also the Chairman of the Selection Committee had only taken the decision that the petitioner did not possess the requisite qualification and the Selection Committee did not apply its mind to the question as to whether the petitioner possess the requisite qualification or not, the selection of the 5th respondent is required to be set aside and a direction is required to be given to the Selection Committee to consider as to whether the petitioner possess the requisite qualification or not. He also pointed out that since the proviso given to the Regulation 5 of the Regulations confers power to relax the qualification even if the petitioner does not possess the requisite qualification, if the Selection Committee were to consider the qualification of the petitioner, it would have, in the facts and circumstances of the case, relaxed the qualification. Sri Patil also submitted that the object of prescribing the qualification being to assess the comparative merit of a candidate, the services rendered or the experience gained by the petitioner on ad hoc basis cannot be ignored by giving too much of emphasis on the words "Regular Service" prescribed in the rules. It is his submission that the rule must be interpreted in a broad and pragmatic manner keeping in mind the object of the rule; and if the rule is so understood what the rule contemplates is the experience of five years in the cadre of Superintending Engineer (Mechanical) and in that case the experience gained by the petitioner, consequent upon his appointment as Superintending Engineer (Mechanical) on ad hoc basis, cannot be ignored. In support of his contentions that the period of ad hoc services rendered by the petitioner must be considered as a regular service, he relied upon the decisions in the cases of Shri L. Chandrakishore Singh Vs. State of Manipur and Others, ; The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, ; K.A. Abdul Majeed Vs. The State of Kerala and Others, ; Keshav Deo and Another Vs. State of U.P. and Others, ; Sualal Yadav Vs. The State of Rajasthan and Others, ; In re Dr. Ravinder Paul Kaur,

1979(2) SLR 645; M.G. Sajjad v. State of Mysore and Anr., 1967(2) Mys. L.J. 274; Dr. Chandra Prakash and Others Vs. State of U.P. and Another, and Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others, . Secondly, he submitted that the rule which prescribes for selection by way of promotion/transfer/deputation from all major ports by adopting composite recruitment is highly arbitrary, unreasonable, vague and gives unguided and arbitrary power to the Selection Committee and the Central Government to pick and choose persons of their choice at their whims and fancies, and therefore the said rule should be struck down as arbitrary, unreasonable and discriminatory in nature and violative of the right guaranteed to the petitioner under Article 14 of the Constitution of India. Further, he submitted that the Schedule given to the Regulation for Composite Recruitment also should be held unenforceable as it runs contrary to Regulation 12 of the Regulations which provides for filling up of the post by promotion and transfer only among the employees of the 3rd respondent-Port Trust and only in exceptional case for appointment on deputation from ports other than 3rd respondent-Port Trust. It is his submission that when the Schedule given to the regulation is required to be struck down on the ground that it is contrary to Regulation 12 of the Regulations, the said Schedule should be read down as conferring power on the Appointing Authority only to appoint the candidates by way of promotion and transfer among the employees of the 3rd respondent-Port Trust and only in exceptional cases by way of deputation with a view to save the said regulation. It is also submitted by him that since the appointment of the 5th respondent has not been made by way of deputation, his appointment made by way of transfer is required to be struck down.

7. However, Sri Ashok Harnahalli, the learned Senior Central Government Standing Counsel appearing for respondents 1 and 2 and Sri Venugopala Gowda, Advocate appearing for the 5th respondent strongly refuting the contentions of the learned Counsel appearing for the petitioner pointed out that since the petitioner was admittedly promoted on regular basis only with effect from 12th August, 1997 by means of order Annexure-D, dated 16th August, 1997, the Selection Committee was fully justified in not considering the claim of the petitioner for appointment as Chief Mechanical Engineer as both on the last date fixed for submission of the names of the suitable candidates with their willingness (i.e. 18th February, 2002) as notified in Annexure-E, dated 29th January, 2002 and also on the date of consideration of the claim of several candidates for being appointed as Chief Mechanical Engineer by the Selection Committee as on the said date he did not possess five years of regular service. It is their submission that since the qualification prescribed requires that the candidate should have put in five years of regular service in the grade of Superintending Engineer (Mechanical/Electrical), the period of services rendered by the petitioner as Superintending Engineer (Mechanical) on ad hoc basis cannot be considered as regular service. In this connection, the learned Counsel referred to me the contents of Annexure-B and C wherein while appointing the petitioner on ad hoc basis it is specifically stated that the services rendered by

him on ad hoc basis will not count for the purpose of seniority in the grade and eligibility for promotion to the higher grade. It is also their submission that once it is held that the petitioner does not possess the requisite qualification, the petitioner cannot be permitted to challenge the validity of the regulation in question on any ground and this petition is liable to be dismissed solely on the ground that the petitioner has no locus standi to challenge the regulations. However, while supporting the validity of the regulations, they pointed out that the amendment of the Schedule to the regulation of the 3rd respondent-Port Trust was made with a view to recruit the most suitable candidate as Chief Mechanical Engineer in the 3rd respondent-Port Trust for the post of Chief Mechanical Engineer is an important position in the set-up of the 3rd respondent-Port Trust. It is their further submission that all the 11 (eleven) Ports in the country have adopted similar regulations and the petitioner who had applied for the post of Chief Mechanical Engineer in Kandla Port Trust, and who tried to take advantage of the similar regulation, cannot now be permitted to challenge the regulation in question which provides for selection by way of composite recruitment. They further submitted that since the amendment to the Schedule by means of notification Annexure-A, dated 5th December, 2001 came to be made subsequent to the framing of Regulation 12 of the Regulations, the Court must place a harmonious construction to both the regulations and give effect to the provisions contained in the Schedule given to the regulations which provides for composite recruitment. They also submitted that since the Schedule given to the regulations does not limit the area of selection by way of transfer/deputation from the 3rd respondent-Port Trust alone, it must be held that the selection to the post of Chief Mechanical Engineer by way of promotion/transfer/deputation could be made as set out in column (9) of the Schedule from the persons qualified to be appointed from all the major ports in the country. In this connection, they also referred to me the circular dated 3rd November, 2000, a copy of which has been produced as Annexure-R1 to the statement of objections issued by the Government of India to the Chairman of all major ports in the country, wherein instructions were given to frame necessary recruitment rules providing for selection by adopting composite recruitment. They have also pointed out that since both the petitioner and the 5th respondent are retiring from service at the end of September 2002 and since the petitioner does not possess the requisite qualification, judged from any point of view, this is not a fit case for this Court to interfere against the selection and nullify the appointment of 5th respondent in exercise of its power under Article 226 of the Constitution of India as it would not enure to the benefit of the petitioner in any manner.

8. In the light of the rival contentions advanced by the learned Counsels appearing for the parties, the three questions that would arise for consideration in this petition are:

(i) Whether the non-consideration of the case of the petitioner for appointment as Chief Mechanical Engineer by the respondents 4 and 5 on the ground that he did not have five years of regular service in the cadre of Superintending Engineer

(Mechanical) is justified?

(emphasis supplied)

(ii) If the petitioner does not possess the requisite qualification, whether it is permissible for the petitioner to maintain this writ petition challenging the validity of the regulations in question providing for composite recruitment?

(iii) If the answer to the Question No. (ii) (supra) is in favour of the petitioner, whether the regulations which provide for recruitment by promotion/transfer/deputation from major ports by adopting composite recruitment is invalid in law?

Before I proceed to consider the questions that would arise for consideration in this petition, it is useful to refer to Regulation 12 of the Regulations and also to Items 8 and 9 of the Schedule given to the regulations which provide for the method and qualification for recruitment by way of promotion/transfer/deputation to the post of Chief Mechanical Engineer. Regulation 12 of the Regulations reads as follows:

"12. Manner of Recruitment.--(1)(a) When a post of Head of Department to which these regulations apply falls vacant is to be filled by promotion/transfer/deputation, the Chairman shall forward to the Appointing Authority names, age, qualification, experience and other relevant particulars of all officers who are eligible for promotion/transfer/deputation to the posts together with his recommendations, whenever the Schedule provides for deputation also, the Chairman may if considered necessary or if directed by the Central Government for application from eligible candidates from other major port Trusts/Central/State Governments/Public Sector Units/Autonomous Bodies.

(b) The Appointing Authority may on receipt of such information either-

(i) make an appointment by promotion/transfer/deputation amongst the candidates so sponsored, or

(ii) refer the candidates to the Selection Committee referred to in Regulation 11 with directions to scrutinize the case and make appropriate recommendations and then make an appointment by promotion/transfer/deputation on the basis of such recommendations, or

(iii) direct that the vacancy be filled by the direct recruitment in the manner laid down in these regulations.

(2) All appointments by direct recruitment shall be made by the Appointing Authority on the recommendations of the Selection Committee provided that it shall be open to the Appointing Authority, for reasons to be recorded in writing not to accept such recommendation in any particular case".

Items 8 and 9 in the Schedule given to the regulations read as follows:

"8.

Method of recruitment whether by direct recruitment or by promotion/ transfer/ deputation

By promotion/transfer/deputation from the major ports (composite recruitment) failing which by transfer or deputation of officers as indicated at column (9) failing both by direct recruitment.

9.

In case of recruitment by promotion/ deputation/ transfer grades from which deputation/ transfer to be made

By promotion/transfer/deputation: Superintending Engineers (Mechanical/ Electrical) with 5 years regular service in the grade of Marine Engineer with MOT First Class Certificate with 5 years regular service in the grade/analogous posts from the major ports failing which by Transfer or deputation of officers holding same or analogous posts in Government/semi-Government Organizations/Public Sector Undertakings or Autonomous Bodies. (Period of Deputation ordinarily not exceeding 3 years.)

The selection is by merit for which the benchmark in the overall grading in the ACRs should not be below "Very Good".

Regarding Question No. (i):

Now let me proceed to consider the first question. As it is seen from Item 8 of the Schedule, the appointment to the post of Chief Mechanical Engineer by way of promotion/transfer/deputation is required to be made by adopting the method of composite recruitment from amongst the candidates who possess requisite qualification prescribed under Item 9 of the Schedule. Item 9 of the Schedule referred to above provides that in case of recruitment by promotion/transfer/deputation, the same could be done from the officers in the cadre of Superintending Engineer (Mechanical/Electrical) with five years of regular service in the grade of Marine Engineer with MOT First Class Certificate with 5 years of regular service in the grade/analogous posts from the major ports failing which by transfer or Deputation of officers holding same or analogous posts in Government/semi-Government, Organizations/Public Sector Undertakings or Autonomous Bodies. It is also provided that the selection is by merit for which the bench-mark in the overall grading in the ACRs should not be below "Very Good". While it is the case of the petitioner that he has five years of regular service in the cadre of Superintending Engineer (Mechanical), it is the case of the respondents that the services rendered on ad hoc appointment as Superintending Engineer (Mechanical) prior to 12th August, 1997 cannot be treated as regular service and as such it cannot be held that the petitioner possess five years of regular service in the cadre of Superintending Engineer (Mechanical) which alone qualifies him to be considered for appointment to the post of Chief Mechanical Engineer". The language employed in the regulations, as noticed by me earlier, is "5 years regular service" in the cadre of

Superintending Engineer (Mechanical/Electrical). The Order Annexure-B, dated 9th May, 1997 and Order Annexure-C, dated 16th August, 1997 produced by the petitioner, no doubt, shows that the petitioner was appointed as Superintending Engineer (Mechanical) from 28th April, 1997 to 27th May, 1997 and from 1st July, 1997 for three months or till the post of Superintending Engineer (Mechanical) is filled by a regular incumbent, whichever is earlier on ad hoc basis and the materials on record also show that he continued to hold the said post till he was regularly appointed as Superintending Engineer (Mechanical) by way of promotion with effect from 12th August, 1997. The Selection Committee considered the case of the eligible candidates for appointment to the post of Chief Mechanical Engineer on 16th May, 2002. The last date for submission of names of suitable candidates and their willingness with the necessary particulars was 18th February, 2002. Therefore, if the period of service rendered by the petitioner on ad hoc basis is taken into consideration, the petitioner would, no doubt, possess the requisite qualification, if only the date of consideration of Selection Committee is treated as a relevant date for the purpose of deciding whether a candidate possess the requisite qualification. However, if the date of forwarding of the names and other particulars of the suitable candidates as notified in Annexure-E by the 3rd respondent-Port Trust is taken into consideration as the relevant date, i.e., 18th February, 2002, the petitioner will not be qualified. For the sake of argument that the date of consideration by the Selection Committee is taken as relevant date, the question that would arise for consideration is what is meant by ""Regular" Service"? According to the Webster's Encyclopedic Unabridged Dictionary of the English Language the word "Regular" means normal, evenly or uniformly arranged, carried out in accordance with an accepted principle of rule, properly qualified for or engaged in an occupation, etc.; according to Thorndike Barnhart World Book Dictionary the word "Regular" means normal, fixed by custom or rule, usual, according to rule, etc.; according to the Oxford Dictionary the word "Regular" means conforming to a rule or principle, consistent; systematic etc. According to the Webster's Encyclopedic unabridged Dictionary of the English Language the word "ad hoc" means for this, with respect to this; according to Thorndike Barnhart World Book Dictionary the word "ad hoc" means for a specific purpose; special; according to P.H. Collin's Law Dictionary the word "ad hoc" means for this particular purpose; and according to the Oxford Dictionary the word "ad hoc" means for this purpose. Therefore, the word "ad hoc" has to be understood as a temporary or as a stopgap arrangement made for a particular purpose. May be the petitioner had gained experience while discharging the duties of the Superintending Engineer (Mechanical) during the tenure of his appointment to that post on ad hoc basis by means of Order Annexure-B and C, dated 9th May, 1997 and 16th August, 1997 respectively. The said orders make it clear that the services rendered by the petitioner on ad hoc basis in the cadre of Superintending Engineer (Mechanical) will not count for the purpose of seniority in the grade and eligibility for promotion to the higher grade. The appointment orders, as noticed by me earlier, clearly indicate that his appointment to the cadre of

Superintending Engineer (Mechanical) was on ad hoc basis. The Hon'ble Supreme Court in the case of K. Madhavan and Another Vs. Union of India (UOI) and Others, , has taken the view that when a person is appointed to a post on a purely temporary or ad hoc basis, such an appointment cannot be considered as a regular appointment. It is useful to refer to the observation made by the Hon'ble Supreme Court at paragraph 10 of the judgment which reads as follows:

"The 1975 Rules which are relevant for the purpose do not explain what is meant by the expression "on a regular basis". The expression has created some ambiguity in the eligibility clause giving rise to this controversy. There can be no doubt that when a person is appointed to a post against a permanent vacancy on probation, his Appointment is on a regular basis, but when a person is appointed to a post on a purely temporary or on an ad hoc basis, the appointment is not a regular basis. The expression "on a regular basis" in the 1975 Rules cannot, in our opinion, be interpreted to mean as on absorption in the CBI as SP. The general principle is that in the absence of any specific provision to the contrary, the length of service from the date of appointment to a post should be taken into consideration for the purpose of either seniority in that post or eligibility for the higher post. As no explanation has been given in the 1975 Rules of the said expression, we do not think it desirable to deviate from the established principle of computing the length of service for the purpose of seniority or eligibility for the higher post from the date of appointment. In our view, therefore, the expression "on a regular basis" would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis. Respondent 5, in our opinion, satisfied the eligibility test of the 1975 Rules for consideration for the post of DIG."

(emphasis supplied)

Therefore, the services rendered by the petitioner on ad hoc basis cannot, in my view, be considered as regular service. No doubt, it is the submission of Sri Patil that the object of prescribing qualification is to pick up the most suitable candidate who has gained sufficient experience and could bring in innovation in the working of the port on account of the experience he has gained at the port. However, it is necessary to point out that the language employed in the regulation is that the candidate should possess five years of regular service in the grade of Superintending Engineer (Mechanical). "Regular service", in my view, cannot be equated to gaining of experience of in the grade of Superintending Engineer for the purpose of deciding the qualification. When the rule making authority has prescribed that the candidate should have five years of regular service in the cadre of Superintending Engineer (Mechanical/Electrical), it is not possible to accept the submission of Sri Patil that the same should be equated as five years of experience and on that basis it should be held that the petitioner possess five years of regular service. I am of the view that it is not permissible for this Court in exercise of its power under Article 226 of the Constitution of India to strike down the qualification prescribed for a post on the

ground that this Court can take a different view in the matter. It is only in cases where the qualification prescribed is totally unrelated and extraneous to the object to make a proper selection of a candidate to a post, this Court could examine the validity of the qualification prescribed. In the present case, five years of regular service prescribed in the cadre of Superintending Engineer (Mechanical/Electrical), in my view, cannot be held as totally unrelated or as an extraneous qualification prescribed for recruitment to the post of Chief Mechanical Engineer. Further, the letter Annexure-F, dated 28th May, 2002 written by the petitioner himself also shows that he also proceeded on the basis that he did not possess the requisite qualification and therefore he requested the authorities to relax the qualification prescribed in exercise of the power conferred on it under proviso given to Regulation 5 of the Regulations. Therefore, I am unable to accept the submission of Sri Patil that the petitioner did possess the qualification of five years of regular service on the date when the Selection Committee considered the case of the candidates for selection. In this view of the matter, in my view, the Chairman of the 3rd respondent-Port Trust, as well as the Chairman of the Selection Committee were fully justified in taking the view that the petitioner did not possess the requisite qualification. Further, the proceedings of the Selection Committee dated 16th May, 2002 indicates that it had also applied its mind to the proposal submitted by the 3rd respondent-Port Trust and found that the petitioner did not possess the requisite qualification. Even otherwise, in the light of my above conclusion that the petitioner did not possess the requisite qualification, even assuming that the Selection Committee has not considered as to whether the petitioner possess the requisite qualification or not, in my view, it would not have made any difference; and has not caused him any prejudice in any manner. When there are other qualified and suitable candidates available, it is not, permissible either for the Selection Committee or to the Appointing Authority to relax the qualification prescribed and consider the case of the petitioner as contended by Sri Patil. If such a procedure is resorted to, the said action may be a subject of attack on the ground of vice of arbitrariness on the part of the Selection Committee or the Appointing Authority, as the case may be, and has resulted in a serious inroad to the right of equality guaranteed to other candidates who possess requisite qualification under Articles 14 and 16 of the Constitution of India. Now, let me also refer to the judgment relied upon by the learned Counsel appearing for the petitioner. In my view, none of the judgments relied upon by him is of any assistance to him to support his case. In the case of S.L.Chandrakishore Singh, supra, the question that came up before the Hon"ble Supreme Court was as to whether the date of officiating appointment has to be treated as a date of regular appointment for the purpose of seniority. In that context the Hon"ble Supreme Court took the view that the date of officiating appointment has to be treated as the date of regular appointment and the seniority has to be fixed by giving the benefit of officiating service. Similarly, in the case of Direct Recruit Class-II Engineering Officers" Association, supra, the question that came up before the Hon"ble Supreme Court was whether for the purpose of seniority, initial

appointment made which was not in accordance with rules should be counted for the purpose of seniority. That was the case where the dispute was between the direct recruits and promotees for the purpose of seniority. In the said case, since the promotees were occupying the post meant for direct recruits, uninterruptedly and continuously for a long period, the Hon''ble Supreme Court took the view that while determining the seniority between the direct recruits and promotees, the date of initial appointment made which was not in accordance with rules, will have to be taken into consideration for the purpose of determining seniority. In the same case, the Hon''ble Supreme Court further observed that where the initial appointment is only on ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority. It is useful to refer to the observation made in paragraph 44 of the judgment which reads as follows:

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial, appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

(emphasis supplied)

In my view, the observation made by the Hon''ble Supreme Court in the above ease, as noticed by me, is also of no assistance to the petitioner. Similar is the principle laid down by the Hon''ble Supreme Court in the case of K.A. Abdul Majeed, *supra*. In the said case also the Hon''ble Supreme Court considered the question of length of service for the purpose of determining the seniority. Therefore, the said decision is also of no assistance to the petitioner. Further, in the case of Keshav Deo, *supra*, the Hon''ble Supreme Court has also taken the view that where the initial appointment is only on ad hoc and not in accordance with the rules and is made as stopgap arrangement, the period of officiation in such posts cannot be taken into account even for the purpose of reckoning seniority. In the case of Dr. Ravinder Paul Kaur, *supra*, no doubt, the Punjab and Haryana High Court took the view that the teaching experience gained on ad hoc appointment cannot be ignored for the purpose of deciding the qualification and there is no difference between teaching experience gained either on regular appointment or on ad hoc appointment. The question that came up for consideration before the Punjab and Haryana High Court was with reference to the number of 4 years of experience. In that matter, the Punjab and Haryana High Court, no doubt, took the view that the teaching experience gained on ad hoc appointment also should not be ignored. In the present case, the regulation

referred to above requires five years of "regular service". The regulation does not speak of experience, but it speaks of regular service. Therefore, in my view, the decision of Punjab and Haryana High Court rendered in the case of Dr. Ravinder Paul Kaur, *supra*, is of no assistance to the petitioner. The decision of this Court in the case of M.G. Sajjad, *supra*, also does not improve the case of the petitioner any further. In the said case while considering what is meant by five years experience in cadre of Superintendent, the Division Bench of this Court took the view that the eligibility of five years of service prescribed need not necessarily be continuous five years of service, and it could be aggregate of five years of service. Therefore, the period of appointment of petitioner as Superintending Engineer (Mechanical) on ad hoc basis cannot be treated as a regular service. Therefore, Question No. (i) is required to be held against the petitioner.

Regarding Question No. (ii):

No doubt, it is the contention of the learned Counsel for the respondents that when, the petitioner is not qualified to hold the post, he should not be permitted to challenge the selection of the 5th respondent on the ground that the regulation in question is invalid in law. I am of the view that there is no merit in this contention. Even according to the respondents, petitioner would acquire the requisite qualification on 12th August, 2002. Admittedly, the petitioner has been placed in charge of the post of Chief Mechanical Engineer. No doubt, placing the petitioner in charge of the post of the Chief Mechanical Engineer would not confer any right to the said post as it is well-settled that in charge arrangement will not confer any right on him to the post. However, once he has been placed in charge of the post, normally the said arrangement is expected to be continued till regular appointment is made unless there are valid grounds to disturb the said arrangement. Further, the petitioner who is next below the cadre of Chief Mechanical Engineer, in my considered view, must have the right to challenge the validity of recruitment regulations to the immediate higher position. It is so because, the petitioner will have to work under his immediate superior and he has to take instructions from him in the course of discharge of his duties; and therefore it would be in larger public interest to hold that the petitioner should have the right to challenge the validity of the regulations in question. Accordingly, Question No. (ii) answered against the respondents.

Regarding Question No. (iii):

The only question now remains to be considered is as to whether the recruitment by way of promotion/transfer/deputation from among the candidates of the major ports by adopting the method of composite recruitment is liable to be struck down either as being arbitrary, unreasonable or violative of right guaranteed to the petitioner under, Article 14 or 16 of the Constitution? No doubt, the regulations prior to the amendment did not specifically provide for recruitment by way of promotion/transfer/deputation by adopting the method of composite recruitment. In my view, that alone cannot be the ground to hold that

the regulation in question is invalid as contended by the learned Counsel appearing for the petitioner. It is the case of the respondents that the whole object of prescribing the recruitment by adopting the composite recruitment method was to pick up the best material who possess the requisite qualification from among the candidates available in all the 11 (eleven) major ports in the country. This is also clear from the Circular Annexure-R1, dated 3rd November, 2000 issued by the Government of India strongly relied upon by Sri Ashok Harnahalli, wherein it is observed at paragraphs 3 and 5 as follows:

"3. At present, the recruitment rules for the post of HODs vary from port to port. It is observed that some of the recruitment rules provide for composite method of recruitment, i.e., by promotion/transfer/deputation from other organisations. However, the port managements are interpreting it in a different manner i.e., the vacancies are filled first by promotion and if nobody is found eligible, then only recruiting from other departments in the same port and failing that too, transfer from other ports or deputation from other organisations is resorted to. In doing so, the port managements are going against the spirit in which the composite method was envisaged. The composite method provides for recruitment of a suitable officer available in the port itself or in the port sector in the first instance and thereafter from other sectors. This provides an opportunity to the managements to select the best person suitable for the job who can bring in innovation to the working by his experience at other ports. It has been decided that all Port Trusts should adopt uniformly the composite method of recruitment for filling the posts of Heads of Departments, i.e., promotion/transfer/deputation from the major ports failing which by transfer or deputation of officers in Government/semi-Government Organizations/Public Sector Undertaking or Autonomous Bodies.

5. Further, promotion to the post of HOD should not be a matter of course and an officer to be appointed as HOD should really earn that position. In order to enable that the most suitable officer is selected for the post, the recruitment rules should provide for selection by merit for which the bench-mark in the overall grading in the confidential rolls should not be below "Very Good".

Though each of the 11 (eleven) ports are a unit by itself, and an independent body, but all the ports are governed by the provisions of the Act and Regulations framed thereunder. What should be the qualification and what should be the method of recruitment is always left to the rule making authority to prescribe and it is a matter of policy and the Courts cannot interfere in this matter unless a strong case of violation of rights guaranteed to a person under Article 14 or 16 of the Constitution is made out or the provision prescribed runs counter to the statutory provisions. To me, it appears that the prescription provided for composite recruitment cannot be said to be unreasonable, arbitrary and violative of rights guaranteed to a person either under Article 14 or 16 of the Constitution. Virtually, what the rule envisages is the selection of eligible and suitable candidates from all the 11 (eleven) major ports in the country instead of picking

up the eligible and suitable candidate only from the 3rd respondent-Port Trust. This procedure provides for wider area of selection among the eligible candidates of all the major ports in the country. It is the case of the respondents that similar provision is made in all the ports in the country. The post of Chief Mechanical Engineer is the Head of the Department and even according to the petitioner, the said post carries heavy responsibilities. Therefore, if regulation in question, provides for selection of candidates among the larger group than limiting to one port and similar provisions are made in all the major ports in the country, in my considered view, it has to be held that the said regulation does not suffer from the vice of being contrary to the rights guaranteed to the petitioner either under Article 14 or 16 of the constitution. It only provides for an opportunity to the Selection Committee and Appointing Authority to pick up the most suitable candidate in the country to the post. In my view, it is in the larger public interest. Though it is natural for the petitioner to expect to reach the highest position in the 3rd respondent-Port Trust before his retirement, as claimed by him, the said expectation should yield for larger public good. It is also necessary to point out that the composition of the Selection Committee provided under Item 10 of the Schedule consists of a very high ranking officer of the Government of India and the Chairman of the 3rd respondent-Port Trust and an officer having wide experience to be nominated by the Ministry of Shipping. Therefore, the power of selection is entrusted to a very High Power Committee with an intention to have transparency in the method of selection and to pick up the most suitable candidate to the post. However, it is needless to point out that in a given case, if that power is abused in the process of selection or if the selection is made in disregard of the norms laid for selection, certainly such selection could be nullified by this Court in exercise of its power under Article 226 of the Constitution of India. However, no such grievance is made in this petition. A reading of Item 9 of the regulations also makes it clear that the appointment by way of promotion/transfer/deputation is made from the lower cadre as set out in the Schedule initially from eligible candidates in all the major ports of the country and if no suitable candidate is available in the major ports of the country, persons who are holding the same or analogous posts in Government/semi-Government Organizations/Public Sector Undertakings or Autonomous Bodies. In this petition, I find it unnecessary to consider the contention of Sri Patil that the words "same or analogous posts in Government/semi-Government Organizations/Public Sector Undertakings or Autonomous Bodies" being vague, the said provision is required to be struck off as the 5th respondent who has been appointed is not from one of those organisations. He is admittedly, from one of the major ports, i.e., Unicorn Port Trust.

9. The only other contention required to be considered is as to whether the Schedule given to the regulations runs counter to Regulation 12 of the regulations. The plain, reading of Regulation 12 of the Regulations indicates that when a post to the Heads of Department is vacant, the said post is required to be filled up by promotion/transfer/deputation and for the said purpose an obligation

is cast on the Chairman of the 3rd respondent-Port Trust to forward to the Appointing Authority, the details of the eligible candidates regarding qualification, experience and other relevant particulars together with his recommendations. The same regulation further provides that whenever the Schedule of the regulations also provides for recruitment by way of deputation, the Chairman, if he consider necessary or if directed by the Central Government, forward the application of the eligible candidates of other major ports, persons who are holding the same or analogous posts in Government/semi-Government Organizations/Public Sector Undertakings or Autonomous Bodies to the Appointing Authority. No doubt, the reading of the said regulations may give an indication, as contended by the learned Counsel for the petitioner, that while the appointment is by way of promotion and transfer, the Chairman of the 3rd respondent-Port Trust is required to forward all particulars of the eligible officers in the 3rd respondent-Port Trust only, to the Appointing Authority, and only in case of deputation, he is required to forward the application of other eligible candidates from other major ports, etc., to the Appointing Authority. It is necessary to point out that this regulation was framed in the year 1991. Schedule to the regulation which is impugned in this petition came to be incorporated providing for composite recruitment by means of notification Annexure-A, dated 5th December, 2001. Item 9 of the impugned regulation makes it clear that the recruitment by promotion/transfer/deputation would be made from the lower cadre of Superintending Engineer (Mechanical) with five years regular service or Marine Engineer with MOT First Class Certificate with five years regular service in the grade/analogous posts from the major ports failing which by transfer or deputation of officers holding same or analogous posts in Government/semi-Government Organizations/Public Sector Undertakings or Autonomous Bodies. Under these circumstances, when the amendment is made to the recruitment rules by incorporating the impugned Schedule providing for composite recruitment, it is clear that the Rule making authority clearly intended to provide for recruitment among the eligible candidates from all the major ports in the country. There is no ambiguity in the method of recruitment provided in the Schedule given to the regulations. The Schedule given to the regulation is a part and parcel of the regulation. Therefore, there cannot be any doubt that the intention of the rule making authority was to make selection by way of promotion/transfer/deputation by providing composite recruitment. Under these circumstances, the impugned regulation which provides for composite recruitment must be read in conjunction with Regulation 12 and a harmonious construction has to be placed to both the regulations, and the Court while interpreting these regulations will have to place a harmonious construction to both the regulations with a view to giving full meaning, life and effect to both the regulations. Otherwise, the impugned regulations will become redundant and it would frustrate the very object of introducing the said regulations. Therefore, in the light of what is stated above, the only way to interpret Regulation 12 in the backdrop of the impugned regulation is to read into the Regulation 12 that an obligation is cast on the part of the Chairman of 3rd respondent-Port Trust to

forward the name, qualification and other particulars of all eligible candidates working in all the major ports in the country as set out in the Schedule given to the impugned regulation to the Appointing Authority. It is the duty of the Courts, when the things are not clear or the language in the statute/regulation is not very clear to fill up the gap and to make the provision in the statute/regulation a live document with a view to achieve the object for which the rule, regulation or the statute is made. In this connection, it is useful to refer to the observations made by the Hon''ble Supreme Court in the case of Keshav Chandra Joshi and others etc. Vs. Union of India and others, , wherein it reads as follows:

"Since the rules are legislative in character, they must harmoniously be interpreted as a connected whole giving life and force to each word, phrase and rule and no part thereof should be rendered nugatory or a surplusage. Resort to iron out the creases could be had only when the construction of the relevant rule, phrase or word would lead to unintended absurd results..."

Therefore, the principle laid down in the case of M/s. Aphali Pharmaceuticals Limited, supra, wherein the Hon''ble Supreme Court has laid down that in case of conflict between the body of the Act and Schedule, the former should prevail has no bearing to the facts of the present case. In the instant case, as noticed by me, the Schedule to the regulation is made as much part and parcel of the body of the regulations inasmuch as the method of the recruitment and qualification for the sake of convenience are set out in the Schedule. Merely because the qualification and the method of recruitment are set out in the Schedule, it cannot be held that it is not the part of the main body of the regulations. However, to my mind, there does not seem to be any serious conflict between the Regulation 12 of the Regulations and the Schedule given to the regulations. While Regulation 12 of the Regulations provides for an obligation on the Chairman of the 3rd respondent-Port Trust to forward the names and several other particulars of the eligible candidates to the Appointing Authority and the steps he is required to take for the purpose of selection to all the posts of Head of Department, the Schedule given to the regulations provides for the qualification and the method of recruitment in the case to the post of Chief Mechanical Engineer. Therefore, in my view, there is no merit in the contention of the learned Counsel appearing for the petitioner that the impugned regulation which provides for composite selection and also appointment by way of transfer/deputation is required to be struck down. Accordingly, Question No. (iii) is held against the petitioner.

10. In the light of the above discussion, this petition is liable to be rejected. Accordingly, it is rejected. However, no order is made as to costs.