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**(2006) 11 DEL CK 0138**  
**In the Delhi High Court**  
**Case No : LPA 158 of 2006**

MCD

APPELLANT

Vs

Jainander Kumar Jain

RESPONDENT

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**Date of Decision :** 09-11-2006

**Acts Referred:**

**Citation :** (2007) 136 DLT 432

**Hon'ble Judges :** Mukul Mudgal, J; J.P. Singh, J

**Bench :** Division Bench

**Advocate :** Amita Gupta, for the Appellant; Party-in-person, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Mukul Mudgal, J.

CM No. 1458/2006 (Delay)

1. The delay is condoned. The application is allowed and stands disposed of.

LPA No. 158/2006

2. This appeal challenges the judgment dated 20.10.2005 passed by learned Single Judge. The central issue involved in the writ petition was that the petitioner who was appointed on 13.7.2003 subsequently bettered his qualification in 1964 and acquired due qualification for the post of LDC. In 1963 the appellant-MCD promulgated the rules for recruitment to the posts of Lower Division Clerks which provided for departmental quota initially 20% and subsequently reduced to 10% for the promotion of Class-IV employees such as peons with five years of service and qualification of matriculation for promotion to the post of LDC. The learned Single Judge has found that the twelve persons who were appointed as LDCs with the prescribed qualification amongst peons working with MCD were appointed much later than the petitioner. The writ petitioner had acquired the prescribed qualification of matriculation in the year 1964. Despite that persons who were junior to him were granted the promotions

as LDCs merely on the possession of the prescribed qualification of matriculation. The case of the MCD before the learned Single Judge was that the 10 persons promoted to the posts of LDC were appointed as peons on compassionate grounds and were found to possess the qualifications to join as LDCs, Therefore they were deemed appointed as LDC from the date of their appointments as peons. The learned Single Judge has, in our view, rightly held that the Explanation of MCD that the other 10 persons who were initially appointed on compassionate basis as peons, should have been given the posts of LDCs cannot be a ground for discrimination against the petitioner specially because the petitioner's appointment was as per rules in the normal recruitment. The mere fact that the persons junior to the respondent were appointed as LDC in the year 1974 i.e. 10 years after he had acquired prescribed qualification clearly shows that this is a case of discrimination without lawful justification.

3. In this view of the matter we are satisfied that no case for interference is made out in the facts and circumstances of the present case. The LPA is accordingly dismissed.

CM No. 1457/2006

4. This application does not survive and is accordingly dismissed.