

(2015) 12 DEL CK 0209
In the Delhi High Court
Case No : LPA 610-11/2006

Ram Niwas Gupta and Others

APPELLANT

Vs

MCD

RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Constitution of India, 1950 — Article 16, 32

Citation : (2016) 2 AD 433

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Neeraj Yadav, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The factual backdrop leading to the filing of the above captioned intra-court appeal is that Mr. Ram Niwas Gupta, appellant No. 1 and Mr. Syed Ahmed, appellant No. 2 were appointed to the post of Junior Engineer in the erstwhile Municipal Corporation of Delhi (hereinafter referred to as the MCD) on November 30, 1960 and April 10, 1961 respectively.

2. In the year 1970 the hierarchical structure of posts in the Engineering Department of the MCD was as under:--

3. On June 27, 1970 the MCD framed Recruitment Rules for its Engineering Services Department, the salient features whereof were as under:--

"a) 80% of the posts of Junior Engineer to be filled by direct recruitment and remaining 20% to be filled by promotion from amongst Works Assistants already in the service of the MCD having diploma in Civil Engineering and minimum experience of two years. A diploma in Civil Engineering was essential for direct recruitment to the post of Junior Engineer.

b) Post of Junior Engineer (Selection Grade) to be filled by promotion of Junior Engineers on completion of twelve years of service on the basis of seniority.

c) 50% of the post of Assistant Engineer to be filled by promotion and remaining 50% to be filled by direct recruitment. A degree in Civil Engineering and two years professional experience were essential conditions for direct recruitment as Assistant Engineer, while for promotion to post of Assistant Engineer from the cadre of Junior Engineer, a minimum of three years service for degree-holders and five years service for diploma-holders in the grade of Junior Engineer was prescribed.

d) All other higher posts of Executive Engineer, Superintending Engineer and Municipal Engineer primarily to be filled by promotion of Assistant Engineer, Executive Engineer and Superintending Engineer respectively."

4. In the years 1978-1979 several diploma holders Junior Engineers, including the appellants, were given Current Duty Charge to the post of Assistant Engineer. Subsequently, some of those Junior Engineers who were given Current Duty Charge to the post of Assistant Engineer including appellants were appointed to the post of Assistant Engineer on ad-hoc basis.

5. Being relevant, we note following portion of the office order dated April 16, 1983 issued by the MCD appointing appellants to the post of Assistant Engineer on ad-hoc basis:--

"TERMS AND CONDITIONS:

1. The appointment is purely, by way of stop-gap arrangement and is on ad-hoc basis pending regular arrangement being made on the post in accordance with the recruitment regulations and will confer no privilege or right on the officer for regular appointment to this post.

2. The period of ad-hoc service will not count towards eligibility period for next higher post."

6. The effect of the aforesaid ad-hoc appointment was that ad-hoc appointees (including the appellants) started drawing pay in the higher scale of Assistant Engineer while in the current duty charge they were drawing pay in the lower scale of Junior Engineer.

7. In the year 1979 some diploma-holder Junior Engineers working in the MCD filed a writ petition, being Writ Petition No. 221/1979, under Article 32 of the Constitution of India before the Supreme Court of India essentially praying therein that the MCD be restrained from making appointment(s) to the post of Assistant Engineer by way of direct recruitment and appointment to said post may be made only by promotion.

8. In a nutshell, the case set up by petitioners (diploma-holders Junior Engineers working in MCD) in aforesaid Writ Petition No. 221/1994 filed before the Supreme Court was as follows:--

"a) Action of the MCD to fill up 50% posts of Assistant Engineers by way of direct recruitment is resulting in acute stagnation in the grade of Junior Engineer;

b) CPWD has decided to suspend direct recruitment in Central Engineering Service because no promotional chances were available to the Central Engineering/Electrical Engineering Service (Class II) with effect from April 01, 1972;

c) In view of suspension of direct recruitment in CPWD, the MCD should also be directed to stop direct recruitment to the post of Assistant Engineer for the reason the MCD had taken a decision, vide resolutions dated July 27, 1970 and February 21, 1971, that all Fundamental and Supplementary Rules including Amendments and Orders issued by the Central Government as also Central Service Conduct Rules as applicable to the Central Government shall be applicable to the MCD."

9. In the same year i.e. 1979, some graduate Junior Engineers working in the MCD, including those who were selected for being directly recruited to the post of Assistant Engineer in the MCD, also filed a writ petition being Writ Petition No. 1194/1979 under Article 32 of Constitution of India before the Supreme Court of India essentially praying therein that:-- (i) MCD be directed to fill 50% posts of Assistant Engineers by way of direct recruitment in terms of the Recruitment Rules framed in the year 1970 for the Engineering Services Department of the MCD; (ii) quash office order entrusting the (diploma-holders) Junior Engineers with Current Duty Charge of the post of Assistant Engineer as also office order promoting such current duty charge-holders Junior Engineers to the post of Assistant Engineer on ad-hoc basis; and (iii) restrain MCD from giving ad-hoc promotion to current duty charge-holders Junior Engineers.

10. Being relevant, we note following four prayers made by the petitioners (graduate Junior Engineers working in MCD) in aforesaid Writ Petition No. 1179/1994 filed before the Supreme Court:--

"(1) direct respondent 1 (MCD) to fill up eight posts of Assistant Engineers amongst those in the Select Panel;

(2) quash Office Order dated April 10, 1978 (Annexure I) entrusting Junior Engineers with current duty charge of the posts of Assistant Engineers and the Office Order dated May 21, 1979 (Annexure M) promoting two Junior Engineers as Assistant Engineers on current duty charge on their pay scale;

(3) direct respondent 1 (MCD) to fill up the remaining posts of Assistant Engineers in the direct recruitment quota from amongst the empanelled petitioners who were graduate Junior Engineers;

x x x

(5) restrain respondent 1 (MCD) from giving ad hoc promotions to current duty charge-holders amongst Junior Engineers;"

11. Most significantly, appellants Nos. 1 and 2 were impleaded as respondents Nos. 37 and 29 respectively in aforesaid Writ Petition No. 1179/1994 filed before

the Supreme Court.

12. In a nutshell, the case set up by petitioners (graduate Junior Engineers working in MCD) in aforesaid Writ Petition No. 1179/1994 filed before the Supreme Court was follows:--

"a) Since last six or seven years the MCD has been denying to graduate Junior Engineers their rightful quota of direct appointment as Assistant Engineer even though a statutory duty is cast upon it to fill up the posts of Assistant Engineer on 50:50 basis.

b) Though twenty six posts of Assistant Engineer were available for being filled up by direct recruitment as on December 20, 1978 only eight posts were advertised and names of petitioners Nos. 1 to 21 (in Writ Petition No. 1194/1979) appeared in the duly prepared selection list. MCD has not even filled up said eight advertised posts with the candidates whose names appeared in the Selection List but instead gave current duty charge who are diploma-holders Junior Engineers of six out of said eight advertised posts thereby violating Recruitment Rules as also fundamental right guaranteed to petitioners under Article 16 of Constitution of India.

c) In all MCD has filled up thirty-seven posts of Assistant Engineer including some in the quota of direct recruits by respondents Nos. 5 to 41 in Writ Petition No. 1194/1979 including the appellants who are diploma-holders Junior Engineers on current duty charge basis with the object of favoring diploma-holders Junior Engineers who have great political influence vide office orders dated April 10, 1978 and June 21, 1979.

d) The diploma-holders Junior Engineers posted as Assistant Engineer on current duty charge have been further promoted as ad-hoc appointees resulting in their drawing pay in the higher scale of Assistant Engineer.

13. The afore-noted two writ petitions (Writ Petitions Nos. 221/1997 and 1194/1979) were clubbed and decided together by way of a common judgment dated July 13, 1983 by the Supreme Court, which decision came to be reported as H.C. Sharma and Others Vs. Municipal Corporation of Delhi and Others,

14. On the issue of stoppage/suspension of direct recruitment by the MCD to the post of Assistant Engineer, the Supreme Court held as follows:--

"34. Mrs. Shyamla Pappu, Senior Advocate, appearing for the petitioners in Writ Petition No. 221 of 1979 drew our attention to certain documents and submitted that direct recruitment of Assistant Engineers should have been suspended by respondent 1 following the decision taken by the CPWD to suspend direct recruitment of Assistant Engineers for seven years from April 1, 1972. She also submitted that the 50:50 quota rule in the Recruitment Regulations approved on June 27, 1970 should not be followed. If her submission is that the quota rule should not be followed altogether it is not consistent with the stand taken by the 27th respondent in his counter-affidavit and also by Mr. S.C. Gupta, learned

counsel appearing for respondents 13, 25 and 27 in Writ Petition No. 1194 of 1979. The contention of the 27th respondent referred to above is that the quota rule can apply to only 60 posts of Assistant Engineers which were in existence on the date on which the Recruitment Regulations were approved, viz. June 27, 1960 and since there were 36 directly recruited Assistant Engineers when Writ Petition No. 1195 of 1979 was filed which was more than 50 per cent of the 60 posts there are no more posts of Assistant Engineers to be filled by direct recruitment. There can be no difficulty in holding that this contention of the 27th respondent is totally unacceptable. It is true that when the Recruitment Regulations were approved on June 27, 1970 there were only 60 posts of Assistant Engineers (Civil) in respondent 1-Corporation. The number was 99 when Writ Petition No. 1194 of 1979 was filed and 115 when it was heard in this court. The contention that the 50 : 50 quota rule can only apply to 60 posts which were in existence when the Recruitment Regulations were approved and will not apply to the posts which are in excess of that number is totally unreasonable and unsustainable and consequently rejected.

x x x

38. It would appear from what has been stated above that the Municipal Corporation of Delhi which is a statutory authority is not automatically bound by any decision that may be taken by the CPWD in regard to direct recruitment of Assistant Engineers and that it is open to the Corporation to adopt any policy of the CPWD by a resolution when alone that policy will become binding on the Corporation. No provision in the Third Pay Commission's Report has been brought to our notice. Mrs. Shyamla Pappu has, on the other hand, admitted that there is no resolution of the Delhi Municipal Corporation banning or suspending direct recruitment of Assistant Engineers for seven years or any period from any date whatsoever. The 50 : 50 quota fixed in the Recruitment Regulations approved on June 27, 1970 has not been altered but has been approved by the Corporation in its Resolution No. 348 dated July 10, 1978. Therefore, there is no substance in the contention of the petitioners in Writ Petition No. 221 of 1979 or the contesting private respondents in Writ Petition No. 1179 of 197 that respondent 1 should have suspended the direct recruitment of Assistant Engineers and that the quota rule laid down in the Recruitment Regulations should not be followed.

39. Coming now to the contention urged by Mr. S.C. Gupta, learned counsel appearing for respondents 13, 25 and 27 in Writ Petition No. 1194 of 1979, regarding the quota rule fixed in the Recruitment Regulations we have already held that it cannot be restricted to only 60 posts of Assistant Engineers which were in existence on the date of their approval. The Recruitment Regulations themselves do not say that they are retrospective in operation from 1958. Prima facie those Regulations would apply to all future recruitments and promotions. That is how they have been understood by authorities of respondent 1-Corporation when they decided to have eight posts of Assistant Engineers filled

up by direct recruitment though at that time there were 36 directly recruited Assistant Engineers holding more than 50 per cent of such 60 posts.

x x x

45. For all the reasons stated above we find that there is nothing wrong in the respondent 1-Corporation proceeding to appoint Assistant Engineers (Civil) by direct recruitment as per the Recruitment Regulations or in fixing the 50 : 50 quota and working it out or in the selection of the petitioners in Writ Petition No. 1194 of 1979 as Assistant Engineers pursuant to the decision to appoint eight Assistant Engineers (Civil) by direct recruitment in the interviews held for that purpose on March 6 and 7, 1979 who are in the select list within six weeks from this date if not already issued as undertaken by Mr. U.R. Lalit on July 29, 1981 within five months from that date."

(Emphasis Supplied)

15. On the issue of current duty charge/ad-hoc appointments of diploma-holders Junior Engineers including the appellants, the Supreme Court held as follows:--

"54. Mr. U.R. Lalit did not dispute the facts mentioned by Mr. V.M. Tarkunde about the current duty charge appointments having been made from 1974 to 1981 of which two were made by the impugned order dated June 21, 1979 even after select list of 37 persons prepared for appointment to eight posts of Assistant Engineers by direct recruitment was approved by the competent authority on May 2, 1979. Mr. U.R. Lalit did not dispute the factual statement made by Mr. Tarkunde that only Junior Engineers holding diplomas have been put on current duty charge and appointed on ad hoc basis as Assistant Engineers and that not even a single degree-holder Junior Engineer has been chosen for such appointment notwithstanding the above decision taken by the Establishment Board in the meeting held on August 17, 1974 to choose only suitable Junior Engineers with degree qualification for such appointments. Continuing current duty charge and ad hoc appointments for such a long period exceeding the period of one year mentioned in the said Memorandum dated December 30, 1976 of the Government of India is irregular though that Memorandum could not be stated to automatically binding on respondent 1. What is totally wrong is that appointment of Junior Engineers on current duty charge as Assistant Engineers has been made by the impugned order dated June 21, 1979 even after the approval of the select list prepared for the appointment of eight Assistant Engineers without issuing orders for appointment even to eight out of those persons who are in the select list. In these circumstances we hold that the appointment of six diploma-holders Junior Engineers by the order dated April 10, 1978 (Annexure I) and of two such Junior Engineers by the order dated June 21, 1979 (Annexure M) as Junior Engineers on current duty charge for periods which are proved to be too long is irregular and we quash the same.

55. Respondent 1 shall issue orders of appointment to eight degree-holders Junior Engineers out of those in the select list approved on May 2, 1979 within

one month from this date and complete the appointment of Assistant Engineers for the remaining posts on regular basis in accordance with the quota fixed in the Recruitment Regulations within six months from this date until which time the current duty charge-holders and ad hoc appointees according to seniority will continue to man the remaining posts. Respondent 1 shall not make current duty charge/ad hoc appointments and promotions except strictly and truly in accordance with the instructions and Regulations referred to above and other instructions, if any, issued in that regard."

(Emphasis Supplied)

16. The ultimate conclusion regarding Writ Petitions Nos. 221/1979 and 1194/1979 filed by diploma-holders and graduate Junior Engineers working in MCD respectively was as follows:

"61. The result is that Writ Petition No. 221 of 1979 fails and is dismissed with costs of the contesting private respondents and Writ Petition No. 1194 of 1979 is allowed in part in regard to prayers (1), (2), (3) and (5) as indicated above and is otherwise dismissed. The contesting respondents in Writ Petition No. 1194 of 1979 shall pay the petitioners' costs. There will be one set of advocates' fee in both the writ petitions."

(Emphasis Supplied)

17. In the year 1984 a petition being Civil Miscellaneous Petition No. 3069/1984 came to be filed by some of the graduate Junior Engineers working in MCD who had emerged victorious in afore-noted Writ Petition No. 1194/1979 seeking initiation of contempt proceedings against MCD for having disobeyed directions contained in the judgment dated July 13, 1983 passed by the Supreme Court in Writ Petition No. 1194/1979. The directions which were claimed to be disobeyed by the MCD were as follows:--

"a) MCD is not filling up fifteen posts of Assistant Engineer falling in the direct recruitment quota from amongst graduate Junior Engineers (petitioners in Writ Petition No. 1179/1994) who have been selected for being directly recruited to the post of Assistant Engineer.

b) MCD has not reverted the diploma holders Junior Engineers whose current duty charge/ad-hoc appointment to the post of Assistant Engineer was quashed by Supreme Court in its judgment dated July 13, 1983.

18. The aforesaid petition (C.M.P. No. 3069/1984) came to be decided by Supreme Court by its judgment dated April 18, 1984, which decision came to be reported as Azhar Ali Khan and Others Vs. Commissioner, Municipal Corporation of Delhi and Others,

19. The stand taken by the MCD in aforesaid petition (C.M.P. No. 3069/1984) has been culled out by the Supreme Court in the following terms:--

"8. No counter-affidavit has been filed in C.M.P. No. 3068 of 1984 evidently

because the stand of the respondents in that petition is reflected by the allegations made in C.M.P. No. 3069 of 1984. In the counter-affidavit of the Assistant Commissioner (Engineering) of the Municipal Corporation of Delhi filed in C.M.P. No. 3069 of 1984 it is stated that the order of this Court to issue orders of appointments to 8 degree holders/Junior Engineers out of those in the select list approved on May 2, 1979 has been complied with and that the appointment for the remaining posts of Assistant Engineers in the direct recruitment quota could not be made in view of the said Resolution No. 493 of 1983 dated September 26, 1983 to fill up all the posts of Assistant Engineers only by promotion and not by direct recruitment. It is further stated in the counter affidavit that this Court has ordered that the vacant posts of Assistant Engineers remaining after absorbing 8 graduate Junior Engineers from the select list approved on May 2, 1979 may be filled from that select list if it is permissible to make the appointments from out of that list. It is contended that the select panel was for a period of two years as per a circular issued by the Commissioner and therefore the panel should have been exhausted by May 1, 1981. As regards the non-reversion of ad hoc appointees/promotees mentioned in the orders dated April 10, 1978 and June 21, 1979 it is stated in the counter-affidavit that their reversion is dependent upon appointments to the posts of Assistant Engineers being made, which could not be done in view of the supervening circumstance viz., Resolution No. 493 dated September 26, 1983, and that it is wrong to say that the representations made in the letters etc. referred to in C.M.P. No. 3069 of 1984 were not considered from the point of view of implementing the judgment of this Court, but they were considered before the Corporation approached this Court for directions in C.M.P. No. 3068 of 1984."

(Emphasis Supplied)

20. The stand taken by the MCD regarding non-reversion of such diploma-holders Junior Engineers whose current duty charge/ad-hoc appointment to the post of Assistant Engineer was quashed vide judgment dated July 13, 1983 was repelled by the Supreme Court in the following terms:--

"There is no substance in the explanation given by respondent 1 for not reverting the Junior Engineers who were appointed/promoted by those orders dated April 10, 1978 and June 21, 1979 which have been quashed by our order dated July 13, 1983. There is no direction in our order that the quashing is subject to any condition, much less to appointments being made as per our order dated July 13, 1983 to the posts of Assistant Engineers. The reversion of those incumbents should have been made forthwith in compliance with our order dated July 13, 1983 quashing those office orders dated April 10, 1978 and June 21, 1979. We hereby direct respondents 1 and 2 to comply with this Court's order quashing those two office orders by reverting the concerned officer within 10 days from this date. If this is not done within 10 days from the date of this order the petitioners in C.M.P. No. 3069 of 1984 may draw this Court's attention and move afresh for action being taken against respondents 1 and 2 for contempt of this

Court's order."

(Emphasis Supplied)

21. After sometime another petitioner who had emerged victorious in Writ Petition No. 1194/1979 viz. Mr. P.H. Siddiqui, filed a petition being C.M.P. No. 32111/1984 seeking initiation of contempt proceedings against the MCD on the ground that during the pendency of Writ Petition No. 1194/1979 twenty two diploma-holders Junior Engineers were appointed to the post of Assistant Engineer on current duty charge/ad-hoc basis but still have not been reverted to the post of Junior Engineer despite clear direction given to said effect by the Supreme Court in its judgment dated July 13, 1983. One of the twenty two diploma-holders Junior Engineers mentioned in C.M.P. No. 32111/1984 was appellant No. 1 Mr. Ram Niwas Gupta. Significantly, the date of appointment of appellant No. 1 to the post of Assistant Engineer on current duty charge/ad hoc basis mentioned in C.M.P. No. 32111/1984 is "March, 1983".

22. Vide order dated February 12, 1985, the Supreme Court disposed of afore-noted C.M.P. No. 32111/1984 filed by Mr. P.H. Siddiqui in the following terms:--

"The 22 diploma-holders working on ad hoc basis as Assistant Engineers holding current duty charge shall be reverted forthwith. The vacancies arising out of the reversion of these 22 Assistant Engineers on current duty charge shall be filled within three months from today in accordance with our Judgment. If necessary, it is open to the Municipal Corporation, Delhi, to make ad hoc appointments against any of those vacancies for this period of three months only, but not from amongst those persons who are being directed to be reverted."

(Emphasis Supplied)

23. On the very next day i.e. February 13, 1985 the MCD issued an office order reverting appellant No. 1 to the post of Junior Engineer with effect from forenoon of February 13, 1985.

24. On August 02, 1985 the appellants were promoted to the post of Assistant Engineer on regular basis.

25. On June 30, 1992 the MCD issued a provisional seniority list of Assistant Engineer wherein seniority of appellants to the post of Assistant Engineer was reckoned from the date they were promoted to the post of Assistant Engineer on regular basis.

26. Aggrieved by the fixation of their seniority under provisional seniority list dated June 30, 1992, the appellants filed a writ petition which as per Rules of this Court was placed before a learned Single Judge of this Court, in which writ petition the appellants essentially prayed that service rendered by the appellants on the post of Assistant Engineer on current duty charge/ad-hoc basis between the years 1979-1985 be taken into consideration while reckoning their seniority on the post of Assistant Engineer.

27. To put it pithily, it was contended by the appellants before the learned Single Judge that upon their promotion to the post of Assistant Engineer on regular basis, the period of their continuous and uninterrupted (ad-hoc) officiation on the post of Assistant Engineer had to be taken into consideration for purposes of fixation of their seniority on the post of Assistant Engineer and other consequential benefits.

28. Vide impugned judgment dated February 13, 2006 the learned Single Judge has dismissed the writ petition filed by the appellants.

29. In so concluding, the reasoning given by the learned Single Judge is as follows:--

"a) The underlying theme of the order giving current duty charge of the post of Assistant Engineer to the appellants was not to confer any promotional advantage upon the appellants but to ensure that the functions and duties attached to the post of Assistant Engineer were appropriately attended to and not neglected for want of incumbents.

b) The period of service rendered by the appellants on the post of Assistant Engineer between the years 1979 to 1983 when they were given current duty charge of the said post cannot be reckoned for purposes of fixation of their seniority to the post of Assistant Engineer in view of ratio of law laid down by Supreme Court in the decision reported as State of Haryana Vs. S.M. Sharma and others, that no one has a right to ask for or stick to a current duty charge.

c) It has been consistently held by Supreme Court in numerous decisions that mere exigency of temporary or ad-hoc promotion does not ipso facto entitle the incumbent to reckon the period of continuous officiation for purposes of fixation of seniority; it has to be established that such ad-hoc or temporary appointment was not fortuitous and was made in accordance with the rules to a substantive vacancy and quota rule prescribed under the regulations has to be kept in mind while adjudging whether the length of service is to be reckoned for purposes of seniority.

d) In the instant case, no material has been placed on record to indicate that the ad-hoc promotions of appellants to the post of Assistant Engineer were effected in accordance with Recruitment Rules. On the contrary, the express conditions of such ad-hoc promotions were that the incumbent had no right to the post and that the arrangement was purely stop-gap.

e) Except for the difference in pay, the ad-hoc promotion of appellants to the post of Assistant Engineer continued to be as tenuous was their holding current duty charge to the post of Assistant Engineer.

f) The submission advanced by the appellants that the order dated February 13, 1985 of reversion was not given effect in their case is misplaced. In view of undisputed facts that appellants were parties in the proceedings before the Supreme Court; application filed before the Supreme Court seeking

implementation of judgment dated July 13, 1983 mentioned appellants as the persons who were not to be continued to the post of Assistant Engineer and Supreme Court directed the MCD to revert twenty two Junior Engineers, this Court cannot go behind the order of the Supreme Court and investigate as to whether the appellants were heard in the Supreme Court or reversion orders were implemented in their case.

g) In any case, the facts relating to their reversion were not highlighted by appellants when they filed writ petition in the year 1993 although they were aware of passing of order dated February 12, 1985 of their reversion by Supreme Court."

30. Aggrieved by the aforesaid, the appellants have preferred the present intra-court appeal.

31. During the pendency of present appeal, the MCD was trifurcated into the North Delhi Municipal Corporation (NDMC), South Delhi Municipal Corporation (SDMC) and East Delhi Municipal Corporation (EDMC). As per policy decision taken, superannuated employees of the erstwhile MCD have been allocated to such trifurcated wing of the Corporation, wherefrom they last superannuated i.e. in the context of the place of the working concerning territorial jurisdiction of the successor-in-interest entity. Appellants Nos. 1 and 2 superannuated from offices which fall under the territorial jurisdiction of North Delhi Municipal Corporation (NDMC) and South Delhi Municipal Corporation (SDMC) respectively.

32. In support of present appeal, the appellant has advanced only one submission which is predicated upon the decision of Supreme Court reported as *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, Counsel argued that it has been held down by Supreme Court in *Direct Recruit's* case (supra) that "where an ad-hoc appointee continues in a post uninterruptedly till regularization of his services to said post in accordance with the rules, the period of officiating service will be counted for purposes of fixation of seniority in said post." Counsel highlighted that appellants worked continuously on the post of Assistant Engineer from the year 1979 to August 02, 1985 when they were promoted to the post of Assistant Engineer on regular basis, firstly on current duty charge basis from the years 1979 to April, 1983 and thereafter ad-hoc basis from the years 1983 to 1985. Thus, in view of afore-noted ratio of law laid down by Supreme Court in *Direct Recruit's* case (supra) the period of officiating service rendered by appellants on the post of Assistant Engineer between the years 1979 to 1985 has to be counted for the purposes of fixation of their seniority to said post.

33. On the issue of reversion of appellants, counsel for appellants contended that as regards appellant No. 2 Syed Mohammed no order whatsoever has been passed by MCD reverting appellant No. 2 to the post of Junior Engineer.

34. As regards appellant No. 1, Ram Niwas Gupta, counsel contended that no doubt the MCD had issued order dated February 13, 1985 reverting appellant No.

1 to the post of Junior Engineer but the same i.e. order dated February 13, 1985 was not given effect to and appellant No. 2 continued to work on the post of Assistant Engineer even after the passing of the order dated February 13, 1985. In support of this assertion that the order dated February 13, 1985 was not given effect to and appellant No. 1 was never reverted to the post of Junior Engineer, counsel placed reliance upon letter dated May 08, 1985 written by an officer of the MCD to the counsel representing the MCD before the Supreme Court in W.P. (C) No. 1194/1979/C.M.P. No. 32111/1984:--

"Shri Maheshwari, Sr. Advocate M.C.D. discussed the matter with regard to CMP No. 32111/84, filed by Shri P.H. Siddiqui in CWP No. 1194/79 titled Ashar Ali Khan & Others v. MCD & Others wherein Shri Siddiqui mentioned names of some JEs who were stated to have promoted to the post of Assistant Engineers (Civil) during the pendency of above said Writ Petition and required to know whether the said persons have been reverted or not. In this regard it is clarified that Shri Siddiqui has wrongly mentioned Sh. Ram Niwas Gupta's promotion as of March 1983 in the list filed by him, which in fact is not correct. Shri Ram Niwas Gupta at Sl. No. 46 of Seniority List circulated vide No. 37/EC II/ENGG/ESTT/83 dated 26-11-83 had been promoted AE on current duty charge basis on 9-2-1979 vide Order No. 2(107)/ECI/ENGG/ESTT/97 dated 9-2-1979 (Copy enclosed) which has been converted into ad hoc basis vide Order No. F-2(1)/ECI/ENGG/ESTT/82/59/1746 dated 29-5-1982 (Copy enclosed). His date of ad hoc appointment shown in the Seniority List dated 26-11-1983 has been corrected from March 1983 to 9-2-1979 vide Order No. ECI/ENGG/ESTT/84/3961 dated 12-10-1984 (Copy enclosed).

The said Writ Petition No. 1194/1979 titled above was filed on 23-10-1979 in Hon"ble Supreme Court of India and the promotion of Sh. Gupta was made on 9-2-1979, as such he was not promoted AE during pendency of said petition referred above as indicated in CMP No. 32111/84 filed by Shri Siddiqui. So Sh. Gupta was not liable to be reverted and in fact not reverted. Other AEs mentioned in the list were promoted after filing the CWP No. 1194/79 i.e. during pendency of petition and have been reverted to the post of JE (C)."

(Emphasis Supplied)

35. It is in the aforesaid backdrop of the facts and the decisions of the Supreme Court that we have to decide the validity of the impugned order passed by the learned Single Judge.

36. The following observations made by the Supreme Court in Direct Recruit's case (supra) have been relied upon by the appellants:--

"47. To sum up, we hold that:

(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 regularization of his service in accordance with the rules, the period of officiating

service will be counted."

37. However, in various subsequent decisions it has been held by the Supreme Court that mere exigency of temporary or ad-hoc promotion does not ipso facto entitle the incumbent to reckon the period of continuous officiation for purposes of fixation of seniority. (See the decisions of Supreme Court reported as Keshav Chandra Joshi and others etc. Vs. Union of India and others, , Dr. Surinder Singh Jamwal and another Vs. State of Jammu and Kashmir and others, and Dr. Surinder Singh Jamwal and another Vs. State of Jammu and Kashmir and others,)

38. Whether the appellants are correct in claiming that they worked uninterruptedly on the post of Assistant Engineer from the year 1979 (when appellants were given current duty charge to the post of Assistant Engineer) till August 02, 1985 (when the appellants were promoted to the post of Assistant Engineer on regular basis).

39. As already noted hereinabove, a dispute existed between diploma-holders and degree holders Junior Engineers working in MCD regarding mode of recruitment to the post of Assistant Engineer, which dispute was directly raised before the Supreme Court.

40. Writ Petition No. 221/1979 came to be filed by diploma-holders Junior Engineers contending therein that MCD should not make recruitment to the post of Assistant Engineer in accordance with Recruitment Rules (which prescribed filling up of 50% of posts of Assistant Engineer by promotion and remaining 50% by direct recruitment) but stop/suspend direct recruitment to the post of Assistant Engineer to lessen acute stagnation faced in the grade of Junior Engineer.

41. On the other hand, Writ Petition No. 1194/1979 came to be filed by degree-holders Junior Engineers contending therein that MCD be directed to make appointment to the post of Assistant Engineer strictly in terms of Recruitment Rules framed for the said post.

42. In addition thereto, it was also contended by degree-holders Junior Engineers in Writ Petition No. 1179/1994 that vide office orders dated April 10, 1978 and June 21, 1979 MCD has illegally given current duty charge of the post of Assistant Engineer to thirty-seven diploma-holders Junior Engineers including the appellants. The said thirty-seven diploma-holders Junior Engineers were impleaded as respondents Nos. 5 to 41 in Writ Petition No. 1179/1994. Significantly, appellant Nos. 1 and 2 were impleaded as respondents Nos. 37 and 29 respectively.

43. Vide judgment dated July 18, 1983 the Supreme Court decided both Writ Petitions Nos. 221/1979 and 1194/1979 filed by diploma-holders and degree-holders Junior Engineers respectively.

44. On the issue of mode of recruitment to the post of Assistant Engineer, it was

held by the Supreme Court that the MCD should make appointment to the post of Assistant Engineer strictly in terms of Recruitment Rules framed for said post, in that 50% of posts of Assistant Engineer be filled by promotion and remaining 50% by direct recruitment.

45. On the issue of holding of current duty charge of the post of Assistant Engineer by thirty-seven diploma-holders Junior Engineers including the appellants, the Supreme Court quashed office orders April 10, 1978 and June 21, 1979 whereby said thirty-seven diploma-holders Junior Engineers including the appellants were entrusted with current duty charge of the post of Assistant Engineer and directed the MCD to fill up said thirty-seven posts of Assistant Engineer (held by diploma-holders Junior Engineers including the appellants) strictly in terms of Recruitment Rules framed for said post.

46. As a necessary corollary thereof, all thirty-seven diploma-holders Junior Engineers including the appellants who were holding the current duty charge of the post of Assistant Engineer were required to be reverted to the post of Junior Engineer.

47. But this was not the end of the matter.

48. The MCD did not revert the aforesaid thirty-seven diploma-holders Junior Engineers including the appellants who were holding the current duty charge of the post of Assistant Engineer. A contempt petition being C.M.P. No. 3069/1984 was filed before Supreme Court seeking reversion of said thirty-seven Junior Engineers including the appellants. Vide order dated April 18, 1984 the Supreme Court disposed of the contempt petition with directions to the MCD to revert all thirty-seven diploma-holders Junior Engineers, including the appellants, who were holding the current duty charge of the post of Assistant Engineer to the post of Junior Engineer within ten days of passing of said order.

49. Yet again, another contempt petition being C.M.P. No. 32111/1984 was filed before the Supreme Court contending therein that twenty-two Junior Engineers including appellant No. 1 who were required to be reverted to the post of Junior Engineer in terms of judgment dated July 18, 1983 still continue to occupy the post of Assistant Engineer. Vide order dated February 12, 1985 the Supreme Court directed the MCD to forthwith revert said twenty-two officers including appellant No. 1 to the post of Junior Engineer.

50. On the very next day i.e. February 13, 1985 the MCD issued an office order reverting appellant No. 1 and twenty-one other Junior Engineers who were named in C.M.P. No. 32111/1984 to the post of Junior Engineer.

51. But no order whatsoever has been brought to our notice by SDMC to show that appellant No. 2 was ever reverted to the post of Junior Engineer.

52. As regards appellant No. 1, we find that order dated February 13, 1985 was issued by the MCD reverting the appellant No. 1 to the post of Junior Engineer but the same was never given effect to and appellant No. 1 continued to occupy

the post of Assistant Engineer even after his reversion to the post of Junior Engineer as is evident from a reading of letter dated May 08, 1985 written by an official of the MCD noted by us in the foregoing paras.

53. But the fact remains that the Supreme Court categorically directed reversion of the appellants to the post of Junior Engineer vide its judgment/order dated July 13, 1983, April 18, 1984 and February 12, 1985.

54. Legally speaking, appellants stood reverted to the post of Junior Engineer on July 18, 1983 when the Supreme Court quashed office orders issued by the MCD entrusting current duty charge of the post of Assistant Engineer to the appellants and thirty-five other diploma-holders Junior Engineers. Thereafter on two more occasions, on April 18, 1984 and February 12, 1985, the Supreme Court directed reversion of the appellants to the post of Junior Engineer.

55. Despite clear directions given by Supreme Court to revert the appellants to the post of Junior Engineer on three occasions, the MCD, for some mysterious reason, chose not to revert the appellants to the post of Junior Engineer.

56. However, by virtue of judgment/order dated July 13, 1983, April 18, 1984 and February 12, 1985 passed by the Supreme Court, the appellants de jure stood reverted to the post of Junior Engineer on July 13, 1983 when the Supreme Court quashed the office orders issued by the MCD entrusting current duty charge of the post of Assistant Engineer to appellants and thirty-five other diploma-holders Junior Engineers and the effect of something existing in law i.e. de-jure in contradistinction to it existing as a matter of fact i.e. de-facto as per the decision of the Supreme Court reported as Bhagwan Dass and Another Vs. Kamal Abrol and Others, has therefore to be given full effect.

57. Such being the position, the appellants cannot claim that they worked uninterruptedly on the post of Assistant Engineer from the year 1979 till August 02, 1985 when they de jure (in law) stood reverted to the post of Junior Engineer on July 13, 1983 when the Supreme Court quashed office orders issued by the MCD entrusting current duty charge of the post of Assistant Engineer to appellants and thirty-five other diploma-holders Junior Engineers.

58. The matter can also be looked at from another angle.

59. The officiation of the appellants to the post of Assistant Engineer after the passing of the judgment dated July 18, 1983 by the Supreme Court till August 02, 1985, when they were promoted to the post of Assistant Engineer on regular basis was clearly in violation of the judgment/order dated July 13, 1983, April 18, 1984 and February 12, 1985 passed by the Supreme Court, directing reversion of the appellants to the post of Junior Engineer. The appellants cannot draw any benefit/mileage from the violation by erstwhile MCD of direction(s) passed by the Supreme Court.

60. In these circumstances we hold that the appellants are not correct in claiming that they worked uninterruptedly on the post of Assistant Engineer from

the year 1979 till August 02, 1985.

61. As regards the submission of appellant No. 1 that his name was wrongly mentioned as one of the twenty-two Junior Engineers who continue to occupy the post of Assistant Engineer in C.M.P. No. 32111/1984 filed by Mr. P.H. Siddiqui as is recorded in the afore-noted letter dated May 08, 1985 written by an official of the MCD, suffice it to state that had that been the case, the appellant No. 1 ought to have approached the Supreme Court and filed an application seeking modification of the order dated February 12, 1985 passed by the Supreme Court in C.M.P. No. 32111/1984 directing reversion of appellant No. 1. No such application has been filed by the appellant No. 1. In the absence of any such application filed by him before the Supreme Court, it is not open to the appellant No. 1 to contend before us that his name has been wrongly mentioned in C.M.P. No. 32111/1984 filed by Mr. P.H. Siddiqui.

62. The upshot of the above discussion is that we do not find any merit in the present appeal which is hereby dismissed.

63. Parties shall bear their own costs in the appeal.