
(2004) 09 DEL CK 0043

In the Delhi High Court

Case No : WP (C) 2541 of 1990 and CM 3758 and 3759 of 1990

Satbir Singh and Others

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 17-09-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 226, 309
Recruitment Rules — Rule 10

Citation : (2004) 09 DEL CK 0043

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : K. Venkataraman, for the Appellant; G.K. Srivastava, for the Respondent

Judgement

S. Ravindra Bhat, J.

1.The petitioners have approached this Court under Article 226 of the Constitution of India, questioning the fixation of their seniority in the cadre of Lower Division Clerks. During the course of proceedings, the petitioner Nos. 2 to 6 were added in the array of the parties.

2. The two issues arising for consideration of the Court are :

(i) The power of the authorities to reopen issues of seniority that have been once settled in a final list;

(ii) Fixation of seniority of certain categories of persons whose recruitment was not provided for in the rules but who are appointed through a special test, when the rules prescribe a quota of promotees and a direct recruits.

FACTS

3. The petitioners as well as respondent Nos. 2 to 8 are working with the Slum Wing of the Municipal Corporation of Delhi (""MCD"") . When these proceedings were initiated, the Slum Wing was a unit of the Delhi Development Authority.

Subsequently, it was transferred to Municipal Corporation of Delhi. The array of the parties was appropriately amended pursuant to orders of this Court dated 26.9.2003. Thereafter, MCD appeared and was represented in the course of proceedings.

4. The recruitment rules, (furnished by the petitioners), for the post of Lower Division Clerk were approved by a Resolution No. 272, dated 29.6.1967. The relevant quota provided was as follows:

""Direct Recruitment - 75%

By promotion - 25%

From Class-IV employees

subject to the test.

Minimum qualification

First Class metriculation""

The Regulations were amended in 1971 and 1989. The MCD has produced a copy of the 1989 regulations. However, the same are not material, because recruitments and appointments were made in the present case, in 1983-84. For the purposes of this petition, the post-1971 Regulations are relevant. After the amendment (carried out by Resolution No. 178 dated 30.8.1971), the position was as follows:

""Direct Recruitment - 75%

By promotion - 15% (to be filled by limited competitive test from Class-IV employees).

- 10% (to be filled by promotion of Class-IV regular employees on the basis of seniority subject to fitness)""

5. Respondent Nos. 2 to 8 were working with the Slum Wing since 1981. However, they were neither direct recruits nor promotees under the Regulations. They were employed on casual and contract basis.

6. The Slum Wing acting pursuant to the Regulations sought to fill vacancies sometime in the years 1982-83. The vacancies in the direct recruitment quota were advertised and an examination was conducted sometime in November 1982. The petitioners on being successful were called for interview. The panel drawn on the basis of this process was approved in November 1983. As per the materials disclosed by the MCD, during the course of proceedings, such panel has a life of one year. Accordingly, the MCD is used appointment letters on various dates commencing in December 1983 on the basis of the panel so approved. It would be relevant here to mention that the last person as per this approved panel was one Shri Madan Gopal Mohan, who joined on 28.8.1984.

7. The contract employees who were about 35 in number at that time also participated in the recruitment process. However, only 4 out of 35 were successful. They seem to have secured appointment. The remaining persons represented to the authorities seeking regular appointment. Hence, a separate ""personality test"" was conducted to screen the contract appointees. There is no provision for such a procedure. In this procedure seven persons, namely, respondent Nos. 2 to 8 were successful. A decision was taken sometime in August 1983 to appoint the said seven respondents. They were, Therefore, appointed w.e.f. 5.12.1983.

8. Sometime later, it appears that those who had secured less than 40% in the regular recruitment process for direct recruits were considered separately for appointment. On application of a relaxed standard, ten such persons were appointed from September 1984 onwards.

9. The authorities published a tentative seniority list on 9.10.1984. Objections were invited from all parties to this list. In the said seniority list, petitioners were senior to respondent Nos. 2 to 8. The petitioners were at Serial Nos. 81,85,97,88,89 and 104 respectively. The respondent Nos. 2 to 8 on the other hand were shown at Serial Nos. 139 to 145 respectively. After considering objections, the authorities published a final list on 14.3.1985. In this list also the position of the petitioners vis-?-vis respondent Nos. 2 to 8 was maintained. The petitioners were shown as senior to the said respondents except in the case of the petitioner No. 6, Ravi Kant who was shown as junior to respondent Nos. 2,3 and 4 respectively. The relevant position of the petitioners was at Serial Nos. 92, 97, 113, 101, 103 and 123 respectively. Respondent Nos. 2 to 8 on the other hand were shown at Serial Nos. 114, 118, 122, 126, 130, 134 and 138 respectively.

10. After finalisation and publication of the final list dated 14.3.1985, the relevant seniority position of the parties stood settled. However, this was sought to be re-opened on 2.1.1987 when a tentative list was published in which for the first time the position of the petitioners was sought to be adversely affected. The petitioners represented against the said proposal. Nevertheless, by another list dated 15.7.1987 the revised seniority list was published. In this, respondent Nos. 2 to 8 were shown at Serial Nos. 54 to 60 whereas all the petitioners were shown as their juniors. This led to representations being made once again after which the seniority list was revised and published on 31.7.1989. Here too the respondent Nos. 2 to 8 were shown a positions senior to the petitioners. Another final seniority list was thereafter published on 29.9.1989. In this too the respondent Nos. 2 to 8 were shown as senior to the petitioners. The said respondents were placed at Serial Nos. 11 to 18. The petitioners on the other hand were shown at Serial Nos. 21, 25, 41, 29, 31 and 52 respectively. The petitioners aver that they unsuccessfully represented against this move. Consequently, they have approached this Court under Article 226 seeking an appropriate writ for the quashing of the seniority lists dated 15.7.1987 and

28.9.1989 and a direction to restore the final seniority list circulated on 14.3.1985.

11. The MCD in its pleadings has justified its action by stating that the decision to give regular employment to the respondent Nos. 2 to 8 was taken in August 1983; they were already in employment since 1981 and that the said respondents had secured more than 40% in the personality test specially conducted for them. The MCD has also relied upon the decision taken at the highest quarters on 7.8.1983. A copy of the said decision of MCD has been placed on record. It has been further averred that the appointment of these respondent Nos. 2 to 8 was approved by the Lt. Governor on 1.9.1983.

12. The respondent Nos. 2 to 8, apart from reiterating the decision taken by the MCD, further aver that the petitioners cannot make a grievance of the two impugned seniority lists since the same have been acted upon by orders dated 3.6.1988 and 25.10.1989 when promotions were made to the post of UDCs.

13. Mr. K. Venkataraman, learned counsel for the petitioners submitted that the action of the MCD in reopening the final seniority list and re-assigning positions to the detriment of the petitioners is illegal. According to him, in the absence of any rule or circular authorising such a review, it was not open to MCD/authorities to have carried out the exercise to the detriment of the petitioners. Once the position was settled in the seniority list dated 14.3.1985, the petitioners acquired the right atleast as against respondent Nos. 2 to 8 too be treated as their seniors.

14. Learned counsel for the petitioners also submitted that in any case even if there was some mistake, there was no justification to fix the position of the respondent Nos. 2 to 8 above regularly recruited persons against the direct recruitment quota as per the rules. According to him, those respondents had also competed with the petitioners but who were unable to pass the examination. Significantly, four of their colleagues who were also contract employees cleared such examination and were regularly appointed. In the case of respondent Nos. 2 to 8, however, upon sympathetic considerations, a special test was held for all existing contract employees. According to the learned counsel there is no provision for such a separate or third mode of recruitment nor does such a special personality test fit in the description prescribed for direct recruitment. On being successful in such a special personality test the said respondent Nos. 2 to 8 were appointed on regular basis. Therefore, it is contended by the petitioners that appointment of such respondents was preceded by a special screening procedure, designed only to regularise their services; under no circumstances could such persons steal a march over the petitioners who were successful in the regular direct recruitment channel.

15. Learned counsel for the petitioner has relied upon certain decisions of the Supreme Court, namely, Union of India v. R.D. Nanjiah and Ors. to contend that once a final list is published, there is no question of inviting objections, much less modifying it. Reliance was also placed upon the decision of the Supreme Court in

R.K. Trivedi and Ors. vs. Union of India and Ors. to the effect that while fixing inter se seniority as between ad hoc and regular appointees, there is no question of the former being treated as senior.

16. Mr. G.K. Srivastava, learned counsel for the MCD sought to justify its actions in revising the final list dated 14.3.1985. According to him, in view of the fact that contract employees were working from 1981, a decision was taken in August/September 1983 (prior to the appointment of the petitioners) to appoint respondent Nos. 2 to 8 on regular basis. For that purpose, he submitted that a special personality test was conducted in which those respondents were successful. According to him merely because those respondents could not qualify in the regular recruitment process, there was no bar to their appointment. Once they were appointed in December 1983, on dates admittedly prior to that of the petitioners, it is submitted that they had to be given seniority over the petitioners. According to learned counsel for MCD, this position was overlooked in the list dated 14.3.1985. Therefore, it was open to MCD to correct that position. According to learned counsel, a public authority such as MCD has the inherent power and obligation to correct or revise its mistakes.

17. Learned counsel for the MCD also urged that many of the direct recruits were in fact appointed by application of a revised standard. According to him, the panel of 1983 was kept alive and later extended to include certain persons by relaxing the cut of marks below 40%. Such being the position, he submitted that it is not open to the petitioners to complain of loss of seniority. According to learned counsel for MCD, no rule or law bars the revision of any seniority list.

18. During the course of hearing, the MCD produced the files pertaining to the preparation of the seniority lists in question. I have gone through the same.

19. The nothings in the file, particularly, dated 3.4.1987 and 24.4.1987 show that the MCD always considered fixation of seniority in the ratio of 1:3 i.e. one Departmental Promotee followed by three direct recruits. The relevant parts of the noting dated 3.4.1987 are extracted below:

""Attention of Director (HandG) is invited to his observations as on page 19/N. In order to appreciate the whole matter of fixation of seniority it will be desirable to re-capitulate the factual position of the different cadres of LDCs according to the source of recruitment. The categorisation of LDCs is given as on page 3/N.

1. Candidates already working as LDC prior to Direct Recruitment

The above category of LDCs are placed from Serial No. 1 to 41 of final seniority list circulated vide order dated 14.3.85. All of them have been promoted as UDCs. And as such there is no dispute about the inter se seniority up to Serial No.41. Only four candidates remain out of this list who have not been promoted as UDCs for one or other reasons and their appointment is prior to 1983. This cadre also includes statistical clerks who have been merged in the general cadre of LDCs and their seniority has been fixed from the date of regularisation and has

already been promoted as UDCs.

2. LDCs recruited through open competitive exam/Direct Recruits (95 candidates)

Direct recruitment through open competitive exam. has been made and the same was advertised in the newspapers in 1982, and the examination was held in November 1982 and the date of approval of panel/merit list was 2.11.1983 and the appointment letters with respect to the first approved merit list were issued beginning from 7.11.1983 and the last candidate on the approved first panel was Madan Gopal Mohan who joined on 28.8.1984. Panel of Direct recruits (10 candidates) was further extended by lowering the criteria of eligibility on 10.8.84 and 10 more candidates were appointed out of the extended panel in August/September 1984.

3. Candidates working on contract basis and regularised (7 candidates)

There were 35 candidates working on contract basis out of which 4 qualified in the open competitive exam. whose panel was approved in November 1983 and their seniority has been reckoned as per merit list of direct recruits.

Candidates working on contract basis who could not qualify in the open competitive examination, on a representation made by them, were given a chance and the selection was held on the basis of personality test and 7 candidates as per page 4/C qualified (without again appearing in the written test) and they were regularised as per orders of the LG dated 7.8.83 subject to the condition that the seniority of these contract basis LDCs who are being regularised shall come on the seniority list immediately after the last man on the general seniority list as is evident from page 2/C, that is their regularisation was subject to the condition that they will rank after the last man on the merit list of the direct recruits, as regards their seniority.'"

20. This noting was followed by a detailed analysis and summary of the position on 24.4.1987. The relevant part of that noting, namely, summation is extracted below:

""1. One promotee followed by 3 direct recruits.

2. The compassionate ground candidates will take the inter se seniority from the date of appointment.

3. The 7 contract basis candidates will be placed at the bottom of last candidate in first panel of 1983.

4. The order of inter se seniority for the year 1984. The promotee and direct recruits of second panel will take seniority in ratio of 1:3 after contract basis candidates.

5. SC/ST candidates will be placed according to their position in merit list and or according to the roster approved by GOI as the case may be.'"

Analysis

21. The following features emerge from the pleadings and the records of the MCD:

1. The post of LDC had to be filled in the ratio of 1:3, by rotation of vacancies, from amongst promotees and direct recruits;
2. Direct recruitment vacancies were advertised, in 1982. In that recruitment process, the petitioners, among others were found successful, and called for interview. They and other selectees were appointed between December 1983 and August, 1984;
3. Respondent Nos 2 to 8 were working since 1981 as contract LDCs. They too participated in the recruitment process. However they were unsuccessful. Four contract LDCs, however were successful, and were appointed;
4. Respondent Nos 2-8 made representation for their continuance. Hence, a special "personality test" was held. This procedure is not the same as the one applicable for direct recruits.
5. The said respondents were appointed after the special personality test.
6. Certain persons were later appointed from amongst the panel as direct recruits, ["the second panel"] by relaxing the standards of the recruitment process held in that regard. Such appointees are 10 in number, and were appointed after the last appointee in the batch of the petitioners, namely Madan Mohan, who was appointed on 28.8.1983.
7. In the initial list, published in 1984 and finalized in 1985, the petitioners were shown as senior to the said respondents;
8. As per MCD's records, the respondent Nos. 2 to 8 were regularised in service subject to the condition that they would be placed at the bottom of the seniority list, after the direct recruits.
9. By the two impugned seniority lists, the position of the petitioners was altered to their disadvantage. The respondent Nos. 2-8 were shown as their seniors.

The first issue: whether a final list can be re-cast

22. The seniority of a public servant is a valuable right. The manner of determination of seniority is the subject matter of rules, regulations or conditions of service. It has been held that public employment is a matter of status, and ceases to be a matter of contract. Consequently, the manner of determining seniority can be modified or changed from time to time, through rules or regulations, by the State. Yet, over the years, it is accepted that while changing the rules, positions that accrue in favor of one party or the other cannot be varied

a] without notice;

b] without reason or reasonable cause.

In Indian Administrative Service (S.C.S.) Assn. v. Union of India³, the position was summarized as follows:

""There is a distinction between right and interest. No one has a vested right to promotion or seniority, but an officer has an interest to seniority acquired by working out the rule. Of course, it could be taken away only by operation of valid law.""

In the present case, the rules/ resolutions, which constitute norms governing the behavior of MCD clearly mandate the observance of a quota: rota rule while fixing seniority of the two categories of employees. There is no third category of employee, viz contract employees appointed through a special test, after they fail in the normal recruitment. Hence, the authorities rightly fixed the seniority of such employees (respondent Nos 2-8) at the bottom of the list, after the last direct recruit in the first panel of 1983. This list of 1985, was preceded by a tentative list, in which the petitioners were shown as seniors. The final list of 14.3.1985 conformed to the previous tentative list, save in one detail that the sixth petitioner was shown as junior to Respondent Nos 2-4. Admittedly, that list was the final list. Under the circumstances, in the absence of any rule or regulation, empowering review/ reworking of that final seniority list, or even any binding administrative circular, it was not open to the authorities and MCD to undertake such reviews in 1987 and 1989. If such exercises are permitted, there would be no sanctity or finality to the seniority of a public servant. Seniority ""lists"" would be open to variation every now and then, leading to an undesired state of flux, with all attendant ill effects on the efficiency and morale of the entire cadre.

23. As far as the contention of Mr. Srivastava that the MCD has the inherent right to correct a mistake, or review is concerned, the submission has to be viewed on the standard imposed by Article 14. Every State action has to be informed by reason, and backed by authority of law. In the absence of law, the authority has to stem from the Constitution. The horizons of judicial review have today reached areas that were hitherto held to be beyond the pale of the Courts. Hence, it is no longer open to MCD to merely plead some necessity, and take shelter under some inherent, but unseen power of review, when it concerns the rights of its employees. Being a creature of statute, every action of the MCD has to be traced to, or backed by a valid law, rule, regulation, or policy/ guideline, framed under its parent statute. No such norm or policy is forthcoming in support of the review and re-review of the final seniority list dated 14.3.1985. On the contrary, the conclusions and findings in the files of MCD support the view that the Respondent Nos 2-8 have to be placed en-bloc juniors to the first direct recruit panel of 1983. The conclusion Therefore is that MCD did not have the power to alter final seniority list, issued on 14.3.1983, to the petitioners' disadvantage.

The Second Issue

24. It is and indeed cannot be disputed that the MCD is bound by its rules; in the

present case, contained in the two resolutions of 1967 and 1971. Those regulations clearly envision appointment to the cadre of LDCs only through two channels, namely direct recruitment, for which a quota of 75% is prescribed, and the balance 25% by promotion. There is no third method of recruitment or appointment.

25. Direct recruitment in respect of 75% of the posts is through advertisement, followed by a written test, and interview. All the petitioners successfully competed, and were appointed against this quota. The selection process commenced in 1982, and the MCD approved the select list in November 1983. Thereafter, the MCD dispatched offers, and the petitioners were appointed.

26. Respondent Nos 2-8 and other contract employees competed along with the petitioners. However they did not qualify in the recruitment process. Only four contract employees qualified in the recruitment process. Since respondent Nos 2-8 were working from 1981, they sought intervention from the MCD for their continuation. At that stage, they were facing termination from employment, as is apparent from the order dated 23.8.1983. The MCD yielded to their entreaties. It decided to hold a "" personality""test. Such a test is admittedly not the one prescribed by the regulations. It was held with a view to assess who among the 30 odd contract employees could be retained or continued. Only seven, i.e. Respondent Nos 2-8 qualified in the test. They were given regular employment in December, 1983.

27. The question here is whether Respondent Nos 2-8 could be assigned seniority over the petitioners, after they had competed together with them, and failed. A two fold justification was given by the MCD. Firstly, it is contended that the Respondent Nos 2-8 were actually appointed on dates earlier to the petitioners, and have to be treated as their seniors. Secondly, it is contended that having qualified in the special personality test, since they were working from 1981, prior to appointment of the petitioners, the respondent Nos 2-8 claim to seniority at least vis-?-vis the petitioners cannot be faulted.

28. This issue has often been considered by courts. Authorities are legion for the proposition that a person appointed without reference to the rules (on irregular/ contract/ ad-hoc/ stop-gap arrangement/ fortuitous basis) cannot claim rights vis-?-vis another, appointed through the normal regular channels in accordance with the rules. In V. Sreenivasa Reddy v. Govt. of A.P.⁴, the Supreme court held as follows:

""14. It is now well settled law that appointment/promotion must be in accordance with the Rules, direct recruiter takes his seniority from the date on which he starts discharging the duty of the post borne on the cadre while a temporary appointee appointed dehors the rules or on ad hoc basis or to a fortuitous vacancy gets seniority from the date of regular appointment.

15. It is settled law by the judgment of the Constitution Bench in Direct Recruit Class II Engineering Officers" Assn. v. State of Maharashtra³ that appointment in

accordance with rules is a condition precedent to count seniority. Temporary or ad hoc or fortuitous appointments etc. are not appointments in accordance with the rules and the temporary service cannot be counted towards the seniority. See Delhi Water Supply and Sewage Disposal Committee v. R.K. Kashyap, Masood Akhtar Khan v. State of M.P.,

(sic).N. Agrawal v. State of M.P.6, State of T.N. v. E. Paripoornam, Excise Commissioner, Karnataka v. V. Sreekanta""

Later, dwelling upon the status of persons ""regularized"" through special dispensations/ orders, it was held that:

""22. In R.N. Nanjundappa v. T. Thimmiah, placitum C and D, dealing with the contention that Article 309 speaks of rules for appointment and general conditions of service, held that regularisation of appointment in exercise of executive power process notwithstanding any rule, cannot be a form or kind of appointment and if it is in infraction of the rules and if it has effect of the violation of the rules or the Constitution, illegality cannot be regularised. If it does not violate the law, it would be permissible. Otherwise the rule itself gets criticised on the ground that it is in violation of Articles 14 and 16(1).

23. In B.N. Nagarajan v. State of Karnataka a Bench of three Judges, held that regularisation in violation of the statutory rules is not permissible, in exercise of the executive power of the State which have the effect of overriding the rules framed under proviso to Article 309 of the Constitution and that, Therefore, no regularisation in exercise of the executive power under Article 162, in contravention of the statutory rules, is permissible.""

The Court concluded that such irregular appointees regularized by orders of Government were entitled to take their seniority only after those appointed as per rules:

""32...It is seen that the PSC candidates were recruited on recommendation by PSC and pending verification of the antecedents of the candidates, they came to be appointed under Rule 10(a)(i)(1) but they were put on probation since they were selected on regular basis. Being direct recruits, their seniority, as stated earlier, counts from the date on which they started discharging the duties of the post. The temporary appointees though have the insignia of the appointment under Rule 10(a)(i)(1), yet they are not members of the service until they are duly appointed and their services subsequently regularised, they get a date later to regular candidates, appointed in accordance with the Rules and were accordingly regularised. In other words, they are only temporary appointees not in accordance with the Rules""

In another case, Dr M.A. Haque and Others Vs. Union of India (UOI) and Others, , the Supreme Court had to deal with rival claims of directly recruited persons, irregularly appointed persons who later were recruited directly in the normal manner [as in the case of the four contract appointees who were

appointed along with the petitioners herein] and irregularly appointed persons (Petitioners before the Supreme Court) who failed in the recruitment process, but were nevertheless regularized. It was observed that:

""Secondly, the petitioner-applicants were given three chances for their selection through the UPSC but they did not avail of them. Some of those who were appointed with them, however, had availed of the chances and have been appointed as regular direct recruits and they have been given their seniority from the date they were regularly appointed through the UPSC. Thirdly, it appears that although in 1977 the written examination was introduced, on account of exigencies, the UPSC held two special selections in the years 1982 and 1985 based on interviews only and by relaxing the age-limit. In these two special selections respectively 100 and 67 ad hoc doctors like the petitioner-applicants were selected and absorbed in the regular cadre. They have also been given their seniority from the date they were so absorbed regularly.""

29. The Court resolved the issue of inter-se seniority as follows:

""In the result, we direct that the seniority of the direct recruits - both outsiders and insiders should be determined according to the dates of their regular appointment through the UPSC and the petitioner-applicants should be placed in the seniority list after those direct recruits who are recruited till this date. Among themselves, their seniority will be governed by the dates of their initial appointment.""

30. In view of this legal position, the first contention of MCD has no force. Merely because the Respondent Nos 2-8 were given appointment orders earlier to the petitioners (a factor exclusively within the control of MCD, where the said respondents were already working) they did not acquire a superior claim. They were not recruited, or regularized in accordance with the rules. Seniority was to be determined on rotation of vacancies in the ratio of 1:3 as between promotees and direct recruits. As the Respondents were neither direct recruits nor promotees, they were not entitled, on application of any known principle, to reckon their seniority over the petitioners, who were direct recruits of the first panel of 1983. The Respondent Nos 2-8 were entitled to take their place at the bottom of the list, after the last person in the first approved panel of direct recruits for 1983. This was also the understanding of the MCD itself, as seen from its note dated 24.4.1987 (para 20 Supra).

31. As far as the second contention urged by the MCD is concerned, it is to be remembered that the question of the Respondents 2-8 relying upon pre-existing rights prior to their appointment (after their regular appointments once they were not successful in the regular channel of recruitment) is to be viewed from the perspective of the nature of such employment. As noticed earlier, it was contractual. No rule or regulation was brought to the notice of the court justifying such engagement; it is not clear whether it was preceded by any process conforming to the standards of Articles 14 and 16 of the Constitution of India.

The petitioners, however do not challenge such appointment; the scope of these proceedings too do not extend to scrutinizing their legality. However, the nature of such appointments, vis-?-vis regular recruitments under the rules, does fall for consideration, in the present seniority dispute. In the Constitution Bench decision of the Supreme Court, reported as *Direct Recruit Class II Engineering Officers" Assn. v. State of Maharashtra* the law in this regard was summarized as follows:

""To sum up, we hold that:

(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 stop-gap 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.""

32. Thus, the Respondent Nos 2-8 cannot claim any benefit of previous service. If that is the case, their regularization, which has not been shown to be under the rules, since it is not a source or channel of recruitment, cannot confer any greater legitimacy to their claim to seniority over the petitioners. The action of the MCD in seeking to confer seniority to the said respondents, who are appointees outside the rules, over the petitioners, is not defensible.

33. The plea of the MCD that the petitioners cannot be treated as senior to respondent Nos. 2 to 8 since direct recruitment, through application of relaxed standards was resorted to, has no force. The file of the MCD itself indicates that the authorities were conscious about two panels for 1983--the first panel, ending with Shri Madan Gopal Mohan, who was appointed on 28.8.1984, and subsequent approval of 10 names, included in the second panel. Nothing has been shown to the effect that the petitioners were appointed after 28.8.1984. In fact, all the materials, including the impugned lists, disclose that they are senior to him. Hence, they were part of the first regular panel.

34. The respondent Nos. 2 to 8 had filed counter affidavit. As stated earlier, they had averred that the seniority lists in question have been acted upon for the purposes of further promotion. A look at the promotional order filed shows that such a submission is not relevant for the purposes of this petition since it is nobody's case that any of the parties here, were beneficiaries.

35. In the light of the above discussion, the petition has to be allowed. I am conscious of the fact that due to passage of time, the parties might have been promoted to higher posts. It would be, Therefore, appropriate that relief is moulded in such a manner that the rights of the other parties are not affected.

Likewise, while restoring the seniority list dated 14.3.1985, it would be necessary to record that the 6th petitioner to the extent he has not made a grievance, has to be shown in the seniority position maintained in that list.

36. I accordingly direct as follows:

(1)The two impugned seniority lists, namely, dated 15.7.1987 and 28.9.1989, are illegal to the extent they seek to disturb the inter se seniority of the petitioners vis-?-vis respondent Nos. 2 to 8. A declaration/direction to such effect is, Therefore, issued;

(2)the respondents are directed to restore the seniority position of the petitioners as reflected in the seniority list published on 14.3.1985;

(3)it is further directed that the inter se seniority between the petitioners and respondent Nos. 2 to 8 shall be worked out in such a manner so as to not result in upsetting the position of any other party;

(4)the respondent corporation, MCD shall also ensure that the seniority of the parties herein is similarly maintained/recast as per directions (1) to (3) above in respect of promotional posts where promotions, are based upon seniority.

The respondent Corporation is required to comply with the above directions within a period of eight weeks from today.

37. Rule is made absolute in the above terms.

38. In view of the above, all pending interlocutory applications are rendered infructuous and are accordingly disposed of.

39. The respondents shall bear costs of these proceedings assessed at Rs. 5,000/-. The same is directed to be paid within four weeks.