

HIGH COURT OF MADHYA PRADESH**Bench: Hon'ble Shri Justice Ravi Malimath, Chief Justice, and Hon'ble Shri Justice Vishal Mishra****Date of Decision: 24th May 2024**

WRIT PETITION NO. 28381 OF 2018

MEHFOOZ AHMAD ...PETITIONER**VERSUS****HIGH COURT OF MADHYA PRADESH & ANR. ...RESPONDENTS****Legislation:**

Article 226 of the Constitution of India

High Court of Madhya Pradesh (Officers and Employee Recruitment and Condition of Service Classification of Appeal and Conduct) Rules, 1996

Right to Information Act, 2005

Indian Constitution, Articles 14, 16, and 229

Subject: Petition challenging the promotions of respondent No.2 over the petitioner to the post of Assistant Registrar, claiming lack of requisite qualifications and procedural improprieties.**Headnotes:**

Service Law - Promotion - Educational Qualification and ACRs - Petition challenging promotions of respondent No.2 on grounds of lacking requisite educational qualifications and procedural improprieties in ACR considerations - Court finds respondent No.2 lacked qualifications for feeder cadre posts, including Private Secretary and Assistant Registrar - Petitioner's ACRs not communicated as per established legal precedents, rendering DPC decision invalid - Orders for reverting respondent No.2 and reconsideration of petitioner's promotion from the date of wrongful supersession - Petition allowed. [Paras 1-39]

Educational Qualification and Promotion - Requirement - Analysis - Held - Respondent No.2 lacked the requisite educational qualifications for the post of Stenographer, Private Secretary, and subsequently Assistant Registrar - Promotions granted to respondent No.2 were contrary to service rules - ACRs of petitioner not communicated as per Supreme Court precedents in Dev Dutt and Sukhdev Singh cases, necessitating quashing of DPC decision. [Paras 12-36]

Judicial Review - Administrative Powers of Chief Justice - Extent - Analysis - Held - Orders of the Chief Justice regarding appointments are subject to judicial review - Appointments not made in accordance with statutory rules and educational qualifications can be quashed by the court - Precedents from Supreme Court cases Union of India v. G. Ganayutham, State of Karnataka v. Umadevi, and others applied. [Paras 21-24, 27-28]

Decision - Promotion and Reversion - Orders - Court directs DPC to reconsider petitioner's promotion from 11/14.08.2016 - Respondent No.2 to be reverted to a post fitting his qualifications - Entire exercise to be completed within 30 days - Petition allowed with no order as to costs. [Paras 37-39]

Referred Cases:

- Dev Dutt v. Union of India, (2008) 8 SCC 725
- Sukhdev Singh v. Union of India, (2013) 9 SCC 566
- Union of India v. G. Ganayutham, (1997) 7 SCC 463
- State of Karnataka v. Umadevi, (2006) 4 SCC 1
- State of M.P. v. Dharam Bir, (1998) 6 SCC 165
- Chandan Banerjee v. Krishna Prosad Ghosh, Civil Appeal No. 5582 of 2021

Representing Advocates:

Shri Rakesh Dwivedi for the petitioner

Shri Ashish Shroti for respondent No.1

Shri Naman Nagrath, Senior Advocate with Shri Greeshm Jain for respondent No.2

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ORDER

Challenge is made to the orders dated 11/14.08.2016, 14.10.2016 and 26.08.2017 whereby the respondent No.2 has been promoted on the post of Assistant Registrar in the pay scale of Rs.15600-39100 + Grade Pay Rs.5400/- ignoring the merit qualification and seniority of the petitioner over and above the respondent No.2. The petitioner has further challenged the promotion of the respondent No.2 on the ground that respondent No.2 is not having a minimum qualification as required for appointment for the post of feeder cadre and the petitioner was senior from the very inception, thus he could not have been superseded.

2. It is the case of the petitioner that he was initially appointed as a Stenographer w.e.f. 25.03.1985 in District Court, Chhindwara and he was appointed in the High Court of Madhya Pradesh vide order dated 06.01.1988 on the post of Personal Assistant. In pursuance to the same he joined on 19.01.1988. He was promoted to the post of Private Secretary on 06.05.1996. The respondent No.2 was initially appointed w.e.f. 10.11.1986. He was holding the qualification of Higher Secondary School Certificate and was placed below the petitioner in the gradation list of his cadre. The seniority of the petitioner in the cadre of Private Secretary always remained over and above the respondent No.2. 3. High Court of Madhya Pradesh (Officers and

Employee Recruitment and Condition of Service Classification of Appeal and Conduct) Rules, 1996 {hereinafter referred to as “Rules of 1996”} came into force on 01.04.1996 and was applicable to the case of the petitioner as well as respondent No.2 which provides for method of recruitment, qualification, eligibility and procedure for promotion. In terms of Part IV of the aforesaid Rules, the post of Private Secretary is to be filled up by promotion from amongst the Personal Assistants on merit-cum-seniority basis, if necessary by direct recruitment. The qualification prescribed in Rule 9 for the post of Private Secretaries is Graduate from a recognised University, qualified in English Shorthand from a recognized Board with a speed of 100 words per minute and preference to Graduation in Law. It is pointed out that even for the post of Personal Assistant and Stenographer which are feeder cadre to the Private Secretary, the minimum qualification is Graduate and Shorthand. The respondent No.2 is holding the qualification of Higher Secondary pass. He was not even Graduate and having a qualification of Shorthand. However, he has been promoted along with the petitioner for the post of Private Secretary vide order dated 06.05.1996.

4. On 20.07.2016, the Departmental Promotion Committee was held to consider the promotional aspects to the post of Assistant Registrar. No criteria was fixed for promotion from the post of Private Secretary to Assistant Registrar, despite the fact that for promotion to Assistant Registrar from the post of Section Officer/Librarian /Assistant Editor, I.L.R. the criteria was two ‘Very Good’ ACR in last five years has been prescribed by the DPC. Two post of Assistant Registrars were to be filled up from the cadre of Private Secretary. The DPC recommended the name of respondent No.2 alone whereas the petitioner was not found fit considering the ACRs and overall records. The representation submitted by the petitioner against wrongful supersession by the respondent No.2 was rejected by the respondent No.1. He again preferred an appeal to the Hon’ble Chief Justice on 10.07.2017 but the appeal was also rejected by the non-reasoned and non-speaking order and the same was communicated vide order dated 26.08.2017. Thereafter, the petitioner sought information under the RTI which was supplied to him vide letter dated 03.01.2018. The ACRs from 2012 to 2017 were having no adverse communications. The petitioner was having four ‘Good’ and one ‘Very Good’ ACRs. No entry in the ACR for the aforesaid period was communicated to the petitioner. Thus, he was not having any opportunity to file his representation for upgrading his ACRs, as the criteria fixed by the DPC was atleast two Very Good in last five years and that too only for the post of Section

Officer/Librarian/Assistant Editor, I.L.R. etc. It is pointed out that the ACR which has not even been communicated to a candidate cannot be taken into consideration by the DPC. The declaration by the DPC that the petitioner is not found fit after considering his ACRs is contrary to the law laid down by the Hon'ble Supreme Court in the case of **Dev Dutt Vs. Union of India and others** reported in **(2008) 8 SCC 725** and **Sukhdev Singh Vs. Union of India and others** reported in **(2013) 9 SCC 566** which provides that every ACR is necessarily to be communicated as the same affects the chances for promotion. It is further argued that ACR only cannot be the criteria for promotion to Group-B post of Assistant Registrar and a candidate must have minimum educational qualification fulfilling the requirement of recruitment rules. The respondent No.2 has been recommended and promoted to the post of Assistant Registrar without having a minimum educational qualification and eligibility to the post in question. The aforesaid aspect has been completely overlooked by the respondent No.1 while considering the eligibility for promotion of the petitioner and respondent No.2. The petitioner got an information that the DPC will again be convened for further promotion to the post of Deputy Registrar from the post of Assistant Registrar. The respondent No.2 was not fulfilling the minimum educational qualification. There was every apprehension that he may again be promoted. Thus, the petitioner will be caused irreparable loss as his seniority and promotional prospects will be seriously jeopardized.

5. It is argued that chances of promotion may not be the condition of service but negation of even the chance of promotion amounts to variation in the conditions of service attracting infraction of Articles 14 and 16 of the Constitution of India. Seniority is a facet of interest. Right to be considered for promotion is a rule prescribed by the conditions of service. The DPC is bound to consider the minimum eligibility and educational qualification before making its own criteria of at least two ACRs to be 'Very Good' in last five years ACRs and it cannot relax educational qualification prescribed in the Rules. The petitioner filed an application under Right to Information Act asking for the qualification of the Shorthand of respondent No.2. The same was denied holding that the same will amount to providing personal information. The Departmental Promotion Committee considered the case of the petitioner and found him fit for promotion to the post of Assistant Registrar and vide order dated 02.11.2018, the petitioner was finally promoted as Assistant Registrar and he joined on his promoted post on 16.11.2018, but he is entitled for promotion to the post of Assistant Registrar w.e.f. 11/14.08.2016 that is the

date when the promotion to the respondent No.2 was granted. Therefore, this petition has been filed seeking the following reliefs :-

“(i) That, the impugned order Annexure P-1 so far relating to promotion of respondent No.2, order rejecting representation dated 14.10.2016 Annexure P-2 and order rejecting appeal dated 26.08.2017, Annexure P-3 may kindly be declared arbitrary and the same may kindly be quashed. (I) (a). That, promotion of respondent No.2 to the post of Private Secretary and Assistant Registrar is illegal and contrary to law as he does not possess the requisite academic and technical qualifications for those posts as informed by the Registry at Principal Seat and as that relevant facts regarding his qualifications were conveniently overlooked by the respective DPCs, hence, he be demoted to the post lowest in cadre for which he has been possessing the academic and technical qualifications and/or”

(ii) That, the respondent No.1 may kindly be directed to grant the promotion, already given to the petitioner on 02.11.2018 on the post of Assistant Registrar, over and above respondent No.2 w.e.f. the date of his promotion i.e. 11/14.08.2016 and to fix the seniority of petitioner over and above the respondent No.2 with consequential benefits.

(iii) That, respondent No.1 may further be directed to consider the petitioner for further promotion to the post of Deputy Registrar as and when the same is being considered by DPC or the concerned Committee.

(iv) Any other relief, which this Hon’ble Court may deem fit and proper may also be given to the petitioner along with costs.”

6. From the relief clause it is seen that virtually the promotion of the respondent No.2 to the post of Private Secretary, Assistant Registrar were put to challenge from very inception, even the promotion to the post of Deputy Registrar as he was not even having a qualification to hold the post in question. Thus, virtually the petition is a quo warranto petition to challenge the appointment of respondent No.2 to the post of Private Secretary/Assistant Registrar/Deputy Registrar for want of educational qualification. Counsel appearing for the petitioner during the course of the argument, further pointed out that the petitioner is not even having minimum qualification to hold the post of Stenographer. The record indicates that the respondent No.1 has considered the case of the respondent No.2 for the post of Stenographer without any reason despite of the fact that he has failed in the examination which was conducted for the post of Stenographer. There are no reasons assigned for promotion to the post of Stenographer except the fact that the respondent No.2 among all failed candidates has committed lesser mistakes, therefore, he was found to be a suitable candidate for promotion to the post of Stenographer and accordingly a recommendation was made. Therefore, the appointment of the respondent No.2 on the post of Stenographer itself was faulty. Hence, there arises no question for further consideration for

promotional post as respondent No.2 is not even having minimum qualification to hold the feeder cadre post.

7. Counsel appearing for the respondent No.1 has filed a detailed reply in the matter denying all the contentions. It is pointed out that in terms of the Rules of 1996 the Departmental Promotional Committee was constituted and the procedure as prescribed therein was followed which was based upon merit-cum-seniority. Considering the same, they have recommended the respondent No.2 for promotion as per the norms. The petitioner has claimed seniority and other consequential benefits although the representations filed by the petitioner has duly been considered and rejected. Even the appeal preferred by him has been considered and rejected. The DPC held on 20.07.2016 has considered the case of the petitioner as well as the respondent No.2 for promotion to the post of Assistant Registrar and the DPC has found respondent No.2 to be fit for promotion to the post in question and the petitioner was not found fit for promotion considering the overall records and the ACRs of the last five years. The same is put to challenge by filing the present petition. It is pointed out that the appointment of the respondent No.2 for the post of Stenographer is not even put to challenge in the present petition.
8. It is contended that the Rules of 1996 does not lay any qualification for promotion from the post of Private Secretary to the post of Assistant Registrar. In fact the provision of Rule 8 (xviii) of the Rules of 1996 does not lay any qualification for the promotion from the post of Private Secretary to the post of Assistant Registrar. As per the Rules, ACRs of previous five years are to be considered for promotion along with overall record of the petitioner. Even in the instant case the ACRs of the respondent No.2 for the past five years is 'Very Good' in four years and 'Good' in one year, whereas the petitioner was having 'Good' for four years and 'Very Good' for one year. Considering the overall performance in the ACRs as per the Rules, the respondent No.2 was found fit and was granted promotion. The criteria that is fixed for promotion to the post of Assistant Registrar/Librarian etc., was ACRs of last five years, overall performance, working experience in administrative and judicial branches and capability to perform duties assigned to him as Assistant Registrar. In terms of the procedure which has been prescribed, the impugned order was passed and the respondent No.2 was found fit for promotion to the post in question. It is further contended that the respondent No.2 possess the qualification of Higher Secondary only and was promoted as Private Secretary along with the petitioner on 06.05.1996 in compliance of the orders

of the Hon'ble Chief Justice dated 24.04.1996. Prior to the said promotion, a suitability test of seven Personal Assistants was conducted including the petitioner and the respondent No.2, in which a passage of 500 words was dictated to all the concerned employees at the speed of 100 words per minute. A test of knowledge of English was also conducted in which both the officials were found suitable for promotion to the post of Private Secretary by the Hon'ble Chief Justice vide order dated 24.04.1996. It has been contended that in terms of the settled law of service jurisprudence, the employee has a right to be considered for promotion. It is not a case where the case of the petitioner was not considered for promotion. However, it has been considered and he was not found fit by the DPC, therefore, it cannot be said that any discrimination has been done with the petitioner. It is further contended that the petitioner has not explained the delay in filing the petition. His case has already been considered twice in his representation as well as by the Appellate Authority but no change was found in the decision taken by the DPC. Under these circumstances, no case for interference is made out. He has prayed for dismissal of the petition.

9. Counsel appearing for the respondent No.2 by filing a separate reply has denied the contentions. It is pointed out that he is having a certificate of passing English Shorthand at the rate of 100 words per minute from National Trader Certificate, Government of Maharashtra Industrial Training Institute dated 30.08.1985. Therefore, the averments made by the petitioner that he is not having qualification and he is not having any certificate of Shorthand is incorrect. There was no requirement of passing Graduation for appointment. On 16.09.2015, there were two Assistant Registrars who were initially appointed in the year 1983 were having qualification of Higher Secondary School Certificate only who were later on promoted to the post of Deputy Registrar and as such have attained superannuation. The Rules of 1996 relied upon by the petitioner was not even in vogue when the petitioner was initially appointed. These Rules came into force in the year 1996. Therefore, they are not applicable to the case of the petitioner. The DPC has correctly considered the case of the respondent No.2 and has found the petitioner not fit for promotion. Therefore, he was rightly not recommended for promotion to the post of Assistant Registrar. There are no merits in the petition. He has prayed for dismissal of the petition.
10. A rejoinder is being filed by the petitioner to the return filed by the respondents pointing out that the promotion to the post is also a mode of recruitment and unless a person who holds the basic qualification required for the particular

post, he can neither be recruited nor being transferred, nor promoted to that post. The criteria for promotion to a post has to be essentially based upon minimum qualification prescribed for the post in addition to service records in ACRs for last five years. The promotion to the post of Personal Assistant was to be filled by promotion among the qualified Stenographers on merit-cum-seniority basis, if necessary by direct recruitment. The post of Stenographer is to be filled by recruiting through competitive test for which qualified person of High Court and District Court may also be considered. The person eligible to be appointed for the post of Stenographer must be a Graduate from a recognised University and in addition, he must have passed a Shorthand Examination in English from any recognized Board of Shorthand and Typewriting Examination @ 80 words per minute and should have knowledge of Computer Application. Similarly appointment to the post of Personal Assistant requires qualification of Graduate from Recognized University and qualified in English Shorthand from Recognized Board of Shorthand and Typewriting Examination with a speed of 100 words per minute.

11. It is pointed out that the post of Assistant Registrar was created in the year 2009 and Schedule was amended vide notification dated 20.10.2009. According to Clause 4 of Class-II posts of Schedule 'A' under Second Schedule, it has been provided that appointment to the post of Assistant Registrar is to be made by selection from amongst Private Secretary, Section Officer, Librarian and Assistant Editor I.L.R. on the basis of ACRs of last five years, overall performance and working experience in the administrative and judicial branches and on consideration of capability to perform the duties of Assistant Registrar. The respondent No.2 is admittedly not possessing the aforesaid qualification which are prescribed under Rule 9 of Rules of 1996. Therefore, subsequent promotions could not have been made. There is no information provided by the respondent No.1 even when the RTI application has been filed by the petitioner. Educational and Technical qualification were never relaxed in promotion of the respondent No.2 to the post of Private Secretary and Assistant Registrar. There is no order for relaxation of educational and technical qualification in the entire records. Therefore, the promotion of the respondent No.2 to the aforesaid post is *per se* illegal. At the time of taking decision on appeal dated 10.07.2017, the proper facts were not placed before the Appellate Authority. The ground of educational qualification and qualification in shorthand have been completely misconstrued as compared to the post of Assistant Registrar. The petitioner never questioned technical qualification meant for Assistant Registrar. In absence of any

separate order relaxing the educational and technical qualification for the post in question, the respondent No.2 could not have been considered for promotion to the aforesaid post. The respondent No.2 is not even having a qualification to be appointed on the post of Stenographer, therefore, apart from seeking a writ of mandamus, the petitioner is seeking a writ of quo warranto as regards the respondent No.2 who is not having a minimum educational requirement/qualification to hold the post of Stenographer.

12. Heard the learned counsel for the parties and perused the record.
13. From the record, it is seen that the petitioner was appointed on the post of Stenographer on 25.03.1985. The petitioner was having qualification of M.Com, (Post Graduate) Plus English Shorthand Certificate in 100 words per minute and during his service with due permission he has also passed his LLB examination in the year 1993 from Jiwaji University, Gwalior. He was promoted and appointed as a Personal Assistant on 19.01.1988. The respondent No.2 was appointed as a Lower Division Clerk on 21.10.1986. He was having a qualification of Higher Secondary Pass with Typing examination (he was not having any shorthand certificate). In the year 1988, the respondent No.2 was promoted as Stenographer though his performance was not found up to the mark in the departmental examination on 28.12.1988. The respondent No.2 was promoted as Personal Assistant on 08.10.1990. Thereafter on 09.05.1996, the petitioner as well as the respondent No.2 was promoted as Private Secretary. The record indicates that the petitioner was having the seniority over the respondent No.2 since from the very inception in service. His initial appointment was on 25.03.1985 and the initial appointment of the respondent No.2 was on 21.10.1986. His seniority continued till both of them become Private Secretaries. As the seniority of the petitioner was not affected, he has not challenged the initial appointment of the respondent No.2 on the post of Stenographer. However, when Departmental Promotion Committee was constituted for considering the cases for promotion to the post of Assistant Registrar which was convened on 20.07.2016, the petitioner was not found fit for promotion on the ground that ACRs for the last five years were taken note of as per criteria and his ACRs were 'Good' for four years and 'Very Good' for one year, whereas the ACRs of the respondent No.2 were 'Very Good' for four years and 'Good' for one year, therefore, he was promoted to the post of Assistant Registrar. It is the case of the petitioner that the respondent No.2 was not even fulfilling the qualification for appointment to the post of Stenographer and his appointment to the post of Stenographer was *per se* illegal then all the subsequent

promotions which were granted to the respondent No.2 were bad in law, as he does not even have the required qualification of feeder cadre post.

14. By the order dated 08.05.2024 this Court has directed as follows:-

“During the course of the argument it transpired that the very selection of the respondent No.2 to the post of stenographer was faulty. The document produced by the High Court at Page 15 of the application for taking additional documents on record filed on 16.08.2023 is the note-sheet for recommendation for appointment to the post of stenographer. In spite of the fact that the overall performance of all the candidates was not up to the mark, the respondent No.2 was appointed. Therefore, this question is put to the High Court to answer as to how his promotion could have been made in violation of law. The respondent No.2 also to respond to the same. The petition would be heard on this question also.”

Therefore, the writ petition has been heard on this issue also.

15. The initial return filed by the respondent No.1 does not contain the detailed particulars with respect to the initial appointment of the respondent No.2 on the post of Stenographer. However, certain documents were placed before this Court i.e. the minutes of the DPC proceedings which took place in the year 2016. As by way of a rejoinder the very appointment on the post of Stenographer is put to challenge and apart from a writ of mandamus, a writ of quo warranto is also being sought for to the effect that as the respondent No.2 is not having the minimum educational qualification /requirement to hold even a Class-III post, he has been promoted to a Class-I post of Deputy Registrar on 03.08.2019, therefore, the records have been produced by the counsel appearing for the High Court.
16. The additional documents which have been submitted by them along with an application for taking documents on record on 16.08.2023 and the records, point out that on 29.11.1988 a written examination was conducted for the post of a Stenographer. The name of respondent No.2 was recommended for appointment to the post of Stenographer in pay scale of Rs.1290 – 2040/- and after a due process, he was appointed as Stenographer vide order dated 28.12.1988 and thereafter as there was a post vacant for the Personal Assistant at High Court of M.P., Bench at Gwalior, looking to the qualification and experience of respondent No.2, he was recommended for promotion as Personal Assistant. The Rules prevailing at the relevant time were notified on 17.06.1937, in terms of the powers conferred under subSection (4) of Section 242 read with paragraph (b) of Sub Section (2) of Section 241 of Government of India Act, 1935, the Hon’ble Chief Justice of High Court of Judicature at Nagpur have made the following rules for regulating the recruitment and the

conditions of service of the staff attached to the High Court of Judicature at Nagpur which came into force on 01.04.1937. In the said rules the post of Stenographer are placed at Serial No.6 at the Ministerial Service.

17. Rule 4 of the aforesaid Rules speaks of that every candidate for employment in Ministerial Service of the High Court must furnish satisfactory evidence that he :-

“(a) is not over 25 years of age;

(b) is of sound health, good physique and active habits;

(c) is of good character;

(d) holds a university degree, if he is a candidate for a post of translator or clerk in the upper Division;

(e) has passed the High School Certificate or other equivalent examination and holds a certificate in typing of the Central Provinces Typing Board, if he is a candidate for a post in the lower division;

(f) has a sufficient knowledge of Hindi or Marathi;

Evidence on all these points should, as a rule, be furnished by candidates appointed to act temporarily and must be furnished before appointment, or within a month of appointment, when the officiating appointment is likely to lead to permanent employment.”

18. Rule 6 makes the provisions that the Hon'ble Chief Justice may in the case of any candidate or a class of candidate dispense with any or all of the qualifications enumerated in Rule 4; and may further exempt any candidate or class of candidates from the operation of Rule 5.

19. The note-sheets which have been placed on record shows that an application dated 20.09.1988 was filed by Shri H.S. Pateria, Clerk which was placed for consideration which shows that the PUD which was received shows that Shri H.S. Pateria, Lower Division Clerk of this Registry has filed an application stating that he appeared in Stenographer Test held in the month of July, 1988. He become unsuccessful as well as Shri Prashant P. Gade (respondent No.2), his counter-part. At present, he is confident about his performance in English Stenographer. Shri H.S.Pateria requested that if Shri Prashant P. Gade gets an opportunity to re-appear in the test to be commenced in future, he may also be given to contest the same test with Shri Prashant P. Gade.

“Application dated 20.09.88 from Shri H.S.Pateria Clerk to A.C.

(ACC) H.C. Jabalpur put up.

Asstt. (Estd)

*Sd/-
ARK.*

21.9.88

The P.U.D. is an application from Shri H.S.Pateria, Lower Division Clerk of this Registry stating that he appeared in the Stenographer's test held in the month of July 88, and he became unsuccessful as well as Shri Prashant P.Gade, his counter part. At present he is confident about his performance in English Stenography.

Shr Pateria requested that if Shri Prashant P.Gade gets an opportunity to re-appear in the test to be commenced in future, he may also be given to contest the same test with Shri Gade. Submitted for orders.

S.O.(E)

Sd/-
28.9.88

Asstt.(E)

May inform Shri H.S.Pateria LDC that in future if test and interview for the post of Stenographer in the scale of Rs.1290-2200 shall be held his name shall also be included along with Shri P.Gade. LDC?

A.R.(A)

Sd/-

S.O.(E)

3.10.88

Whether Mr. Pateria's performance in the last test was of qualifying standard or much below.

Sd/-

4.10.88

A.R.(M)

May be seen from the linked file.

Sd/-

5.10.88

AR (A)

This is a request by Mr. H.S.Pateria for being permitted to reappear in test with Mr. P.Gade.

His earlier performance on 02.08.88 was much below the expectations while that of Mr.Gade was better.

The requisite improvement in case of Mr. Gade who had been recommended for appointment may be examined just with a view to confirm the standard & the note.

Mr. H.S.Pateria failed in the test. It is not a retest of candidates as such Mr. Pateria can't be permitted to re-appear for test with Mr.Gade, however, whenever general test is taken Mr. Pateria decidedly may apply afresh.

Seen. In view of dearth of good stenographers, chance may be given to Shri H.S.Pateria to appear for the test along with Shri P.P. Gade.

Sd/-

6.10.88

A.R.(M)

Kindly see the order dt. 6.10.1988 on the foregoing notesheet.

Along with Shri P.Gade and Shri H.S.Pateria, S/Shri P.S.Namdeo, Nizamullah and S.Prasad, employees of this Registry also appeared for test in English shorthand conducted on 24.11.1988. A piece of 500 words was selected for dictation. The dictation was given by me @ 100 w.p.m. The test papers were valued by Shri T.P.Shrivastava, Dy. Registrar, and shri V.K.Upadhyay, P.S.to Hon.C.J.

The test papers and the transcriptions made in English by each candidate are submitted for perusal. A perusal of all the papers would show that the overall performance of all the candidates is not upto the mark. However, Shri P.Gadey, LDC of this Registry, who is qualified in English shorthand and who was earlier recommended for

appointment s Stenographer, did somewhat better in comparison to other candidates, in that he has committed few minor mistakes.

If considered proper, he may be recommended for appointment to the post of Stenographer in the scale of Rs.1290-2040.

Submitted for orders.

(S.B.Shrungarpure)

Additional Registrar (M)”

29.11.1988

20. Thereafter the appointment order dated 28.12.1988 was issued to Shri Prashant P. Gade appointing him on the post of Stenographer in the pay scale of Rs.1290-40-1450-50-2050/- by the orders of Hon'ble Chief Justice. The note-sheet dated 06.10.1988 reflects that the application filed by Shri H.S. Pateria was rejected as he has miserably failed in the test conducted for Stenographer, whereas it is noted that his performance was much below expectation while that of Mr. Gade was better. However, the later part of the note-sheet shows that H.S. Pateria was permitted to appear in the test along with Shri P.P. Gade. If the later part of note sheet dated 06.10.1988 is seen then it appears that sentence “*Seen. In view of dearth of good stenographers, chance may be given to Shri H.S.Pateria to appear for the test along with Shri P.P. Gade.*” is in a different hand writing and different fonts and appears to have been inserted subsequently. Thereafter, it is pointed out that the result of test appears that overall performance of all candidates were not up to the mark. However, Shri P. Gade, Lower Division Clerk who is qualified in English Shorthand and was earlier recommended for appointment as Stenographer did somewhat better in comparison to other candidates, in that he has committed a few minor mistakes. Therefore, he may be recommended for appointment to the post of Stenographer. However, the fact remains that all the candidates could not clear the written examination held for the post of Stenographer. Rule 4 of the aforesaid Rules of 1937 stipulates that the candidate must require to furnish satisfactory evidence for employment in a Ministerial service. Rule 4 (d) of Rules of 1937 stipulates that if he is a candidate for the post of Translator or Clerk in Upper Division, he must hold a University degree and Rule 4 (e) of Rules of 1937 stipulates that if he is a candidate for Lower Division Clerk, he has passed the High School Certificate or other equivalent examination and holds a certificate in typing of the Central Provinces Typing Board but the condition No.(e) is only applicable for the post of Lower Division Clerk, whereas for the post of Upper Division Clerk he has to hold a University Degree. In the present case, the respondent No.2 is only a High Secondary Pass without having any Shorthand certificate. The return which is being filed on behalf of the High Court in paragraph 12 reflects that the respondent No.2 possesses the qualification of Higher Secondary only

and despite of that he was promoted as a Private Secretary along with the petitioner vide order dated 06.05.1996. This goes to show that the respondent No.2 was not even having requisite certificates to hold the post of Stenographer. However, certain documents are being filed on behalf of the respondent No.2 to show that his initial appointment on the post of Stenographer was correct. He has placed on record a certificate issued from the National Trade Certificate, Government of India Ministry of Labour pointing out the fact that he has taken training at Industrial Training Institute, Gondia from August, 1984 to July, 1985. However, a subsequent certificate has been issued on 07.06.1996 to the effect that he appeared in the English Shorthand Examination at the rate of 100 words per minute and secured 30 marks out of 50 marks and passed the aforesaid examination but the aforesaid aspect does not find place in the initial certificate which was issued to the respondent No.2 in the year 1988 which has been filed as R/2-4 in the writ petition. Therefore, it is clear that the respondent No.2 is not having any certificate of English Shorthand Examination. How he has obtained the certificate on

07.06.1996 is not explained either by the return filed by the High Court or the return filed by the respondent No.2. On the contrary the note sheet dated 30.11.1988 reflects that the recommendation for the post of Stenographer has been approved by the Hon'ble Chief Justice but the fact remains that whether any relaxation to the qualification has been granted by the Hon'ble Chief Justice is not reflected from the record. There is no note-sheet to show that the Hon'ble Chief Justice has relaxed the qualifications of respondent No.2. The only consideration from the note sheet appears to be that his performance was better in comparison to the other candidates as he has committed lesser mistakes but the fact remains that he was not having qualification to hold the post in question as he was not having English Stenographer Examination certificate. He has filed the training certificate issued from the National Training Institute, but the same does not contain certificate of passing of English Typing Examination.

21. It was argued that the appointment of respondent No.2 on the post of Stenographer was in pursuance to the extraordinary powers exercised by the Hon'ble Chief Justice. The question voiced out that whether any interference in a petition under Article 226 of the Constitution of India can be made in the orders passed by the Hon'ble Chief Justice while exercising his extraordinary powers. The aforesaid question was considered in large number of cases by the Hon'ble Supreme Court.

22. In the case of **Union of India and others Vs. G. Ganayutham** reported in **(1997) 7 SCC 463**, it was held that ground for judicial review are mainly two, namely, 'Reasonableness and Rationality'. Besides this principle of proportionality can also be invoked where the Court is examining whether the restrictions on fundamental freedoms imposed by a Statute are within the Constitutional limits. In this case also referring to earlier judgment of Supreme Court in **Ranjit Thakur Vs. Union of India and others** reported in **(1987) 4 SCC 611**, aspect of proportionality has been dealt with. In para 31, Hon'ble Supreme Court has held as under :-

"31. The current position of proportionality in administrative law in England and India can be summarised as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury [(1948) 1 KB 223 : (1947) 2 All ER 680] test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational — in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU [1985 AC 374 : (1984) 3 All ER 935] principles.

(3)(a) As per Bugdaycay [R. v. Ministry of Defence, ex p Smith, (1996) 1 All ER 257] , Brind [(1991) 1 AC 696 : (1991) 1 All ER 720] and Smith [Cunliffe v. Commonwealth, [(1994) 68 Aust LJ 791] (at 827, 839) (also 799, 810, 821), Australian Capital Tel. Co. v. Commonwealth, 1992 CL p. 106 (at 157) (Aus), R. v. Oake, 1987 Law Reports of Commonwealth 477 (at 500) (Can), R. v. Big M Drug Mart Ltd., (1985) 1 SCR 295 (Can)] as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

23. It is the settled proposition of law that the Hon'ble Chief Justice in pursuance to Article 229 of the Constitution of India can appoint a candidate on any post for proper administration of the High Court and the aforesaid appointment could not be questioned by the Government but the fact remains that whether the exercise of powers under Article 229 of the Constitution can be put to judicial review and can be interfered by judicial pronouncement. The similar question was considered by Delhi High Court in the case of **A.K.Mahajan Vs. Hon'ble the Chief Justice and others (C.W.No.2944 of 1995)** decided on 01.03.2001. In the aforesaid case, the Court has held that the administrative powers held by the Hon'ble Chief Justice can always be reviewed in a judicial proceedings, and finding the amendment to be retrospectively applicable which were adversely affecting the vested rights of the petitioner was quashed in that matter.
24. The application of another candidate Shri M.V.R. Balaji Sharma for appointment to the post of Personal Assistant was taken into consideration and the same was rejected on the ground that he was not qualified in 100 words per minute examination from any Board so far. Thus, he was not eligible to hold the post of Personal Assistant because High Court have been recruiting only qualified English Stenographer who have passed 100 words per minute in English Shorthand from any recognized Board, if not from the Board of Madhya Pradesh. In the present case, there is nothing on record to show that the respondent No.2 has qualified the English Shorthand examination from any of the recognized Board even not from the Board of Madhya Pradesh. The document which has been placed by him along with the record shows that he has obtained a certificate from the Industrial Training

Institute of Government of Madhya Pradesh which shows that he has obtained training from August 1984 to July, 1985. The certificate was issued on 30.08.1985 but the aforesaid does not speak of the fact that he appeared in English Shorthand examination and cleared the same. The respondent No.2 somehow obtained a certificate on 07.06.1996 showing the fact that he has appeared in the English Shorthand Examination at the rate of 100 words per minute and secured 30 marks out of 50 marks and passed the examination. The certificate further shows that since entry to this effect in the original National Trade Certificate could not be made, he has been awarded the certificate separately but the fact remains that he was not having the certificate initially when the appointment to the post of Stenographer was made. He cannot be considered for the post of Stenographer without the certificate of English Shorthand Examination. This goes to show that the initial appointment of the respondent No.2 on the post of Stenographer is per se illegal. Therefore, the same cannot be sustained. It is hereby set aside.

25. The very entry of the Respondent No. 2 into the post of Stenographer is not in accordance with the law. It leads to the irresistible conclusion that the Respondent No.2 was never entitled to be in the post of Stenographer. If the aforesaid be duly established, then the length of service rendered or the many years spent on that post are factors which not only pale into insignificance but are rendered wholly irrelevant. The initial appointment of the Respondent No. 2 as Stenographer is irregular and not in accordance with the Service Rules in force. Therefore, appointments are to be made strictly in accordance with the Recruitment Rules in force. Irregular or illegal appointments can never be a ground to claim permanent absorption or regularisation. The Hon'ble Supreme Court in the case of **State of Karnataka and others vs. Umadevi and other** reported in **(2006) 4SCC (1)** has already enunciated that a person, who was appointed irregularly or illegally, cannot claim any right for permanent absorption.
26. The interpretation of rules cannot be extended in order to violate the principles of Constitution and every statute and rules must be read along with the Constitutional principles to reach its goal and thus, the exercise of power or discretionary power by the authority must be in accordance with the Constitution. The Hon'ble Supreme Court in the case of **State of Odisha v. Sulekh Chandra Pradhan** reported in **(2022) 7 SCC 482** has held as follows:
“34. It is not in dispute that the appointment of all the applicants/respondents/teachers have been made directly by the respective Management without following the procedure as prescribed under the Rules/statute. It is a trite law that the appointments made in contravention of the statutory provisions

are void ab initio. Reference in this respect could be made to the judgments of this Court in *Ayurvidya Prasarak Mandal v. Geeta Bhaskar Pendse* [Ayurvidya Prasarak Mandal v. Geeta Bhaskar Pendse, (1991) 3 SCC 246 : 1991 SCC (L&S) 900], *J&K Public Service Commission v. Narinder Mohan* [J&K Public Service Commission v. Narinder Mohan, (1994) 2 SCC 630 : 1994 SCC (L&S) 723], *Official Liquidator v. Dayanand* [Official Liquidator v. Dayanand, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] and *Union of India v. Raghuwar Pal Singh* [Union of India v. Raghuwar Pal Singh, (2018) 15 SCC 463 : (2018) 2 SCC (L&S) 823].”

27. The Division Bench of this Court in **Abdul Hafeez Khan v. Government of Madhya Pradesh** reported in **1964 SCC OnLine MP**

47 has held as follows:-

“From what has been stated above, it is plain that the President of the Municipal Board had no power under section 48(a) and (e) to appoint the petitioner to the post of an Octroi Superintendent. As reappointment was not made by the Board as required by section 55(3) of the Act, it was illegal. **If the petitioner's appointment could not be regarded as valid and legal, then his reversion to his substantive post of Octroi Inspector, assuming that it was done by the competent authority, cannot amount to imposition of any punishment on him so as to require compliance of any rules with regard to dismissal, removal or reduction in rank of municipal employees.** This is clear from the decision of the Supreme Court in *K.S. Srinivasan v. Union of India* [AIR 1958 SC 419 : 1958 SCR 1295.]. The appellant K.S. Srinivasan in that case held “a quasi-permanent post as Public Relations Officer in the All India Radio”. When the number of posts of Public Relations Officers was reduced to one and the remaining solitary post was filled by a permanent incumbent, Srinivasan's services were terminated. But the Government then appointed him to officiate as Assistant Station Director making the declaration that the post of Assistant Station Director offered to Srinivasan was one as held by him with a quasi-permanent status. This declaration was made without consulting the Union Public Service Commission which consultation was a condition precedent according to the Rules. When the Commission objected to the appointment as irregular and invalid, the Government cancelled its order appointing Srinivasan as Assistant Station Director and offered him an alternative inferior appointment as a matter of grace. Srinivasan refused to accept the lower post of Assistant Press Information Officer which was offered to him and later on challenged the validity of the order of the Government terminating his services by filing a petition under article 226 in the Punjab High Court which was summarily rejected by that High Court. The matter then went to the Supreme Court. The majority of the Supreme Court held that Srinivasan's appointment to the post of Assistant Station Director was itself irregular, unauthorized and invalid; that the Government was right in terminating his services when it discovered its mistake; and that as his appointment was illegal, he was not entitled to any legal right and the termination of his appointment could not, therefore, be said to be an act of punishment. The decision of the Supreme Court in Srinivasan's case (*supra*) is an authority for the proposition that if a man's appointment to a post is itself irregular, unauthorized and

invalid, the termination of such appointment on discovery of mistake in the appointment cannot be said to be an act of punishment.”

28. The next question that voiced out for consideration is that once this Court has already arrived at a conclusion that initial appointment of the respondent No.2 on the post of Stenographer is per se illegal, then whether the subsequent promotions can be granted to him.
29. The respondent No.2 have been promoted to the post of Assistant Registrar in pay scale of Rs.15600-39100 + Grade Pay of Rs.5400/ignoring the seniority of the petitioner. It was pointed out that he does not even fulfill the minimum educational qualification for the post of feeder cadre that is Private Secretary as per the High Court of Madhya Pradesh (Officers & Employees Recruitment and Conditions of Services, Classification, Control, Appeal and Conduct) Rules, 1996 as he is only holding the qualification of Higher Secondary School Certificate Examination where as the minimum qualification to hold the post of a Private Secretary is Graduate with qualification in English Shorthand from a recognized Board of Shorthand and a Typing Examination with a speed of 100 words per minute with further stipulation of preference to Graduation in Law. It is an admitted fact that the respondent No.2 is only having a qualification of Higher Secondary. He has produced a certificate from an Industrial Training Institute of the year 1985 which shows that he has participated in training from August, 1984 to July, 1985 but the fact remains that whether he was having a qualification of English Shorthand or not. The certificate of English Shorthand was first obtained in the year 1996.

There is no explanation on record to the fact that how the certificate of English Shorthand has been obtained by him in the year 1996 correlating the same with the certificate which was issued to him in the year 1985 and whether on the date of consideration of his appointment to the post of Private Secretary he was having a certificate or not. As already considered hereinabove that at the time of appointment to the post of Stenographer the respondent No.2 was not having a minimum qualification, therefore, the same analogy will apply here also. Once he is not having a minimum qualification, he could not have been appointed even to the post of Assistant Registrar. He could not have been considered for grant of subsequent promotions. The comparative chart of the appointment of the petitioner as well as the respondent No.2 along with the qualifications and subsequent promotions is reproduced herewith :-

Date	Petitioner	Respondent No.2
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25.03.1985	Appointed as a Stenographer . The petitioner before appointment was having the qualification of M.Com (Post-Graduate) Plus English Shorthand Certificate in 100 WPM. During service with due permission passed LLB Examination in 1993 from Jiwaji University, Gwalior.	Xx
21.10.1986	Xx	Appointed as Lower Division Clerk and was only Higher Secondary Pass with Typing Examination (No Shorthand Certificate).
19.01.1988	Promoted and appointed as Personal Assistant .	Xx
28.12.1988	XX	Promoted as Stenographer , though not found his performance “ upto the mark ” in the Departmental Examination as reflected from Document No.2 filed by respondent No.1 with I.A. dated 16.08.2023.

08.10.1990	XX	Promoted as Personal Assistant. Order annexed at Page No.21 of I.A. dated 16.08.2023 filed by respondent No.1.
06.05.1996	Promoted as Private Secretary. Order annexed at Page No.33 of I.A. dated 16.08.2023 filed by respondent No.1.	Promoted as Private Secretary. Order annexed at Page No.33 of I.A. dated 16.08.2023 filed by respondent No.1.

30. From the perusal of the aforesaid, it is apparently clear that the petitioner was senior to the respondent No.2 as his initial appointment was in the year 1985. The appointment of the respondent No.2 on the post of Stenographer was on 28.12.1988 despite of the fact that his performance was not upto the mark. On 08.10.1990, the respondent No.2 was promoted on the post of Personal Assistant to which he was not even having the qualification because the certificate of passing of English Shorthand Examination was obtained by him in the year 1996. The same was not a part of the records at the time when the promotion to the post of Personal Assistant was granted to him. In the year 1996 both were promoted to the post of Private Secretary. Till 09.05.1996, the petitioner was shown senior over and above the respondent No.2. In the cadre of Private Secretary, the seniority was fixed by the respondents vide order dated 22.05.1996 and the confirmation to the aforesaid list i.e. Annexure P/7, the petitioner stood at Serial No.3 and the respondent No.2 stood at Serial No.6. The gradation list during the different periods which have been produced with the petition as is reflected from page 23 to 39 clearly shows that the petitioner is always senior to respondent No.2. The High Court of Madhya Pradesh (Officers & Employees Recruitment and Conditions of Service, Classification, Control, Appeal and Conduct) Rules, 1996 came into force which were amended in the year 2009 w.e.f 13.11.2009 and the post of Assistant Registrar was inserted at Serial No.(xviii) in Rule 8 which was to be filled by promotion from among the Private Secretary, Section

Officer, Librarian and Assistant Editor, I.L.R. Rule 9 provides for qualification to the post of various Class-III and Class-II including Private Secretary. The feeder cadre post of Private Secretary for promotion to the post of Assistant Registrar is already having a requisite qualification of Graduate from any recognized University with qualification in English Shorthand from a recognized Board of Shorthand and Typing Examination with speed of 100 words per minute and Graduation in Law will be preferential qualifications. Admittedly, the respondent No.2 was not having the aforesaid qualification. He is only a Higher Secondary Pass with a training certificate from the Industrial Training Institute obtained by him in the year 1985. The certificate of passing of English Shorthand examination was obtained by him in the year 1996. Admittedly, he was not Graduate from any of the recognized University because no such certificate is produced by him. Under these circumstances, he could not have been considered by the DPC for the post of Assistant Registrar in its meeting held on 20.07.2016. Although the criteria for promotion to the post of Assistant Registrar was fixed to be atleast two or more 'Very Good' grading during last five years but the fact remains that atleast educational qualification to the post in question or to the feeder post in question should have been fulfilled by the candidate. The respondent No.2 admittedly is not having the qualification even for appointment to the post of a feeder cadre i.e. Private Secretary then how his case could have been considered for promotion to the post of Assistant Registrar. He may be having ACRs as per the benchmark but the fact remains that he is not possessing qualification even to the feeder cadre that is to the post of Private Secretary. Even otherwise in the DPC held on 20.07.2016, the ACRs which have been taken note of as far as petitioner is concerned were never communicated to him. Although he is having four 'Good' ACRs and one 'Very Good' ACR but in terms of the judgment passed by the Hon'ble Supreme Court in the case of **Dev Dutt** (supra) and **Sukhdev Singh** (supra) all the ACRs are required to be communicated to an employee to enable him to file a representation asking for upgradation of ACRs. In the case of **Dev Dutt** (supra) the Hon'ble Supreme Court has held as under :-

"17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-

communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597] that arbitrariness violates Article 14 of the Constitution.

18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.”

31. In the case of the **Sukhdev Singh** (surpa), the Hon'ble Supreme Court has held as under :-

“8. In our opinion, the view taken in Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR—poor, fair, average, good or very good—must be communicated to him/her within a reasonable period.”

32. It is a settled preposition of law that employee should have the qualification to hold the post.

33. The Hon'ble Supreme Court in the case of **State of M.P. and another Vs. Dharam Bir** reported in **(1998) 6 SCC 165** has considered the fact that required educational qualification for a particular post is must and cannot be relaxed merely on the basis of experience gained by him while working in the department. The relevant portion is as under :-

“32.”Experience” gained by the respondent on account of his working on the post in question for over a decade cannot be equated with educational qualifications required to be possessed by a candidate as a condition of eligibility for promotion to higher posts. If the Government, in exercise of its executive power, has created certain posts, it is for it to prescribe the mode of appointment or the qualifications which have to be possessed by the candidates before they are appointed on those posts. The qualifications would naturally vary with the nature of posts or the service created by the Government.”

34. Recently, the Hon'ble Supreme Court in the case of **Chandan**

Banerjee & Ors Vs. Krishna Prosad Ghosh and Ors (Civil Appeal No.5582 of 2021) vide judgment dated 21.09.2021 has laid down certain principles regarding having educational qualification which are summarised as under :-

“26. The principles which emerge from the above line of precedents can be summarised as follows :

(i) Classification between persons must not produce artificial inequalities. The classification must be found on a reasonable basis and must bear nexus to the object and purpose sought to be achieved to pass the must of Articles 14 and 16.

(ii) Judicial review in matters of classification is limited to a determination of whether the classification is reasonable and bears a nexus to the object sought to be achieved. Courts cannot indulge in a mathematical evaluation on the basis of classification or replace the wisdom of the legislature or its delegate with their own;

(iii) Generally speaking, educational qualification is a valid ground for classification between persons of the same class in matters of promotion and is not violative of Articles 14 and 16 of the Constitution.

(iv) Persons drawn from different sources and integrated into a common class can be differentiated on grounds of educational qualification for the purpose of promotion, where this bears a nexus with the efficiency required in the promotional post;

(v) Educational qualification may be used for introducing quotas for promotion for a certain class of persons; or may even be used to restrict promotion entirely to one class, to the exclusion of others;

(vi) Educational qualification may be used as a criteria for classification for promotion to increase administrative efficiency at the higher posts; and

(vii) However, a classification made on grounds of educational qualification should bear nexus to the purpose of the classification or the extent of differences in qualifications.”

35. Learned Senior Counsel Shri Naman Nagrath appearing on behalf of the respondent No.2 has argued that as the appointment to the post of Stenographer was way back in the year 1988 and almost three decades have been passed, therefore, it will not be feasible to revert him back to the lower post. However, the argument advanced by the learned Senior counsel is directly hit by the judgment passed by the Hon’ble Supreme Court in the case of **Dharam Bir** (supra) and **Chandan Banerjee** (supra) because the respondent No.2 was not fulfilling the required qualification of the post to which he was initially appointed.
36. The uncommunicated ACRs cannot be taken into consideration by the DPC. Under these circumstances, the consideration of ACRs by the DPC which were never communicated to the petitioner, the declaration by the DPC that the petitioner is not found fit for promotion is *per se* illegal. Although the petitioner has been granted promotion subsequently from a subsequent date but he has sought promotion from the date when the DPC has considered the

case of other candidates that is from 11/14.08.2016. The DPC has taken a decision to promote the petitioner to the post of Assistant Registrar vide order dated 02.11.2018 considering the fact that none of ACRs considered by DPC were communicated to the petitioner.

37. Under these circumstances, this petition is allowed. The order passed by the DPC declaring the petitioner to be unfit for promotion in the year 2016 is hereby quashed. The DPC is directed to reconsider the case of the petitioner for promotion to the post of Assistant Registrar from 11/14.08.2016.
38. As far as respondent No.2 is concerned, it is already held hereinabove that he is not having qualification to hold the post of Stenographer from the very inception, therefore, he has to be reverted back. Under these circumstances, the respondent No.1 is directed to pass an order reverting the respondent No.2 to any other post for which he is having qualification. The order appointing him on the post of Stenographer has already been held to be illegal and has been quashed by this Court, therefore, while considering his case for reversion, he has to be placed below the post of Stenographer. The entire exercise be completed within a period of 30 days.
39. The writ petition stands allowed. No order as to costs.

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