

\$~2

\*

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

***Judgment dated 1<sup>st</sup> September, 2016***

+

W.P.(C) 5431/2016

MCD MINISTERIAL STAFF ASSOCIATION (REGD.) & ORS

..... Petitioners

Through: Mr.A.K.Behera, Advocate.

versus

THE DIRECTOR, LOCAL BODIES, NEW SECRETARIAT & ORS

..... Respondents

Through: Thakur Virender Pratap Singh Charak  
with Ms.Shubhra Parashar,  
Mr.Pushpender Singh Charak and  
Ms.Deepa Malik, Advocates for  
R3/SDMC.  
Kumar Rajesh Singh, Standing  
Counsel with Ms.Punam Singh,  
Advocate for R-4/ EDMC.  
Mr.Naresh Kaushik, Advocate for  
R6/UPSC.  
Mr.Sanjoy Ghose, ASC with  
Ms.Pratishtha Vij, Advocate for  
GNCTD.  
Ms.Biji Rajesh and Ms.Aditi Gupta  
for Mr.Gaurang Kanth, Advocate for  
North DMC.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MR. JUSTICE I.S. MEHTA**

**G.S.SISTANI, J (ORAL)**

1. Challenge in this writ petition is to the order dated 28.5.2015 passed by Central Administrative Tribunal (in short '*the Tribunal*') by which

OA No.1935/2015 filed by petitioners herein was allowed but the Tribunal has failed to quash and set aside the Advertisement dated 12.9.2013.

2. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
3. The present petition pertains to the post of Administrative Officer/Assistant Assessor and Collector (hereinafter referred to as 'AO/AA&C') (Post Code 46/2013).
4. The necessary facts, which are required to be noticed for disposal of the present writ petition, are that petitioner no.1 is an Association of Ministerial Staff of Corporations and petitioners no.2 and 4 are directly affected person.
5. As per the petition, petitioners no.2 to 4 have initially joined Municipal Corporation of Delhi as Lower Division Clerks in the year 1979, 1983 and 1995, respectively. Thereafter petitioners no.2 to 4 were promoted to the post of Upper Division Clerk in the years 1990, 1989 and 2001, respectively. In the years 2003 to 2004, petitioners no.2 to 4 were promoted as Head Clerk. Since the respondents did not conduct DPC for filling up the post of Superintendent and AO/AA&C from the year 2002 to 2011, on 6.9.2011 the petitioners submitted representations for filling up the said post. On 23.9.2011, petitioners no.2 to 4 submitted another representation challenging the action of respondents in resorting to direct recruitment by violating the statutory Recruitment Rules and not holding DPC for promotion to the said post of AO/AA&C. On 12.9.2013, the respondents while ignoring the aforesaid representations and statutory Recruitment

Rules, issued advertisement for filling up the vacancies of AO/AA&C by way of direct recruitment despite the fact that in the Recruitment Rules, it has been clearly mentioned that the vacancies of AO/AA&C are to be filled up by promotion, failing which by direct recruitment. Thus, the respondents are not justified in not resorting to promotion by holding DPCs and proceeding further to second mode of recruitment i.e. direct recruitment. Aggrieved by the aforesaid, the petitioner no.1 filed OA No.3883/2013 before the Tribunal, however, the said OA was dismissed as withdrawn on 8.11.2013 with liberty to file a fresh OA. In the meanwhile, respondents have issued a notification dated 2.5.2015 wherein it has been stated that the recruitment process pursuant to the advertisement dated 12.9.2013 would continue and the written test would be held on 31.5.2015. Aggrieved by the advertisement, the petitioners filed OA No.1935/2015 before the Tribunal. The Tribunal vide impugned order dated 28.5.2015 disposed of the OA but did not quash and set aside the advertisement no.3/2013 dated 12.9.2013. The Tribunal while passing the impugned order has also observed that the Notification in respect of Administrative Officers under challenge is valid and in greater public interest. It was also observed that the respondents could continue with their recruitment process under the said Notification as the same was not against the constitutional provisions but it was made clear that the promotional avenues must not be tampered with. Aggrieved by the impugned order, the petitioners filed the present writ petition.

6. Learned counsel for the petitioners submits that the learned Tribunal has failed to take into consideration the Recruitment Rules for the post of AO/AA&C. Counsel further submits that the respondents had published the vacancy notice advertisement no.3/13 dated 12.9.2013 with respect to AO/AA&C (Post Code 46/13) ignoring the representations of petitioners no.2 to 4 and the Recruitment Rules. It is contended that by the said advertisement the respondents intended to fill-up 30 vacancies, the break-up of which is as under:

| Post Code | Name of Post                                          | Name of Department              | UR | OBC | SC | ST | TOTAL | PH | EX SM | SP OR TS |
|-----------|-------------------------------------------------------|---------------------------------|----|-----|----|----|-------|----|-------|----------|
| 46/13     | Administrative Officer/ Asstt. Assessor and Collector | Municipal Corporations of Delhi | 16 | 08  | 04 | 02 | 30    | 01 | -     | -        |

7. Mr.Behera, learned counsel for the petitioner, submits that the main grievance of the petitioners is that the vacancy advertisement dated 12.9.2013 is against the Recruitment Rules. Counsel further submits that as per the Recruitment Rules, the posts are to be filled up by promotion, failing which by transfer or deputation and failing both by direct recruitment. In support of this submission counsel has drawn the attention of the Court to the Recruitment Rules, relevant portion of which reads as under:

*“RECRUITMENT REGULATION FOR THE POST OF ADMINISTRATIVE OFFICER/ASSISTANT ASSESSOR & COLLECTOR*

|    |                                                                         |                                                                                        |
|----|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 11 | <i>Method of recrtd. Whether by direct rectt. or by promotion or by</i> | <i>By promotion failing which by transfer on deputation and failing both by direct</i> |
|----|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------|

|  |                                                                                                |                     |
|--|------------------------------------------------------------------------------------------------|---------------------|
|  | <i>deputation/transfer &amp; percentage of the vacancies to be filled by various methods”.</i> | <i>recruitment.</i> |
|--|------------------------------------------------------------------------------------------------|---------------------|

8. Mr.Behera further submits that the respondents have failed to hold any DPC since the year 2007. It is further submitted that no steps have been taken by the respondents for filling up the posts through transfer or deputation and in the absence thereof this advertisement published is liable to be quashed.
9. Ms.Biji Rajesh, learned counsel appearing on behalf of respondent no.2/North Delhi Municipal Corporation, submits that the Recruitment Rules sought to be relied upon by counsel for the petitioners have since been revised and as per the revised Recruitment Rules dated 17.6.2013, the method of recruitment is 50% by promotion, failing which by direct recruitment and 50% by deputation failing which by direct recruitment.
10. Learned counsel appearing on behalf of respective Municipal Corporations submit that there are total 116 sanctioned posts and even if the appointments are made by direct recruitment, no prejudice would be caused to the rights of the petitioners.
11. We have heard learned counsel for the parties and considered their rival submissions.
12. In this case, the petitioners are aggrieved by the advertisement published by the respondents for filling up the vacancies of AO/AA&C by way of direct recruitment despite the fact that the existing Recruitment Rules provide that the vacancies are to be filled

up by promotion at the first instance and failing which by transfer or deputation and in the eventuality that the post cannot be filled up either by promotion, transfer or deputation, the vacancies are to be filled up by direct recruitment. The petitioners have, thus, prayed for quashing of advertisement so published.

13. The respondents have opposed this petition, firstly, on the ground that the Recruitment Rules, sought to be relied upon by the petitioners, already stand amended. Another objection, which is sought to be raised, is that there are total 116 sanctioned posts and even if appointments are made by direct recruitment based on the advertisement, no prejudice would be caused to the rights of the petitioners.
14. Mr.Virender Pratap Singh Charak, learned counsel for respondent No.3/SDMC has also expressed an apprehension that the department may consider amending the recruitment rules again and thus this order should not come in the way of the department. We have asked Mr.Singh as to whether he has any specific instructions or as to whether there is any proposal on behalf of the respondents to further amend the recruitment rules, the answer is in the negative. We may also add at this stage that even if the respondents propose to amend the recruitment rules to which there can be no bar and the recruitment rules, if amended, would obviously be prospective in nature unless a specific provision is made that the rules would be retrospective in nature. In any case, this issue cannot hold us in passing the order as the writ petition is premised on the existing Recruitment Rules.
15. The Recruitment Rules relied upon by learned counsel for the

petitioners have been extracted in paragraph-7 aforgoing. The amended Recruitment Rules sought to be relied upon by learned counsel for the respondents read as under:-

*“Govt. of NCT of Delhi  
(Urban Development Department)  
9<sup>th</sup> level, C-Wing, Delhi Secretariat  
IP Estate, New Delhi.  
No.13(97)/MB/UD/CC/2011/3065-3074 Delhi dated the 17/6/2013*

### NOTIFICATION

#### ‘SCHEDULE’

#### *RECRUITMENT REGULATIONS FOR THE POST OF ADMINISTRATIVE OFFICER/ASSISTANT ASSESSOR AND COLLECTOR IN NORTH, SOUTH AND EAST DELHI MUNICIPAL CORPORATIONS.*

|     |                                                                                                                                                                 |                                                                                                                                   |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| 1.  | <i>Name of the Post</i>                                                                                                                                         | <i>Administrative Officer/Assistant Assessor and Collector</i>                                                                    |
| 2.  | .....                                                                                                                                                           | .....                                                                                                                             |
| 3.  | .....                                                                                                                                                           | .....                                                                                                                             |
| 4.  | .....                                                                                                                                                           | .....                                                                                                                             |
| 5.  | .....                                                                                                                                                           | .....                                                                                                                             |
| 6.  | .....                                                                                                                                                           | .....                                                                                                                             |
| 7.  | .....                                                                                                                                                           | .....                                                                                                                             |
| 8.  | .....                                                                                                                                                           | .....                                                                                                                             |
| 9.  | .....                                                                                                                                                           | .....                                                                                                                             |
| 10. | <i>Method of recruitment whether by direct recruitment or by promotion or by deputation / absorption and % of the vacancies to be filled by various method.</i> | <i>i) 50% by promotion, failing which by direct recruitment.<br/>ii) 50% by deputation, failing which by direct recruitment.”</i> |

16. Reading of both, the unamended Recruitment Rules and the amended Recruitment Rules, makes it abundantly clear that the vacancies are to

be filled up by promotion. As per the unamended Recruitment Rules all the vacancies are to be filled up by promotion, however, as per the amended Recruitment Rules 50% of the vacancies are to be filled up by promotion failing which by direct recruitment and remaining 50% by deputation failing which by direct recruitment.

17. Looking at both the Recruitment Rules would show that the first option available with the Department is to fill up the vacancies by promotion. Since the respondents have not exhausted the first option available to them it is not open to the respondents to publish an advertisement for direct recruitment.
18. Learned counsel for the petitioners has also drawn attention of this Court to the fact that the advertisement published by the respondents was made on the basis of old recruitment rules for the reason that it pertains to vacancies during the period the old recruitment rules were in force.
19. A reading of the recruitment rules relied upon by learned counsel for the petitioners as also the existing recruitment rules make it abundantly clear that the respondents have failed to comply with the recruitment rules and only after the respondents have been unable to fill up the vacancies either by promotion or by transfer or deputation would the department be entitled to publish the advertisement to fill up the vacancies. Admittedly, the respondents have not complied with the existing recruitment rules. They have also not made any effort to hold any DPC to carry out the promotions. The respondents have also not explored the possibility of recruiting and filling up the vacancies either by transfers or deputation for the reason that the said stage has

not arisen as of now.

20. Consequently, the impugned advertisement issued by the respondents qua the post code 46/13 is quashed. The order passed by the Tribunal is set aside. The present writ petition is allowed. We may add here that the Tribunal has highlighted that the notification/advertisement is of grave public interest and promotional avenues must not be tempered with. The thought, no doubt, is laudable, but is not applicable to the facts of the present case as the recruitment rules cannot be ignored. The respondents are bound by their own recruitment rules which have not been complied with by them. We may also add here that the Tribunal has granted two months time to the respondents to hold DPC for the post in question and if no DPC has been held by the respondents for the said post, the same shall be held by them positively within two months, failing which the Court would be compelled to take a serious view in the matter.
21. Writ petition stands disposed of in the above terms.

**G.S.SISTANI, J**

**I.S.MEHTA, J**

**SEPTEMBER 01, 2016**

*msr/'dc'*