

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Krishna Rao

FMA 857 of 2021

With

CAN 1 of 2021

CAN 2 of 2022

The Registrar General, High Court at Calcutta & Ors.

Versus

Bappa Chakraborty

With

MAT 240 of 2022

With

CAN 1 of 2022

Mina Samaddar & Ors.

Versus

Bappa Chakraborty & Ors.

Mr. JaydipKar

Mr. S. Banerjee

.....For the Appellants in FMA 857 of 2021

Mr. Arunava Ghosh

Mr. Anindya Lahiri

Ms. Pranati Das

Mr. Arkadipta Sengupta

.....For the Appellants in MAT 240 of 2022

Mr. Sambuddha Dutta

Mr. Chandra Sekhar Banerjee

Mr. Shamit Dutta

.....For the respondent no. 1 in MAT 240 of
2022 & FMA 857 of 2021

Heard on : 18.04.2022

Judgment on : 26.08.2022

Krishna Rao, J.:- This appeal is directed against the order passed by the Ld. Single Judge in WPA No. 23331 of 2019 dt. 08.03.2021 wherein and where under the Ld. Single Judge has directed the High Court Administration to conduct a separate and independent written test for the petitioner to participate in the aforesaid promotion process from the post of Assistant Registrar to Deputy Registrar. If, the petitioner succeeds in such written test and the interview thereafter and he shall be afforded promotion. This Court is not inclined to interfere with the next promotional process from the post of Deputy Registrar to the post of Joint Registrar.

On 04.2.2019, the Joint Registrar, General Administration, High Court at Calcutta issued a notice upon 15 Assistant Registrars to appear at a selection process, to be conducted by the High Court Selection Committee in connection with assessing the performance of the candidates for selection to the three (3) vacant posts of Deputy Registrars in the General Administration of the High Court at Calcutta created for smooth functioning of Commercial Appellate Division, for the purpose of digitization project of disposed of as well as pending case records of the High Court at Calcutta and setting up of a separate vigilance wing under the Registry of the Calcutta High Court schedule to be held on 12.12.2019 and 13.12.2019 at 05:00 p.m. onwards.

In the said notice, it is further mentioned that the selection shall comprise a written test carrying 30 (thirty) marks scheduled to be held on

12.12.2019 and viva voce/interview of 10 (ten) marks to be held on 13.12.2019 and 10 (ten) marks are to be allotted for their service records. In the said notice, syllabus of written test was also indicated which are as follows:-

- i) *Overall concept about the duties and responsibilities of Deputy Registrars.*
- ii) *General knowledge about High Court affairs.*

Out of the 15 Assistant Registrars, two Assistant Registrars namely Jaladhar Puil and Shri Sukumar Bag have submitted their unwillingness to appear in the said selection process and accordingly instead of the said two Assistant Registrars, another two Assistant Registrars namely Pratap Kumar Mondal and Shri Debashis Bhattacharjee – II were considered to appear in the said selection process vide notice dt.09.12.2019.

Being aggrieved with the notice dt. 09.12.2019, the respondent herein had submitted a representation on 10.12.2019 and prayed for a direction to allow all the willing incumbents of Assistant Registrars to participate in the selection process in terms of Calcutta High Court Service (Appellate Side) Categorization of Posts, Channels of Promotion and Principles of Seniority Rules, 1986.

As the request of the respondent was not considered and accordingly the respondent had preferred writ application being WPA No. 23331 of 2019 before the Ld. Single Bench.

The Ld. Counsel for the appellant submits that the Hon'ble Selection Committee comprising of three Hon'ble Senior Judges of this Court have

taken the decision to permit 15 candidates from the feeder post of Assistant Registrars to participate in the selection process for filling up three vacant posts of Deputy Registrars in the General Branch of this Court as per the provisions laid down under the Normal Zone of Consideration for Promotion Rules, 1982 under Article 229 (2) of the Constitution of India, which is still subsisting. It is further contended that the Calcutta High Court Service (Appellate Side) Categorization of Posts, Channels of Promotion and Principle of Seniority Rules, 1986 cannot be construed, read or interpreted in a manner so as to render the Normal Zone of Consideration for Promotion Rules, 1982 framed under Article 229 (2) of the Constitution of India completely nugatory or otiose.

Ld. Counsel for the appellant further submits that the Normal Zone of Consideration for Promotion Rules, 1982 and the Calcutta High Court Service (Appellate Side) Categorization of Posts, Channels of Promotion and Principle of Seniority Rules, 1986 operates in two different fields mutually exclusive to each other and there is no conflict in between the said Rules. It is further contended that by the reason of mandates of the Normal Zone of Consideration for Promotion Rules, 1982 framed under Article 229 (2) of the Constitution of India, the respondent had no manner of right to participate in the selection process for promotion to the post of Deputy Registrar in the General Branch of the Hon'ble High Court having not been able to come within the first 15 Assistant Registrars in descending Order of Seniority.

Ld. Counsel for the appellant further submits that there is no conflict in between the provisions laid down under the Normal Zone of Consideration for Promotion Rules, 1982 and the Calcutta High Court Service (Appellate

Side) Categorization of Posts, Channels of Promotion and Principle of Seniority Rules, 1986, both the Rules ought to have been adhered to while filling up the vacant post of Deputy Registrars borne in the General Branch of High Court by way of promotion from the feeder post of Assistant Registrars. It is further contended that a combined reading of the rules framed in 1982 and 1986 had required the High Court Administration to first fix and restrict the Zone of Consideration for Promotion to the relevant posts and then to fill up such posts strictly on the basis of inter-se merit of the candidates, who had come within the Zone of Consideration.

Ld. Counsel for the appellant also submits that the respondent himself is a beneficiary to the Normal Zone of Consideration for Promotion Rules, 1982 and had been promoted to the post of Assistant Registrar from the post of Section Officer by application of the said Rules.

Per contra, Ld. Counsel for the respondent submits that the appellants have not complied with the Calcutta High Court Service (Appellate Side) Categorization of Posts, Channels of Promotion and Principle of Seniority Rules, 1986 by restricting for considering the candidature of only 15 Assistant Registrars on the basis of Seniority by not allowing all 40 Assistant Registrars to participate for promotion to the Post of Deputy Registrar. It is further contended that the appellants have wrongly taken into consideration the 1983 notification by taking the ratio of 1:5. The Counsel for the respondents submits that there are 40 candidates in the feeder post and when the merit is the only criteria to be followed for the purpose of promotion, the High Court Administration was not justified by

inviting only 15 persons to participate in the selection process on the basis of seniority.

Ld. Counsel for the respondent further submits that the High Court Administration has acted in a most mala fide, high handed and arbitrary manner with ulterior motive to deprive the petitioner of his due promotion. It is further contended that the authorities have not given an opportunity of hearing to the respondent to present his case before the concerned authority.

About 11 Assistant Registrars have also filed an application being CAN No. 1 of 2022 seeking leave to appeal against the impugned order. The Ld. Counsel appearing for the 11 Assistant Registrars submits that only in the month of February, 2022 they came to know that the respondent herein had preferred the writ petition being WPA No. 23331 of 2019 by challenging the notification dt. 14.12.2019 and when the applicants came to know about the same have applied for the certified copy of this order passed by the Ld. Single Judge. It is further contended that while applying the Principle of Zone of Consideration in the feeder post of Deputy Registrar, the Ld. Single Judge failed to appreciate that all other Assistant Registrars who are Senior in Service to the respondent would be prejudicially affected in case the respondent is granted an opportunity to participate in the written test for promotion to the Post of Deputy Registrar.

The Ld. Counsel for the applicants submits that the criteria for promotion as enumerated in the Rule, the concept of seniority cum merit as has been prevailing cannot be overlooked since the Normal Zone of Consideration for Promotion Rules, 1982, are Special Rules formulated by

invoking Article 229 (2) of the Constitution of India. It is further contended that the Rules being Normal Zone of Consideration for Promotion Rules, 1982 operate in a special field and cannot be negated by application of a *non obstante* clause contained in the subsequent Rule which is general in nature.

It is further contended that the prevailing procedure for promotion on the basis of seniority cum merit is maintaining parity with the incumbents of the feeder posts.

Heard, the Ld. Counsel for the respective parties, considered the documents available on record. For the purpose of adjudication Rule of 1982 and 1986 are set out:

“1986
High Court, Appellate Side
Calcutta
NOTIFICATION

No. 9358 (1)-G
1986

The 28th August,

Whereas I am satisfied that the provision in the Rules for categorisation of Posts, channels of Promotion and principles of seniority of the staff on the Appellate Side of this Court will promote the interest of justice and equity and will be conducive to good administration, I, the Chief Justice, in exercise of the power vested in me under Article 229 (2) of the Constitution of India, do hereby make, the following rules.

RULES

Name 1 (1) These Rules shall be called the “Calcutta High Court Service (Appellate Side) Categorisation of posts, channels of Promotion and Principle of Seniority Rules 1986.

These Rules shall come into force with immediate effect.

Notwithstanding anything contained in any other Rules or orders these Rules shall apply to all present or future holders of the posts mentioned in the schedule ‘A’ to these Rules.

(2)(1) The service in the Appellate Side of the Court shall consist of two Branches, viz, the General Branch and the Technical Branch, Each Branch shall consist of posts mentioned in Schedule ‘A’ to those

rules Provided that the Chief Justice may interchange or transfer posts from one branch to the other and modify Schedule 'A', accordingly.

2(a) General branch consists of posts which involve duties and work of clerical nature.

(b) Technical Branch (Part-I) shall consist of posts which involve duties and work of Stenographical nature and requires knowledge of Shorthand and Typewriting.

(c) Technical Branch (Part-II) shall consists of posts which involve specialized knowledge of Library Management, and require a Librarian Degree or Diploma and preferably also LL. B. Degree.

3(1) Subject to orders of Chief Justice, no person holding a post in the General Branch of the service may be appointed by way of transfer to any post in the Technical Branch and vice versa.

3(2) Initial recruitment in either of the branches of the service shall ordinarily be made to the basic posts of the respective Branches mentioned in Schedule 'A' to these Rules.

4. The channel of promotion shall be from the loser to the next higher category as mentioned in Schedule 'A'. Provided that the Chief Justice may in his discretion give jump promotion to an official of exceptional merit.

5(1) The Criteria of promotion to posts in the category of Upper Division Assistant and Superintendent Grade-II in the General Branch and to the category of Assistant Court Officer in Technical Branch, Part-I and to the category of Centenary Librarian or Librarian in Technical Branch part-II shall be seniority subject to rejection of the unfit.

5(2) Subject to Rule 5 (93) the criteria for promotion to all other higher promotional posts shall be Merit-cum-Seniority.

5(3) The criteria from promotion to selection or to Super Selection Grade posts shall be merit only.

Determination of Seniority of District Recruits

(i) The inter-se-seniority of District Recruits selected through competitive examination or interview shall be determined by the order of merit in which they are placed in the select list. Persons appointed on the result of an earlier selection shall be senior to those appointed on the result of a subsequent selection.

Provided that where appointment of persons initially made otherwise than in accordance with the relevant recruitment rules is subsequently regularized by the order of the Chief Justice, seniority of such person(s) shall be determined ordinarily from the date of regularization unless stated otherwise by a Special order by the Chief Justice.

Provided further that if any person selected for appointment to any post does not join within two months of the Offer of appointment, his seniority shall count from the date on which he joins the post, unless the delay is condoned by the Chief Justice.

Note (1) A select list of candidates in order of merit shall be prepared by the selecting authority in all cases of recruitment in a single process for more than one vacancy and the same shall be published.

Note (2) where the inter se seniority amongst several persons has not been determined prior to the coming into force of these rules, be determined, on the basis of actual dated of their joining. When the date of joining of all such persons is the same, seniority shall be determined on the basis of date of birth, person senior in age being adjudged as senior, when the date of birth is the same seniority shall be determined on the basis of total marks obtained by each in the examination, passing of which is the qualification prescribed for recruitment to the particular post.

Determination of Seniority of promotes

6(20(a) Seniority of persons appointed on promotion to any post shall be determined from the date of joining the post.

(b) In case of appointment in a single process of selection of more than one person, their inter as seniority shall be determined by the order in which they are placed in the sale list prepared for such promotion.

(c) Persons appointed on the result of an earlier selection be senior to those appointed on the result of a subsequent selection.

Note : Where the inter as seniority amongst several promotes has not been determined prior to the coming into force of those rules, such seniority shall, on the coming into force of these rules, be determined on the basis of the joining, when the date of joining of such persons is the name, seniority in the promotion post shall follow the seniority in the lower feeder post.

7(1) The post of Committee Clerk in the General Branch shall be filled by promotion from the incumbents to the post of G.A. of the U.D.A Category.

7(ii) The avenue of promotion of the post of Committee Clerk shall, notwithstanding any other rules to the contrary, be to the post of Assistant Registrar (Court) only and later on the higher category posts in this Technical Branch Part – I.

(iii) A Translator, promoted out of turn, will have to wait for his promotion to the post of Superintendent Grade-II other than the Senior Translator, till the L.D. Assistant Category who was just above him in the Lower Division Category considered for promotion. Similarly in the

case of the Senior Translator, he will have to wait for promotion to the next higher post till his senior just above him in the basic category of L.D. Assistant is considered for such promotion.

8. There shall be prepared a Branch wise and Category wise Gradation List of staff on the basis of the principles enumerated herein above and it shall be kept continuously revised,. The gradation list shall be published every five years.

9. The requisite qualification for the post of Stamp Reporter shall be a LL.B. degree.

Provided that when no qualified person is available in the fonder posts, the senior most person in U.D. Assistants Category having a LL.B. Degree may be considered for appointment to the post of stamp Reporter.

10. Promotion to the post of Translators shall be subject to passing of the prescribed qualifying test. Such appointments shall be made from the select list of successful candidates prepared according to their length of service in the basic category.

11. Appointment to the post of either of Court Keeper or Additional Court Keeper of both may as far as possible, be made from serving or retired personal belonging to the Defence Services of the Police Services.

12. Appointment to the post of General Assistant shall made from the select list prepared from the L.D. Assistant subject to the prescribed qualifying service as well as a qualifying list and according to their length of service in the Basic Category.

The 28th August, 1986

Satish Chandra

Chief Justice.

Schedule "A"

Sl. No, Of posts	General branch Posts		Category
1.	Lower Division Assistant	:	1. Basic Category (1)
2.	Upper Division Assistant (including General Assistant to Deputy registrar and Assistant Registrar-I	:	2. Upper Division Assistant Category (2,3,4,5 & 6)
3.	Court Clerk		
4.	Technical Assistant		
5.	Translator		
6.	Commissioner of Affidavit		
7.	Superintendent	:	

8.	Editor		3. Superintendent
9.	Senior Translator		Gr-II Category (7,
10.	Clerk to L.D. = II		8, 9, 10 & 11)
11.	Committon Clerk		
12.	Accountant	:	4. Superintendent
13.	Additional Accountant		Gr-I Category
14.	Cashier		(12, 13, 14 & 15)
15.	Special Assistant (Legal)		4(a) Section Officer
15(a)	Section Officer		
16.	Court Keeper		5. Court Keeper
17.	Additional Court Keeper		Category (16 & 17)
18.	Stamp Registrar		
19.	Additional Stamp Registrar		6. Selection Grade
20.	Superintendent Grade-I		Category (18, 19, 20, 21
21.	Assistant Registrar		& 22)
22.	Special Officer		
23.	Deputy Registrar	:	7. Super Selection Grade
			Category (23).

Technical Branch (Part-I) posts

Category

1.	Stenographer to Hon'ble Justice	:	1, Basic Category (1,
2.	Stenographer to Registrar		2, 3 & 4)
3.	Stenographer to Addl. Registrar		
4.	Stenographer to inspecting Judicial Officers,		
5.	Assistant Court Officer	:	2. Promotion Category.
6.	Assistant Engineer (Court)	:	
7.	Deputy Engineer (Court)	:	3. Selection Grade Category.
8.	Secretary to the Hon'ble the Chief Justice		4. Super Selection Grade Category.

Technical Branch (Part – II) Posts:

1.	Assistant Librarian	:	1. Basic Category
2.	Cantenary Librarian	:	
		:	2. Promotional
3.	Librarian	:	Category (2 & 3)

Satish Chandra
Chief Justice
28.8.86

“NOTIFICATION

No. 8055G – 11th July, 1983 – In exercise of the powers vested under Article 229 (2) of the Constitution of India. I do hereby make the rules of the governance of the members of the staff of the High Court.

Rules

1. Short title and commencement – (a) These rules may be Normal Zone of Consideration for Promotion Rules, 1982.

(b) These rules shall take effect from the 22nd October, 1982.

2. Normal zone of consideration in respect of promotion - Notwithstanding anything contained in any rules on procedure regulating the recruitment service or post under the High Court, Calcutta, by promotion normal consideration in respect of promotion to such service or post shall such of the employees eligible for promotion to such service or post to the rules of procedure regulating the recruitment thereto as occasional arranged in descending order of the seniority, five times the number or vacancies actually available for filling up by promotion at the consideration.

Provided that the selecting authority or the appointing authority the discretion to consider further cases of eligible officers. In the event availability of the requisite number of suitable officers within the time of consideration.

Note – In cases where a group of posts (service having separate lists are prescribed in the recruitment rules as feeder posts (service for to another higher post (service the zone of consideration shall consisting the vacancies actually available in the promotion post (service at the consideration in each group of feeder post (service, if available.

*T.K. Basu
Acting Chief Justice”*

In order to fill up three posts of Deputy Registrars in the General Branch, Calcutta High Court, a Committee was constituted consisting of three senior most judges of this High Court and the Selection Committee in its meeting held on 02.12.2019 have taken a decision to permit 15 candidates from the feeder post of Assistant Registrars to participate in the selection process in terms of Normal Zone of Consideration for Promotion

Rules, 1982 framed under Article 229 (2) of the Constitution of India. As per the decision of the Selection Committee, 15 names of the Assistant Registrars were published in the notice dt. 04.12.2019 and after publication of the said notice, two of the Assistant Registrars have expressed unwillingness for appearing in the selection process and accordingly, other two Assistant Registrars coming next in the order of seniority in the Cadre of Assistant Registrars have been included in the list for participation in the selection process for the post of Deputy Registrar.

The question in the instant appeal is whether the decision of the Selection Committee by permitting only 15 candidates from the feeder post of Assistant Registrars to participate in the selection process in terms of Normal Zone of Consideration for Promotion, Rule 1982 inspite of the Rule namely, Calcutta High Court Service (Appellate Side) Categorization of Posts, Channels of Promotion and Principle of Seniority Rules, 1986 is legal or not.

Prior to the notification of 1986 Rule, there was a Rule of 1982. In the Rule of 1982, it is provided that *“Normal Zone for Consideration in respect of Promotion – Notwithstanding anything contained any Rule of Procedure regulating the recruitment service or post under the High Court, Calcutta, by Promotion Normal Consideration in respect of promotion of such service or post shall such of the employees eligible for promotion to such service or posts to the Rule of Procedure regulating the recruitment thereto as occasional arranged in descending order of seniority, five times the number or vacancies actually available for filling up by promotion at the consideration.”*

In the Rule of 1986, it is provided that: *“Notwithstanding anything contained in the other Rules or Orders, these Rules shall apply to all present or future holders of the posts mentioned in the schedule ‘A’ to this Rule.”*

Rule 5 (3) reads as follows:-

“The criteria for promotion to selection or Super Selection Grade post shall be merit only.”

As per Rule 1986, the post of Deputy Registrar is of Super Selection Grade.

In the case reported in (1992) 1 SCC 335 (R. S. Raghunath –vs- State of Karnataka & Ors.) it held that:

“8. I have already noted that even in the General Rules the promotion by selection is provided for and if there are any Special Rules in that regard they are not abrogated except by an express repeal.

10. The very question was considered by the Hon’ble Karnataka High Court in Muniswami –vs- Superintendent of Police, in the said case also the same General Rules and particularly Rule 3 (2) inserted letter came up for consideration. The Special Rules where that of Karnataka State Police State (Recruitment) Rules, 1967. The Director General of Police issued a circular for the purpose of recruitment of had constable on purely seniority cum merit basis. It was contended that the post of Head Constables have to be filled up by promotion by selection as provided in the Special Rules and Rule 3 (2) of the General Rule cannot have an overriding effect inspite of a non obstante clause. The Division Bench of the Karnataka High Court held that sub Rule (2) of Rule 3 which is an amendment to the General Rules cannot be treated as an amending all other Special Rules of recruitment of all other departments of Government in General. It also further observed that this amendment to the General Rules 1 (3) of the Rules and cannot be read as enlarging the scope. This Judgment rendered by the High Court in the year 1986 has become final. The fact that the State did not appeal or repeal the Special Rule suitably inspite of the decision clinchingly shows that it accepted this position.”

In Chandavarkar Sita Ratna Rao –vs- Ashalata S. Guram reported in (1986) 4 SCC 447 the scope of *non obstante* clause is explained in the following words:-

“67.A clause beginning with the expression ‘notwithstanding anything contained in the Act or in some particular provision in the Act or in any law for the time being in force, or in any contract’ is more often then not appended to a Section in the beginning with a view to give the enacting part of the Section in case of conflict and overriding effect over the provisions of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that inspite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment.”

In the case reported in (2005) 2 SCC 271 (Nathi Devi –vs- Radha Devi Gupta), the Hon’ble Supreme Court held that:

“13. The interpretive function of the Court is to discover the legislative intend. It is trite that in interpreting a statue the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of consequences. Those words must be expounded in their natural and ordinary sense. When the language is plain and unambiguous an admits only one meaning, no question of construction of statue arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the result are injurious or otherwise, which may follow from giving effect to the language used. If the word used as capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consisting with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statue has a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statue unconstitutional.

14.It is equally well settled that in interpreting a statue, efforts should be made to give effect to each and every word used by the legislature. The Court always presumed that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of statue should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors.

15. It is well settled that literal interpretation should be given to a statue if the same does not leave to any absurdity.”

In the judgment reported in (2008) 9 SCC 763 (K.S.L Industries Limited –vs- Arihent Threads Limited &Ors.) held that:

“89. From the above discussion, in my judgment, the law is fairly well settled. A provision beginning with non obstante clause (Notwithstanding anything inconsistent contained therein in any other law for the time being in force) must be enforced and implemented by giving effect to the provisions of the Act and by limiting the provisions of other laws. But, it cannot be gainsaid that sometimes one may come across to or more enactments containing similar non obstante clause operating in the same or similar direction. Obviously, in such cases, the Court must attempt to find out the intention of the legislature by examining the nature of controversy, subject of the Act, proceedings initiated, reliefs sought and several other relevant considerations.

90. From the case law referred to above, it is clear that courts have applied several workable test. They, inter alia, include to keep in view whether the Act is ‘General’ or ‘Special’, whether the Act is a subsequent legislation, whether there is reference to the former law and the non obstante clause therein. The above tests are merely illustrative and by no means they should be considered as exhaustive. It is for the Court when it is called upon to resolve such conflict by harmoniously interpreting the provisions of both the competing statutes and by giving effect to one over the other.”

In the case reported in (1985) 4 SCC 417 (Ashok Kumar Yadav & Ors. –vs- State of Haryana & Ors.) the Hon’ble Supreme Court held that:

“20. We do not think that the selection made by Haryana Public Service Commission could be said to be vitiated merely on the ground that as many as 1300 and more candidates representing more than 20 times the number of available vacancies were called for interview, though on the view taken by us that was not the right course to follow and more than twice or at the highest thrice, the number of candidates should have been called for interview. Something more than merely calling and unduly large number of candidates for interview must be shown in order to invalidate the selection made. That is why the Division Bench relied on the comparative figure of marks obtained in the written examination and at the viva voce test by the petitioners, the first 16 candidates who topped the list in the written examination and the first 16 candidates who topped in the list on the basis of the combined marks obtained in the written examination and the viva voce test, and observed that these figures showed that there was reasonable livelihood of arbitrariness and bias having operated in the marking at the viva voce test. Now, it is true that some of the petitioners did quite well in the written examination but fared badly in

the viva voce test and in fact their performance at the viva voce test appeared to have deteriorated in comparison to their performance in the year 1977-78. Equally, it is true that out of the first 16 candidates who topped the list in the written examination, 10 secured poor rating in the viva voce test were knocked out of the reckoning while two also got low marks in the viva voce test but just managed to scrap through to come within the range of selection. It is also true that ought of the first 16 candidates who topped the list on the basis of the combined marks obtained in the written examination and the viva voce test, 12 could come in the list only on account of high marks obtained by them at the viva voce test, though the marks obtained by them in the written examination were not of sufficiently high order. These figures relied upon by the Division Bench may create a suspicion in once mind that some element of arbitrariness might have entered the assessment in the viva voce examination. But suspicion cannot take the place of proof and we cannot strike down the selection made on the ground that the evaluation of merit of the candidate in the viva voce examination might be arbitrary. It is necessary to find out that the Court cannot sit in the judgment over the marks awarded by interviewing bodies unless it is proved or obvious that the marking is plainly and indubitably arbitrary or affected by oblique motive. It is only if the assessment is patently arbitrary or the risk of arbitrariness is so high that a reasonable person would regard arbitrariness as inevitable, that the assessment of marks at the viva voce test may be regarded as suffering from the voice of arbitrariness. Moreover, apart from only 3 candidates, namely Trilok Nath Sharma, Shakuntala Rani and Balbir Singh one of whom belonged to the General Category and was related to Shri Raghubar Dayal Gaur and the other two were candidates for the seats reserved for Scheduled Castes and were related to Shri R. C. Marya, there was no candidate in whom the Chairman or any member of the Haryana Public Service Commission was interested, so that there could be any motive for manipulation of the marks at the viva voce examination. There were of course general allegations of casticism made against the Chairman and the members of the Haryana Public Commission, but these allegations were not substantiated by producing any reliable material before the Court. The Chairman and member of the Haryana Public Commission in fact belonged to different castes and it was not as if any particular case was pre dominant amongst the Chairman and members of the Haryana Public Commission so as even to remotely justify and interference that the marks might have been manipulated to favour the candidates of that caste. We do not think that the Division Bench was right in striking down the selections made by the Haryana Public Commission on the ground that they were vitiated by arbitrariness or by reasonable livelihood of bias.”

In the case reported in (1985) (supp) SCC 7 (V. J. Thomas & Ors. –vs- Union of India & Ors.), the Hon’ble Supreme Court held that:

“13. If by 1982, more than 4000 Junior Engineers of pre-1973 batch had become eligible to take the examination and if the accumulated number of vacancy was around 300, it is difficult to accept the submission of Mr. Ramamurti that everyone who has just put in five years of service must be permitted to take examination. It is a known principle of service jurisprudence that even though minimum eligibility criteria is fixed enabling one to take the examination yet the examination can be confined on a rational basis to recruits upto a certain numbers of years. That constitutes reorganization of long experience and not permitting some irate junior to score a march. If by 1982, nearly 4000 Junior Engineers of pre-1973 batches had become eligible for taking competitive examination, the department would be perfectly justified in keeping the examination open only to persons who have put in such long service and leaving others to wait for the next examination. If for taking examination this aspect introduces classification, it is based on rational and intelligible differencea which has a nexus to object sought to be achieved. By the note, for a period of two years only pre-1973 Junior Engineers who had cleared qualifying examination were given a chance to take competitive examination. If this introduces, a classification, it is valid. It caters to a well known situation in service jurisprudence that there must be some ratio of candidates to vacancies. And it is based on long experience as a rational basis for classification. Viewed from this angle we find nothing in the policy under laying the note to clause (4) as being either discriminatory or arbitrary or denying equality of opportunity in the matter of promotion. It had the desired effect of not heavy a glut of Junior Engineer taking examination compared to fewer number of vacancies. Length and experience were given reorganization by note. The promotion can be thus by stages exposing the promotional avenue gradually to persons having longer experience. This seems to be the policy under laying the note and we see nothing improper or unconstitutional in it.”

In the case reported in (2013) 16 SCC 702 (Duddilla Srinivasa Shamra & Ors. –vs- V. Chrysolite), the Hon’ble Supreme Court held that:

“10. We may record, at the out set that the general observation of the High Court in the impugned judgment to the effect that short listing of the applicants could not be on the basis of higher qualification, may not be correct. In this behalf we may refer to the judgment of this Court in S. B. Mathur –vs- Chief Justice of Delhi High Court. That was a case of departmental promotion. However, Zone of Consideration was limited to a multiple of 3 to 5 times of the number of vacancies. This creation was upheld. The test let down was the creation adopted should be reasonable based on the rational and intelligible differencea which has a nexus to the object sought to be

achieved. The justification given by this Court in adopting such a course of action is found in the following passages from the judgments:

“20. In the case before us, Zone has been restricted by prescribing that out of the total numbers of candidates who satisfy the eligibility requirement, the Zone of Consideration is limited to a multiple of 3 to 5 times of the number of vacancies and the persons to be considered will be determined on the basis of the seniority in the combined seniority list. It appears to us that there is nothing unreasonable in this restriction. It was open to the Delhi High Court to restrict the Zone of Consideration to a multiple of the number of vacancies and basing it on seniority according to the combined seniority list, in our view, cannot be regarded as arbitrary or capricious or mala fide. Nor can it be said that such restrictions violate the principle of selection on merit because even experience in service is relevant consideration in assessing merit. We may also refer, in this connection, to the decision of this Court in *V. J. Thomas –vs- Union of India* where it has been pointed out that even though minimum eligibility criteria for enabling one to take the examination, yet the examination can be confined on a rational basis to recruits up to a certain number of years. In adopting such a policy which underlay the note to clause (4) of the Appendix I to the new Rule in question, there is nothing which is arbitrary or amounting to denial of equal opportunity in the matter of promotion. It had the desired effect of not having the glut of Junior Engineer taking examination compared to fewer number of vacancies. Length and experience were given reorganization by the notes. The promotion can be thus by stages exposing the promotional avenue gradually to persons having longer experience. This seems to be the policy underlying the note and there was nothing arbitrary or unconstitutional in it. Such a limitation caters to a well known situation in service jurisprudence that there must be some ratio of candidates to vacancies. If for taking an examination this aspect of classification is introduced, it is based on the rational and intelligible difference which has a nexus to the object sought to be achieved. In view of what we have pointed out, the submissions of Mr. Thakur in this connection must also be rejected.”

11. Therefore, what follows from the above is that whenever the particular criterion for short listing is adopted, the validity thereof is to be examined keeping in view whether the same is rational and having nexus with the objective sought to be achieved. It would depend on the facts and circumstances of each case as to whether a particular criteria is valid or not. At the same time, it is also becomes clear that whenever there is a particular provision of shortlisting the candidates in the Rules or instructions, then the shortlisting is to be resorted to in accordance with the criterion mentioned in those rules or instructions.”

In the judgment reported in (2009) 12 SCC 62, the Hon'ble Supreme Court held that:

“20. We must observe that the said para 24 of Rangadhamaiah case is being interpreted in an erroneous way. It is clear language that were the amendment, having retrospective operation, which has the effect of taking away a benefit already available to the employee, then such a provision is arbitrary, discriminatory and violative of the rights guaranteed under Article 14 and 16 of the Constitution of India.

21. Now, we find no discussion in the whole judgment of the High Court as to what was the benefit which was available to the said employee. The High Court has observed that the benefit of consideration, which was available to the writ petitioner 8 prior to the retrospective amendment of the rules, in our opinion, this is an in correction notion. There can be no benefit of consideration. To be considered is a right of employee but merely being considered, in itself, is not a benefit as it may or may not result in the selection of promotion of an employee and hence it is in the nature of chance. A mere chance of promotion being effected by amendment is in our opinion inconsequential.

22. This Court has time and again held that since promotion is not a right of the employee, a mere chance of promotion if affected cannot and does not invalidate the action on the part of the employer. That right of consideration may accrue at a particular point of time of subsequently thereto. Merely because at a particular point of time the employee is not considered, does not mean the total denial of the consideration of the employee.”

In the present case the respondent/ writ petitioner has filed the writ application challenging the decision of the selection committee on the ground that the direction and observations contained in the Rule 1986 has not been complied with due to which the writ petitioner has been deprived of his due promotion. We have already observed in the foregoing paragraphs that the decision of the Committee cannot be said to be violation of any Rule. The name of the writ petitioner is appearing much below in the seniority list of the Assistant Registrars. It is not the case of the writ petitioner that the channel of the writ petitioner for promotion is

closed. The Hon'ble Supreme Court categorically held that promotion is not the right of the employee, a mere chance of promotion if affected cannot and does not invalidate the action on the part of the employer. The right of consideration may accrue at a particular time or subsequent thereto.

In the present case the as per the order of the Ld. Single Judge this Court directed the High Court Administration to conduct a separate written test of the writ petitioner and accordingly the appellants have conducted written test and interview but the writ petitioner could not succeed in the said process.

The Counsel for the respondent/ writ petitioner relied upon the judgment reported in (2014) 2 SCC 401 (J. Jayalalithaa & Ors. –vs- State of Karnataka & Ors.):

“34. There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal magazine expression unious est exclusion alterius, meaning thereby that if a statute provide for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following other course is not permissible.

36. We have examined the scheme of the statutory provisions in this regard. The Karnataka Civil Services (General Recruitment) Rules, 1977 authorized the State Government to appoint a retired government servant on contractual basis after meeting certain formalities, for a specific period as may be necessary. So far as the Judicial Officers are concern, their services are governed by the Karnataka Judicial Services (Recruitment) Rules, 1983 and Rule 3 (2) thereof provides the application of the Rules framed under any law of proviso under Article 309 of the Constitution to Judicial Officers, though subject to the provisions of Articles 233, 234 and 235 of the Constitution. The Rule of 1983, stand repealed by the Karnataka Judicial Services (Recruitment) Rules, 2004 (hereinafter referred to as “The 2004 Rules”) and Rule 11 (2) thereof reads as under:-

“11(2). All Rules regulating the conditions of the service of the members of the State Civil Services made from time to time under any law or the proviso to Article 309 of the Constitution of India shall subject to Article 233, 234 & 235 be applicable to the Civil Judge (Junior Division), Civil Judge (Senior Division) and District Judges recruited and appointed under the these Rules.”

Thus, it is evident that the State Government is competent to appoint the Ld. Special Judge on contractual basis after his retirement for the period required to conclude the present trial, though with the consultation of the High Court as required under Article 235 of the Constitution of India. Further in our humble opinion such a course must be adopted in the manner prescribed under 2004 Rules and in view thereof, the matter requires to be considered by this State Government with the consultation of the High Court.

In the case reported in (1997) 1 SCC 373 (Sultana Begam –vs- Prem Chand Jain), the Hon’ble Supreme Court held that :

“10. Part-II of the Code of Civil Procedure, comprising Section 36 to 74 as also the whole of Order 21 consisting of Rule 1 to 106, deal with the execution with the decree. Section 47, as also Order 21 Rule 2 are, therefore, part of the same legal or statutory system dealing with the same subject, namely execution of decree. That being so, the Rule of interpretation requires that while interpreting to inconsistent, or, obviously repugnant provisions of an Act, the courts should make an effort to so interpret the provisions as to harmonious them so that the purpose of the Act may be given effect to an both the provisions may be allowed to operate without rendering either of them otiose.

11. The statue has to be read as a whole to find out the real intention of the legislature.”

In the case reported in (2008) 17 SCC 117 (Sambhaji & Ors. –vs- Gangabai & Ors.), the Hon’ble Supreme Court held that :

“10. All the Rules of procedure are the handmade of justice. The language employed by the draftsman of proceesual law may be liberal or stringent, but the facts remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statue, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which

would leave the Court helpless to meet extra ordinary situations in the ends of justice.

12. The processual law so dominates in certain system as to overpower sustentative rights and substantial justice. The humanist Rule that procedure should be handmade, not the mistress, of legal justice compels consideration of wasting a residuary power in the judges to act *ex debito justitiae* were the tragic sequel otherwise would be wholly in equitable. Justice is the goal of jurisprudence, processual as much as substantive.....

13. No person has a wasted right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right then to proceed according to the altered mode A procedural law should not ordinarily be construed as mandatory; The procedural law is always subservient to and is in aid to justice. Any interpretation which alludes or frustrates the recipient of justice is not to be followed.....

14. Processual law is not to be tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmade and not be mistress, a lubricant, not a resistant in the administration of justice.”

In the case reported in (2002) 7 SCC 273 (Union of India &Anr. –vs- Hansoli Devi &Ors.), the Hon’ble Supreme Court held that:

“9. Before we embark upon an enquiry as to what would be the correct interpretation of Section 28 – A, we think it appropriate to bear in mind certain basic principles of interpretation of statue. The Rule stated by Tindal. C. J. in *Sussex Peerage Case* still holds the field. The aforesaid rule is to the effect:

“If the words of the statue are in themselves precise and ambiguous, then no more can be necessary then to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.”

It is cardinal principle of construction of a statue that when the language of the statue is plain and ambiguous, then the Court must give effect to the words used in the statue and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In *Krikness –vs- John Hudson & Company Limited*, Lord Reid pointed out as to what is the meaning of “ambiguous” and held that:

“A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meaning. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word of fresh which in that particular context is capable of having more than one meaning.”

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the Court may look into the purpose for which the statute has been brought and would try to give a meaning, which adhere to the purpose of statute. Patanjali Sastri, C. J. in the case of Aswani Kumar Ghosh –vs- Arabinda Bose held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of statute. In Quebec Railway, Light Heat and Power Company Ltd. –vs- Vandry it had been observed that the legislature is deemed not to waste its words or to say anything in when and a construction which attributes redundancy to the legislature will not be accepted except for compelling reason. Similarly, it is not permissible to add words to a statute which are not there on a literal construction being given a part of statute becomes meaningless. But before any words are read to repair and omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature and their attention been drawn to the omission Before the bill had passed into a law. At times, the intention of legislature is found to be clear but unskillfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such situation, it may be permissible for the Court to reject the surplus words, so as to make the statute effective. Bearing in mind the aforesaid principle, let us now examine the provisions of Section 28-A of the Act, to answer the questions referred to us by the bench of two Ld. Judges. It is no doubt true that object of Section 28-A of the Act was to confer a right of making a reference (sic on one) who might have not made a reference either earlier under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other persons make a reference and the reference is answered. But the Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression “had not made an application to the collector under Section 18” in Section 28-A of the Act. The aforesaid expression would mean that if the land owner has made an application for reference under Section 18 and the reference is entertained and answered. In other words, it may not be permissible to the land owner to make a reference and get it answered and then subsequently make another application when another person gets the reference answered and obtains a higher amount. In fact in Pradeep

Kumari case, the three Ld. Judges while enumerating the conditions to be satisfied, where after an application under Section 28-A can be moved had categorically stated "the person moving the application did not make an application to the collector under Section 18". The expression "did not make an application", as observed by this Court, would mean did not make an effective application which has been entertained by making the reference and the reference was answered. When an application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the right of such applicant emanating from some other reference being answered to move an application under Section 28-A cannot be denied. We accordingly, answered question 1 (a) by holding that the dismissal of an application seeking reference under Section 18 of the ground of delay would tantamount to not filling the application within the meaning of Section 28 of the Land Acquisition Act, 1984."

In the case reported in (1971) 2 SCC 452, the Hon'ble Supreme Court held that:

"32. Nor are we impressed with the contention of Mr. Garg that there is no principle laid down in the rules for assessing the merit of an officer especially after the deletion of sub-rule (2) of Rule 27 and sub-rule (2) to (6) of Rule 28. No doubt sub-rule (2) of Rule 27 enumerated certain factors or matters to be taken into account in selecting candidates for promotion. Sub rules (2) to (6) of Rule 28, no doubt also dealt with certain aspects of procedure to be adopted for promotion. The deletion of those sub-rules, in our opinion, does not make the Rules 28-B and 32 in any manner invalid. We have already extracted the relevant rules and also pointed out that the selection or promotion is to be considered by the committee referred to therein. It is no doubt argued by Mr. Garg that introduction of the idea of married in the procedure of promotion brings in an element of personal evaluation and such personal evaluation opens the door to the abuse of nepotism and favouritism. Hence, it is argued that there is a violation of the constitutional guarantee under Article 14 and 16.

33. We are unable to accept this contention. The State Government is taken a decision in 1965 that selection to the service and promotion have to be on the basis of merit and seniority-cum-merit. There can be no controversy that the main object in such matters is to serve public interest and not the personal interest of the members of the official group concerned. As stated by Leonard D. White in his Introduction to the Study of the Public Administration, 4thEdn., p. 380: "The public interest is best secured when reasonable opportunities for promotion exists for all qualified employees when really superior civil servants are enabled to move as rapidly up the promotion ladder as

their merits deserves and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment."

34. The above statement has been quoted with approval by this Court in *Sant Ram Sharma –vs- State of Rajasthan & Anr.* We may also point out that the Administrative Reforms Committee has also emphasised that merit should be given adequate weightage in the matter of promotion specifically for senior appointments to ensure greater efficiency in Government functioning and also to provide adequate incentive to Government servants to give their best.

35. Rule 32 is essence adopt what is stated in Rule 28-B. The latter rule provides for two methods of selection: one based on merit and the another based on seniority-cum-merit. In other words, the rule provides that the promotion based on merit in contra distinction to that based on seniority-cum-merit shall strictly be on the basis of merit. The Selection Committee and the Promotion Committee consist of very responsible and senior officers of the State and being persons of experience they can be trusted to evaluate the merits of a particular officer. No doubt the term 'merit' is not capable of an easy definition, but it can be safely said that merit is a sum total of various qualities and attributes of an employee such as his academic qualifications, his distinction in University, his character, integrity, devotion to duty and the manner in which he discharge his official duties. Allied to this may be various matters or factors as his punctuality in work, quality and outturn of work done by him and the manner of his dealing with his superiors and subordinate officers and general public officers rank in the service. We are only indicating some of the board aspects that may be taken into account in assessing the merits of an officer. In this connection it may be stated that the various particulars in annual confidential report of an officer, if carefully and properly noted, will also give a very broad and general indicating regarding the merit of an officer. Therefore, it cannot be stated that Rule 28-B and 32 are in any manner vague or do not give any guideline for assessing of the merit of an officer. No doubt, sub Rule (2) of Rule 27 dealt with certain factors which are to be taken into account for considering the claims of the promotions, but when it comes to a question of merit, not only those factors but also certain additional factors and circumstances will have to be taken into account and such an evaluation of merit has been left under the Rule to a committee consisting of responsible, senior and experienced officers of the State.

36. We are also not impressed with the contention that Rule 28-B (2) and its proviso confining the selection to senior most officers not acceding 10 times the number of total vacancy to be filled up and further restriction regarding the eligibility of the officer who have put at least 6 years of service for the first promotion of an Article 16 of the Constitution of India.

41. From the above extract it is clear that in the matter of selection of promotion the committees concerned are enjoined not only to have regard to the statutory rules under which they function, but also to the administrative instructions given in the circular. This makes it very clear that it is not open to the committee concern to ignore the instructions contained in the circular or to act contrary to the direction contained therein. Therefore, it will be seemed that if the circular or any part of it gives instructions to or opposed to any of the rules, the circular or that part of the circular to that extent will be invalid.”

In the case reported in (2020)14 SCC 625 (All Manipur Pensioners Association – vs- The State of Manipur &Ors)the Hon’ble Supreme Court held that:

“8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes, viz. one who retired pre-1996 and another who retired post-1996, for the purpose of grant of revised pension, In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form a one class who are entitled to pension as per the pension rules. [Article 14](#) of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that [Article 16](#) of the Constitution of India permits a valid classification. However, a valid classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied.

8.1. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary,

discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.

8.2. *As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre-1996 or post-1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cut-off date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cut-off date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.”*

Relying upon the aforementioned judgments the counsel for the respondent/ writ petitioner submits that when a statute provides a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. The rule of interpretation requires that while interpreting inconsistent or, obviously repugnant provisions of an Act, the Court should make an effort to so interpret the Provisions as to harmonise them so that the purpose of the Act may be given effect to and both the Provisions may be allowed to operate without rendering either of them otiose. The main grievance of the writ petitioner is that there is no mentioning in the Rule 1986 with regard to the ratio of 1:5. As per Rule 1986 the promotion to the post of Deputy Registrar is only

merit. The selection committee consisting of senior most three judges of the High Court have taken a decision to fill up the three vacancies of Deputy Registrar by maintaining ratio of 1:5 on the basis of seniority list of Assistant Registrar which is the feeder post of Deputy Registrar by conducting written test, viva-voce/interview and considering the service records. Nothing has been shown to us by Learned Counsel for the writ petitioner/respondent that the decision of the Committee is in any manner inconsistent with due process which may for the Committee to limit the candidate in order of their seniority. The decisions as referred by the writ petitioner/ respondent is distinguishable in the facts of this case.

After the impugned order passed by the Ld. Single Judge, the other Assistant Registrars who are senior to the writ petitioner have filed an application for leave to appeal against the impugned order along with an appeal on the ground that the other Assistant Registrars are senior to the writ petitioner would be badly affected in case only the writ petitioner is granted opportunity to participate in the written test for promotion. It is further contended that the criteria for promotion as enumerated in the Rule 1982 is Special Rule formulated by invoking Article 229(2) of the Constitution of India.

Since the Bench is persuaded to hold that the decision of the Selection Committee cannot be said to be violation of any Rule and thus we are not inclined to allow the application filed by the intervener being **CAN No.1 of 2022** in **MAT 240 of 2022**. Thus same are **dismissed**.

For all the foregoing reasons, we allow the appeal and set aside the order passed by the Ld. Single Judge in WPA No. 23331 of 2021 dt. 08.03.2021 and consequently WPA No. 23331 of 2021 is dismissed.

FMA 857 of 2021 is thus **allowed**. Accordingly, **CAN 1 of 2021** and **CAN 2 of 2022** are **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)

Later:

Learned Counsel for the respondent prays for stay of the operation of the order for four weeks.

Learned Counsel for the appellant raised objection. Prayer is considered and refused.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)