

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2295 OF 2008

Kishore D. Raorane]
An Indian Inhabitant of Mumbai]
Working as Section Officer, in the]
office of Prothonotary and Senior Master]
High Court, Mumbai - 400 001.]

...Petitioner

Vs.

1. The High Court of Judicature at Bombay,]
Through the Prothonotary and Senior Master]]
High Court (Original Side), Bombay.]

2. Shri M.H.I. Patel,]

3. Shri P. Y. Shinde]

4. Shri H. S. Mallapurkar]

5. Shri S. M. Worlikar]
House No. 108K, Worli, Koliwada,]
Bombay - 52.]

6. Shri A. P. Guram]

7. Shri S. S. Javkar,]
residing at Heenalaxmi Co-op. Hsg. Soc.]
102, Shivaji Nagar, Sane Guruji Marg,]
Naupada, Thane.]

8. Shri M. S. Bichan]

9. Shri R. B. Kaniskar]

10. Shri A. G. Renuka]
Vallabh Darshan,]
B-604, Poddar Road,]
Malad (E), Mumbai - 97.]

11. Shri S. S. Mallapurkar]

12. Shri V. B. Kadu]

13. Shri S. N. Naik]
 Respondent Nos. 2 to 4, 6,8, 9 and 11 to 13]
 working in the office of the Prothonotary]
 and Senior Master, High Court,]
 Original Side, Mumbai.]

14. State of Maharashtra]
 Through Government Pleader (OS),]
 High Court, Mumbai]

] ...Respondents

Mr. M. S. Topkar a/w Ms. Pavitra Manesh and Mr. Saurabh
 Mandlik - Advocate for the Petitioner

Mr. A. V. Bukhari, Senior Advocate a/w Mr. V. S. Kapse and Mr. B.
 V. Bukhari - Advocate for the Respondent No.1

Mr. Asif Iqbal Patel – Advocate for Respondent No. 2

Mr. P. H. Kantharia, Government Pleader for Respondent No. 14
 (State)

Mr. Yogesh Rane, Registrar, Legal and Research, High Court,
 Bombay present.

**CORAM : R. D. DHANUKA AND
 S. M. MODAK, JJ.**

**RESERVED ON : 01st MARCH, 2022
 PRONOUNCED ON : 15th JUNE, 2022**

JUDGMENT (Per S. M. MODAK, J.) :-

1. We are dealing with a Petition filed by the Petitioner who joined the services of the High Court Administration on Original Side as a Clerk in the year 1985 and retired in the year 2021 from the post of Master (Adm). During this tenure, he worked as

Clerk, Assistant, Section Officer, Master Administration. During his tenure, he passed Lower Standard Departmental Examination and Higher Standard Departmental Examination. His main grievance is that though he has secured highest marks in the Higher Standard Departmental Examination, as compared to the Respondent Nos.2 to 13 and when principle of merit-cum-seniority is applicable for promotion to the post of Section Officer he was not promoted earlier than other Respondents. According to the Petitioner the High Court Administration has wrongly applied and interpreted the Rules and has not promoted the Petitioner in time. His further grievance is that, as he was not promoted in time, the other Respondents superseded him in the promotion which caused great prejudice to him.

2. It is important to note that, his interpretation of securing highest marks as a parameter for promotion was turned down by the High Court Administration and also by this Court in his First Writ Petition bearing No. 225/2001. The Petitioner however has raised the same issue.

3. We have gone into this issue after considering the provisions of 1981, 1995 Rules for passing examination so also

after going through the 1985 recruitment Rules and 2002 Rules applicable to the employees of Original Side of this Court. After going through the record thoroughly, we do not find any support to the contention of the Petitioner that securing highest marks is the criteria for promotion. In spite of knowing this fact, again in this Petition this issue has been raised by the Petitioner. We do not find any support for this interpretation. In fact we were inclined to saddle heavy cost on the Petitioner for raising this issue again and again; however we have restrained ourselves from doing that for the simple reason that the Petitioner has retired from the service.

4. In order to support this ground, the Petitioner has also raised other grounds. It deals with the exemption granted by the High Court administration to some of the Respondents from appearing in Higher Standard Departmental Examination. It also deals with the relaxation granted by the High Court Administration to some of the Respondents while considering the educational qualification and also while considering the experience criteria. However, after going through record, we find that, this exemption and relaxation have been granted by the High Court Administration, as per the provisions of Rules. It

is pertinent to note that, the Petitioner has not challenged the power of Hon'ble Chief Justice to grant such relaxation and exemption. Hence, we are also not inclined to accept these grounds.

5. There is also an objection taken by the Petitioner to the preparation of 'Seniority List'. We are also not inclined to entertain this ground for the simple reason that, the Respondents Nos. 2 to 13 were shown as seniors to the Petitioner on the basis of the relaxation and exemption granted to them legitimately. Hence, we do not find any merit in this Petition. We will give reasons for that herein after.

PREVIOUS PETITIONS

First Writ Petition.

6. Prior to this Petition, there were two Writ Petitions filed by the Petitioner. Writ Petition No. 225 of 2001 was filed by the Petitioner thereby raising similar grievance of not giving proper weightage to higher marks while promoting the Petitioner and granting exemption and relaxation to the Respondents. This Court as per the order dated 23rd February, 2005 was pleased to direct the High Court Administration to consider the Writ Petition of the Petitioner as a representation and to decide the same.

While disposing of this Writ Petition, this Court has made certain observations about the claim of the Petitioner for considering the higher marks as one of the criteria. They are as follows :--

“6. The Petitioner has contended before us that as he secured higher marks in the Higher Standard Departmental Examination than Respondent Nos.2 to 17 and as such he is entitled to seniority over them.

“7. We are unable to accept this contention of the Petitioner. None of the guidelines referred by him, indicate that seniority is to be determined on the basis of the number of marks obtained by a candidate at the examination. Even if we assume that passing the examination is a criteria for a candidate to be eligible to be considered for promotion, it does not necessarily follow that a candidate with higher marks is entitled to seniority over the candidates with lower marks.”

Second Writ Petition.

7. After disposal of the First Writ Petition, the Petitioner filed Second Writ Petition No. 2047 of 2007. After filing of that Writ Petition, the representation made by the Petitioner was decided. It was partly allowed. Petitioner was given seniority over Shri P. S. Zinge and over Shri A. C. Landge. The majority of the grievances of the Petitioner were however rejected. There were

two Orders on the said representation. They are passed by the Prothonotary and Senior Master of this Court. These Orders are dated 17th March, 2007 and 16th August, 2007.

a. As per the Order dated 16th August, 2007, the decision taken by the Prothonotary was communicated to the Petitioner.

b. Whereas as per the Order dated 17th March, 2007, the Prothonotary had given detailed reasons.

The Petitioner was pleased to withdraw the said Petition. By the said order passed on 19/6/2008, Petitioner was granted liberty to challenge the reasoned Order passed by the Prothonotary. The Petitioner accordingly filed the present Writ Petition bearing No. 2295 of 2008.

PRAYERS IN THIS WRIT PETITION.

The main prayers of the Petitioner are as follows:-

A) To set aside, the Orders dated 16th August 2007 and the reasons dated 17th March 2007.

B) To treat the Petitioner as senior over Respondent Nos. 2 to 13 and grant him all consequential benefits.

C) To set aside the promotions granted after 20th December 1998 to the posts of Assistant Prothonotary (Administration), Master (Adm) and Master & Assistant Prothonotary (Administration).

D) To quash and set aside the draft Seniority list dated 2nd

December 2008 and final seniority list dated 7th March 2009.

8. The administration of High Court has opposed the Petition on various grounds. According to them merely securing more marks in examination does not make that employee Senior. Ultimately, he has to score good marks in the promotional exercise because according to Administration the rule of Merit-cum-Seniority is applicable to the promotional posts of Section officer, Assistant Prothonotary and Master administration. They have also pleaded that the employees who were considered as Senior to Petitioner were granted the relaxation in age and relaxation in qualification. Furthermore, some of the Respondents were exempted from appearing in Higher Standard Departmental Exam. Hence, they have prayed for dismissal of this Petition.

9. The Respondent Nos. 2 to 13 have not filed separate reply (except Respondent No.7.)

10. We have heard Mr. M. S. Topkar learned Advocate for the Petitioner, Mr. A. V. Bukhari, Senior Advocate for Respondent No.1, & Mr. Asif Iqbal Patel, Advocate for Respondent No.2, Mr. P.

H. Kantharia, Government Pleader for Respondent No.14 State
other Respondents were absent though served.

The following are the important points for our consideration: -

- (i) Can it be said that a particular employee who has secured more marks in Higher Standard Department examination would have edge over the employees who have secured less marks?
- (ii) Whether the Administration of High Court was right in granting exemption to certain employees from appearing in Higher Standard Department Examination?
- (iii) Whether the Administration of High Court was right in granting relaxation in years of service and relaxation in qualification and was right in considering them for the promotional post?
- (iv) Whether the grievances of Petitioner in respect of draft and final seniority list are proper?
- (v) Whether the rule of Merit-cum-seniority for the promotional posts is applied and is followed by High Court Administration?

11. During arguments, both the parties have referred to the following rules:-

- (a) Rules for passing Lower and Higher Department examination Rules, 1981.
- (b) Bombay High Court Services (Recruitment) Rules 1985

- (c) Bombay High Court Departmental Examination Rules, 1995.
- (d) Bombay High Court Original Side Services Rules, 2002.

12. Both the sides have also relied upon certain citations. The Petitioner relied upon following citations :-

1	B.V. Sivaiah And Ors Vs. K. Addanki Babu And Ors.	(1998) 6 SCC 720
2	Bhupendra Nath Hazarika And Anr Vs. State of Assam And Ors. with Bibekananda Das Vs. State of Assam And Ors.	(2013) 2 SCC 516
3	Uttar Pradesh Power Corporation Limited Vs. Ayodhya Prasad Mishra And Anr.	(2008) 10 SCC 139
4	Sankar Deb Acharya And Ors. Vs. Biswanath Chakraborty And Ors. With State of W.B. And Ors. Vs. Biswanath Chakraborty And Ors.	(2007) 1 SCC 309

13. The High Court Administration relied upon following citations:-

1	Harigovind Yadav Vs. Rewa Sidhi Gramin Bank And Ors.	(2006) 6 Supreme Court Cases 145
2	Haryana State Electronics Development Corporation	(2009) 7 Supreme Court Cases 311

	Limited and Ors Vs. Seema Sharma And Ors.	
3	Santosh Sood Vs. Gajendra Singh And Ors.	(2009) 7 Supreme Court Cases 314

14. Out of the judgments relied upon by both the sides, both of them have placed reliance on the judgment in case of **B.V. Sivaiya**. In that judgment Hon'ble Supreme Court has dealt with the appeals against the Judgment delivered by Andhra Pradesh and Madhya Pradesh High Court. The issue in all these appeals was considerations to be followed while promoting to the post of Area Manager/ Senior Manager in Regional Rural Banks under the Regional Rural Banks Rules, 1988. The Rules prescribed following the principle of seniority cum merit. The Hon'ble Supreme Court dealt with how this principle is to be applied. When the selection committee selected the officers on the basis of marks assigned to them in the interview and the candidate who secure more marks were selected it was held that, in such circumstances the principle of seniority cum merit is not followed.

15. Similarly, in para No. 29, it was observed that, candidate who has secured more marks in the interview was selected and

on these facts, it was held that principle of seniority cum merit was not applied properly. In para No. 18, it was observed that,

“the criteria of seniority cum merit postulates that, even the minimum necessary merit requisite for efficiency of administration, the senior even though less meritorious shall have priority and the comparative assessment for merit is not required to be made.”

In para No. 10, it was observed that, seniority cum merit criteria lays greater emphasis on seniority.

16. Whereas, in case of Bhupendranath Hajarika Vs. State of Assam (supra), relied upon by the Petitioner the direct recruits were recruited by way of competitive examination. The Rules prescribed that their number should not exceed 5% of total number of posts which came to 4 posts at the relevant time. However, the selection was in excess of the quota provided as per the Rules. On this background, the question arose what would be the effect on their seniority if subsequently their appointments were regularized.

17. Hon'ble Supreme Court considered the earlier views. If the appointment is made without following the procedure prescribed under the Rules, the appointees are not entitled to have the

seniority fixed on the basis of total length of the service. In essence it has been ruled that, when the appointment is made dehors the Rules, the appointee cannot claim seniority, even if his appointment is later on regularized.

18. This ratio cannot be made applicable to the facts before us for the reason that various Respondents were granted exemption from passing the Departmental Examination, relaxation from requisite number of service and relaxation from Educational Qualification as per the Order of Hon'ble Chief Justice. While doing that, the provisions of 1981 Departmental Examination Rules, the Provisions of 1995 Departmental Examination Rules and the Provisions of 1985 Recruitment Rules were considered. So also the criteria of merit cum seniority and the circulars issued from time to time were considered. In this case, there is no challenge to the validity of those Rules and Circulars. There is no challenge that, the Hon'ble chief Justice has improperly granted exemption and relaxation. Hence, the ratio in the said Judgment cannot be useful to the Petitioner.

19. In the case of Uttar Pradesh Power Corporation Vs. Ayodhya Prasad Mishra, issue was about promotion of Executive

Engineer to the post of Superintendent Engineer. As per the Circulars, on the basis of marks obtained in the examination, the Executing Engineers were divided into category I, II & III on the basis of the marks secured. It was held that when the question of promotion to the post of Superintendent Engineer arose, the Executive Engineer in category I has to be given priority. Whereas in case before Hon'ble Supreme Court the Respondent though was appearing in category I, the candidate from category II was promoted, only for the reason that he was senior to the Petitioner. The High Court directed the Corporation to promote the Petitioner as and when the occasion arose due to vacancy. This Order was confirmed by the Hon'ble Supreme Court. It was held that, persons from the same category cannot be treated unequally. The said judgment is distinguishable on facts.

20. In the case of Shankardev Achari Vs. Vishwanath, relied upon by the Petitioner, the question of interpreting seniority between the Appellants and Respondents was involved. The Appellants joined the duty after the Respondents. However so far as passing of examination and confirmation was concerned, the Appellants passed the examination and were confirmed

earlier to the Respondents. There was an argument on behalf of the Respondents that, since they had passed the examination, their date of entry to the service was relevant. These submissions were turned down (para 40). Ultimately the Hon'ble Supreme Court set-aside the Order passed by the High Court.

21. Whereas the Respondent No.1 relied upon the Judgment in the case of Hargovind Yadav Vs. Reva Siddhi Gramin Bank and the Judgment in the case of Haryana State Electronics Development Corporation Vs. Seema Sharma. In both these Judgments, Hon'ble Supreme Court has laid down the difference between the principle of merit cum seniority and principle of seniority cum merit. In case of seniority cum merit, there is more emphasis on seniority. Whereas in the case of merit cum seniority, there is greater emphasis on merit and seniority plays less significant role. It becomes relevant only when merit is approximately equal.

22. The grounds raised by the Petitioner can be grouped as follows: -

(a) Though Petitioner secured more marks in Higher

Standard Department Examination he was considered Junior.

- (b) Respondent Nos. 2 to 13 were granted exemption from passing Higher Standard Department Examination illegally.
- (c) Respondent Nos. 2 to 13 were granted relaxation from securing requisite qualification.
- (d) Granting relaxation in years of service.
- (e) Not preparing the Seniority list as per the rules.

Securing Higher Marks in Higher standard Departmental Examination.

23. Time and again the Petitioner has stressed upon this point. This Court in the first Petition has already rejected this grievance. However, there should not be any room for making grievance that while deciding this Writ Petition this Court has not dealt with that objection, hence we are deciding the said objection. The question can be decided after considering the facts which are pointed out by the Petitioner and after considering the provisions of relevant rules. The result of Higher Standard Departmental Examination conducted on 24th January, 1998 and 25th February, 1998 is filed on record at page No.82. There are in all 54 employees. The names of the relevant employees and their total marks are as follows:-

Sr. No.	Name	Marks
Sr. No.20	Shri.Patel Mohammad Hanif.	201
Sr. No.23	Shri. Rajvatkar Vikas.	201
Sr. No.25	Shri. Shinde Pravin.	202
Sr. No.36	Shri Zinge Prakash.	82
Sr. No. 39	Shri. Dethe Nandvir.	219
Sr. No. 40	Shri. Mungekar Sambhaji.	208

Marks of all employees are not mentioned.

24. No doubt it is true that name of the Petitioner is at Sr. No.22 and he secured 211 marks in written and 54 marks in oral (only Shri Dethe had secured more marks) higher marks as compared to the employees as mentioned above. The question that arises is whether on the basis of these marks the petitioner was eligible for promotion and to be shown as a senior amongst the section officers selected in the promotional exercise conducted in the year 1998?

OTHER INSTANCE OF PROMOTION.

25. In order to buttress his submissions that getting more marks in departmental examination is factor to be considered for the purpose of promotion, Petitioner relied upon the cases of employee S M Mungekar and employee Shri Dethe. Both were in the cadre of Assistant. In that cadre Mungekar was senior to Mr. Dethe. However, when the promotion to the post of Section

Officers was conducted, Shri Dethe was given promotion in the year 1998 along with the Petitioner whereas Shri Mungekar was given promotion on 1st June 1999. According to Petitioner, the reason for giving promotion to Shri Dethe earlier was securing more marks than Shri Mungekar in Higher Standard Departmental Examination. This is strongly denied by Respondents. According to them the reason for early promotion was not securing more marks but for the reason that Dethe was selected earlier by applying the test of Merit-cum-Seniority. Neither of the parties have placed on record any of the documents.

OFFICE NOTE DATED 29/6/1993.

26. In order to buttress his submission as to how higher marks obtained in Departmental examination played a vital role, Petitioner relied upon a note prepared by the Prothonotary and Senior Master dated 29th June, 1993 addressed to Hon'ble Chief Justice. It is at page No.85. In all 23 Assistant Superintendents were selected for the post of Section Officers. However, it is important to note that on page No.87 against these 23 employees, their marks obtained are also mentioned. None of the candidates have obtained more than 100 marks. These are the marks obtained by the employees in the promotional

exercise and have nothing to do with the marks obtained in departmental examination. These employees were asked to participate in the promotional exercise on the basis of their seniority and they were selected on the basis of merit. It is also important to note that on page 85 what are the criteria to be considered while adhering to the principle of merit-cum-seniority are laid down. In those criteria 'securing higher marks' in Higher Department examination is not mentioned. On page No.90 there is a select list of 9 employees for the post of Section Officer. It is dated 20th July, 1993. This document does not support the contention of the petitioner.

Rules & Circulars

27. Before going into the contentious issues, it will be material to see the provisions of the rules and the circulars. There are following rules and circulars: -

- (i) 1981 Rules framed for the purpose of passing Lower and Higher departmental examination (page no. 38).
- (ii) 1995 Rules on the same subject thereby superseding 1981 Rules (page no. 49).
- (iii) Bombay High Court service (recruitment) Rules, 1985 (page 143).
- (iv) 11/12/992 circular prescribing the guidelines

for the promotion of Assistant Superintendent and for the post of Superintendent/Section Officers.

28. 1981 rules come into force on 1st February 1981. Notification to that effect was published on 27th January 1981 (Page 42). The important and relevant provisions of 1981, Rules are as follows:-

(a) Rule 2 -

Mandates a clerk and Assistant Superintendent to pass out Lower standard departmental examination and Higher standard departmental examination respectively.

(b) Rule 15

talks about how a Seniority is to be fixed.

29. It means a Clerk or Assistant Superintendent is not eligible for the promotion unless they pass out Lower standard and Higher standard departmental examination respectively. The contention of the Petitioner is that when he has secured marks of 211 in Higher standard departmental examination conducted in the year 1998 (which are more than marks obtained by Respondent Nos. 2 to 13), he ought to have been given Seniority and ought to have been considered for promotion

earlier to these Respondents.

Notification publishing the 1981 rules

30. It is important to consider certain guidelines framed by the High Court (Administration) in the Notification dated 27th January 1981. They are as follows :-

a) The Members of the staff were granted time to pass out the relevant examination, Particularly, those members who are promoted after the Rules came into existence on 1st February 1981.

b) The members who have completed 45 years on 1st February 1981 - were exempted from appearing and passing the said examination. This provision is specifically included in Rule 10 of 1995 Rules.

31. The relevant provisions of 1995 Rules are as follows: -

a) Rule 8 and 9

The similar criteria for passing Lower and Higher Examination is included.

b). Rule 27 talks about confirmation in the service on passing examination or completion of 45 years as the case may be.

c) Rule 28

Provides the Criteria for Seniority.

Circular for fixing criteria for promotion.

32. Earlier to 1995 Rules, there was one circular dated 11th December 1992 issued by the Prothonotary (on page 45). It is this circular which lays down the criteria for a promotion. It is as follows :-

- (a) If there is a promotion to the post of Assistant Superintendent - the criteria will be Seniority-cum-Merit.
- (b) If there is a promotion to the post of Superintendent - the criteria will be Merit-cum-Seniority.

33. The main grievance of the Petitioner is that as he has secured highest marks in Higher standard examination, he ought to have been given seniority over other Respondents. It will be material to consider whether this submission is supported by provisions of these Rules and circular. According to the Respondents, the contention is not correct. The passing of examination is necessary for promotion and it only makes eligible a particular employee to participate in the Promotional exercise carried out for the next cadre.

34. Though 1981 Rules were superseded by 1995 Rules, in order to understand the situation prevailing in the year 1981 relating to Seniority, we have perused those rules. We may find

some reference about seniority in the Rule 15. The provisions are as follows:-

- a) A clerk or Assistant Superintendent who is Junior in his cadre, but he is promoted earlier to his Senior Colleague, merely because the Senior passed out the respective examination - the senior is not entitled to be considered as a Senior by reverting the Junior colleague who is promoted earlier to Senior.
- b) The seniority of Superintendents and Assistant superintendents in their respective grades should be determined not by reference to their Seniority in the lower cadre but it is to be determined from the date of their appointment/promotion.
- c) We find similar provision in Rule 28 of 1995 Rules.

35. After considering both these Rules, we do not find any provision in the Rules, which says that the employee who have secured more marks in particular examination will have to be given preference over the employees who have secured less number of marks. In fact, when we have read the provisions of Rule 15 of 1981 Rules and the provisions of Rule 28 of 1995 Rules, we find that it may happen that Junior employee may be promoted earlier to Senior employee. In that contingency, when

the Senior employee has passed out the respective departmental examination at latter stage, he has no right to say that being Senior he may be promoted by reverting the junior employee. It means that passing out a relevant department examination does not give any right when the promotional exercise is undertaken. In other words, the employee cannot claim that he has secured more marks and as such he may be given priority amongst the employees who come under the zone of consideration for the promotional exercise. Rule 2 of 1981 Rules and Rules 8 and 9 of 1995 Rules only lays down the criteria for passing examination prior to promotion.

36. Rule 14 and Rule 16 of 1985 recruitment rules lay down that these posts are to be filled in from the feeder cadre post. Whereas Rule 67 mandates any clerk to pass out lower standard departmental examination if he is to be considered for promotion to the post of Assistant Superintendent. It also mandates the Assistant Superintendent to pass out higher standard departmental examination prior to considering his name for the promotional post of Superintendent.

37. For the above discussion, we find no merit in the

reagitated issue of considering 'higher marks in departmental examination' as one of the factor in promotional exercise. It is neither supported by Rules nor justified by the instance quoted by the petitioner.

38. Petitioner also made grievances in respect of various promotional exercise. They are as follows: --

- a. Promotion for the post of Master (Administration) in the year 2002.
- b. Promotion for the post of Assistant Prothonotary in the year 2003.
- c. Promotion for the post of Master (Administration) in the year 2010.
- d. Promotion for the post of Master (Administration) in the year 2011.
- e. Promotion for the post of Master (Administration) in the year 2013.

Grievances about promotion of respondents.

39. The Petitioner has grievance against Respondent No.2 and 3. The grievances against Respondent No.2 are as follows: -

- (1) The Respondent No. 2 was appointed to the post of Assistant (feeder cadre post) on 1st April 1991 and he was promoted to the post of Section officer on 1st December 1995. As such, he had not completed the service of five years to the feeder post of Assistant.
- (2) When Respondent No. 2 was promoted on 1st December 1995 to the post of Section officer, he had

not passed out Higher examination, which he passed in the month of July 1998.

40. It is not clear from where the petitioner has mentioned the date of 1/12/1995 for the promotion of Respondent No.2 in the written arguments. Because in the statement showing detail information of all respondents filed by respondent no.1, date of promotion of respondent no. 2 as section officer is given as 1//11/1996 and continued on 28/12/1998. Prior to that the respondent no.2 passed out higher examination on 24/1/1998.

41. Hon'ble Chief Justice has approved the submission dated 29/6/1993 on 13/7/1993 selecting in all 23 employees as section officer. Out of them 9 employees were selected as section officers and out of them respondent no.2 is one of them. A copy of order dated 7th November, 1994 issued to Respondent No.2 Patel is filed on page No.91. Subject to complying existing rules and passing the Departmental Examination he was given appointment as Section Officer. His appointment was on temporary basis by way of ad hoc arrangement. It means it was not clear vacancy. For the above discussion there is no merit in the arguments of petitioner.

Objection to promotion of respondent no. 4 to 8, 10,

11.

42. According to petitioner above referred respondents were promoted as section officers on respective dates even though they did not pass out higher standard departmental examination. Their details are as follows :--

- a. Respondent no.4-- 2/3/1987.
- b. Respondent no.5 --11/1/1989.
- c. Respondent no.6 --2/5/1989.
- d. Respondent no.7 --19/6/1989.
- e. Respondent no.8 --9/10/1989.
- f. Respondent no.10-- 15/9/1990.
- g. Respondent no.11 --24/12/1991.

43. The above argument is fallacious. It is for the reason that all above respondents were exempted from appearing for both the examinations as per notification dated 27/1/1981 and notification dated 31/8/1988. We may find this from the detail information furnished by respondent no.1 in tabular format. In fact the petitioner is aware of this exemption but still he has raised this dispute. We accordingly reject this contention of the Petitioner.

44. To the appointment and promotion of Respondent No.3 - Shri Shinde, the Petitioner is also having serious objections. In the written submissions on page no. 6 he has done comparison. He has taken the following objection: -

(1) The Respondent No. 3 - Shri Shinde was promoted to the post of Section Officer on 28th December 1998 though at that time he was not possessing the qualification of a graduation which was required for the promotional post of Section Officer. In fact, he obtained degree in the year 2002.

45. This argument has no basis in view of the fact that when the respondent no.3 was promoted, Rules did not prescribe qualification of graduation. Even 1985 recruitment Rules and more specifically Rule no. 14 does not prescribe for that qualification (for the post of superintendent). Furthermore the respondent no.3 was recruited/appointed as clerk on 7/01/1985. Since 14/2/1994 posts of clerk are filled in from the post of graduates. Hence the committee in its decision dated 25/1/2002 relaxed the qualification of graduation for the promotional post. It is only for clerks recruited prior to 14/2/1994. Hence this objection is rejected.

PROMOTIONAL EXERCISE 2002.

46. When the interviews were conducted on 15th February, 2002 for the post of Master (Adm) at that time Writ Petition No. 225 of 2001 was pending. Petitioner filed notice of motion No.106 of 2002. This Court in the order dated 18th February, 2002 observed that the appointment/ promotion would be subject to result of the writ petition.

PROMOTIONAL EXERCISE 2003.

47. There were interviews conducted on 29th September, 2003 for the post of Assistant Prothonotary. Even though Petitioner was called for the interview, he was not selected by the interview committee. Grievance of the Petitioner is that the seniority of the Petitioner was not considered and some of the employees were granted exemption from appearing in examination and they were considered. We find no merit in this grievance of the Petitioner. We have also perused the reply filed on behalf of the Respondent No.1 High Court Administration and more specifically para No.14. We have also perused the documents filed by the Respondent along with written arguments. In that promotional exercise Respondent No.2, 4, 8, 9, 12 & 13 were selected for the post of Assistant Prothonotary Administration. The necessary office order was issued on 8th October, 2003.

48. It is true that interviews were conducted on 29th September, 2003 and on 30th September, 2003. In all 21 employees were called. Out of them present Petitioner was at Serial No.18. The circular for interview is filed on page No.206. We find that Respondent No.4 Mallapurkar, Respondent No.8 Bichan, Respondent No.9 Kaniskar were exempted from appearing both the examinations and it is on the basis of notification dated 27th January, 1981 and 31st August, 1988 (page no. 212). Whereas Respondent No.12 Kadu (page no. 215) and Respondent No.13 Shri Naik (page no. 216) had already passed both these examination in the year 1992/1994 and 1994/1998 (as per detail information filed by respondent no.1 in a tabular format). It means that both the Respondent Nos.12 and 13 had fulfilled the criteria. Even though Respondent No.13 Naik was junior to the Petitioner, he was selected. The Petitioner could not be selected because he could not fulfill the principle of merit-cum-seniority. If we read the 1981 and 1988 notification, we find that those employees who had completed the age of 45 years on the date on which 1981/1988 notification came to force, were exempted from appearing for this examination.

49. It is true to say that Rule 10 of 1995 examination rules was

deleted in the year 2002. It was notified on 27/6/2002 (page no. 49). The effect of this deletion is that employees cannot claim exemption on the ground of completion of 45 years. They have to appear for the examination within the period of 3 years from the date of their appointment. Circular to that effect was also issued by Additional Prothonotary on 7/1/2003 (copy is on page no. 61). Those employees who had given undertaking to clear the examination were not exempted on the basis of deletion of Rule 10 from 1981 rules. Hence we do not find any merit in the grievance of Petitioner so far as the promotional exercise of 2003 for the post of Assistant Prothonotary is concerned.

50. Petitioner along with other section officers was called for the interview for the post of Assistant Prothonotary vide circular dated 6/9/2004 (page no. 209) and vide circular dated 15/4/2005 (page no. 208). Respondent no. 6 and respondent no. 7 were selected respectively in that process (para no 15 and no. 16 of the reply filed by respondent no.1). It was on the basis of 'merit cum seniority'. We do not find fault in that process.

PROMOTIONAL EXERCISE 2010.

51. Interviews were scheduled on 20th September, 2010 and

on 24th September, 2010. Circular to that effect was issued on 14th September, 2010 annexed at page No.114 AF. In all 12 Section Officers were called for the interview and Petitioner was at Serial No.2. Petitioner took objection that some of the Section Officers were not graduates and it is one of the condition for the promotion for Assistant Prothonotary. In view of the said objections the promotional process was cancelled. It is true that after chamber summons was amended, the High Court administration has not filed any reply to those amendments but accept the fact that the said promotional exercise was cancelled, it does not support the case of the Petitioner anymore.

**Promotional exercise for the post of
Master(Administration) year 2011.**

52. Circular dated 5th October, 2011 for conducting interview is filed by the Petitioner at page 114 AG. Copy of selection of 3 Section Officers Shri. Lopez, Shri. Chaudhari and Shri. Bharaswadkar dated 21st October, 2011 is filed on page 114AH. The appointment letter dated 13th November, 2011 for the Section Officer A. D. Kamble is filed on page 114 AI. In all 12 Section Officers were called for the interview. According to

Petitioner from the circular, Section Officers at Serial No.1 to 4, 7 & 8 were only eligible whereas other section officers were not eligible as they have not completed 5 years of service in the feeder cadre (para no 25 F of the petition).

53. In that process, the Section Officers at Serial No.6 Shri Lopez, Shri. Chaudhari, Serial No.9, Shri. Bharaswadkar Serial No.10 Shri. Gulekar and Shri Kamble at Serial No.11 were selected. These Section Officers are not party respondents in this Petition. The High Court Administration has not filed reply to the amendment carried out as per the Chamber summons. However, in the documents filed by the High Court Administration, one note put up by Additional Registrar dated 7th December, 2011 before the Committee is filed. So also, a letter addressed to the Petitioner dated 16th December, 2011 is also filed on record. It was informed to the Petitioner that representation made by the Petitioner on 9th November, 2011 was not accepted. The copy of that note is filed on record. This note was prepared on the basis of representation dated 11/11/2011 made by the petitioner. We have read that note. We find that the following factors were considered: -

a) The candidates possessing requisite qualifications were only called for the interview.

b) The earlier representation date 3rd September, 2011 filed by the Petitioner came to be rejected as per the order of the committee dated 14th September, 2011. We thus do not find merit in the said objection. The Petitioner though was senior most Section Officer called in that promotional exercise his performance was not up to the mark. Hence, we find no merit in the contention of the Petitioner that unqualified Section Officers were considered and selected for the post of Master Administration. We also reject the contention of the Petitioner that Petitioner was not selected in spite of the merit. The performance has to be assessed on the basis of principal of merit-cum-seniority. As the Petitioner has not passed that test, he could not be selected.

Promotional exercise for the post of Master Administration conducted in the year 2013 :-

54. There were three posts of Master Administration. In all twelve Section Officers were called in the ratio of 1:4. According to the Petitioner, the candidates at Sr. Nos. 1 to 6 were only eligible whereas candidate at serial Nos. 7 to 12 were not eligible on the ground that they were not possessing sufficient experience of 5 years. Whereas the candidates at Sr. Nos. 11 and 12 were only possessing three years of experience. Rule 12 of 2002 Rules prescribes a test of Merit-cum-Seniority for the

promotional post of Master Administration. Furthermore, he must be having five years experience as Section Officers and must possess a degree of recognized university and law degree is given preference. It will be material to consider what is the contention of High Court Administration.

55. Our attention is brought to the Minutes of Judges Committee dated 20th June 2013. There are three tables.

Table I consists of the names of the six candidates who fulfill all criteria's including the degree certificate and experience qualification. Amongst them the Petitioner is at Sr. No. 1. Whereas table-II and table-III consist of names of the candidates who have not fulfilled the five years experience criteria. They have fulfilled the educational qualification.

Table II consists of four candidates at Sr. Nos. 7 to 10. They have only completed four years of service as Section Officers.

Table III consists of names of two candidates who have only completed three years of service as Section Officers.

56. The note also says that there were two clear vacant posts. Whereas one post would be vacant in near future that is on 31st July 2013. As such the candidates in the ratio of 1:4 were required to be called. After considering the particulars

mentioned in the chart, it reveals that only six candidates fulfilling all the criteria's were available. In that case it did not fulfill the ratio of 1:4. That is how the submission was made that the experience criteria may be relaxed.

57. Our attention is also brought to the provisions of Rule 53 (b) of 2002 rules. Accordingly, the Committee made recommendation to Hon'ble Chief Justice to relax the experience criteria. The Hon'ble Chief Justice relaxed the experience criteria and accordingly the candidates at Sr. Nos. 7 to 12 were called for the interview. The Petitioner is thus not justified in making grievance that the concerned candidates were not possessing experience required for the post of Master Administration. It is important to note that validity of the provisions of Rule 53 of 2002 Rules is not challenged. There is also no grievance that the Hon'ble Chief Justice has exercised the power under Rule 53 improperly. In view of that, we are rejecting the contention of the Petitioner in so far as the promotional exercise of 2013 is concerned.

58. In that process Section Officers Shri Faruq Sheikh, S. F. D'Costa and Shakil A.M.Y. were selected who are not the parties

to this Petition. Even though the Petitioner was at Sr. No. 1 from the 12 Section Officers which were called, the Petitioner could not fulfill the test of Merit-cum-Seniority. It is important to note firstly that merit amongst the seniors is to be considered. So even if the meritorious candidate is junior as compared to seniors, he can be selected. The Petitioner has failed to fulfill that criteria and accordingly was not selected. There is no merit in the contention of Petitioner for wrongful selection. Amongst them also A.M.Y. Shaikh has fulfilled the criteria of graduation and experience also. That is why his name is appearing in table I at Sr. No. 2 below the name of Petitioner. The Copy of Minutes dated 27th July 2013 prepared in the interview is also produced for our perusal. It reveals that even though Petitioner is at Sr. No. 1, he secured less marks than the three selected candidates and hence they were not considered for the appointment for the post of Master Administration.

Conclusion

59. In case before us when the posts of Section Officers and higher posts are to be filled in by way of promotion, as per the Rules, the principle of merit cum seniority is applicable. It means when there are particular employees who comes within the zone

of consideration, their merit is to be assessed first on the basis of prescribed criteria and the meritorious candidate is to be given priority, even though he may be junior. When the merit is equal, then the senior most among them is to be given priority. Whereas in case of seniority cum merit, minimum qualifying marks are prescribed. The employees coming under zone of consideration has to pass that bench mark. When that bench mark is crossed, the senior most employee is to be selected even though he may be having less marks. In this way the merit to certain extent is considered and then seniority is respected.

60. Whereas in case of merit cum seniority, the seniority comes into picture only when the marks are equal. When we have applied these principles to the promotional exercise undertaken, we find that this principle has been followed scrupulously. Petitioner (was senior amongst the employees coming under the zone of consideration) was not selected because he had secured less marks. Marks obtained in Higher Standard Examination is not the criteria. Just because certain employees were exempted from examination and were granted relaxation in years of service and relaxation in qualification, it does not mean that the principle of merit cum seniority is not

followed. Ultimately there is no challenge to the validity of the Rules and there is no grievance that, there has been improper exercise of the powers. Hence, we are of the view that ratio laid down in any of the citation will not be useful to the Petitioner. All above objection taken by the petitioner are with out merit.

Objection about seniority list.

61. The petitioner took various objections firstly to the draft seniority list published on 12/1/2009 and secondly to the final seniority list published on 7/03/2009. Main objection is petitioner was not shown as senior to all respondent. He has tried to substantiate the objection on the ground that his higher marks in higher standard departmental examination is not considered, respondents were promoted even though they have not passed out the departmental examinations. Many of them were not possessing requisite educational qualification, experience qualification. In all the promotional exercise the respondents were promoted in spite of the fact they were not eligible.

62. Though there is no reply on behalf of the respondents to the amendment, we have dealt with the grievances on the basis of available record. These objections are decided by us in earlier part of our judgement while dealing the particular promotional exercise. We are convinced that proper procedure was followed

while undertaking promotional exercise for the particular year.

Even though the candidates have not passed out particular departmental examination they were considered for the promotion because they were exempted from passing examination. Hon'ble Chief Justice has granted exemption by exercising power under the relevant Rules. Exemption is granted depending upon the circumstances prevailing at that time. After completing particular age, it may not possible for the employees to pass out the examination. At the same time they have gained sufficient experience. It is also true that the exemption clause was deleted in the year 2002. But the petitioner has not made a particular instance wherein the employee even though not falling under the exemption clause was granted exemption.

63. So also some of the respondents were promoted even though they were not possessing the educational qualification and sufficient experience. However when we have seen the record produced before us, we find that those respondents were granted relaxation depending upon the situation prevailing at that time. If there are no sufficient number of candidates from zone of consideration for the promotion of particular post, then they are no sufficient choices available for selection and if posts are lying vacant, Hon'ble Chief Justice is empowered to grant

exemption as per Rules. The petitioner has not brought out any particular instance wherein without granting relaxation to an employee he is considered for the promotion.

64. We have already rejected the arguments of considering 'securing higher marks in departmental examination'. It is important to note that in a particular promotional exercise if a particular employee is selected on merit (even though junior) naturally he is promoted to the next cadre and becomes senior to employees who are not promoted. It is important to note that while fixing seniority in promotional post, seniority in the feeder cadre is not be considered. This principle is incorporated in rule no. 15(II) of 1981 Rules and in rule no.28 (ii) of 1995 Rules.

65. For the above discussion, we do not find any merit in the submission that the rules while preparing the final seniority list were not followed. We reject the said contention.

66. For the above discussion, we find absolutely no merit in any of the grievances raised on behalf of the petitioner. He was not promoted earlier because he has not satisfied the test of 'merit cum seniority'. The arguments advanced on behalf of the petitioner is predominantly based on the principle of 'seniority cum merit' which is not applicable for the posts for which the petitioner has participated. Hence, we have no alternative but to

dismiss the petition. Hence petition stands dismissed. Parties to bear their own costs.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]