

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

Present:

The Hon'ble Justice Lapita Banerji

W.P.O. No. 1238 of 2023

Suchhanda Ganguly & Ors.

Vs.

The Registrar, Original Side, High Court at Calcutta & Ors.

For the petitioners : Mr. Partha Sarathi Bhattacharyya, Sr. Adv.
Mr. Dhruba Ghosh, Sr. Adv.
Mr. Anand Farmania, Adv.
Mr. Rohit Banerjee, Adv.
Mr. Raju Bhattacharyya, Adv.
Mr. Arunava Maity, Adv.
Mr. P. K. Maity, Adv.

For High Court Administration : Mr. Jaydip Kar, Sr. Adv.
Mr. Siddhartha Banerjee, Adv.
Mr. Soumajit Majumder, Adv.
Mr. Sharjit Ahmed, Adv..

Heard On : 12.07.2023.

Judgment On : 14.07.2023.

Lapita Banerji, J.:- The petitioners are working as Assistant Registrars (directly recruited from the legal profession) in the Original Side Establishment of the Hon'ble High Court at Calcutta. By a Notice dated December 18, 2020, it was notified that one new post has been sanctioned and designated as Deputy Registrar (Legal).

2. By the said Notice dated December 18, 2020, it was also informed that the post of Deputy Registrar (Legal), Original Side may be filled up from the Officers in the cadre of Assistant Registrars (directly recruited from the legal profession) and the cadre of Stamp Reporter(s) on the Original Side.

3. Names were invited from the Officers to show their willingness/unwillingness in writing for consideration of promotion to the post of Deputy Registrar (Legal), in short, DR (L) by the same notice.

4. The petitioners made a joint representation on January 4, 2021, for cancellation, withdrawal and/or modification of the Notice dated December 18, 2020. The petitioners prayed for deletion of the names of the Stamp Reporter(s) from the list of incumbents for being considered for promotion to the post of DR (L). The Joint Registrar (Administration)/Respondent No.5 by a communication dated March 11, 2021, informed the petitioners that by an Order dated March 1, 2021, the Hon'ble Chief Justice was pleased to reject the representation of the petitioners. The grievance of the petitioners is that such a rejection was made without assigning any reason. By the communication dated March 11, 2021, the respondent No.5 again sought for intimation of willingness/unwillingness of the incumbents to be considered for promotion to the post of DR (L).

5. Upon the communication dated March 11, 2021, being issued the petitioners preferred a joint representation on March 18, 2021. Another

representation was made on March 19, 2021, for deferring the time to submit the willingness/unwillingness in terms of the communication dated March 11, 2021. Reasons were sought for rejection of the joint representation dated January 4, 2021 by the Order dated March 1, 2021 passed by the Hon'ble Chief Justice.

6. By a communication dated March 21, 2022, the petitioners were informed, that the Hon'ble Chief Justice vide Order dated March 17, 2022, was pleased to reject the prayers of the petitioners dated March 18, 2021 and March 19, 2021. No reasons were given as to why such prayers were rejected.

7. Subsequent thereto, another joint representation was made before the Hon'ble Chief Justice for recalling of the Order dated March 17, 2022, upon providing an opportunity of hearing to the petitioners. There was no response to the said representation dated March 28, 2022. Thereafter, almost 10 months after the said representation, the petitioners were informed by the respondent No.5 vide communication dated February 1, 2023 that the Hon'ble Chief Justice was pleased to reject the representation of the petitioners dated March 28, 2022 on January 30, 2023. As such, the rejection was done without an opportunity of hearing and without assigning any reason to the petitioners. By a notice dated June 1, 2023 the incumbents from both the groups were requested to furnish their willingness/unwillingness to sit for the promotional examination.

8. It is the case of the Petitioners that under the High Court Services (Conditions of Services and Recruitment) Rules, 1960, the High Court services are classified into 4 Classes, i.e. Class-I, Class-II, Class-II and Class-IV. The posts of Deputy Registrar and Assistant Registrar fall under Class-II. They are Gazetted Posts. The post of Stamp Reporter (SR) is a Class-III post. It is Non-Gazetted (Ministerial) post.

9. It is contended that the post of Stamp Reporter(s) (SR) is below the post of Superintendent, Grade-I. The post of SR could not be clubbed with that of ARs for promotion. The feeder post of a DR is AR and not SR. The Calcutta High Court Service Rules, 1960 are comprehensive Service Rules applicable to the staffs of both Appellate Side and Original Side establishments. There are no specific Service Rules governing the Original Side Establishment.

10. In the absence of a Rule, endorsing *eligibility* of an SR to be considered for promotion to the post of DR the same could not be done by way of an administrative decision. The SR(s), if at all, could only be considered for promotion to the posts of AR(s) and not to the posts of DRs. The Hon'ble Administrative Committee by seeking to approve of such clubbing of posts by its Administrative Order dated November 2019 acted beyond its jurisdiction. The approval of the Administrative Committee's Order was also beyond the jurisdiction of the Hon'ble Chief Justice. Without framing of the service rules in the OS, the procedure that was continuing so far, should not have been altered.

11. It is submitted that the post of the AR(s) was a promotable post, whereas, the post of a Stamp Reporter in the O.S. was non-promotable post. Attention of this Court is drawn to the Gradation List to contend that the post of Stamp Reporter(s) is below than the post of Assistant Registrar on the Original Side. Hence, the clubbing of SR(s) and AR(s) is an arbitrary decision.

12. The Stamp Reporter(s) in the Original Side made a representation for promotion to the higher post of Assistant Registrar AR(s), OS and Deputy Registrar (DR), OS. The said representation of the Stamp Reporter(s) was considered and rejected by the Administrative Committee of the Hon'ble High Court on November 13, 2014. Therefore, the Stamp Reporters themselves accepted that their post is below that of the AR(s) and was a non-promotable post.

13. According to the petitioners the candidates are called for promotional posts from the feeder posts in 1:5 ratio. In the event the Stamp Reporter(s) are included, the same would result in considering the candidates for promotion in 1:7 ratio. Such a departure from the original norms/guidelines is arbitrary. Such departure will reduce the chances of the ARs for being considered for promotion. Therefore, the Notice dated June 1, 2023 should be quashed and/or set aside.

14. Mr. Bhattacharya, Learned Senior Counsel, assisted by Mr. Ghosh, Learned Senior Counsel appearing for the petitioners submitted that from the information gathered by the petitioners under The Right to

Information Act 2005, it transpired that the posts of Stamp Reporter(s) in the Original Side are not promotable posts. The prayers for being considered to the post of AR and DR by the SR(s) were rejected in 2014 by the Administrative Committee of the High Court. The promotional aspects/avenues of SR(s) have not been indicated in the 1960 Service Rules till date.

15. He submitted that from replies to the RTI applications, it appears that the next promotional post of SR is AR in the Appellate Side establishment. Furthermore, from the reply to RTI applications, it transpired that an incumbent must hold the post of AR to be considered to be *eligible* for the promotional post of DR in the Original Side establishment of the High Court.

16. The recruitment criteria/process for both the posts are different. Incumbents belong to different cadres and, therefore, it was essential to notify the post of the Stamp Reporter to be a promotable post before clubbing SR(s) with ARs.

17. Furthermore, it was argued that there are different sections/cadres of employees paid at the same scale of pay, but, they are never clubbed together for being considered to the promotional post. Even if the senior most section cadres draw salary equivalent to an Upper Division Assistants (UDA) they are not *eligible* to compete with the UDAs for promotional posts. Assuming, that the post of a Stamp Reporter is a Gazetted Post, even then an opportunity of hearing should have been

given to the petitioners before SR(s) were considered for jump promotion by clubbing the two different cadres. Without framing the service/promotional rules, the two different cadres could not be clubbed together. Most importantly, the power/discretion conferred upon by the Hon'ble Chief Justice must be exercised in a fair and reasonable manner.

18. Mr. Ghosh relied on a Judgment reported in (1994) 2 SCC 411 [**Shakuntala Sharma (Mrs) vs. High Court of H.P. at Shimla and Anr.**] to contend that two unequal sets of posts cannot be put at par with each other and considered for promotion.

19. Mr. Kar, Learned Senior Counsel, appearing for High Court Administration submitted that the Hon'ble Chief Justice while framing the Rules under Article 229 of the Constitution of India, has an absolute discretion over the service related issues of the staff of the High Court.

20. He handed over the Minutes of the Meeting dated November 11, 2019. The said Minutes were retained with the records.

21. From the Minutes dated November 11, 2019, it appears that there were three newly sanctioned posts of Deputy Registrar, Original Side. The newly sanctioned posts had specific nomenclatures. From the report of the Registrar, Original Side placed before the Committee, it transpired that there were six sanctioned posts of DRs in the Original Side establishment. Out of the six sanctioned posts, 3 which were already filled up are DR (Court and Judicial), DR (Administration) and DR (Judge's Accounts Section). The post of DR (Court and Judicial) was

filled up from the feeder post of Assistant Registrar (direct recruit from legal profession).

22. The remaining 3 posts of DRs were sanctioned by the Finance Department, Government of West Bengal in 2015 and 2016. Such 3 vacant posts were required to be filled up. One newly sanctioned post of DR was earmarked for the Officers, who were directly recruited from the legal profession. Such post could be filled up from a field of selection of officers in the cadre of AR(s) (from legal profession) and in the cadre of Stamp Reporter(s) on the Original Side as both the cadres were filled up by direct recruitment from legal profession. The said post was designated as Deputy Registrar (Legal) out of the 3 newly sanctioned posts of DRs.

23. There are 2 sanctioned posts of SR(s) on the Original Side. The said posts were filled up directly through open competitive test. The Stamp Reporter(s), Original Side like the Assistant Registrars (from legal profession) were law graduates, who were directly recruited from legal profession through open competitive test. The recruitment rules in respect of both the cadres are more or less same. The Officers of both the cadres perform court related duties. Both the posts of Stamp Reporter(s) and Assistant Registrar (from legal profession) carry the same scale of pay, Band-4A (Rs.15,600/42,000/-) with Grade Pay of Rs.5,400/-. Therefore, the Stamp Reporter(s) on the Original Side were considered in the field of selection along with ARs (from the legal

profession) for the purpose of promotion to the post of Deputy Registrar (Legal) and any future vacancies to the post of Deputy Registrar (Court and Judicial) as per the Minutes dated November 11, 2019.

24. The fact that the post of SR, OS is a blind alley post, was considered before clubbing the said posts. Since there were only 2 sanctioned posts of SR(s), the Committee was of the view that 1 post of Deputy Registrar (Legal) could not be earmarked for the Stamp Reporter(s). Therefore, the Committee decided to club the post of SR(s) with the post of ARs (from legal profession) in the field of selection for appointment on promotion to the post of DR (Legal). He submits that there is no infirmity in the decision making process of the Administrative Committee's decision dated November 11, 2019.

25. Mr. Kar referred to a decision reported in (1991) 1 SCC 505 (**Union of India & Ors. Vs. S.L. Dutta & Anr.**). He submitted that mere chances of promotion are not conditions of service. A reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a condition of service but chances of promotion are not. In that case, it was held that the issue was whether the change in promotional policy by reducing the chance of promotion to the writ petitioners could be said to be arbitrary or malafide. Only because of the reason that the minutes relating to the change of the policy were not produced, the policy could not be held to be arbitrary. The policy, that was sought to be assessed in that case,

required consideration of materials, which were highly technical or scientific in nature. They were matters where the judges and lawyers of courts, could hardly be accepted to have much knowledge of. Just because once the Ministry of Defence was not agreeable to accept the proposal for such change of policy and later accepted the same due to change of circumstances, did not *per se* render the policy arbitrary.

26. Mr. Kar then referred to a decision reported in (2006) 8 SCC 647 (**Punjab National Bank & Ors. vs. Manjeet Singh & Anr.**). The said case was cited for the proposition that the principles of Natural Justice were not required to be complied with when the same would have been an empty formality. In that case, it was held that the Court will not insist on compliance of the principles of Natural Justice in view of the binding nature of the award. Their application will be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not be issued only because there is violation of principles of Natural Justice.

27. Next he relied on a full bench decision reported in 2000 (1) CHN 72 (**Baidyanath Mukherjee vs. Vivekananda Goswami & Ors.**). In the said case, Article 229 of the Constitution of India was considered. Article 229 is reproduced hereinafter:

229. Officers and servants and the expenses of High Courts

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or

such other Judge or officer of the Court as he may direct: Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorized by the Chief Justice to make rules for the purpose: Provide that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

28. Under the constitutional scheme, the Chief Justice is the supreme authority and the other Judges, so far as the officers and servants of the High Court are concerned, have no role to play either in the administrative side or in the legislative side unless authorized by the Chief Justice of the High Court. The power available to a Chief Justice of a High Court under Article 229 is akin to the power of the Chief Justice of India under Article 146 of the Constitution. Just as the Chief Justice of India is the supreme authority in the matter of Supreme Court establishment including its office staff and officers, also the Chief Justice of a High Court is the sole authority in these matters.

29. Under Article 229(2), the State can make laws. The rules which may be framed by the Chief Justice of a High Court, shall be subject to the provisions of such law. However, in the absence of any such law made by the State Legislature, the rules framed by the Chief Justice shall have the full application. The rules framed by the Chief Justice is in the nature of subordinate legislation.

30. The Chief Justice is not required to follow the principles of Natural Justice in exercising his legislative power. The Chief Justice of a High Court in exercising a power under Article 229(2) of the Constitution of India, cannot be made to follow the principles of Natural Justice. Such rules being subordinate legislation may be struck down only on grounds which may be invalidate a legislative measure.

31. He cited a decision reported in (2001) 9 SCC 763 (**Hon'ble Chief Justice, High Court of Bombay And Others Vs. B. S. Nayak And Others**) to contend that in the absence of any rules framed by the Court or the Hon'ble Chief Justice, the directions of the Hon'ble Chief Justice would operate in the field of appointment. In that case it was held that the Hon'ble Chief Justice was well within his jurisdiction in deciding the norms of promotion by merit-cum-seniority criteria for the post of Private Secretaries in deviation from the previous practice whereby the said posts were filled by consideration of seniority only. It was held that the Hon'ble Chief Justice formulated the criteria of filling up the posts in a

manner he thought appropriate for efficient administration and efficient discharge of the duties.

32. Next he relied on a decision reported in (1989) 1 SCC 121 (**State of U.P. & Ors. vs. J.P. Chaurasia & Ors.**). The said case was cited for the proposition that the equation of posts or equation of pay must be left to the executive/government. It must be determined by expert bodies like the Pay Commission. An expert body would be the best judge to evaluate the nature of the duties and the responsibilities of the posts. The Court should normally accept such determination by a commission/committee. The Courts should not ordinarily interfere with such determination/opinion unless extraneous consideration is showed.

33. Thereafter, he relied upon a decision reported in (2005) 13 SCC 630 (**Manmatha Nath Ghosh & Ors. vs. Baidyanath Mukherjee & Ors.**). In that case, the Apex Court held that the equivalence of work done by the two sets of employees was entirely a matter of assessment by the High Court. The assessment of quality of work done by the two categories of employees must be left to the judgment of the employer, in that case, the High Court.

34. Mr. Bhattacharyya, in reply, relied on a judgment reported in (2014) 14 SCC 50 (**Renu & Ors. –Versus-District & Sessions Judge, Tis Hazari Courts, Delhi & Another**) to contend that any vacancy for a post either in the High Court or in the Courts subordinate to the High Court were to be made in strict compliance of the statutory rules. In case

any appointment is made in contravention to the statutory rules the said appointment would be *void ab-initio* irrespective of any class of persons or person occupying it. Therefore, the powers under Article 229(2) of the Constitution of India cannot be exercised by the Chief Justice in an unfettered or arbitrary manner. The appointments have to be made in accordance with the provisions of Articles 14 and 16 of the Constitution and the rules made by the legislature.

35. Considering the rival submissions of the parties and the materials placed on record this Court is of the view-

- a. There were six incumbents to the post of Deputy Registrar (Court & Judicial).
- b. Upon the three newly sanctioned posts of Deputy Registrars being approved by the Finance Department, State of West Bengal, it became necessary to decide how the said posts will be filled up.
- c. The Administrative Committee vide resolution dated November 2019 decided that promotion to the post of Deputy Registrar (Legal) cannot be earmarked only from the post of Stamp Reporter(s) as there were only two Stamp Reporter(s) working on the Original Side.
- d. The Administrative Committee decided to club together the posts of Assistant Registrars (Legal) and the Stamp Reporter(s) for being considered for promotion to the post of Deputy Registrar (Legal) by way of an examination.

- e. The decision of the 2019 Administrative Committee was based on the following reasons.
 - i. There was no avenue for promotion for the Stamp Reporter(s). The said post was a dead alley.
 - ii. The Assistant Registrars (Legal) and the Stamp Reporter (s) were practising advocates at the time of recruitment.
 - iii. Both obtained Law Degrees and appointed through competitive examination/direct recruitment.
 - iv. Both Assistant Registrars (Legal) and Stamp Reporter(s) were performing Court related duties.
 - v. Both were getting same scale of pay.
- f. The reasons recorded by the Administrative Committee are unambiguous. The Recruitment process, nature of work and the scale of pay for both the groups have been clearly taken into account by the Administrative Committee.
- g. Sitting in Judicial Review, this Court is not inclined to review the decision taken by the Administrative Committee, based on its expertise.
- h. Previously, there were six incumbents competing for one post for Deputy Registrar (Court and Judicial). Now there are eight incumbents competing for two posts of Deputy Registrars, out of which one post is newly sanctioned. Therefore, this Court is of the view that the petitioners chances for promotion to the post of

Deputy Registrar (Legal) and (Court and Judicial) is in 1:4 ratio. The contention of the petitioners that their chances for promotion have been reduced to less than 1:5 in ratio cannot be accepted. Even, if the chances of promotion were reduced due to the inclusion of the Stamp Reporter(s) as incumbents for the higher posts, the said decision is in the exclusive domain of the employer/High Court administration as long as there was no arbitrariness or mala fide or perversity in the decision making process.

- i. This Court cannot examine whether there is any material difference in the Recruitment process whereby the Assistant Registrars (Legal) have to answer a more onerous paper of 150 marks as opposed to 100 marks paper that the Stamp Reporter(s) have to sit for.
- j. Furthermore, this Court also cannot comment on the difference of pay in the salary of the Assistant Registrar (Legal) and the Stamp Reporter(s) by referring to the scale produced before this Court. The Administrative Committee in its wisdom decided that since, both the groups of Officers draw same scale of pay and perform Court related duties, they can be treated at par for being considered for promotion to the post of Deputy Registrar (Legal).
- k. In the case of **J. P. Chaurasia** (supra), the Apex Court held that the opinion of the Committee in respect of the Section Officers of

the High Court of Allahabad performing onerous duties and bearing higher responsibilities than the Bench Secretaries, should be accepted. The prayer of the Bench Secretaries to get the scale of pay admissible to the Section Officers was not accepted.

1. This Court accepts the contention that the opinion of an expert body while evaluating the nature of work, volume of work, difference in degrees of performance and equation of posts/pay must be left to the committee/commission, unless extraneous considerations are proved.
- m. There is no dispute with regard to the position in law that while framing the rules under Article 229(2) of the Constitution of India, the Chief Justice is not required to follow the principles of Natural Justice as laid down in **Baidya Nath Mukherjee** (supra). However, the issue here is whether the representations made by the petitioners were required to be disposed of upon following principles of Natural Justice including the principle of *audi alteram partem* and whether the same were required to be disposed by a reasoned order **after** the Rules were framed or decision was taken.
- n. It is also true that no hearing is required to be given to any of the interested parties prior to framing of the legislation/subordinate legislation.
- o. The case of **Manjeet Singh** (supra) is far removed from the facts of the present case. In the present case, only 6 ARs (L) were

- concerned. They were neither represented by themselves nor by any union. The facts and the applicable rules are being disputed since 2020. Therefore, a personal hearing should have been given to the said ARs/petitioners before the disposal of their representations.
- p. This Court cannot agree with the submission of Mr. Kar that since an Administrative Order has been passed by the Hon'ble Chief Justice upon consideration of the Administrative Committee's decision, even by giving an opportunity of hearing to the petitioners and otherwise complying with the principles of Natural Justice, no useful purpose would have been served.
 - q. In view of this Court, the case of **Renu** (supra) does not aid the writ petitioners in any way. The first issue under consideration in the said case was whether the recruitment process could be centralized in case of class-IV employees who were initially appointed on ad-hoc basis in the Courts subordinate to the Delhi High Court and the appointments were extended from time to time. The second issue under consideration was whether the service conditions of the entire staff could be amended to make them transferable post. The Registrars General of all the High Courts were invited to file their response on the said issues.
 - r. There is no allegation of violation of Articles 14 and 16 of the Constitution of India in the present writ petition nor is there any

allegation of violation of any statutory rules. Even the Rules of the High Court in the Original Side relating to the present issue, are silent. The said judgment made it clear that the High Court is a *constitutional and autonomous authority subordinate* to none. Only in cases where the Rules of the High Court are not in consonance with the philosophy of the Constitution then the same may be modified and no appointment may be made in contravention to the provisions of the Constitution. The employer was bound to strictly comply with the appropriate Rules and the provisions of Articles 14 and 16 of the Constitution before making any recruitment.

- s. It is not a case where the employer by exercising its expertise came to the finding that two groups of employees may be clubbed together for considering them for promotion to a higher post upon giving notice to the incumbents and inviting their willingness/unwillingness to sit for a promotional examination. The said procedure for promotion cannot be held to be flawed due to lack of transparency or violation of the provisions of the Constitution of India or statutory Rules.
- t. In the case of **Shakuntala Sharma (supra)**, the Appellant was appointed as a Clerk on July 24, 1972. She was promoted as a Translator on July 30, 1979. Thereafter, she was promoted to the post of Revisor on February 26, 1992.

- u. The respondent No.2 was appointed as a Clerk on January 7, 1974. He was promoted to the post of Senior Assistant on August 14, 1986. The respondent was not promoted to the post of Deputy Superintendent. The post of the Translator was equivalent to the post of Senior Assistant. Both the posts carried the same scale of pay. The post of a Revisor was at par with that of Deputy Superintendent. Both the posts carried the same scale of pay.
- v. Incumbents could be promoted from the posts of Revisors and Deputy Superintendents to the posts of Superintendents. The post of Superintendent was a common promotional post. There was no dispute with regard to the fact that the respondent No.2 was promoted to the post of Senior Assistant after the petitioner was promoted to the post of Translator. The fact that the petitioner was appointed as a Clerk prior to the respondent No.2, was also not in dispute. Furthermore, it was admitted that in the combined seniority list, the Appellant stood at Serial No.30, whereas, the respondent No.2 stood at Serial No.70. Admittedly, the respondent No.2 was never promoted to the post of Deputy Superintendent which was at par with the post of a 'Revisor'.
- w. On December 3, 1992, overlooking the claim of the Appellant the Respondent No.2 was promoted to the post of Superintendent. The High Court relied upon the 1992 Rules for effecting promotion. Under the said Rules, the Deputy Superintendents/Revisors with

minimum of 3 years of service, in the ratio of 4:1 could be considered for promotion to the post of Superintendent. However, if such candidates were not *eligible* with minimum 3 years of service, the promotion to the post of Superintendent could be made from Senior Assistants/Translators with minimum 6 years of service, in the said ratio.

- x. The result of the said Rules was that since the Appellant did not put in 3 years of service on December 3, 1992 as Revisor, she was disentitled for promotion to the post of Superintendent. However, since there were no Deputy Superintendent/Revisor with 3 years of service on December 3, 1992, the respondent No.2 was given the promotion being the Senior Assistant with more than 6 years' service.
- y. The consequence of implementation of the Rules was that had the Appellant continued as a Translator, she would have been promoted to the post of Superintendent as she would have qualified by completing more than 6 years of service as a Translator and being higher up in the Gradation List. However, by being promoted to the post of Revisor only few months before the appointment of the respondent No.2, to the post of Superintendent, she lost her chance of promotion to the post of Superintendent. The contention that such a promotion was given to the petitioner

- only to facilitate the promotion of the respondent No.2, was accepted by the Hon'ble Apex Court.
- z. The Apex Court held that 2 unequal sets of posts were put at par with each other. The posts of Deputy Superintendents and Revisors were admittedly posts higher than that of Senior Assistants and Translators, respectively. In any event, if the incumbents of both the sets of posts were made *eligible* for promotion to the post of Superintendent, then, no qualifying period of service could be prescribed for the incumbents in the posts of Deputy Superintendents and Revisors. Since no *eligible* candidate from the post of Deputy Superintendent was available, the respondent No.2 holding the post of Senior Assistant was promoted to the post of Superintendent as he had completed 6 years of service as required by Rule 10 of the 1992 Rules.
- aa. The Apex Court held that the Rule 10 of 1992 Rules was iniquitous and indefensibly unjust. Therefore, it violated Article 14 of the Constitution of India by treating unequal as equal. Unwarranted advantage was given to the incumbents of lower posts over the incumbents of higher posts. It was held that the promotional avenues for those, who are stagnated, could not be made in a manner which would deny the incumbents of higher promotional posts their right to be considered for promotion. An unmerited advantage over them were being given to those holding lower posts.

- bb. This Court is of the view that **Shakuntala Sharma** (Supra) does not aid the case of the petitioners in any manner. Why the posts of ARs and SRs could be clubbed together for promotion has been reasoned in detail by the Administrative Committee. Furthermore, in the present case, the petitioners/AR(L) are not being unfairly ousted from promotion to the post of DR while the SR(s) were only being considered for the said post of DR. This is not a case of giving unwarranted advantage to the SR(s) over the ARs(L). In the present case, there is no issue relating to the SRs qualifying the residency period and therefore the question getting unmerited advantage by being considered for promotion to the post of DR, to the exclusion of ARs does not and cannot arise.
- cc. However, to the mind of this Court, the several representations made by the Assistant Registrars (Legal) should have been disposed of by a reasoned Order upon giving them an opportunity of hearing.
- dd. Since, the petitioners were aggrieved by the notices dated December 18, 2020 and June 1, 2023 they should have been given an opportunity of hearing prior to disposal of the representations summarily.
- ee. As employees of the Original Side Establishment of the High Court, the petitioners deserved an opportunity of hearing and a reasoned consideration of their representations.

36. In the light of the discussions above, this Court is of the view that the representations of the petitioners dated January 4, 2021, March 18, 2021, March 19, 2021 and March 28, 2022 shall be disposed of by the respondent no.4/the learned Registrar, Original Side, High Court at Calcutta, by passing a reasoned Order within four weeks from the date of this Order. Prior to passing of the reasoned order the petitioners shall be given an opportunity of hearing. Till such time the representations of the petitioners are disposed of, there will be no publication of the results of the promotional examination to the post of Deputy Registrar (Legal), intimated to be held pursuant to the Impugned notice dated June 1, 2023.

37. With the directions aforesaid, **WPO 1238 of 2023** is **disposed of**.

38. All parties are to act on server copy of this order as downloaded from the official website of this Hon'ble Court.

39. Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(Lapita Banerji, J.)