

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Before :-

The Hon'ble Justice Saugata Bhattacharyya

APO 509 of 2017
WITH
WPO 1050 OF 2012

The Kolkata Municipal Corporation & Ors.

Vs.

Dr. Pradip Kumar Ray Chaudhury & Ors.

For the Appellants : Mr. A.K. Ghosh, Ld. Advocate.
Mr. S.K. Debnath, Ld. Advocate.

For the Writ Petitioner/
Respondent No. 1 : Mr. R. Chakborty, Ld. Advocate.
Ms. A. De, Ld. Advocate.

Hearing concluded on : 16.08.2023.

Judgment On : 06.09.2023.

Saugata Bhattacharyya, J. :-

1. Writ petition was filed by Dr. Pradip Kumar Ray Chaudhuri, inter alia, claiming promotion reckoning his seniority w.e.f. 4th July, 1984 and to grant pecuniary and other service benefits on considering seniority of the writ petitioner w.e.f. 4th July, 1984. In addition thereto it has been prayed for in the writ petition to grant benefits of Carrier Advancement Scheme of the Kolkata Municipal Corporation (hereinafter referred to as "KMC") by treating the writ petitioner on regular service w.e.f. 4th July, 1984.

2. Writ petitioner was appointed by the concerned authority of KMC vide letter dated 2nd July, 1984 on a leave vacancy of one Dr. Debangshu Sarkar, Medical Officer at Palta Water Works Dispensary on a daily rate of Rs.45/. The said appointment letter issued in favour of the writ petitioner is annexed as 'Annexure X-2' to the affidavit affirmed on behalf of KMC on 17th July, 2023.

3. It appears from records as well as submissions made on behalf of the learned advocates representing the parties that writ petitioner was permitted to function as Medical Officer of KMC on *ad-hoc* basis till 29th January, 1988 and on recommendation of the Municipal Service Commission dated 29th/30th January, 1988 appointment of the writ petitioner was made on substantive basis as Medical Officer, Epidemic Control. Before writ petitioner was appointed on the recommendation of the Municipal Service Commission w.e.f. 30th January, 1988 service of the writ petitioner was extended from time to time after his appointment vide letter dated 2nd July, 1984 having span of six months. In the year 1986 writ petitioner participated in the selection process for filling up the post of Medical Officer, Palta Water Works Dispensary but he was not found suitable for being recommended by the Municipal Service Commission for the said post and one Dr. Subrata Roy Chowdhury being respondent no. 7 in the appeal was selected for the said post. Therefore, the appointment on *ad-hoc* basis of the writ petitioner continued till his appointment as Medical Officer on substantive basis on 30th January, 1988.

4. After appointment of the writ petitioner based on recommendation of the Municipal Service Commission dated 29th/30th January, 1988 writ petitioner functioned as Medical Officer on substantive basis and subsequently based on a gradation list prepared by the KMC dated 19th August, 2010 a promotional order was issued on 28th February, 2012 whereby six candidates including the writ petitioner were decided to be promoted to the post of Executive Health Officer. From the gradation list dated 19th August, 2010, it appears that the petitioner was placed at serial no. 32 considering his date of joining service on 21st August, 1986 whereas respondent no. 7 was placed at serial no. 33 treating his appointment w.e.f. 11th December, 1986. However, KMC found such gradation list erroneous resulting in denial of promotion to the writ petitioner based on promotional order dated 28th February, 2012 but other five candidates whose names featured in the said promotional order were given promotion including respondent no.7. Subsequently, during pendency of the writ petition vide promotional order dated 4th November, 2013 writ petitioner was promoted to the post of Executive Health Officer and thereafter writ petitioner was again promoted to the post of Deputy Chief Health Officer on 9th February, 2015. The writ petitioner retired on superannuation in 2015.

5. The writ petition preferred by Dr. Pradip Kumar Ray Chaudhuri was allowed vide judgment dated 29th June, 2017 whereby the Hon'ble Single Bench directed the KMC to grant benefits to the writ petitioner including promotion by treating the seniority of the writ petitioner w.e.f. 4th July, 1984. The issue travelled before the Hon'ble Division Bench since intra

Court appeal was preferred by KMC and there was difference of opinion amongst the two Hon'ble Judges of the Division Bench as it emanates from the judgment dated 26th April, 2023, therefore the issue has been referred to me vide order dated 3rd May, 2023 by the Hon'ble Chief Justice for third opinion. Since facts have been narrated in details in two judgments dated 29th June, 2017 and 26th April, 2023 the Court is making endeavor to appraise the issue involved in the appeal based on submissions made by the parties in the backdrop of relevant facts.

6. Since writ petitioner was initially holding the post of Medical Officer which is 'A' category post reliance has been placed on Section 19 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as "the said Act of 1980"). It has been contended on behalf of the appellant-KMC that under Section 19(1) said 'A' category post needs to be filled up on the recommendation of the Municipal Service Commission. However, exception has been provided under Section 19(3) which envisages that requirement on recommendation by the Municipal Service Commission can be dispensed with as contemplated under Section 19(1) in the event prior approval of the State Government is accorded for such appointment. In the present case according to KMC since there was no approval of the State Government to the appointment of the writ petitioner made vide letter dated 2nd July, 1984, the said appointment was not valid. But according to KMC writ petitioner functioned as Medical Officer on *ad-hoc* basis till 29th January, 1988 and regular appointment was made on the recommendation of Municipal Service Commission w.e.f. 30th January, 1988. Notice of the Court has also been

drawn to Section 24 of the said Act of 1980 which provides the situation relating to appointment where consultation with the State Public Service Commission or Municipal Service Commission is dispensed with. Section 24(1)(b) provides that if the post is filled up for a term of six months consultation with State Public Service Commission or Municipal Service Commission is not required. According to KMC Section 24(1)(b) does not come in aid of the writ petitioner since he was appointed on the recommendation of the Municipal Service Commission w.e.f. 30th January, 1988 on substantive basis, prior to such appointment *albeit* service of the writ petitioner was for a period of six months which was extended from time to time but that was without approval of the State Government as it is required under Section 19(3).

7. The appellant has also submitted that writ petitioner availed opportunity to be appointed on substantive basis in 1986 for the post of Medical Officer, Palta Water Works Dispensary but he failed to be selected. Therefore, on being appointed on substantive basis w.e.f. 30th January, 1988 he cannot claim seniority from the month of July 1984. According to the appellant writ petitioner discharged duty as Medical Officer on being appointed w.e.f. 30th January, 1988 till 2012 without any claim i.e. pecuniary benefits need to be sanctioned reckoning his seniority from July 1984. Therefore, subsequently he is estopped from raising such claim when promotional order dated 28th February, 2012 was issued by KMC and as such claim of the writ petitioner for pecuniary benefits is a stale claim.

8. It has also been contended on behalf of the appellant that the gradation list dated 19th August, 2010 was erroneous as it appears from the relevant parts of the gradation list since against serial no. 32 writ petitioner's name was mentioned considering date of his joining on 21st August, 1986 which is inappropriate, if contention of the writ petitioner is accepted in that event also date of joining of the writ petitioner would be 4th July, 1984 not 21st August, 1986. Due to such incorrect mentioning of date of joining of the writ petitioner in the said gradation list the promotion could not be granted to the writ petitioner and the respondent no.7 who was duly selected as Medical Officer w.e.f. 11th December, 1986 was found to be senior in the matter of granting promotion. However, after appointment of the writ petitioner on 30th January, 1988 twice he was accorded promotion vide order dated 4th November, 2013 and subsequently w.e.f. 9th February, 2015 and the same was accepted without keeping his right alive in connection with the pending writ petition.

9. In support of the contentions of the appellants following judgments have been relied upon: -

- i) **(1994)1 SCC 431**, paragraphs 8 and 11 **(S.K. Saha vs. Prem Prakash Agarwal & Others)**;
- ii) **AIR 1998 SCW 1971**, paragraphs 12 and 13 **(Dr. Anuradha Bodi & Others vs. Municipal Corporation of Delhi & Others)**;
- iii) **(2007)1 SCC 575 (State of M. P. & Others vs. Lalit Kumar Verma)**;

- iv) **(2008)15 SCC 332 (P.P.C. Rawani (Dr.) & Others vs. Union of India & Others);**
- v) **(2009)4 SCC 170 (Union of India vs. Dharam Pal & Ors.);**
- vi) **AIR1995 SC 962 (Dr. Arundhati Ajit Pargaonkar vs. State of Maharashtra & Others)**

10. On the contrary it has been submitted on behalf of the writ petitioner being respondent no.1 in the appeal that on being appointed on the basis of letter dated 2nd July, 1984 tenure of the writ petitioner was extended time to time for a period of six months and ultimately service of the writ petitioner was regularized with the consultation of Municipal Service Commission w.e.f. 30th January, 1988. In order to address the issue whether appointment of the writ petitioner with the nod of Municipal Service Commission w.e.f. 30th January, 1988 is by way of regularization or fresh appointment reliance has been placed on affidavit-in-opposition used on behalf of KMC to the writ petition specially paragraphs 4(l), 7 and 9. According to the writ petitioner in the said affidavit KMC admitted that service of the writ petitioner was regularized on 30th January, 1988 since the term “regularization” has been used in the said affidavit which attracts first proviso to Regulation 4 of the Calcutta Municipal Corporation (Determination of Seniority) Regulations, 1984 (hereinafter referred to as “the said Regulations of 1984”).

11. First proviso to Regulation 4 of the said Regulations of 1984 provides that in determining seniority of employees/persons of KMC if it is found that

appointments of persons initially made otherwise than in accordance with the relevant recruitment regulations or in the absence of any prescribed recruitment regulations and subsequently such appointments are regularized in consultation with the Municipal Service Commission, seniority of such persons shall be determined from the very date of appointment. On taking cue from the term “regularization” used on behalf of KMC in its affidavit it has been strenuously argued on behalf of the writ petitioner that first proviso to Regulation 4 is applicable in case of the writ petitioner while determining his seniority from 4th July, 1984. Therefore, he is entitled to get pecuniary benefits as well as promotional benefits based on first promotional order dated 28th February, 2012. Another limb of submission made on behalf of the writ petitioner is based on Section 24 (1)(b) which according to the writ petitioner dispensed with necessity of recommendation by the Municipal Service Commission and in absence of recommendation prior approval of the State Government as contemplated under Section 19(3) of the said Act of 1980 is also not necessary since writ petitioner was appointed time to time for a period of six months.

12. On query being posed to the learned advocate for the writ petitioner whether on being appointed as Medical Officer, Epidemic Control as per the recommendation of the Municipal Service Commission dated 29th/30th January, 1988 initially pay of the writ petitioner was fixed by taking into consideration the writ petitioner’s service w.e.f. 4th July, 1984 or treating the writ petitioner as fresh appointee his pay was fixed on and from 30th January, 1988. It has been replied on behalf of the writ petitioner that

certain incremental benefits were sanctioned in his favour but this Court does not get satisfactory reply with regard to mode of fixation of pay of the writ petitioner on and from 30th January, 1988.

13. In support of the contentions of the writ petitioner following judgments have been relied upon: -

- i) **(1974)4 SCC 325**, paragraph 12 **(C.P. Damodaran Nayar And P.S. Menon vs. State of Kerala & Others)**;
- ii) **(2002)10 SCC 710**, paragraphs 41 and 42 **(Dr. Chandra Prakash and Others vs. State of U.P. and Another)**;
- iii) **(2000) 8 SCC 25**, paragraph 20 **(Rudra Kumar Sain & Others vs. Union of India & Others)**

14. In order to appreciate the issue as raised in the appeal relating to reckoning seniority of the writ petitioner whether it is to be counted from 4th July, 1984 or from 30th January, 1988 first relevant statutory prescriptions as provided under the said Act of 1988 qua first proviso to Regulation 4 of the said Regulations of 1984 need to be taken into consideration. Section 19 and Section 24 of the said Act of 1980 are quoted below:

“19. Appointment to category A posts, category B posts, category C posts and category D posts.—

(1) Appointment to a category A post or a category B post shall be made on the recommendation of the Municipal Service Commission.

(2) Appointment to a category C post or a category D post shall be made in such manner as may be determined by regulation.

(3) Notwithstanding anything contained in sub-section (1), prior approval of the State Government shall be necessary in the case of appointment of a person not recommended by the Municipal Service Commission.

24. Dispensation of consultation with State Public Service Commission or Municipal Service Commission.--

(1) Notwithstanding anything contained in this Chapter, it shall not be necessary to consult the State Public Service Commission or the Municipal Service Commission, as the case may be, in the case of appointment of a person as an officer or employee of the Corporation, –

(a) if the person to be appointed is or has been in the service of Government, or

(b) if the post to be filled up is for a term of six months, or

(c) if the period for which the appointment is made does not exceed six months.”

Regulation 4 of the said Regulations of 1984 is quoted below:

“4. Determination of Seniority of direct recruits:

The relative seniority of all persons appointed directly through competitive examination or interview or after training or otherwise shall be determined by the order of merit in which they are selected for such appointment on the recommendation of commission or other selecting authority, persons appointed on the results of an earlier selection being senior to those appointed on the results of a subsequent selection;

Provided that where appointments of persons initially made otherwise than in accordance with the relevant recruitment regulations or in the absence of any prescribed recruitment regulations are subsequently regularized in consultation with the Commission, where necessary, seniority of such persons shall be determined from the very date of appointment.

Provided further that if any person selected for appointments to any post does not join within 2 (Two) months of the offer of appointment his seniority shall count from the date on which he joins the post unless the appointing authority for reasons to be recorded in writing condones the delay at the time of joining.

Note:

1) A list of candidates for the purpose of selection for appointment shall be prepared in all cases by the selecting authority when there will be recruitment in a single process of selection of more than one person.

2) Where the inter se seniority amongst several persons has not been determined prior to the coming into force of these regulations, seniority shall, on the coming into force of these regulations, be determined on the basis of actual date of their joining. When the date of joining of all such persons is the same, the seniority shall be determined on the basis of date of birth, persons retiring earlier 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 academic qualification prescribed in/for recruitment to the particular post, cadre of pay scale/grade.

3) In so far as the determination of relative seniority of persons selected either by the Commission or by selecting authority for appointment to different posts in the same pay-scale with different qualifications such as Assistant Engineers in Civil, Mechanical and Electrical Engineering etc. is concerned, seniority shall be determined from the date of joining.”

(emphasis supplied)

15. Since the petitioner was holding ‘A’ category post being Medical Officer in terms of Section 19(1) recommendation of the Municipal Service Commission is necessary for his appointment. Only exception has been carved up under Section 19(3) wherein it has been provided in the event of prior approval of the State Government even in absence of recommendation of the Municipal Service Commission such appointment under section 19

can be made. Striking feature of Section 19 is the requirement of recommendation of the Municipal Service Commission in filling up 'A' category post which was held by the writ petitioner. On the contrary under Section 24 consultation with the State Public Service Commission or Municipal Service Commission is dispensed with when person is appointed for a term of six months as provided under sub-Section (1)(b). In first proviso to Regulation 4 of the said Regulations of 1984 it has also been provided if persons initially appointed otherwise than in accordance with the relevant recruitment regulations and if subsequently such persons are regularized in consultation with the Municipal Service Commission, seniority shall be determined from the very date of appointment. In Section 24 and proviso to Regulation 4 'recommendation' by the Municipal Service Commission is not the required condition rather 'consultation' with the Municipal Service Commission has been contemplated but it has been dispensed with in certain cases under section 24.

16. Another aspect which is required to be taken into consideration in the matter of application of Section 19 and Section 24 that Section 19 prescribes the procedure which needs to be followed in the matter of substantive appointment where recommendation of the Public Service Commission is *sine qua non*. On the other hand, Section 24(1)(b) postulates a situation where short-term appointment for a period of six months can be made without consultation with State Public Service Commission or Municipal Service Commission. Therefore, Section 24 deals with short term appointment up to the extent of six months unless the appointed person has

been in service of Government. But in terms of first proviso to Regulation 4 of said Regulations of 1984 consultation with the Municipal Service Commission is a precondition in reckoning seniority of the person from the very date of appointment if the said person was appointed initially otherwise than in accordance with relevant recruitment regulations or in absence of any prescribed recruitment regulations.

17. In view of the aforesaid discussion in the context of Section 19 and Section 24 of the said Act of 1980 it will not be correct to assume that the connotations such as 'recommendation' and 'consultation' have been interchangeably used. Under Section 19 in case of substantive appointment recommendation of Municipal Service Commission is required whereas under Section 24 for short term appointment having span of six months consultation with the Public Service Commission has been dispensed with. It also appears from first proviso to clause 4 of the said Regulations of 1984 consultation with the Public Service Commission is necessary in the matter of reckoning seniority from the initial date of appointment on subsequent regularization of the person.

18. During course of hearing and in consideration of the averments made in the affidavit-in-opposition used by KMC to the writ petition which has been heavily relied upon by the writ petitioner, direction was given upon the KMC to file an affidavit to disclose the procedure followed by KMC in appointing the writ petitioner in the post of Medical Officer, Epidemic Control and the steps taken by the Municipal Service Commission for appointing the writ petitioner. Such direction to file affidavit had to be given

in view of the following averments made by KMC in its affidavit-in-opposition:

“As per order of Municipal commissioner dated 05.03.1988, the ad-hoc appointment of Dr. Pradip Kumar Roy Choudhury as Medical Officer (Epidemic Control) was regularized w.e.f. 30.01.1988, i.e. the date of the letter of recommendation from MSC and the appointment letter dated 09/12.03.1988 was issued as the same was a direct recruitment. Hence the tenure of service of Dr. P.K. Roy Chaudhury on ad-hoc appointment from 21.08.1986 to 29.01.1988 cannot be said to be regular. It may also be mentioned that as per order of Municipal Commissioner dated 29.01.1991 Dr. P. K. Roy Chaudhury was confirmed and made permanent w.e.f. 30.01.1990, i.e. after completion of 2 years satisfactory service from the date of regularization.”

From the aforesaid averments though it appears that the term “regularization” has been used in order to describe the appointment of the writ petitioner w.e.f. 30th January, 1988 but it was also considered by the KMC as fresh appointment as it further appears from use of the term “direct recruitment”. Therefore, there is a dichotomy in treating the nature of appointment of the writ petitioner w.e.f. 30th January, 1988.

19. Pursuant to order dated 28th June, 2023 of this Court an affidavit has been affirmed on 17th July, 2023 on behalf of KMC disclosing certain documents including the letter of the Municipal Service Commission dated 29th/30th January, 1988 issued by the secretary of the Commission. Vide letter dated 18th January, 1988 which is at page 12 to the said affidavit the writ petitioner was asked to appear before the Commission on 22nd January, 1988 when an interview was scheduled to be held, such letter dated 18th January, 1988 was issued by the Assistant Secretary, Municipal Service

Commission. Based on said interview Commission vide letter dated 29th/30th January, 1988 recommended names of six candidates including the writ petitioner for appointment on substantive basis which is at page 14 of the said affidavit. It also appears that said recommendation of the Commission was made in response to letter of the KMC dated 14th January, 1988 for filling up six permanent posts of Medical Officer, Epidemic Control. The letter of the Municipal Service Commission dated 29th/30th January, 1988 is quoted below:

*“From: Shri K.Chatterjee,
Secretary, Municipal Service Commission.*

To

*The Municipal Commissioner,
The Calcutta Municipal Corporation.*

*Subject:- Appointment to 6 permanent post of Medical
Officer, Epidemic Control, Health Department under
the Calcutta Municipal Corporation.*

Sir,

I am directed to refer to the Corporation's letter No.H/520 dated 14th January 1988 on the subject noted above and to say that the Commission considered the cases of all the candidates and interviewed them with the assistance of an adiver(sic). The Corporation was represented by its Chief Municipal Health Officer.

After interviewing the candidates at length the Commission recommends the following 6 candidates in order of preference for appointment to 6 permanent posts of Medical Officer, Epidemic Control in the scale of Rs.660-40-1, 100-50-1, 600/- plus other admissible allowances: -

- 1. Shri Pradip Kr. Roy Choudhury*
- 2. Shri Ajanta Banerjee (nee Mukherjee)*
- 3. Shri Chandan Das Sharma*

4. Shri Pradip Kr. Dutta

5. Shri Sakti Bikas Bhattacharya

6. Smt. Tapati Mandal

A copy of the order appointing the candidates as recommended above may please be forwarded to this office in due course.

An acknowledgment of receipt of the letter with its enclosures is requested.

Yours faithfully,

Secretary”
(emphasis supplied)

20. In pursuit of finding an answer whether appointment of the writ petitioner w.e.f. 30th January, 1988 was based on recommendation of the Municipal Service Commission or it was in consultation with the Municipal Service Commission the letter of the Municipal Service Commission dated 29th/30th January, 1988 is found to be significant. It appears from the said letter that appointment of the writ petitioner on and from 30th January, 1988 was not in consultation with the Commission rather it was based on the recommendation, since in the second line of second paragraph of the letter the term “recommendation” has been specifically used. Therefore, this Court does not have any hesitation now to decide the issue on the basis of the fact that the writ petitioner was recommended by the Municipal Service Commission prior to his appointment w.e.f. 30th January, 1988. Section 19(1) of the Act of 1980 also prescribes necessity of recommendation by the Commission for substantive appointment in the post of Medical Officer (‘A’ category). The contention of the writ petitioner that first proviso to Regulation 4 of the said Regulations of 1984 applies in his case is negated

since it has been contemplated under the first proviso to Regulation 4 that when a person initially appointed otherwise than in accordance with the relevant recruitment regulations and subsequently regularized in “consultation” with the Commission in that event only seniority of that person to be reckoned from the very date of appointment. But in the case of appointment of the writ petitioner from 30th January, 1988 there was a recommendation by the Commission dated 29th/30th January, 1988. It cannot be construed as regularization on consultation with the Commission as contemplated under the first proviso to the said Regulation 4 rather shows an appointment of the writ petitioner on substantive basis afresh w.e.f. 30th January, 1988.

21. Another fact cannot be brushed aside while considering the nature of appointment of the writ petitioner prior to 30th January, 1988. Writ petitioner and Dr. Subrata Roy Chowdhury being respondent no. 7 participated in the selection process for being appointed as Medical Officer on substantive basis in 1986 when said respondent no. 7 was selected for being appointed in the post of Medical Officer whereas the writ petitioner was found not suitable. If writ petitioner’s seniority is reckoned from 4th July, 1984 as claimed in the writ petition that would lead to a situation where in spite of being not found suitable in the selection process conducted in 1986 his seniority is to be counted from 4th July, 1984 which appears to be preposterous.

22. Subsequent facts after appointment of the writ petitioner w.e.f. 30th January, 1988 as Medical Officer, Epidemic Control, fortifies aforesaid

conclusion relating to determination of nature of appointment w.e.f. 30th January, 1988. The writ petitioner has failed to demonstrate before this Court that on his appointment w.e.f. 30th January, 1988 his pay fixation was made taking into consideration his past service from 4th July, 1984. Submission has been made at the bar that certain incremental benefits were accorded to the writ petitioner but there is nothing on record which shows that reckoning seniority of the petitioner from 4th July, 1984 writ petitioner's pay was fixed w.e.f. 30th January, 1988. Writ petitioner accepted such fixation of pay from 1988 for a subsequent period of 24 years and thereafter on issuance of promotional order dated 28th February, 2012 filed the writ petition claiming benefit of promotion based on said promotional order dated 28th February, 2012 as well as grant of pecuniary service benefits treating his seniority from 4th July, 1984. There is no plausible explanation offered by the writ petitioner in explaining the delay made in approaching the Court for grant of pecuniary service benefits upon treating his service to be reckoned from 4th July, 1984 and extending the benefit of Career Advancement Scheme. Therefore, it does appear that the claim of the writ petitioner for sanction of pecuniary benefits on treating his past service prior to 30th January, 1988 is a stale claim.

23. Seniority of the writ petitioner as claimed in the writ petition to be reckoned from 4th July, 1988 cannot be delved into in isolation in the backdrop of facts that in first 24 years of his service he did not get any pecuniary benefits in consideration of his past service prior to 30th January, 1988 and filed the writ petition on 11th December, 2012.

24. In **C.P. Damodaran** (supra) as relied upon by the writ petitioner appellant was though temporarily appointed as a District Munsif by the Madras Government on the recommendation of the Public Service Commission and was sent on training and thereafter on completion of training appellant took charge of his post from 26th May, 1951; therefore while determining the seniority of the appellant it was considered by the Apex Court that the appellant was in continuous service from 26th May, 1951 and the same ought not to be disturbed. But in the present case writ petitioner was not appointed either on the recommendation of the Municipal Service or after consultation with the Municipal Service Commission on and from 4th July, 1984 whereas under Section 19(1) of the said Act of 1980 it has been specifically provided that for appointment in 'A' category post recommendation of the Municipal Service Commission is necessary. Similarly in **Rudra Kumar Sain** (supra) the Apex Court found that it was wrongly held by the High Court it is erroneous to consider the appointment of promotees in the Delhi Higher Judicial Service since such appointment was found to be *fortuitous/ad-hoc/stopgap* for the reasons the appointee was having requisite qualification for being appointed to a particular post and he was appointed with an approval and after consultation with the appropriate authority and continues in the post for fairly long period. This is not the situation in the present case since the appointment of the writ petitioner was without recommendation/consultation of the Municipal Service Commission and also without the prior approval of the State Government. In **Dr. Chandra Prakash** (Supra) it has been held in paragraph

41 and 42 in consideration of Rule 18 of U.P. Medical Service (Men's Branch) Rules, 1945 that an appointment whether temporary or permanent is immaterial in determining seniority where same is against substantive vacancy in the context of finding made in paragraph 42 that it has not been disputed the writ petitioners have been continuing in service and had enjoyed till 1983 all the benefits of regular service from the date of their initial appointments. However, in the present case it has already been held above that writ petitioner's initial appointment was not on substantive basis since there was no recommendation of the Municipal Service Commission or prior approval of the Government and it is also indisputable that the writ petitioner did not enjoy regular service benefits during the period prior to his substantive appointment from 30th January, 1988.

25. In **Dr. Anuradha Bodi (Supra)** similar situation was considered by the Apex Court and in paragraph 12 and 13 it has been succinctly decided that since appointments can be made for periods lesser than one year without consultation with UPSC in terms of proviso to Section 96 of the Delhi Municipal Corporation Act the said period of service, if is made permanent, would lead to nepotism and anarchy. The reason is statute has not provided any such situation. In the present case under Section 19 substantive appointment can only be made in 'A' Category post on the recommendation of Municipal Service Commission whereas under first proviso to Regulation 4 for regularization of service consultation with the Commission is required; since it has already been found that based on the recommendation letter dated 29th/30th January, 1988 of the Commission writ petitioner was

appointed the service rendered prior to 30th January, 1988 is found to be on ad-hoc basis which is incapable of adding additional seniority to the tenure of the writ petitioner.

26. Since it has already been held in the preceding paragraphs that based on the recommendation of Municipal Service Commission writ petitioner was appointed on substantive basis w.e.f. from 30th January, 1988 and it is not the case of regularization in consideration of previous service of the writ petitioner, the fact situation in **P.P.C. Rawani (Dr.)** (supra) which was considered by the Apex Court is not akin to the facts of the present case.

27. However, benefit under Career Advancement Scheme is payable to the writ petitioner on reckoning his service from 30th January 1988, if the same is not paid.

28. In the above conspectus I am *ad-idem* on the view expressed by the Hon'ble Justice Biswaroop Chowdhury, being party to the Hon'ble Division Bench which delivered the judgment dated 26th April, 2023, on the aforesaid reasoning.

29. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)