Supreme Court of India
S.B. Mathur And Others vs Hon'Ble The Chief Justice Of Delhi ... on 31 August, 1988
Equivalent citations: 1988 AIR 2073, 1988 SCR Supl. (2) 772
Author: M Kania
Bench: Kania, M.H.

PETITIONER:
S.B. MATHUR AND OTHERS

Vs.

RESPONDENT:
HON'BLE THE CHIEF JUSTICE OF DELHI HIGH COURT,AND OTHERS

DATE OF JUDGMENT31/08/1988

BENCH:
KANIA, M.H.
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KANIA, M.H.
SINGH, K.N. (J)

CITATION:
1988 AIR 2073 1988 SCR Supl. (2) 772
1989 SCC Supl. (1) 34 JT 1988 (3) 507
1988 SCALE (2)615

ACT:
Delhi High Court Establishment (Appointment and conditions of service) Rules, 1972-Delhi High Court Staff {SEniority) Rules 1971-Superintendents of Delhi High Court challenging the treatment of posts of Superintendents, Court Masters or Readers and Private Secretaries to Judges as equal status posts, being violative of Article 14 of the Constitution, and challenging joint seniority list of Superintendents, Court Masters and Private Secretaries for purposes of promotion to the post of Assistant Registrars and claiming better rights of promotion.

HEADNOTE:
The Superintendents of the Delhi High Court by writ petition claimed better rights of promotion, objected to their being treated as on par with the Private Secretaries to Judges and Court Masters, and being included in a joint seniority list alongwith them, particularly as far as the promotion to the next higher post of Assistant Registrar was concerned.

The petitioners contended inter-alia that there was a violation of Article 14 of the Constitution in treating the posts of Superintendents, Court Masters or readers and

Private Secretaries to Judges as equal status posts; that the sources of recruitment to these posts were not identical and so also the qualifications required for appointments to these posts; that the duties of the incumbents of these posts were different; that in treating these posts as equal status posts, unequals had been treated equally and the rule of equality had been violated.

Dismissing the petition, the Court,

HELD: Where an employer has a large number of employees, performing diverse duties, he must enjoy some discretion in treating different categories of his employees as holding equal status posts or equated posts, as questions of promotion or transfer of employees inter se will necessarily arise for the purpose of maintaining the efficiency of the organisation. [781C-D)

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There is nothing inherently wrong in an employer treating certain posts as equal posts or equal status posts, provided that in doing so he exercises his discretion reasonably and does not violate the principles of equality enshrined in Articles 14 and 16 of the Constitution. [781D-E]

For treating certain posts as equated posts or equal status posts, it is not necessary that the holders of these posts must perform the identical functions or that the sources of recruitment to the posts must be the same, nor is it essential that the qualifications for appointments to the posts must be identical. But, there must not be such difference in the pay-scales or qualifications of the incumbents of the posts or in their duties or responsibilities or regarding any other relevant factor that it would be unjust to treat the posts alike and posts having substantially higher pay-scales or status in service or carrying substantially heavier responsibilities and duties or otherwise distinctly superior, cannot be equated with the posts carrying much lower pay-scales or substantially lower responsibilities and duties or enjoying much lower status in service. [781E-G]

The petitioners could not challenge the aforesaid posts being treated as equal status posts as that had been done in accordance with the Seniority Rules of 1971 the vires of which had not been challenged. [782B]

Neither the combined seniority list nor the treating of the said posts as equal status posts could be said to be arbitrary in the absence of any material, particularly in view of the fact that the Chief justice and the Judges of the High Court had taken the view that it was necessary in order to provide adequate promotional opportunities to the various sections of the employees. [784D]

The challenge to the said posts being treated as equal status posts had come too late in 1970 to be entertained in a writ petition, after the seniority Rules of 1971 became

effective. This challenge could be negatived on the ground of delay or latches apart from other considerations. [784E-G]

There was nothing unreasonable in the restriction that out of the total number of candidates who satisfied the eligibility requirement, the zone of consideration would be limited to a multiple of 3 to 5 times the number of vacancies or in determining the persons to be considered on the basis of their seniority in the combined seniority list. It was open to the High Court to restrict the zone of consideration in any reasonable manner, and limiting the

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zone of consideration to a multiple of the number of vacancies and basing it on seniority according to the combined seniority list cannot be regarded as arbitrary or capricious or mala fide, nor can it be-said that such a restriction violates the, principle of selection on because even experience in service is a relevant consideration in assessing merit. [791C-E]

It is not as if either Rule 7 of the Establishment Rules of 1972 or Rule 5 of the seniority Rules of 1971 which provides for a combined seniority list negatives the chance of promotion to the posts of Assistant Registrars being granted to the Superintendents. [794A-B]

So far as the zone of consideration is Limited by the competent authority in a manner not inconsistent with the Rules or in a manner not arbitrary or capricious or mala fide, the validity of the decision to limit the zone of consideration cannot be called in question on the ground that the manner in which the zone was limited was not uniform. [795D-E]

V. T. Khanzode and Ors. v. Reserve Bank of India and Anr., [1932] 3 S. C.R. 411 ; Guman Singh v. State of Rajasthan und Ors., [1971] Suppl. S.C.R. 900; Sant Ram Sharma v. State of Rajasthan and Anr., [19688] 1 S.C.R. III; Reserve Bank of India v. N.C. Paliwal and Ors., [1977] 1 S.C.R. 377; Ashok Kumur Yadav and Ors., etc. v. State of Haryana and Ors., etc., [1985] Suppl. 1 .S.C.R. 657; V.J. Thomas and Ors. v. Union of India and Ors., l1985] Suppl. S.C.C. 7; Madan Mohan Saran and Anr. v. Hon'ble the Chief Justice and Ors., [1975] 2 S. C. R. 899 and Mahesh Prasad Srivastava v. Abdul Khair, [1971] 1 S.C.R. 157, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 263 of 1979.

(Under Article 32 of the Constitution of lndia.) D.D. Thakur, A. Minocha, Mrs. Veena Minocha, G. S. Vashisht, T.R. Arti and B.S. Bali for the Petitioners. Kuldeep Singh, Additional Solicitor General, C. M. Nayar and C.V. Subba Rao for Respondent Nos. 1 and 2. Kuldeep Singh, Additional Solicitor General, Ashok Srivastava and Ms. A. Subhashini for Respondent No. 3.

PG NO 775 Ms. A. Subhashini Advocate for the Respondent No. 11. A. k. Ganguli, A. Mariarputha and Mrs. Aruna Mathur for the Respondents Nos. 6, 7, 4 and 10.

The Judgment of the Court was delivered by KANIA, J. This Writ Petition owes its origin to a dispute between different groups of employees of the Delhi High Court, claiming better rights of promotion for themselves, a type of dispute too common in services these days. The present Writ Petition has been filed by some Superintendents in the Delhi High Court objecting to their being treated on a par with the Private Secretaries to learned judges and Court Masters and being included in a joint seniority List along with them, particularly as far as the promotion to the next higher post of Assistant Registrar is concerned. In order to appreciate the controversy before us, it is necessary to keep in mind the background in which the dispute has originated.

Prior to the Constitution of the Delhi High Court in 1966, there was a Circuit Bench of the Punjab High Court sitting at Delhi. By Act 26 of 1966, Parliament established an independent High Court for the Union Territory of Delhi. By an order dated October 31, 1966, effective from October 31, 1966, the Government of lndia created a staff for the said High Court. The letter of the Government of india, which is Annexure-A to the Petition, shows that the President of India sanctioned the creation of certain posts for the Delhi High Court with effect from October 31, 1966 or from the date of setting up of the High Court, whichever was later, upto February 28, 1967. Amongst these posts, there was a post of an Assistant Registrar having a pay- scale of Rs.500-30-800 plus (scales of pay and dearness allowance as admissible in Punjab). Among the other posts created were six posts of Private Secretaries to Hon'ble Judges of the High Court in the pay-scale of Rs. 500-20-450- 25-475, six posts of Readers and seven posts of Superintendents. The pay-scale of all these posts was the same, namely, Rs.350-20-450-25-475. The Delhi High Court started functioning with effect from October 31, 1966. The staff of the Punjab and Haryana High Court working in Delhi was, for the time being, treated as on deputation to the Delhi High Court till they were permanently absorbed in the Delhi High Court. From the time of its formation till 1971, the Delhi High Court had no rules of its own regarding conditions of service or regarding the salary or seniority in respect of its staff. Section 7 of the Delhi High Court Act, 1966 (Act 26 of 1966), in brief, provided that, PG NO 776 subject to the provisions of the said Act, the law in force immediately before the Appointed Day (31.10.1966) with respect to practice and procedure in the High Court of Punjab shall, with the necessary modifications, apply in relation to the Delhi High Court and conferred powers on the High Court of Delhi to make rules and orders with respect to its practice and procedure, such powers being the same as exerciseable by the High Court of Punjab immediately before the Appointed Day. There was a proviso which was to the effect that any rules or orders which were in force immediately before the Appointed Day with respect to practice and procedure in the High Court of Punjab shall, until varied or revoked by rules or orders made by the High Court of Delhi, apply with the necessary modifications in relation to practice and procedure in the High Court of Delhi as if made by that High Court. The Delhi High Court started in 1966 with four Hon'ble Judges including the Chief Justice and among its staff inter alia were four Superintendents, four Readers and three Private Secretaries against the sanctioned strength. Under the powers conferred by Article 229 of the Constitution, the Chief Justice of the Delhi High Court framed the Delhi High Court Officers and Servants (Salaries , leave, Allowances and Pension) Rules, 1970 (hereinafter referred to as "the Salary Rules of 1970") and the Delhi High Court Staff (Seniority) Rules, 1971 (hereinafter referred to

as "the Seniority Rules of 1971"). Under the Salary Rules of 1970, the scale of Pay for Superintendents, Readers and Private Secretaries was the same, namely, Rs.350-20-475. With the increase of work and the extension of the territorial jurisdiction of the Delhi High Court, there was an increase in the number of Judges as well as staff of the Court. According to the Petitioners, by March 1979, there were 21 Private Secretaries, 21 Readers and 13 Superintendents in the Delhi High Court. It appears that because of the increase in the number of Judges, the increase in the post of Private Secretaries and Readers was at a somewhat higher rate than that in the posts of Superintendents. We are informed that in March 1988, the position was that there were 27 Private Secretaries, 30 Readers and 24 Superintendents in the same pay scale. We may mention that Readers are now called Court Masters. We may at this stage consider the Seniority Rules of 1971, Rule 3 of the said Rules provides that inter se seniority of confirmed employees in any category of the High Court staff shall be determined on the basis of the date of confirmation. Rule 5 of the said rules runs as follows :

"Joint inter se seniority of confirmed employees in categories of equal status posts shall be determined PG NO 777 according to their dates of confirmation in any of those categories."

Rule 9, with which we are not directly concerned, provides that certain credit for purposes of seniority shall be given to an employee who before his appointment as Assistant in the High Court was working on any of the posts mentioned in Clause IV of Schedule II. Rule 2 contains certain definitions for purposes of the said Rules. Rule 2(ii) runs as follows:

"`Equated post' means any of the posts shown as equated posts, from time to time, in Schedule I to these rules". Clause (iii) of the said Rule runs as follows : " 'Equal status posts' means the posts shown to be of equal status, from time to time, in Schedule II to these rules".

Item (ii) of Schedule I under Rule 2 runs as follows:

> "Equated Posts:
>
> (i) x x x x x x
>
> (ii) Judgment writers/Personal Assistant to Judges of Punjab & Haryana High Court (from 7.11. 1964] and Private Secretaries to Judges."
>
> The relevant portion of Schedule II (See Rule 2) runs thus:
>
> "Equal Status Posts:
>
> (i) x x x x
>
> (ii) Superintendents, Court Masters, Private Secretaries to Jugdes . . . . .".
>
> (iii) x x x x
> (iv) x x x x

(v) x x x x

In exercise of the powers vested in the Chief Justice of the Delhi High Court, he framed certain rules which were notified on 15th September, 1972, called Delhi High Court Establishment (Appointment and conditions of Service) Rules, 1972 (hereinafter referred to as "Establishment Rules of PG NO 778 1972"). Rule 7 of the said Rules runs as follows: "7. Mode of Appointment.

Except for appointment on officiating, temporary or ad hoc basis, the mode of and qualifications for appointment to the posts specified in Schedule II to these rules shall be as stated therein."

The material portion of Schedule II runs as follows: Schedule-II (See Rule 7)

S.No.	Category of post	Minimum qualifi-cations prescribed for appointment to the posts	Mode of appointment
"1	x	x	x
1a	x	x	x
2	x	x	x

3 Assistant Registrar - By selection on merit (Selection post) from confirmed offi-

cers of categories 5 6 & 7 of Class IT mentioned in Schedule 1.

x x x x x x x"

We may mention that Schedule I framed under Rule-4 mentions the various categories of posts. Category of comprises Assistant Registrars, Categories 5, 6 and 7 of Class II are Superintendents, Court Masters and Private Secretaries to Judges. respectively.

The above provisions make it clear that certain posts were treated as equated posts under Schedule I and certain posts were treated as equal status posts under Schedule I1 to the said Seniority Rules of 1971. It is clear that these provisions were made with a view to provide transferability among persons holding these posts and to provide for channels of promotion to certain categories of employees who did not enjoy a chance for promotion earlier with the result that there was stagnation and frustration in the categories concerned. It may be noticed here that the posts of

Judgment PG NO 779 Writers, Personal Assistants to Judges and Private Secretaries to Judges have been treated as equated posts and the posts of Superintendents, Court Masters and Private Secretaries to Judges have been treated as equal status posts. Rule 5 of the Seniority Rules of 1971 set out by us earlier provides for a joint seniority list of confirmed employees in categories of equal status posts presumably with the same object as aforestated.

It may be noticed that prior to October 31, 1966 the position relating to pay-scales was as follows:

1. Superintendent	50-20-500-30-650	Gazetted Post
2. Reader	250-20-450	Non-Gazetted Post

3. P.S. (Private Secretary) 150-10-300 Non-Gazetted Post.

Later on, there was a revision of scales of pay of these posts. It is not necessary to consider all these revisions, but it may be noticed that at the relevant time and thereafter under the Salary Rules of 1970 the Scales of Pay of the said three posts are the same, namely, Rs.350-25-575. The said Rules have been framed as early as 1970 and the same have not been challenged before us. It was under the Seniority Rules of 1971 that the said posts were treated as equal status posts and Mr. Thakur, learned Counsel for the Petitioners made it clear that he was not challenging this portion of the Rules. ln fact, in his opening he made it clear that he would not challenge any of the aforesaid Rules set out earlier. However, we must mention that in the rejoinder an attempt was made to challenge the joint seniority list which would imply a challenge to Rule 5 of the said Seniority Rules of 1971.

A joint seniority list of Superintendents. Readers and Private Secretaries was framed on May 8, 1972 but it was quashed on February 24th, 1975 when the seniority list of Readers was challenged. The seniority list of Readers was quashed on October 10, 1975. A direction was given in both the cases when the said joint seniority list was quashed that a fresh list should be prepared in accordance with the observations made in the judgment whereby the said list was quashed. Accordingly, fresh lists were made after hearing objections thereto and were finalized in December, 1976. Occasions then arose for temporary appointments to the posts of Assistant Registrars. That the appointments to be made were temporary is not or much consequence as later the confirmations were made in that very order. Under Rule 7 of the Establishment Rules of 1972 appointments to the post of PG NO 780 Assistant Registrar are to be made by selection on merit from the three categories, Superintendents, Readers and Private Secretaries. It appears that it was felt that it would not be feasible to consider all the incumbents of the posts in the said three categories because a proper selection among such a large group would be impracticable and extremely difficult. This appears to be the basis underlying the decision of the Administrative Judges at Annexure XVI to the Petition. For delimiting the zone of consideration or field of choice in making the appointments which had to be made by selection on merits, after considering various modes for delimiting the zones of consideration, it was decided at the meeting of the Administrative Committee of the Judges of the Delhi High Court held on February 3, 1977 that the zone of consideration or field of choice should be limited to the first five names in the finalized joint seniority list of Superintendents, Readers and Private Secretaries, that is, for each post of Assistant Registrar to be filled in by selection on merits, five persons from the

finalized joint seniority list had to be considered in order of seniority, and the selection between them made on merits. In other words, if appointments were to be made to two posts of Assistant Registrars, the first ten employees in the joint seniority list would be included in the zone of consideration. It was further decided that no written test or interview was to be held for the purposes of selection. We are not referring here to any individual promotion made on this basis because the grievance made is against this mode of selection itself and not against any particular promotion. We may mention here that, as set out earlier, when the Delhi High Court started functioning, the authorised strength in the relevant categories was six Private Secretaries to the Judges, six Readers (same as Court Masters) and seven Superintendents. With the passage of time the number of posts in three categories has risen fairly sharply. As aforestated by March 1979, according to the Petitioners, there were 21 Private Secretaries, 21 Readers and 13 Superintendents and by March 1988 there were 37 Private Secretaries to Judges, 30 Readers or Court Masters and 33 Superintendents. Although there is a little controversy regarding these figures, it is not of any consequence in the case before us. All that need be noticed is that the increase in the number of Readers and Private Secretaries has been higher percentagewise than that in the case of Superintendents because with increasing work and increase in the number of Judges, the number of Private Secretaries and Readers had necessarily to rise in proportion whereas the number of Superintendents had not gone up quite in the same proportion. lt may be mentioned that there was some grievance made regarding differences in the method of selection employed on different occasions when vacancies arose of requiring PG NO 781 temporary appointments to the posts of Assistant Registrars. There is, however, not much substance in that grievance as we shall point out later.

The first submission of Mr. Thakur, learned Counsel for the petitioners is that there is a violation of Article 14 of the Constitution in treating the posts of Superintendents, Court Masters or Readers and Private Secretaries to the Judges as equal status posts. It was urged by him that the sources of recruitment to these posts were not identical and so also the qualifications required for appointments to these posts. He also pointed out that the duties of the incumbents of these posts were different. It was submitted by him that in treating these posts as equal status posts unequals were treated equally and hence the rule of equality was violated. In appreciating this submission, it must be borne in mind that it is an accepted principle that where there is an employer who has a large number of employees in his service performing diverse duties, he must enjoy a certain measure of discretion in treating different categories of his employees as holding equal status posts or equated posts, as questions of promotion or transfer of employees inter so will necessarily arise for the purpose of maintaining the efficiency of the organisation. There is, therefore, nothing inherently wrong in an employer treating certain posts as equated posts or equal status posts provided that, in doing so, he exercises his reasonably and does not violate the principles of equality enshrined in Articles 14 and 16 of the Constitution. it is also clear that for treating certain posts as equated posts or equal status posted, it is not necessary that the holders of these posts must perform completely the same functions or that the sources of recruitment to the posts must be the same nor is it essential that qualifications for appointments to the posts must be identical. All that is reasonable required is that there must not be such difference in the pay-scales or qualifications of the incumbents of the posts concerned or in their duties or responsibilities or regarding any other relevant factor that it would but unjust to treat the posts alike or, in other words, that posts having

substantially higher pay-scales or status in service or carrying substantially higher responsibilities and duties or otherwise distinctly superior are not equated with posts carrying much lower pay--scales or substantially lower responsibilities and duties or enjoying much lower status in service.

As far as the case before us is concerned, although Mr. Thakur, learned Counsel for the Petitioners has urged that aforesaid posts, namely, Superintendents, Private Secretaries and Readers could not be treated as equated PG NO 782 posts or equal status posts, he was unable to point out to us specifically any such difference in respect of the requisite qualifications of the holders of different categories of these posts or regarding the duties and responsibilities carried by these posts as were so marked or significant that it would be unfair or violative of the rule of equality to treat these posts as equal status posts. In fact, it may be mentioned that at one stage in his opening, Mr. Thakur specifically stated that he did not challenge the vires of any of the said Seniority Rules of 1971.If that is so, we fail to see how he can challenge the aforesaid posts being treated as equal status posts as that has been done under the said Seniority Rules of 1971 which have been framed by the Chief Justice in exercise of the powers conferred upon him under Article 224 of the Constitution of India. Even if one is to examine the contention on merits, we are afraid, it must fail. A perusal of items 5, 6 and 7 of Schedule I to the said Salary Rules of 1970 shows that under the said Rules which were framed as early as 1970, the salary scale of Superintendents, Court Masters (Readers) and Private Secretaries is the same, viz., Rs.350-25-575. There is, therefore, no difference in the scales of salary. As far as the qualifications for appointment are concerned, under rule 7 it is provided that these qualifications are as specified in Schedule 11. items 4, 5 and 6 of the said Schedule inter alia provide for the qualifications for appointments to the said posts and it is undoubtedly true that the qualifications required for appointment to these posts are not identical. In the case of Superintendents, it appears, very briefly stated, that appointments to 25 per cent of these posts are to be made on the basis of seniority-cum-suitability from the joint seniority list of categories 9, 10,11, 13, 14 and 15 of Class 111 mentioned in Schedule 1 and 75 per cent of the posts are to be filled by selection on merit from the same categories. The categories of posts from which promotions of selections can be made to the posts of Court Masters are substantially the same. As far as the Private Secretaries are concerned, the mode of appointment is by selection and the qualifications prescribed are that a graduate degree is required for appointment of the said post and a further requirement is a speed of not less than 120 words per minute in shorthand and 45 words per minute in type writing. A perusal of the said provisions shows that the qualifications required for appointment to the post of a Private Secretary are certainly higher than the qualifications required for appointment to the post of a Superintendent or a Court Master although from the latter two categories, probably, more experience would be required. Thus, one fails to see how any grievance can be made by the Superintendents on this score. As far as the duties these posts carry are concerned, undoubtedly they are not the Same. But Rule 8(c) of the Establishment Rules of PG NO 783 1972 provides that any person appointed to the post in one category may be transferred to other category. The validity of this Rule has not been challenged before us. This would show tat even if the duties and responsibilities attached to these posts are not the same, they were not so materially different as to render it inequitable that these posts should be treated on the same footing for the purposes of promotion and transfer. It may be that because of the requirement that a Court Master must be a graduate and having a certain typing speed, Superintendents could not be generally transferred to

the posts of Private Secretaries. But one fails to see how any grievance can be made on that score by the Superintendents.

The view which we ave taken, as set out earlier, finds support from the decision of this Court in V.T. Khanzode & ors. v. Reserve Bank of India & Anr., [1982] 3 S.C.R. 4111 rendered by a Bench comprising three learned Judges of this Court. In that case, by Administrative Circular No. 8 dated Administrative Circular No. 8 dated January 7,1978 the Reserve Bank of India stated that it had decided to combine the seniority list of all officers on the basis of their total length of service (including officiating service) in Group I (Section A), Group II and Group 111. The seniority of all officers in each of the three Groups was to be combined with effect from May 22, 1974 on the basis of their total length of service, including officiating service, in the grade in which they were then posted on a regular basis. The Circular introduced combined seniority with retrospective effect from May 22, 1974 (the date of an earlier Administrative Circular No. 15) as it was "fair and equitable to the officers as a class". The effect of this decision was that the group wise system of seniority which was in existence in the bank for more than 27 years stood substituted by a combined seniority for officers in the aforesaid grades with retrospective effect. This adversely affected the existing seniority of many officers, particularly those in Group I. The validity of this Administrative Circular was challenged. This Court held that the said Administrative Circular No. 8 and the draft combined seniority list prepared pursuant to it did not violate the rights of the petitioners under Articles 14 and 16 of the Constitution whether there should be a combined seniority in different cadres or groups is a matter of policy which does not attract the applicability of groups is am pointed out that the past events showed the equality clause. The Court pointed out that the past events sowed that the various Departments of the Reserve Bank of India were grouped and regrouped from time to time. Such adjustments in the administrative affairs of the Bank were a necessary sequel to the growings of new situations which are bound to arise in any developing economy. The Court pointed PG NO 784 out further that no scheme governing service matters can be fool-proof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employees is not evidence of these. This decision clearly leads to a conclusion that grouping and regrouping of different categories of employees is inevitable in a large organisation with a view of meeting changing situations and needs of a live organisation. Merely because the chances of promotion of some employees are adversely affected by such grouping or regrouping, that does not lead to a conclusion that it is against the law. We may point out that in the case before us, there is no contention urged before us that the equating of posts or the combined seniority list was promoted by any mala fides. We fail to see how the combined seniority list or the treating of the said posts as equal status posts can be said to be arbitrary in the absence of any material and, particularly, in view of the fact that the learned Chief Justice and the learned Judges of the Delhi High Court considered the facts and took the view that it was necessary in order to provide for transfers from one department to another and to provide adeq uate promotional opportunities to various sections of the employees of the Delhi High Court.

Apart from this, it must be observed that the challenge to the said posts being treated as equal status posts comes much too late to the entertained in the writ petition. These posts were treated as equal

status posts under Rule 2 read with the Schedules to the said Seniority Rules of 1971 and certain promotions have also been made under the said Rules. These Rules became effective in 1971 at is much to late to seek to challenge them in 1979, long after Rule have been given effect to. It may be mentioned that, although they did make representations, the petitioners chose to file the Writ Petition only as late as in 1979. In our view, the challenge to the Rules providing for the said posts being posts being treated as equated posts or equal status posts can be negatived on the ground of delay or latches apart from other considerations.

The next submission of learned Counsel, Mr. Thakur, which he stated was his main submission, is that under the relevant Rules an appointment to the post of Assistant Registrar has to be made by selection from Superintendents. Private Secretaries and Readers or Court Masters and hence all employees holding these posts in a permanent capacity PG NO 785 must be considered to be eligible and within the zone of consideration for selection to these posts. It was not open to the learned Chief Justice, Respondent no. 1 herein, to limit that zone of consideration in any manner. He drew our attention to the Establishment (Appointment and Conditions of Service) Rules of 1972 and in particular Item No. 3 of Schedule II thereof framed under Rule 7 of the said Rules. He pointed out that under the said item, the appointment to the post of Assistant Registrar, which is a selection post is to be made by selection on merit from categories of officers of categories 5, 6 & 7 of Class II mentioned in Schedule, namely, Superintendents. Court Masters (Readers) and Private Secretaries. It was submitted by him that this Rule excluded any reference to seniority and even if it was open to the appointing authority to limit or restrict the zone of consideration it could not be limited with reference to seniority.

It was urged by Mr. Thakur that the rule that the promotion was to be made on the basis of selection on merit prescribed by the Chief Justice in conscious exercise of his powers conferred under Article 229 of the Constitution the decision to restrict the zone of consideration to four or five times the number of posts available on the basis of seniority under the combined seniority list was a mere administrative instruction or decision. It was submitted by him that the said instruction or decision is in conflict with that rules prescribing the method of selection by merit and hence it is bad in law. We propose to proceed on the assumption that Mr. Thakur may be right in his contention that mere administrative instructions cannot override rules framed in exercise of the powers conferred under Article 229 of the Constitution although the person issuing the administrative instruction may be that same person who prescribed the rules as in the case before us. Even then, It has to be considered whether the said administrative instructions or decision in any way conflicts with the rules. In this connection Mr. Thakur drew our attention to that decision of this Court in the case of Guman Singh v. State of Rajasthan and Ors., [1471] Suppl. S.C.R. 900. The few facts which need to be noticed in connection with this case are that in 1965 the State of Rajasthan decided to introduce the system of making promotions to the service on the basis of merit alone in addition to the existing system of making promotions on the basis of seniority-cum-merit. On December 14, 1965, Rule 28B was incorporated into Rajasthan Administrative Service Rules, 1954, providing for appointment by promotion to posts In the service on the basis of merit and on the basis of' seniority-cum-merit in the proportion of 50:50 and prescribing that the number of eligible candidates to be considered for promotion was to be 10 times the total number of vacancies to be filled up on PG NO 786 the basis of merit as well as seniority-cum-merit. Prior to August 26, 1966, Rule 28B was amended but we are

not concerned with such amendments. On that date, Rule 28B was further amended by providing that the proportion of promotion to be made by selection on the basis of merit and seniority-cum-merit was to be 1:2 instead of 50:50. On the same date, a proviso was also added to sub-rule (2) of Rule 28B providing that only officers who have been in service for not less than 6 years in the lower grade of the cadre will be eligible for being considered for the first promotion in the cadre. There was, however, a circular issued subsequently, that is after the said Rules were framed which provided that 50 marks were to be given for the record of 5 years prior to the period of 5 years preceding the selection; and for the five years preceding the selection the marking of 25 was to be given on the basis of confidential rolls. The validity of this Circular was challenged on various grounds. This Court took the view that from the Circular it was clear that an officer who has rendered less than five years of service will not be eligible to get a single mark out of 50 which is provided for the record for the period preceding five years far the simple reason that he will have no such record. An officer who has put in less than five years of service has been straightway denied 50 marks out of 75 marks and he has to establish his worth within the small range of 25 marks on the basis of his confidential rolls which will be available for a period of less than five years. It was held that this formula which was prescribed in the circular was opposed to Rule 28B and Rule 32 which ensured that merit and merit alone was to form the basis of promotion as against the quota fixed for merit. in contradistinction to seniority- cum-merit. It may be pointed out that in that case the circular question stated that the instructions contained therein should be strictly kept in view when persons are being considered for promotion. In view of this the Circular was held to be invalid. In our view. this. decision does not lend support to the submission of learned Counsel. Mr. Thakur. This Court pointed out that Rule 28B of the Rajasthan Administrative Service Rules, 1954, in brief, provided for two methods of section one based on merit and the other based on seniority-cum-merit. In other words the rule provides that the promotion based on seniority-cum-merit for 50 per cent the posts in contradistinction to that based on seniority-cum-merit prescribed for the other 50 per cent of the posts. and that the selection on merit shall be strictly on the basis of merit. Rule 32 was similar Rule 28B. It was pointed out that by this Court he word merit is not capable of easy definition. but it can be safely said that merit is the sum total of various qualities and attributes of an employee such as his academic qualifications, his distinction in the University, his PG NO 787 character, integrity, devotion to duty and the manner in which he discharges his duties. Allied to this may be other matters or factors such as his punctuality in work, the quality and out-turn of work done by him and the manner of his dealing with his superiors and subordinate officers and the general public and his rank in the service. Rule 32 in essence adopts what is stated in Rule 28B. It was held that the restriction contained in the proviso to sub-rule (2) of Rule 28B providing that before an officer in the junior scale could be considered fit for promotion to the senior scale, he should have worked on post in the service at least for some period of time, was quite reasonable. The provisions contained in sub-rule (2) confining the selection to senior most officers not exceeding 10 times the number of total vacancies was also held to be reasonable. Such a provision would encourage the members of the service aspiring for promotion to make themselves eligible by increasing their efficiency in the discharge of their duties. However, the impugned Circular was bad in law as it left no discretion to the Selection or Promotion Committee to adopt any method other than that indicated in the Circular in making selections for promotion and the method prescribed was so rigid and so worded as to impede the selection being made on merit. It was held that the Circular was violative of the rule prescribing selection on merit. We may point out that this

decision does not take the view that where selection is to be on merit, seniority cannot be taken as a relevant factor for limiting the zone of consideration provided of course, that this is not done so rigidly as to exclude a proper selection on merit being made. In fact, it runs to the contrary effect. We may refer. In this connection, to the case of Sant Ram Sharma v. State of Rajasthan und Anr., [1968] 1 S.C.R. 111 where it was inter alia contended on behalf of the petitioners that in the absence of any statutory rules governing promotions to selection grade posts, the Government cannot issue administrative instructions and such instructions cannot impose any restriction not found in the rules already framed. A Bench comprising five learned Judges of this Court dealt with the contention as follows (p. 119):

"We proceed to consider the next contention of Mr. N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection PG NO 788 grade posts. But that does not mean that the statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to the selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

We may also refer, in this connection to the decision of this Court in Reserve Bank of India v. N.C. Paliwal & Ors., 1977] 1 S.C.R. 377 which was cited before us although the decision is not directly relevant to the case before us. In that case a challenge was made to the combined seniority scheme adopted by the Reserve Bank of India. The High Court had taken the view that the scheme adopted by the Reserve Bank was violative of Articles 14 and 16 of the Constitution inter alia on the ground that the said combined seniority list framed persuant to the scheme had the effect of prejudicing the promotional opportunities assured to the petitioners under the Optee Scheme which had previously been adopted by the Bank and it discriminated against the petitioners in relation to the clerical staff in the General Department who either did not exercise the option under the Optee Scheme or having exercised the option were not selected. It was observed by this Court (p. 393) that there can be no doubt that it is open to the State to lay down any rule which it thinks appropriate for determining seniority in the service and it is not competent to the Court to strike down such rule on the ground that in its opinion another rule would have been better or more appropriate. The only enquiry which the Court can make is whether' the rule laid down by the State is arbitrary and irrational so that it results in inequality of opportunity amongst employees belonging to the same class. the Court pointed out that in the case before it, the employees from the non-clerical cadres merit being absorbed in the clerical cadre and therefore, a rule for determining their seniority vis-a-vis those already in the clerical cadre had to be devised. If the non-clerical service rendered by the employees from non- clerical cadres were wholly ignored, it would be unjust to them. Equally, it would have been unjust to employees in that clerical cadre, if the entire non-clerical service of those coming from non-clerical cadres was taken into account for non-clerical service cannot be equated with clerical service and the two cannot be treated on the same footing. The Reserve Bank, therefore,

decided that one-third of the PG NO 789 non-clerical service rendered by employees coming from non- clerical cadres should be taken into account for the purpose of determining seniority. It was held that this rule attempted to strike a Just balance between the conflicting claims of non-clerical and clerical staff and it cannot be condemned as arbitrary or discriminatory. We may also refer here to the decision of a Bench comprising four learned Judges of this Court in Ashok Kumar Yadav & Ors. etc. etc. v. State of Haryana & Ors. etc. etc., [1985] Suppl. I.S.C.R. 657. Rule B clause (1) of the Punjab Civil Service (Executive Branch), Rules, 1930 prescribes a competitive examination for recruitment to posts in Haryana Civil Service (Executive) and other allied services. The relevant regulation (Regulation 5) lays down that the compulsory subjects carry in the aggregate 400 marks and there is also viva-voce examination which is compulsory and which carries 200 marks and each optional subject carries 100 marks. Thus, the written examination carries an aggregate of 700 marks for candidates in general and for ex- servicemen it carries an aggregate of 400 marks as they were exempted from appearing in optional papers and the viva-voce test carries 200 marks. Regulation 3 provides that no candidate shall be eligible to appear in the viva-voce test unless he obtains 45 per cent marks in the aggregate of all subjects. In the written examination held by Haryana Public Service Commission for recruitment to 61 post in the Haryana Civil Service (Executive) and other allied Services over 1300 candidates obtained more than 45 per cent marks and thus qualified for being called for interview for viva-voce examination. The Haryana Public Service Commission invited all that said candidates for the viva-voce examination with the result the interviews lasted for about half a year. In the meantime, further vacancies arose as 191 posts became available far being filled and, on the basis of total marks obtained in the written examination as well as viva-voce test, 119 candidates were selected and recommended by the Haryana Public Service Commission to the State Government. The petitioners before the High Court failed to get selected on account of poor marks obtained by them in the vive-voce test, although they had obtained high marks in the written examination. They made several allegations regarding the competence of the members of the Public Service Commission as well as regarding favoritism and sc on. The contention with which we are concerned is the contention urged by the petitioners that the number of candidates called for the interview was almost 20 times the number of vacancies and this widened the scope: for arbitrainess in selection by making it possible for the Haryana Public Service Commission PG NO 790 to boost up or deflate the total marks which might be obtained by candidates and this invalidated the selection made. The Punjab and Haryana High Court held that the selection made by the Haryana Public Service Commission was bad in law and decided in favour of the petitioners. On an appeal by special leave to Supreme Court, the Division Bench of the Supreme Court observed as follows (p. 690) :

"We must admit that the Haryana Public Service Commission was not right in calling for interview all the 1300 and odd candidates who secured 45 per cent or more marks in the written examination. The respondents sought to justify the action of the Haryana Public Service Commission by relying on regulation 3 of the Regulations contained in Appendix 1 of the Punjab Civil Service (Executive Branch) Rule, 1930 which were applicable in the State of Haryana and contended that on a true interpretation of that Regulation, the Haryana Public Service Commission was bound to call for interview all the candidates who secured a minimum of 45 per cent marks in the aggregate at the written examination. We do not think this contention is well founded. A plain reading of Regulation 3 will show that it is wholly unjustified. We have already referred to Regulation 3 in a~n earlier part

of the judgment and we need not reproduce it again. It is clear on a plain natural construction of Regulation 3 that what is prescribed is merely a minimum qualification for eligibility for appearing at the vive- voce test must obtain at least 45 per cent marks in the aggregate in the written examination. But obtaining of minimum 45 percent marks does not by itself entitle a candidate to insist that he should be called for the viva- voce test. There is no obligation on the Haryana Public Service Commission to call of the viva-voce test all candidates who satisfy the minimum eligibility requirement. It is open to the Haryana Public Service Commission to say that out of the candidates who satisfy to eligibility critarion of minimum 45 per cent marks in the written examination, only a limited number of candidates at the top of the list shall be called for interview."

The Bench, however, went on to hold that. in its view, merely because the Haryana Public Service Commission had called all the 1300 candidates who obtained 45 per cent or PG NO 791 more marks in the written examination to appear in the interview that did not invalidate the selection made. This decision points out that the minimum eligibility qualification has to be kept distinct from the zone of consideration and even if there are a large number of candidates who satisfy the minimum eligibility requirement it is not always required that they should be included in the zone of consideration, it being open to the authority concerned to restrict the zone of consideration amongst the eligible candidates in any reasonable manner. In the case before us, zone has been restricted by prescribing that out of the total number of candidates who satisfy the eligibility requirement, the zone of consideration will be limited to a multiple of 3 to 5 times of the number of vacancies and the persons to be considered will be determined on the basis of their seniority in the combined seniority list. It appears to us that there is nothing unreasonable in this restriction. It was open to the Delhi High Court to restrict the zone of consideration in any reasonable manner and limiting the zone of consideration to a multiple of the number of vacancies and basing it on seniority according to the combined seniority list, in our view, it cannot be regarded as arbitrary or capricious or mala fide. Nor can it be said that such restriction violates the principle of selection on merit because even experience in service is a relevant consideration in assessing merit. We may also refer in this connection, to the decision of this Court in V.J. Thomas and Ors. v. Union of India, & Ors., [1985] Suppl. S.C.C.7 where it has been pointed out that even though minimum eligibility criterion as fixed for enabling one to take the one to take can be confined on a rational basis examination, yet the examination to recruits up to a certain number of years. in adopting such a policy which underlay the Note to clause (4) of Appendix 1 to the new Rules in question, there is nothing which is arbitrary or amounting to denial of equal opportunity in the matter of promotion. It had the desired effect of not having a glut of Junior Engineers taking examination compared to fewer number of vacancies. Length and experience were given recognition by the Note. The promotion can be thus by stages exposing the promotional avenue gradually to persons having longer experience. This seems to be the policy underlying the Note and there was nothing arbitrary or unconstitutional in it Such a limitation caters to a well-known situation in service jurisprudence that there must be some ratio of candidates to vacancies. If for taking an examination this aspect of classification is introduced, it is based an rational and intelligible differential which has a nexus to the object sought to be achieved (see p. 13). In view of what we have pointed out above, the submission of Mr. Thakur in this connection must also be rejected.

PG NO 792 In fairness to learned Counsel for the petitioners, we must at this stage refer to the decision of the Division Bench of the Allahabad High Court in Madan Mohan Saran & Anr. v. Honble the Chief Justice and Ors.,[1975] 2 S.L.R. 889 on which strong reliance was placed by learned Counsel. In that case, the petitioner before the Allahabad High Court challenged 3 orders passed by the Chief Justice containing general principles for fixation of seniority of the staff holding posts in various grades in the Establishment of the High Court and the Gradation List of 1951, the Draft Gradation List of 1967 & the Final Gradation List of 1969 in so far as certain respondents were shown as senior to the petitioners. We are not concerned with the other reliefs prayed for by the petitioners in that case. One of the contentions of the petitioner (see paragraph 31 of the report) was that before making a promotion to the post of Assistant Superintendent or a Superintendent, the entire field of eligibility had to be considered and an omission on the part of respondents nos. 1 and 2 to do so rendered the promotion made invalid and that this was what happened when certain respondents were promoted. The Division Bench pointed out that there was no allegation in the counter- affidavit that a serutiny of the entire field of eligibility was made before the respondents were appointed. Rule 9 of the Allahabad High Court (Conditions of Service of Staff) Rules, 1946 being the relevant rule found place under the heading promotion to the posts of responsibility etc." Posts of Assistant Superintendents and Superintendent were posts of responsibility and trust and were covered by Rule 9. The said rule provided that promotion to such posts of responsibility or trust or which require special qualifications "shall be made by section irrespective of seniority". Relying upon the interpretation given to the expression "selection irrespective of seniority" in Mahesh Prasad Srivastavaa c. Abdul Khair, [1971] 1 S.C..R 157 the Division Bench of the Allahabad High Court in Madan Mohan Saran cuse (supra) held that"The use of the words `selection, irrespective of seniority' shows that the field of eligibility takes within its embrace even the Juniormost member of each department. Being a selection post, promotion has not to be confined to the members of the particular department in which the vacancy has occurred; and the Rule requires respondents Nos 1 and 2 to take into consideration members of the entire Establishment. irrespective of seniority, in making their choice for promotion- - - - - - -

- - - - - The question of merit enters primarily in the reckoning. In our view, the petitioner is right in his contention that the ranking or position in the Gradation List does not confer any right on the respondents to be PG NO 793 promoted and that it is a well established rule that promotion to such posts is to be based primarily on merit and not seniority alone". In our view, this decision has no application to the case before us because the words "irrespective of merit" which were used in Rule 9 of the Rules in question are nowhere to be found in the relevant Rules or Schedules before us. In fact, if it was the intention of the rule-making authority that all the persons eligible. for the post should be considered in making the selection on merit, expression like irrespective of seniority" or without regard to seniority" or on merit alone" could have been used in the Rules or the Schedule. We do not find any such words in Rule 5 of the said seniority Rules, 1971 or in Rule 7 or Item 3 of Schedule II of the said Establishment Rules of 1972. The mode of appointment to the post of Assistant Registrar, set out in the said Item 3 of Schedule 11, merely states that the appointment will be no selection on merits from confirmed officers of categories 5, 6 & 7 of Class II mentioned in Schedule I and the said Item contains no such expression as we have set out earlier or any other equivalent expression.

Coming to the next submission of Mr. Thakur, it was submitted by him that the interpretation placed by the Chief Justice and the learned Judges of the Delhi High Court on Rule 7 of the said Appointment and Conditions of Service Rules, 1972 was incorrect. It was urged by him that, even if the Combined Seniority List is valid, it could not be applied for the purpose of promotion. In dealing with this argument, we may again briefly refer to Rule 5 of the said Seniority Rules of 1971 which clearly provides that joint inter se seniority of confirmed employees in categories of equal status posts shall be determined according to their dates of confirmation in any of these categories. The posts of Superintendents, Court Masters and Private Secretaries to the Honble Judges are treated as equal status posts under Schedule I to the said Seniority Rules, 1971, framed under Rule 2 thereof. Rule 7 of the Establishment Rules of 1972 merely states that, except for appointment on officiating, temporary or ad hoc basis, the mode of and qualifications for appointment to the posts specified in Schedule 1I to the said Seniority Rules of 1971 shall be stated the rein and Item 3 of the said Schedule II to which we have already referred earlier shows that the appointment of Assistant Registrar is to be made on selection on merits from confirmed officers in categories 5, 6 & 7 of Class II mentioned in Schedule I. The only ground on which the validity of the said Rule 7 is challenged is that if it is applied and the zone of consideration restricted on the basis of the said Combined Seniority List, the prospects of promotion which the Superintendents enjoyed would be PG NO 794 reduced. We find ourselves totally unable to appreciate this argument. In the first place, it is not as if either the said Rule 7 of the Establishment Rules of 1972 or Rule 5 of the Seniority Rules of 1971 which provides for a Combined or Joint Seniority List negatives the chance of any promotion to the posts of Assistant Registrars being granted to the Superintendents. In fact, several Superintendents have been promoted to the posts of Assistant Registrars after the said Rules became effective. All that could be pointed out by Mr. Thakur was that under the Combined Seniority list, for some time, relatively fewer Superintendents will be within the zone of consideration for the posts of Assistant Registrars as compared to Private Secretaries to the Honble Judges and Court Masters. We fail to see how any of the said Rules or the said Combined or Joint Seniority List can be struck down on the basis of such a consequence. In the first place, it is well settled that no employee has a right to promotion as such. As we have already pointed out the Rule does not exclude the possibility of Superintendents getting promoted to the posts of Assistant Registrars. It may happen that for an year or two, the number of Superintendents in the zone of consideration might be fewer compared to the number of Court Masters and Private Secretaries within the zone. But that situation might well be reversed a few years later and it is impossible to hold that any of the said provisions is bad in law on that ground. It was next submitted il, this connection that in the mode of appointment set out in Item 3 of Schedule II to the Establishment Rules of 1972 it is stated that for the posts of Assistant Registrars, selection on merits had to be made from confirmed officers of categories 5, 6 & 7 of Class II mentioned in Schedule I. It was urged that the reference to categories 5, 6 & 7 without reference to the Combined or Joint Seniority List indicated that even if the zone of consideration was to be restricted on the basis of seniority this could be done only according to separate seniority lists for each of these three categories and that the Combined Seniority List was not to be used for the purposes of limiting the zone of consideration. According to learned Counsel, the Combined Seniority List was applicable only for the purpose of transfers. In our view, this argument is unsound and cannot be accepted. The reference to categories 5, 6 & 7 in Item 3 of Schedule II to the said Establishment Rules of 1972 is merely made with a view to set out the categories from which promotion or selection has to be made to the posts of Assistant Registrars. The language of Item 3

nowhere indicates that there was any idea to create anything like a quota for each of the said three categories and in fact reading fairly the relevant Rules and Item in the Schedule, it appears to us that the intention is to treat all these categories as forming a single class or category for PG NO 795 purposes of promotion to the posts of the Assistant Registrars. There is no warrant for limiting the use of the Combined Seniority List merely to purpose of transfers. In fact, it appears to us that Rule 5 of the Seniority Rules of 1971 and the Combined Seniority List framed pursuant thereto were intended to provide for a combined seniority for purposes of transfer as well as for purposes of promotion. Finally, it was pointed out by learned Counsel for the Petitioners that no uniform policy has been followed in the past regarding the limitation of zone of consideration as far as the selection to the posts of Assistant Registrars is concerned. This may be so. But, we are afraid, by itself that circumstance cannot lead to a conclusion that promotions are made arbitrarily because the failure to follow one uniform policy in respect of limiting the zone of consideration would not, by Itself, necessarily render the limitation of the zone of consideration invalid on the ground of arbitrariness. So long as the zone of consideration is limited by the competent authority in a manner not inconsistent with the Rules or in a manner which is not arbitrary or capricious or mala fide, the validity of the decision to limit the zone of consideration cannot be successfully called in question on the ground that the manner in which the zone of consideration was limited was not uniform. The zone might have been limited on each occasion keeping in view the relevant circumstances including the number of posts vacant and on a basis having nexus to the purpose of selection. Although, the main grievance of the Petitioners as disclosed in the oral arguments is regarding the limitation of the zone of consideration to 3 times the number of vacancies that grievance is not reflected in the prayer sought and the prayer to the petition only relates to the decision of the Administrative Committee of the learned judges of the Delhi High Court arrived at on 3.2. 1977 to fill in the vacancy in the post of Assistant Registrar by selection from the five seniormost persons from the joint seniority list of Superintendents, Court Masters and Private Secretaries which list was finalised under the said Seniority Rules of 1971 read with the Establishment Rules of 1972. This decision is at annexure 16 to the petition and it has been arrived at by a Committee of Administrative Judges comprising the then learned Chief Justice and four other learned Judges of the Delhi High Court. Nothing has been shown to us to indicate that this decision of the Committee was in any manner capricious, arbitrary or mala fide. The only contention is, as we have already pointed out, that it was not open to the Committee to limit the zone of consideration at all and secondly, that this could not be done with reference to the joint seniority list both of which contentions we have PG NO 797 already rejected earlier. In view of this, the challenge to this decision must fail.

In the result, the petition fails and must be dismissed. However, looking to all the facts and circumstances of the case, it appears that the parties should bear their own costs. Hence, the petition is dismissed and rule discharged with no order as to costs.

S.L. Petition dismissed.