

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA No. 501/2004

% Date of Reserve: 19th August, 2008
Date of decision: 29th August, 2008

M. N. Sharma
S/o Late Shri Ram Chandra Sharma
R/o 1/14 Aryabhakti Enclave,
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Shri Ram Gopal
S/o Shri Bhagwan Das
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Shri B.S. Negi,
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S/o Shri Sahib Singh Verma,
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Shri Ajay Vashisht
S/o Shri R.K. Vashisht,
R/o C-81, Shivalik,
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Shri R.S. Solanki,
S/o Shri S.V. Solanki,
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ITI Staff Campus,
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...APPELLANTS

Through: Mr. Ajit Singh, Advocate.

Versus

Government of NCT of Delhi
Through its Chief Secretary,
Delhi Secretariat,
Delhi -110002

Department of Training and Technical
Education, Govt. of NCT of Delhi
Through its Principal Secretary (TTE),
Muni Maya Ram Marg, Pitam Pura,
Delhi – 110088

Union Public Service Commission
Through its Secretary/Deputy Secretary,
Shahjahan Road, Delhi – 110003

Ms. Shashi Vasudeva
D/o Shri K.L. Vasudeva,
R/o 41, ITI Staff Quarters,
Sunlight Colony,
New Delhi – 110014

...RESPONDENTS

Through: Ms. Sujata Kashyap, Advocate for
Respondent Nos. 1 and 2.
Mr. G. D. Gupta, Sr. Advocate
With Ms. Amita Gupta, Advocate
for Respondent Nos. 4.
None for Respondent No.3

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

MOOL CHAND GARG, J.

1. This Letters Patent Appeal has been filed by the appellants
against the judgment delivered by the learned Single Judge in
Civil Writ No.5930/2002 filed by the fourth respondent. By the
impugned order the writ petition has been allowed. It has been

held that the fourth respondent (petitioner in that case) was entitled to be considered for promotion to the post of Principal ITI Pusa, Arab Ki Sarai and Jaffarpur/Assistant Apprenticeship Advisor/Assistant Director Training/Principal, Basic Training Center under the Directorate of Training & Technical Education, Government of NCT of Delhi, in the pay scale of Rs.3000-4500 (Pre-revised) as per recruitment rules prescribed for the posts and other equivalent posts (hereinafter referred to as 'A-post'). The appellants were not a party to the said writ petition.

2. Respondents No. 1 and 2 opposed the said petition. According to them Respondent No.4 was not eligible for promotion to the said post as she did not have the requisite educational qualification. It was also their case that her name was wrongly included in the seniority list and that this fact alone would not entitle her for promotion to the aforesaid post. However, instead of filing an appeal, they have accepted the judgment and have promoted Respondent No.4.

3. According to the appellants, this action of Respondents No. 1 and 2 is illegal and mala fide. Aggrieved by the aforesaid action of the respondents and the impugned judgment, they have filed the present LPA after seeking permission of this Court, which was granted to them vide orders passed on 6.7.2004 in C.M.No. 5925A/2004 in the appeal, with the following prayers:

(i) set aside the judgment/order dated 5-12-2003

passed by Hon'ble Mr. Justice Pradeep Nandrajog, in writ petition no. 5930 of 2002 of Shashi Vasudeva v. Govt. of N.C.T of Delhi and others,

- (ii) accept and allow the appeal of the appellants,
- (iii) pass any further/appropriate order/direction as this Hon'ble Court deems fit and proper in the interest of justice.

4. It is the case of the appellants that the fourth respondent was not eligible for promotion to A-post since she did not fall in either of the streams from where the promotion was to be effected as she is not having requisite educational qualification. It was also their case, that her name could not have been included in the seniority list dated 28.5.1993. In fact, the tentative seniority list did not include the name of the fourth respondent. It is only in the final list that her name was shown which also has been objected to by the appellants. However, despite pendency of their objections, her name was included in the seniority list which is one of the reasons why the learned Single Judge was persuaded to accept the case of the fourth respondent. It is also stated that appellant Nos. 5 and 6 have already been promoted to the A-post but the promotion of the fourth respondent later on affects their seniority. As far as appellant Nos. 1 and 4 are concerned, it is contended, that despite being eligible they have not even been considered for promotion.

5. The issues which require consideration in this LPA are as under:-

- (i) *Whether the fourth respondent was not eligible for promotion to A-Post;*
- (ii) *Whether the final Seniority list dated 28.5.1993 which includes the name of the fourth respondent as one of the incumbent for the post has been prepared mala fide to help the fourth respondent out of the way and is illegal; AND*
- (iii) *Whether the promotion of the fourth respondent to post-A needs to be set aside. If so what other directions are called for.*

6. As per Recruitment Rules for A-Post, the appointment can be made by way of direct recruitment as well as by promotion. The promotions can only be made out of the two streams, i.e.

- (a) *Principals/Sr. Surveyor/Trg. Evaluation Officer in the scale of 2200-4000 (Pre-Revised) in the Directorate of Training & Technical Education, Delhi Administration and holding degree in Engg. /Technology in the subject concerned or its equivalent. (i.e. the post mentioned in Para 7 above) having five years regular service.*

(33-1/3%)

- (b) *Principal and Vice Principals, ITSs, Assistant Inspector of Training, Industrial Liaison Officer-cum-Officer in Charge and training Officer in the scale of 2000-3500 (Pre-Revised) in the Directorate of Training & Technical Education, Delhi Administration and holding degree in Engineering/Technology in the subject concerned or its equivalent having eight years regular service.*

*(Note: The requirement about the educational qualifications shall not be applicable in the case of the Departmental candidates **holding the feeder posts** on regular basis on the date of promulgation of Recruitment Rules i.e. 26th July 1989).*

(66-2/3%)

7. The essential qualifications for a direct recruit are as follows:-

(i) *Degree in Mechanical/Electrical/Civil Engg./technology of a recognized University or equivalent.*

(ii) *5 years Professional or teaching experience in the subject concerned of which at least 2 years should be in a supervisory capacity in an Industrial concern or in a Training Institute.*

Thus it can be seen that the promotion/direct appointment to the aforesaid post is from Engineering cadre i.e. from the candidates holding a degree of mechanical/electrical/civil engineering/technology of recognized university or equivalent.

8. It is the common case of the parties that the fourth respondent is not eligible for promotion through the feeder cadre described as (a).

9. *In fact, it is the note appended to the 2nd feeder cadre (b) providing relaxations in the educational qualification is the bone of contention between the parties.*

10. According to the fourth respondent she finds place in the 2nd stream (b). However the appellants submit otherwise. According to them, the 2nd stream /feeder cadre (b) is in fact the engineering cadre and therefore, the fourth respondent, who was merely a graduate with Home Science as a subject, could not form part of that stream. It is also their case that the relaxations were meant only for diploma holders in engineering cadre.

11. It was pleaded on behalf of the fourth respondent before the Id. Single Judge, that she was entitled to be considered for promotion to A-Post, because of the note appended to category (b) because she was also a Principal in an ITI. It is, however, not disputed that she was neither an engineering graduate nor a diploma holder but only held a B.A degree with Home Science as a subject.

12. The Id. Single Judge decided the case in favour of the fourth respondent by accepting the interpretation to the note as given by her and also because her name stood included in the final seniority list. It would be appropriate to take note of the following observations, made in the impugned Judgment;

".4. A perusal of the Recruitment Rules to the post of Assistant Director shows that all Principals, Vice Principals in ITIs, Assistant Inspector of Training, Industrial Licensing Officer -cum-Officer in charge and Training Officers in the scale of pay of Rs. 2000-3500 are eligible for being considered to the post of Assistant Director. These persons are required to hold a degree in Engineering/Technology but the note to the Recruitment Rules waives the said requirement for departmental candidates who otherwise are eligible for promotion.

5. A perusal of the Recruitment Rule to the post of Assistant Director ex-facie shows that all the Principals of ITIs form a feeder cadre and where promotion has to be effected by promotion, the technical qualification of holding a degree in Engineering/Technology would be inapplicable. The respondent has always treated all principals as falling in one cadre evidenced by the fact that a common seniority list is maintained for all, and as noted above, petitioner was at S. No. 11 in the said

seniority list.

6. xxx xxx xxx

7. Post of Assistant Director is a selection post. Mandamus is, therefore, issued to the respondent to convene a review DPC. Candidature of the petitioner would be considered by the said DPC as on 08.10.2002 when persons junior to the petitioner were promoted. If found suitable for promotion, the recommendation of the DPC shall be given effect to. In such eventuality, petitioner would be entitled to be promoted as Assistant Director w.e.f. 08.10.2002 when persons junior to the petitioner were promoted. Petitioner would be entitled to salary in the said grade with all consequential benefits of pay, seniority etc. "

13. Respondents No.1 and 2 accepted this interpretation despite having taken a contrary stand in their counter affidavit and implemented the impugned judgment. The averments made by them are reproduced here under:

"2.3 In reply to paragraph 2.3 of the writ petition it is submitted that wrong inclusion of the name of the petitioner in the seniority list of principal/Vice Principal/I.L.O./Assistant Inspector of Training does not make the petitioner eligible for promotion as she was holding neither of the above stated post. As already stated hereinabove she was holding post of lady Principal which was altogether different cadre, and different set of recruitment rules are applicable. The name of the petitioner in the above seniority list was only indicative of her position among the class-II officers of the Department. Non-issuance of letter of confirmation has no relevancy with the case of promotion inasmuch as the petitioner was already considered for promotion, but not found fit for promotion because she is neither holding feeder post for promotion nor qualified as per the Recruitment Rules in force at the time of consideration.

2.4 Paragraph 2.4 of the writ petition as stated is incorrect and misleading and hence denied. It is further submitted that as already stated herein above that wrong inclusion of her name in the seniority list of Principal/Vice Principal/ILO/Assistant

Inspector of Training in the scale of Rs. 2000-3500 was only indicative of her position among the class-II Officers. She was holding none of the posts mentioned on the Top of the seniority list as she was holding the post of "Lady Principal" having different qualification and recruitment rules.

2.5 Paragraph 2.5 of the writ petition is wrong and is denied in view of what has been explained hereinabove. However, it is stated that the posting of the petitioner on any position of the Department does not make the petitioner eligible for promotion as the eligibility is considered with reference of the qualification prescribed in the Recruitment Rules and whether one is on feeder post or not. But the petitioner was not qualified as per Recruitment Rules in force at the time of consideration."

14. This is precisely the grievance of the appellants who admittedly are eligible for promotion through the 2nd feeder cadre having necessary qualifications including the educational qualifications. According to them the Judgment was given at their back inasmuch as they were not even impleaded as party to the petition. It is also their case that the promotion of respondent No.4 to Post A not only affects the chances of promotion of appellants No.1 to 4 but also the seniority of appellants No.5 and 6.

15. We have heard the parties and have examined the records.

16. In nutshell the case of the appellants is that the feeder cadre for promotion to post-A is (a) and (b) aforesaid. The note which stands appended to feeder cadre (b) does not make the fourth respondent eligible for promotion as she forms a separate cadre and in fact does not fit in the scheme of things as is

apparent from the recruitment rules of feeder cadres (a) and (b) and (c). It is submitted that while cadre (a) and (b) REPRESENTS THE ENGINEERING CADRE, it is not so in the case of the fourth respondent who was only a 'lady principal' in a woman Polytechnic which had a different set of qualifications and is not a post in the Engineering Cadre. It is stated that the exception created by the note appended to cadre (b) is meant for diploma holders in engineering and does not cover the case of the fourth respondent who is simply a graduate (BA) with Home Science as a subject. It is also submitted that the fourth respondent was not even eligible for inclusion in the combined seniority list and was rightly not considered to be so eligible when the tentative list was prepared. There is no basis for the observations made in para 5&6 of the impugned judgment.

17. To emphasize their stand, Id. Counsel for the appellant also drew our attention to the recruitment rules for the cadre post (a) and (b) as also to the recruitment rules of the post held by the fourth respondent described as (c) which are reproduced hereunder:

Feeder Cadre (a) :

As per the recruitment rules notified for the post of Principal ITI Malviya Nagar and Shahadra/Training Evaluation Officer/Senior Surveyor, vide notification no. f.2 (67)/75-S.II/vol. I dated 19th Aug. 1981, the vacancies of the abovesaid post are to be filled by direct recruitment by the candidates having following educational & other qualifications:

Essential:

- i) At least second class Degree in Mechanical/Electrical/Civil Engineering/Technology from a recognized university or equivalent.
- ii) 3 years professional experience in the subject concerned preferably in teaching.

Desirable:

Knowledge of the local language.

Feeder Cadre (b):

As per the recruitment rules notified for the post of Principal/Asst. Inspector of Training/Vice Principal/Industrial Liaison Officer/Training Officer in the pay scale of 2000-3500 (Pre-revised), vide notification no. F.3/1/87/Trg./Admn. Dated 26th July 1989, the abovesaid post is to be filled in the following manner.

- i) *That the abovesaid post is a Selection post and vacancies are filled 50% by promotion from the departmental candidates holding the feeder post(s) and 50% by direct recruitment.*
- ii) *In case of recruitment by promotion, the promotion is considered from the following posts.*
 - a) *Assistant Employment Officer (tech) in the scale of Rs. 1640-2900 with 3 years regular service in the grade.*
 - b) *Foreman/Assistant Apprenticeship Advisor (jr.)/Senior Technical Asst./Surveyor with 2 years regular service in the grade.*
 - c) *Instructor (AVTS) in the scale of Foreman with 2 years regular service in the grade.*

(Provided they possess a diploma/Certificate in Engg. Or Technology from a recognized University/Institution or Equivalent).

18. However as per the recruitment rules notified for the post of Lady Principal, ITI for women (described as (c)) in the pay scale of Rs.2000-3500 (Pre-revised) vide notification no. F.2 (34)/86-S.II dated 28th January, 1987, the post of Lady Principal is a post to be filled by direct recruitment by the candidates having following educational and other qualifications:

Essential:

- i) *Degree of recognized university or equivalent preferably with Home Science*
- ii) *Degree/Diploma in Teaching of recognized university.*
- iii) *About three years experience in a supervisory capacity in an industrial undertaking of repute or in an institute with vocational trades.*

Desirable:

Diploma or certificate of recognized institute in Food Processing/Cutting & Tailoring/Embroidery.

19. A perusal of the aforesaid recruitment rules leaves no room for doubt that to be eligible for promotion for (A-post) the incumbent must be from either of the feeder cadres (a) or (b) and it is only thereafter, the question of relaxation of his/her educational qualification can be considered by applying note

appended to feeder cadre (b). It is not the case of the fourth respondent that she was part of the (a) cadre. In fact she was not even eligible for promotion through (b) cadre.

20. The arguments addressed by Shri G.D. Gupta, learned Senior counsel appearing for the fourth respondent, argued that she being a Principal of ITI, forms part of (b) cadre cannot be accepted for the simple reason, that the persons who are appointed to cadre (a) and (b) are basically Engineering graduates whereas the post of Lady Principal for ITI for women forms a cadre in itself as is apparent from the recruitment rules for the said post which only provides for a degree of a recognized university or equivalent professional qualification with Home Science and therefore, even if a person who does not have any engineering degree can still be considered for the post of Lady Principal, ITI for women but not vice versa. Here, it can also be observed that the word 'lady principal' which probably became a cause of sympathy before the learned Single Judge, is not material because the recruitment rules for the aforesaid post where the fourth respondent had been working was in fact described as the post of 'lady principal' as per the recruitments rules and it is in this context that she was again and again described as 'lady principal' in the pleadings of the parties. The word 'lady' was not to create any distinction or any gender bias so as to keep her out of the feeder cadre (b).

21. The recruitment rules for cadre (b) show that the appointment is both by process of direct recruitment and promotion. The fifty per cent quota of direct recruitment requires a degree of Mechanical/Electrical/Civil Engg. from a recognized university or equivalent. Insofar as the promotion quota is concerned, there is a requirement of diploma certificate. It is in this context that the note for recruitment rules for A-post has to be read. There is thus a possibility that persons appointed to the second feeder cadre described as (b) who in turn have come in through the fifty per cent quota for promotion may not have the requisite educational qualification for the recruitment to A-post and that is the reason why the note has been inserted and has to be read only in respect of the second feeder cadre described as (b) for the promotion to A-post. It can have no application to person like the fourth respondent who does not figure in the (b) cadre.

22. It is no more res integra that any appointment of a person not having the requisite qualification, which is violative of the Recruitment Rules, cannot be sustained. In this regard, reliance is placed upon a judgment of a Division Bench of this Court in *Usha Handa Vs. Lt.Governor, NCT of Delhi [2008 (103) DRJ 115]*.

23. Another argument put forth by learned counsel appearing for the fourth respondent is that even a B.A. degree with Home Science as a subject must be considered a degree in technology

so as to find place in the feeder cadre (b) for the purpose of promotion. In this regard, the learned counsel also relied upon a judgment of the Supreme Court in *Smt. Swaran Lata Vs. Union of India & Ors as reported in 1979 3 SCC 165* and contended that the knowledge of Home Science should be considered as a knowledge of technology, which is an essential qualification for consideration of fourth respondent through feeder cadre (b). In the above-said case, it has been held:

“55. *In the present case, as already pointed out, there was no statute or regulation having the force of law by which any qualifications were prescribed for the post of Principal. There were also no rules framed to regulate recruitment and conditions of service of the post under the proviso to Article 309 of the constitution. It was the exclusive power of the Chandigarh Administration in the absence of any law or rules, to prescribe the essential qualifications for direct recruitment to the post, and, accordingly the qualifications were prescribed in the consultation with the commission. The Commission, while advertising the post, had reserved to itself the power to relax the qualifications in deserving cases. It is not that the Commission had relaxed one of the essential qualifications viz., qualification No.(ii) ‘Diploma in Technology of three years duration’ , in the case of respondent 6 alone. There were three other candidates who were also interviewed in relaxation of essential qualifications Nos. (ii) and (iv). The affidavit of Dr. A.C. Mathai, Under Secretary in the Union Public Service Commission shows that in the case of respondent 6 the commission relaxed essential qualification No. (ii), as under:*

Requirement of Diploma of Industrial Training of two years' duration.

It is noteworthy that essential qualification No. (ii), as advertised was 'Diploma in Technology of three years' duration or diploma in industrial Training of two years' duration with one year's teachers training/ C.T.I. Indeed, respondent 6 had essential qualification No. (ii). The word 'or' made the two clauses disjunctive, and they were in the alternative. Respondent 6, besides being a graduate in Arts, also held a three years' Diploma in Home Science from Lady Irwin College, Delhi.

56. *It is a matter of common knowledge that **Home Science in some countries called 'domestic science'** is a broad field of learning integrating the subject – matters of several disciplines to form a body of knowledge focused on the problems of the home and their living. It is concerned with all phases of home life and includes the following subjects: child development and family relationships ; clothing, textiles and related arts ; family economies and home management ; food and nutrition ; housing and house management. Shorter Oxford Dictionary, 3rd Ed., Vol.II, p. 2253 gives the meaning of 'Technology' as :*

a discourse or treatise on an art or arts; the terminology of a particular art or subject ; the scientific study of children.

In Webster's New International Dictionary, 2nd Ed., Vol.IV ,p.2590 apart from giving it the meaning of "industrial science" , also conveys to it the meaning:

Any science or systematic knowledge of the industrial arts.

The random House Dictionary of the English Language, p. 1349 gives some of the

meanings of the term as :

*the application of knowledge for practical ends, as in a particular field; **educational technology;** the terminology of an art, science, etc. **technical nomenclature.***

Though in its primary sense it is true that the word “Technology” involves a technical process, invention, method or the like in the broader sense it embraces non-engineering, related curricula pertaining to applied and graphic arts, education, health-care, nutrition, etc., i.e, it includes technique or professional skill in any of the subjects enumerated above. The expression ‘Diploma in Technology’ is, therefore wide enough to include a Diploma in Home Science.”

24. However, the aforesaid judgment, in our opinion, cannot help the fourth respondent because the facts and circumstances of that case have no application to the facts of this case as it is apparent, that the word “technology” used as a qualification for the promotees cannot be equated with Engineering Degree or even a diploma, which is an essential qualification both in the case of direct recruits as well as in the case of candidates who seek promotion more so, when the fourth respondent was not in the feeder cadre (b).
25. As such, we have no hesitation to hold, that the promotion of the fourth respondent to the post A was illegal and cannot be sustained .
26. It may be of benefit to take note of the information

submitted by respondents No. 1 and 2 by way of additional affidavit dated 18th August, 2008:

(i) *The appellant No.5 Sh.Ajay Vashisht had filed an objection on 11.07.1995 to the final seniority list circulated under memorandum dated 28.05.1993. The objection of Sh. Ajay Vashisht was considered by the Competent Authority but as per record the final seniority list circulated under memorandum dated 28.05.1993 was not changed.*

(ii) *There are five vacant posts at present to the post of Principal ITI Arab ki Sarai/Jaffarpur/Pusa/BTC/Assistant Apprenticeship Advisor/Assistant Director in the pay scale of Rs. 10,000-15,200 which will be filled up as under:*

Total number of posts: Five Posts

(a) *No. of posts to be filled up under the promotional quota of 33-1/3% from the officer working in the pay scale of Rs. 8000-13500 with five years qualifying service in the grade : Two Posts*

(b) *No. of posts to be filled up under the promotional quota of 66-2/3% from the officer working in the pay scale of Rs. 6500-10500 with eight years qualifying service in the grade : Three Posts*

(iii) *It is proposed to take the following course of action:-*

(a) *The names of Appellant No.1 to 3 will be forwarded for consideration by Departmental Promotional Committee for selection to the aforesaid post under the promotional quota of 66-2/3% from the officers working in the pay scale of Rs. 6500-10500 having eight years qualifying service in the grade.*

(b) *The Name of Appellant No.4 will be forwarded, along with those of other eligible candidates, against the promotional quota of 33-1/3% for the officers working in the pay scale of Rs.8000-13500 with five years qualifying service in the grade, as his name is falling under consideration zone.*

(c) Appellant No. 5&6 were promoted to the aforesaid post on 08.10.2002.

(iv) (a) The Recruitment Rules of the aforesaid post i.e. Principal ITI - Arab Ki Sarai/Jaffarpur/Pusa/BTC/Assistant Apprenticeship Advisor/Assistant Director have been amended and notified vide notification No. F.3(26)/2007.Trg.Admn./321 dated 05.05.2008 with the following charges:-

(i) Number of posts increased from seven to ten due to inclusion of two more it is i.e. ITI-Narela and ITI-Vivek Vihar for Women and one post of Assistant Director in column No. 1 and 2.

(ii) The post of Lady Principal has been included in the feeder grade in column No.12.

(iii) A Departmental Promotional Committee for considering promotion within Group "A" posts the maximum of the scale of which is less than Rs. 16500 has been constituted in column No.13.

(b) The Recruitment Rules for the post to which the Appellant from 1 to 4 and Respondent No.4 were initially appointed have not been changed/amended as yet. However, the Recruitment Rules of the post to which the Appellants No. 5 & 6 belong i.e. Principal ITI-Arab Ki Sarai/Jaffarpur/Pusa/BTC/Assistant Apprenticeship Advisor/Assistant Director has been amended and notified vide notification No.F.3(26)/2007.Trg.Admn./321 dated 05.05.2008, as mentioned above.

(c) With this change in Recruitment Rules the number of posts under promotional quota of 33-1/3% from officers working in the pay scale of Rs. 8000-13500, have become three(3). Likewise the number of posts under promotional quota of 66-2/3% from officers in the pay scale of Rs. 6500-10500, have now become seven (7).

(v) After inclusion of the post of Lady Principal in the Feeder Grade on 05.05.2008, of the post of i.e. Principal ITI-Arab Ki Sarai/Jaffarpur/Pusa/BTC/Assistant Apprenticeship Advisor/Assistant Director, the process of inclusion of the post/name of Lady Principal in the seniority list of Group 'B' Officers has been initiated and objections thereto have been called from the concerned officers. The name of successor to Respondent No.4 will be considered for promotion on

inclusion of her name in the seniority list of Group 'B' Officers after removal of objections if any, and after ascertaining fulfillment of the aspects of academic/technical qualifications prescribed in the RRs to the post of i.e. Principal ITI Arab Ki Sarai/Jaffarpur/Pusa/BTC/Assistant Apprenticeship Advisor/Assistant Director in the Pay Scale of Rs. 10000-15200 notified on 5.5.2008.

It is proposed to consider the successor to Respondent No.4 for promotion, based on the relaxation clause included in the revised Recruitment Rules, which provides that "the requirement about the educational qualifications shall not be applicable in case of departmental candidates holding the feeder post on the date of promulgation of these rules."

27. From this affidavit, it is apparent, that the amendment proposed to the Recruitment Rules would be effective with effect from 5.5.2008 subject to decision on the objections to the proposed Recruitment Rules and only on that basis a Lady Principal, that is, persons like respondent No.4 may be considered for promotion to the A-post and not otherwise. However, the appellants being eligible are certainly entitled for consideration and in fact according to the submissions made by learned counsel for respondents No.1 and 2, their names are under consideration and would be considered as and when DPC is held.

28. Under these circumstances, the following directions are passed:

(i) The judgment of Single Judge dated 5.12.2003 directing the respondents No.1 to 3 to promote fourth respondent to post A,

that is, to the post of Principal ITI Pusa, Arab Ki Sarai and Jaffarpur/Assistant Apprenticeship Advisor/Assistant Director Training/Principal, Basic Training Center under the Directorate of Training & Technical Education, Government of NCT of Delhi, in the pay scale of Rs.3000-4500 (Pre-revised) is unsustainable and thus is set aside.

- (ii) It is further held that the inclusion of the name of the fourth respondent in the seniority list dated 28.5.1993 was illegal and therefore, the said list is also set aside to the extent that it includes the name of the fourth respondent.
- (iii) Respondents No.1 to 3 are directed to hold a DPC for considering the candidature of appellants No. 1 to 4 in terms of the Recruitment Rules which were in existence prior to the proposed amendment to the Rules within a period of three months from today and in case the appellants No.1 to 4 are selected, they be given seniority over and above the fourth respondent.
- (iv) Insofar as appellants No.5 and 6 are concerned, they would certainly rank above the fourth respondent in seniority.
- (v) Insofar as the fourth respondent is concerned, it is for respondents 1 to 3 to consider whether she is to be allowed to continue on the post which she is holding for several years keeping in view the proposed amendment which makes her eligible for being considered for A-post as also the fact that she is

due for retirement in three years.

29. The letters patent appeal filed by the appellants is disposed of in terms of the aforesaid directions leaving parties to bear their own costs.

MOOL CHAND GARG, J.

August 29, 2008
rk/dc

SANJAY KISHAN KAUL, J.