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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

OA No.1887/88

Date of decision: 07.07.1993.

SMT. INDRA JAIN

...PETITIONER

VERSUS

UNION OF INDIA & ANOTHER

...RESPONDENTS

CORAM

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)  
THE HON'BLE MR. J.P. SHARMA, MEMBER (J)


FOR THE PETITIONER

MS. SHYAMLA PAPPU, SENIOR  
COUNSEL WITH SHRI O.P.  
Khokha, Counsel.

FOR THE RESPONDENTS

SHRI P.P. KHURANA, COUNSEL.

1. WHETHER REPORTER OF LOCAL PAPERS MAY BE ALLOWED TO SEE  
THE JUDGEMENT? *NO*
2. TO BE REFERRED TO THE REPORTER OR NOT? *yes*

  
(I.K. RASGOTRA)  
MEMBER (A)

(12)

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE  
MR. I.K. RASGOTRA, MEMBER (A))

The petitioner Smt. Indra Jain filed this O.A. on 28.9.1988 apprehending termination of his service, under Section 19 of the Administrative Tribunals Act, 1985. When the case came up for hearing on 30.9.1988 an exparte order to the effect "In the meanwhile to maintain status quo till further orders" was issued in her favour. The interim order passed above was continued till the disposal of the O.A. vide order dated 12.10.1988. As the service of the petitioner was terminated with effect from 8.4.1993 vide order No.G-16/Estt/8771 dated 8.4.1993 she filed CCP-123/93, alleging wilful disobedience by the respondents of the interim order of the Tribunal. The said contempt proceedings were closed as the respondents reinstated the petitioner in service vide order dated

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4.6.1993. The Tribunal vide the said order further directed that the matter be listed for final hearing before the appropriate bench on the top of the list on 8.6.1993. Accordingly, the matter was listed before us. The case was heard on 8.6.1993 and 9.6.1993. The petitioner was represented through Ms. Shyamla Pappu, learned senior counsel alongwith Shri O.P. Khokha, counsel while the respondents pursued their case through learned counsel Shri P.P. Khurana.

2. The case of the petitioner is that she was appointed as Lower Division Clerk (LDC)-cum-Typist vide order dated 2.1.1981. The said order is extracted hereunder:-

"Km. Indra Jain is hereby appointed as TYPIST-CUM-LOWER DIVISION CLERK in this office with effect from 23.12.1980 (F.N) on purely temporary and adhoc basis for a period of 50 days or till the regular incumbent is appointed whichever is earlier, in the grade of Rs.260-6-290-EB-326-EB-8-390-10-400 on a basic pay of Rs.260/- p.m. plus usual allowances as admissible under Rules."

3. Her service was terminated vide order dated 19.2.1981, which reads:-

"The services of Km. Indra Jain appointed Typist-cum-L.D.C. on purely temporary basis w.e.f. 23.12.1980 for 50 days vide this office order No.G/35/II/25 dated 2.1.1981 are hereby terminated w.e.f. 10.2.1981 (Noon)."

4. She was reappointed on purely temporary and ad hoc basis for 89 days or till regular incumbent is appointed whichever is earlier w.e.f. 17.8.1981 vide order dated 21.8.1981 and her service was again terminated vide order dated 19.11.1981 w.e.f. 13.11.1981. According to the next appointment order (Annexure A-5) the

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petitioner was reappointed as Typist-cum-L.D.C. w.e.f. 17.11.1982 for 89 days on purely temporary and ad hoc basis or till the regular incumbent is appointed whichever is earlier vide order dated 6.12.1982. This period of appointment ended on 4.1.1983. The service of the petitioner was continued thereafter by appointing her from time to time on conditions as stipulated in orders of appointment adverted to above. The common feature of these letters of appointment is that the petitioner was engaged "on purely temporary and ad hoc basis for a period of not more than 89 days or till regular appointments are made whichever is earlier". The petitioner, therefore, continued to work in the office of the respondents for nearly 8 years with short breaks on ad hoc and temporary basis. Thereafter she filed this application on 28.9.1983. Her principal contention is that she is eligible in all respects for the post she is holding and that she possesses the prescribed qualification for the post of Typist-cum-LDC. She also contends that she meets all the conditions of eligibility for appointment as L.D.C on regular basis. She has prayed that the respondents be directed to:-

- i) regularise her service on the present post from the date of initial appointment, i.e., 23.12.1980;
- ii) give the applicant due benefits of pay scale, salary, arrears and other perquisites attached to her post w.e.f. 23.12.1980; and
- iii) fix her seniority on the basis of the aforesaid regularisation.

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5. Ms. Shyamla Pappu, learned Senior Counsel submitted that the case of the respondents is not that they were not satisfied with the work performance of the petitioner. In fact, vide letter dated 21.9.1987 the respondents have certified that the petitioner " is very diligent and hard worker. She bears good moral character." It is an admitted fact that the petitioner has continued to work in the office of the respondents till date to the full satisfaction of the respondents. After having kept her for such a long time, the services of the petitioner cannot be terminated as the uninterrupted continuance in service for a long time gives a right to the petitioner for regularisation in service. The learned counsel contended that it was incumbent on the respondents to provide adequate opportunity to the petitioner to get herself regularised against the vacancy she was working for over 8 years. The respondents have failed to provide the petitioner a single opportunity to appear in the Staff Selection Commission's (SSC) examination even though the said examination was held periodically. In fact when she applied for appearing in the SSC examination her application was rejected. It was further urged that the case of Usha Rani v. Union of India through the Secretary, M/O Industry & Company Affairs & Anr. - OA 1372/88 decided on 8.2.1991 and relied upon by the respondents should be ignored. The said judgement does not take into consideration the law declared by the Supreme Court. The facts in the present case are broadly identical to the facts in Usha Rani's (supra) case. Briefly Smt. Usha Rani was appointed as L.D.C.-cum-Typist in the office of Registrar of Company Affairs, on purely temporary and ad hoc basis initially for 89 days in the

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pay scale of Rs. 260-400 w.e.f. 21.4.1983. The ad hoc appointment was extended from time to time by giving short breaks of two/three days. The last extension was upto 13.11.1987. She proceeded on maternity leave on 16.11.1987 and her services were terminated alongwith some others vide order dated 19.11.1987 with effect from the afternoon of 13.11.1987. It was argued by the respondents that the services of all the seven ad hoc employees including Smt. Usha Rani were terminated in 1987 with a view to fill up the vacancies by selecting persons sponsored by the employment exchange. 116 names were sponsored by the employment exchange. Six candidates were finally appointed w.e.f. 3.12.1987 after they had been declared qualified in the typing test and viva voce. Some of the candidates so selected had earlier worked on ad hoc basis before their services were terminated in 1987. It was held by the Tribunal that the termination of service of an ad hoc female employee like Smt. Usha Rani during the period of her maternity leave was illegal according to the provisions of Sections 5 and 12 of the Maternity Benefit Act, 1961. The applicant (Usha Rani) was therefore, held to be entitled to the wages for the period from 13.11.1987 to 15.2.1988 and the impugned order, terminating her service, was quashed. The Tribunal relied on **Dr. (Smt) Adarsh Arora v. Union of India - 1989 (9) ATC 800**. Regarding the issue of regularisation of ad hoc employees the Tribunal held that the "termination of services of 7 ad hoc LDCs including the applicant w.e.f. 3.12.1987 on the basis of fresh nominations sought from the Employment Exchange is not legally sustainable." The Tribunal directed the respondents to engage Smt. Usha Rani as LDC-cum-Typist on ad hoc basis with immediate

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effect on the ground that persons with lesser length of service had been reengaged by them w.e.f. 3.12 1987 and some of them were still continuing in service, though their continuance was stated to be on the basis of the interim order issued by the Tribunal in another Original Application filed by them. The Tribunal further directed that "such engagement shall be continued till a regularly selected candidate sponsored by the SSC is appointed to this post and subject to the principle of 'last come first go'".

6. After discussing the above case Ms. Shyamla Pappu, learned Senior Counsel made two propositions viz. i) that the judgement in Smt. Usha Rani's (supra) case be deemed to be 'per incuriam' and should be ignored and ii) alternatively in case the above proposition is not acceptable, then the matter should be referred to a larger bench. The latter proposition was based on the premise that the Tribunal has taken conflicting views in different cases, involving identical issues of law and of fact. The learned counsel pointed out that in T-699 '86 (S No.178/87) Dr. S.K. Pathak v. Union of India & Ors. decided on 25.7.1991 the Tribunal held that termination of ad hoc Ayurvedic Doctors who had been continued from time to time on ad hoc basis over a period of time was illegal and violated. It was further held in Dr. Pathak's (supra) case that "even when the nominees of the UPSC are available the department should consider adjusting the applicant against vacant post if any. Their case may be considered by the UPSC after condonation of age to the extent of ad hoc service." In this context the learned counsel submitted that a 1 that the petitioner is praying



for is that she should be granted an opportunity to appear in the SSC's examination to get herself regularised. Such an opportunity was allowed to the petitioner in **Dr. Pathak's** (supra) case. It was contended that when the petitioner applied for appearing in the special qualifying examination her application was not forwarded to SSC by the respondents. In support of her case the learned senior counsel cited the following judgements:-

- i) 1991 (15) ATC 697 Jacob M. Puthuparambil & Ors. v. Kerala Water Authority & Ors.
- ii) 1992 (20) ATC 190 Karnataka State Private College Stop Gap Lecturers Association vs. State of Karnataka & Ors.
- iii) 1992 (21) ATC 403 State of Haryana & Piara Singh & Ors.
- iv) Dr. A.K. Jain & Ors. v. Union of India & Ors. 1987 (Supp.) SCC 497.

7. The stand of the respondents was articulated by Shri P.P. Khurana, learned counsel. He submitted that ad hoc appointment of the petitioner was a short term stop gap arrangement. It continued from 1980 onwards till the first interim order was passed in the case of the petitioner on 9.11.1987 by the Delhi High Court and later vide order of the Tribunal in the present O.A. During all this period the petitioner did not compete in the open competitive examination held by the SSC. The petitioner is employed as a LDC in an office which is a participating department in the Central Secretariat Clerical Service (CSCS). The said service is governed by statutory rules and none can be appointed to the service de hors the

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rules. With a view to help the ad hoc LDCs working in the departments participating in CSCS, Special Qualifying Examination was held in 1985, 1987, 1989 and 1991. These examinations were tailored to meet the specific requirement of ad hoc and temporary appointees who were given short term appointment till regular candidates from SSC become available. The notices for Special Qualifying Examination were got noted by all concerned, including the petitioner. The petitioner never applied for appearing in the said examination. The question of rejecting her application for appearing in the Special Qualifying Examination does not, therefore, arise. The learned counsel submitted photocopies of all the circulars addressed to all temporary and ad hoc employees in the department. One such circular issued under diary No.1198 dated 5.8.1991 was got noted among others by the petitioner herself. The temporary and ad hoc employees including the petitioner were directed to submit the completed application form after going through the scheme of Clerks Grade Examination for regularisation of service of ad hoc LDCs to the concerned officer in the SSC latest by 12.8.1991. In the note dated 12.8.1991 recorded on the file, it is clearly stated that the petitioner "had not submitted her application even today, i.e., 12.8.1991 at 10.20 AM." After having ignored the opportunities available to clear the SSC qualifying examination the petitioner cannot now pray that she should have been given an opportunity to appear in the SSC examination. Shri Khurana, learned counsel for the respondents pointed out that the case now being set up by the petitioner is that she should be given an opportunity to appear in the SSC examination to get herself regularised. This is not the

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relief prayed for by the petitioner. She cannot be allowed to set up altogether a new case at this stage when the matter is being finally heard. In the O.A. the case of the petitioner is that she has been continuously working, as the short breaks given to her are not to be reckoned in accordance with law. She was fully qualified to hold the post of Typist-cum-LDC and she is eligible to hold the post against which she is working. These are the averments made in the O.A. It is not the case of the petitioner that she suffers from any disability or disqualification for regularisation and that this disability or disqualification be removed by granting her exemption. If she was suffering from any disability which deprived her from appearing in the Special Qualifying Examination she should have approached the Tribunal at the stage when this disability came to her notice. She should have then prayed for requisite reliefs with a view to get the disability removed. The petitioner, however, never approached the Tribunal with a view to cure the disability from which she was suffering. On the other hand, she is maintaining that she is fully qualified and she is eligible to hold the post. However, it is now being urged that she should be given an opportunity to appear in the SSC's examination, as she could not avail of the opportunity earlier. This was so because she was not sponsored by the employment exchange when she was appointed in the office of the respondents. Admittedly, the candidates who have not been appointed through the employment exchange would not be able to appear in the Special Qualifying Examination. This fact was known to the petitioner. She had two courses open. She should have either sought an exemption from the department or

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come to the Tribunal with a view to seek to get this disability cured. Mere efflux of time cannot cure the disability she was suffering from. In any case, the petitioner did not choose either of the courses open to her. She approached the Tribunal in 1988 with the prayer that she should be regularised on the ground that she has been serving the department over a period of time. The petitioner had adequate number of opportunities to get herself regularised through the Special Qualifying Examination. She failed to do so. In such a case no relief can be provided to her, particularly when the appointment given to her from time to time was for a specific period, making a clear stipulation that the appointment was temporary and ad hoc till the regular incumbent is appointed. In support of his case the learned counsel cited the following judicial pronouncements:-

- i) Delhi Development Horticulture Employees' Union v. Delhi Admn. JT 1992 (1) SC 394.
- ii) OA No.1536/91 - Shri Manchar Lal & Ors. v. Union of India & Ors. decided on 27.2.1992.
- iii) Kiran B. Desai v. Union of India 1986 (4) SLJ 917.
- iv) OA 63/86 Suman Kumar Khanna & Ors. v. Union of India decided on 21.4.1986.
- v) OA 501/87 Hardeep v. Union of India (Chandigarh Bench) decided on 11.11.1987.

8. We have heard the learned counsel for both the parties and considered the matter carefully. As we have observed earlier the case of Smt. Usha Rani (supra)

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cannot be said to be 'per incuriam' and cannot be ignored. The proposition of law laid down in Usha Rani's (supra) case is that the engagement on ad hoc basis can continue only till regularly selected candidates in accordance with the rules become available. This is not a judgement which can be deemed to passed per incuriam. To our mind no principle of law laid down by the Supreme Court or by the Tribunal has been ignored while coming to that conclusion. The judgements marshalled by the learned counsel in support of the case of the petitioner have to be viewed in the context of as to what constitute the binding precedent which must be followed by the Court in a given situation. This aspect has been discussed in Dr. Promila Srivastava vs. Director General of Health Services and Another - ATR 1992 (2) CAT 752. It will be proper to extract the relevant part of the judgement from Dr. Promila Srivastava for appreciation of the position.

"11. Before considering the decisions relied upon by Shri Chara, we may advert to the settled law of precedents. In PRAKASH AMICHAND SHAH Vs. STATE OF GUJARAT AND OTHERS (AIR 1985 SC 465) the Supreme Court has held :-

"A decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the court which is dealing with it should carefully ascertain the true principle laid down in the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation."

The Supreme Court has pointed in AMAR NATH OM PRAKASH AND OTHERS Vs. STATE OF PUNJAB AND OTHERS (AIR 1985 SC 218) that a case is only an authority for what it actually decides, and not what logically follows from it. In SREENIVASA GENERAL TRADERS Vs. STATE OF

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ANDHRA PRADESH (AIR 1983 SC 1246) the Supreme Court dealing with the observations relied upon as precedent said:-

'With utmost respect these observations of the learned judge are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear.'

IN AMBICA QUARRY WORKS ETC. VS. STATE OF GUJARAT AND OTHERS (AIR 1987 SC 1073) the Supreme Court has observed:-

"the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

There is a further elucidation by the Supreme Court in KRISHNA KUMAR & ORS. VS. UNION OF INDIA & OTHERS (AIR 1990 (2) SC 555) wherein it is observed:-

'The doctrine of precedent, that is, being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when the case itself required.'

12. What emerges from these decisions is that every decision of a court cannot be regarded as laying down a precedent. The decision is undoubtedly binding on the parties to the decision. But if the said decision has to be followed as a precedent, we have to ascertain the ratio decidendi. If the decision has laid down a principle of law, that can be relied upon as a precedent. There is a clear distinction between a decision which is rendered having regard to the particular facts and circumstances and a decision which lays down a principle of law of general application. Hence, when a decision is pressed into service as a precedent, it becomes the duty of the Tribunal to ascertain carefully if any principle of law of general application has to be followed as a precedent."

9. It is against the above backdrop that we have to examine the authorities relied upon by the learned Senior Counsel Ms. Shyamla Pappu.

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10. The first decision relied upon is Jacob M. Puthuprambil (supra). After noticing the relevant facts of the case and the law on the question and the relevant rules the Supreme Court observed:-

"Therefore, if we interpret Rule 9(a)(i) consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job, should not be thrown out but their services should be regularised as far as possible."

11. The Supreme Court also noticed that sub clause (e) of Rule 9 provided for regularisation of service of any person appointed under clause (i) of sub rule (a) if he had completed continuous service of two years on a cut off date notwithstanding any thing contained in the rules. The relief provided to the petitioners in Puthuparambil's (supra) case was by virtue of the interpretation of the rules in a manner consistent with the conduct of the respondents in the context of the various provisions made in the Rules.

ii) **Karnataka State Private College Stop Gap Lecturers Association (supra).**

12. In this case the crux of the matter was noted by the Supreme Court in paragraph-2 of the judgement where their Lordships observed:-

"Ad hoc appointments, a convenient way of entry usually from backdoor, at times even in disregard of rules and regulations, are comparatively recent innovation to the service jurisprudence. They are individual problems to begin with, become a family problem with passage of time and end with human problem in court of law. It is unjust and unfair to those

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who are lesser fortunate in society with little or no approach even though better qualified, more meritorious and well deserving. The infection is widespread in government or semi-government departments or State financed institutions. It arises either because the appointing authority resorts to it deliberately as a favour or to accommodate someone or for any extraneous reason ignoring the regular procedure provided for recruitment as a pretext under emergency measure or to avoid loss of work etc. Or the rules or circulars issued by the department itself empower the authority to do so as a stopgap arrangement. The former is an abuse of power. It is unpardonable. Even if it is found to have been resorted to as a genuine emergency measure the courts should be reluctant to grant indulgence. Latter gives rise to equities which have bothered courts every now and then."

13. The Supreme Court was dealing with the case of ad hoc Teachers employed in institutions fully aided by the State Government. The facts which led to the issue of the direction by the Supreme Court were appreciated by their Lordships as under:-

"Further the State of Karnataka appears to have been regularising services of ad hoc teachers. Till now it has regularised services of contract lecturers, local candidates, University lecturers, Engineering colleges' lecturers etc. It may not furnish, any basis for petitioners to claim that the State may be directed to issue similar order regularising services of teachers of privately managed colleges. All the same such policy decisions of government in favour of one or the other set of employees of sister department are bound to raise hopes and expectations in employees of other departments. That is why it is incumbent on governments to be more circumspect in taking such decisions. The petitioners may not be able to build up any challenge on discrimination as employees of government colleges and private colleges may not belong to the same class yet their claim cannot be negivated on the respondents' stand in the counter-affidavit that the regularisation of temporary teachers who have not faced selection shall imparir educational standard without explaining the effect of regularisation of temporary teachers of University and even technical colleges. Such being the unfortunate state of affairs this Court is left with no option but to issue following directions to respondents for not honouring its commitments before the High Court and acting contrary to

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the spirit of the order, and also due to failure of government in remaining vigilant against private management of the college by issuing timely directions and taking effective steps for enforcing the rules."

14. It will be observed from the above that the directions issued by the Hon'ble Supreme Court were in a specific context of the facts of the case.

15. The next case relied upon by the learned Senior Counsel is **State of Haryana & Ors. v. Piara Singh** (supra). This is a case where the Supreme Court after noticing the facts of the case and the law on the question found fault with the directions of the Punjab and Haryana High Court and observed.-

"Now coming to the direction that all those ad hoc /temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him - which means creation of a vacancy (b) he was not sponsored by the Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back-door (c) he was not eligible and/or qualified for the post at the time of his appointment (d) his record of service since he is appointed is not satisfactory. These are in addition to some of the problems indicated by us in paragraph 25 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders..... Further, there can be no single 'rule of thumb' in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot

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be a mechanical act but a judicious one. Judged from this standpoint, the impugned directions must be held to be totally untenable and unsustainable."

16. In paragraph 45-47 of the said judgement their Lordships further observed that:-

"45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not he must go away to the regularly selected candidate. The appointment of the regularly selected candidates cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay..."

17. It will be seen from the above that first the Supreme Court frowned upon the approach of the High Court for issuing blanket orders for regularising ad hoc employees. Secondly the Supreme Court upheld the conditions prescribed by the State Government for regularisation of employees recruited on temporary basis as reasonable and fair. In particular the conditions for drawing employees for temporary/ad hoc employment through the employment exchange was held to be unexceptionable. It is not the case of the petitioner that she was employed through the employment exchange nor is it her case that she did not have an opportunity to compete along with others for regularisation. In fact, having ignored the chances for appearing in the SSC's examination held for

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direct recruitment and having failed to take advantage of the qualifying examinations specially tailored for the ad hoc employees she is now asking for further opportunity for allowing her to appear in the SSC's examination. The judgement of Piara Singh's (supra) does not in any way support the case of the petitioner.

18. A reference was also made to the case of Dr. A.K. Jain & Ors. v. Union of India & Ors. 1987 (supp) SCC 497. This case also does not support the case of the petitioner. The Supreme Court in this case observed that "having failed to get regularised in accordance with the prescribed rules and regulations for regular appointments the petitioner's services had to be terminated and as such there has been neither any arbitrary nor illegal action on the part of the respondents or any violation of the Fundamental Rights guaranteed under Articles 14 and 16." The Supreme Court thus did not find any fault with the action of the authority in terminating the services of a person who was appointed on ad hoc basis. Thereafter the Court proceeded to give certain directions "having regard to the peculiar facts and circumstances of these cases."

19. The relief provided in Dr. A.K. Jain's (supra) case cannot thus be provided mechanically to the petitioner before us.

20. We need not dwell into several other judgements which were referred to by Ms. Shyamla Pappu, learned Senior Counsel for the petitioner. It will be, however,

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appropriate to extract the observations made in Dr. Pramila Srivastava's (supra) case in paragraph-20 by the Principal Bench:-

"20. The courts, having regard to the peculiar facts and circumstances on equitable or humanitarian considerations, issued directions in some cases for continuance in service on ad hoc basis or for regularisation. No general principle of law can be regarded as having been laid down enunciating general principles of law regarding regularisation as the directions in those case were issued on equitable or humanitarian considerations having regard to the peculiar facts and circumstances of those case. There cannot be a fixed formula for exercise of discretion on equitable or humanitarian considerations. Hence, they cannot be relied on as precedent to be followed in other situations."

21. The above observations in Dr. Promila Srivastava's (supra) case are equally applicable to the judgements cited before us.

22. The case of Dr. S.K. Pathak v. Union of India & Ors. (TA 699/86) Suit No.178/85 CAT Delhi was cited before us to indicate that the Tribunal has given conflicting judgements regarding regularisation of ad hoc employees and, therefore, the matter may be referred to a large bench if the relief is not provided to the petitioner herein. This contention in our view is misplaced, as in the case of Dr. Pathak's (supra) case the services of ad hoc employees were terminated contrary to the terms and conditions of appointment. The appointments were made on ad hoc basis until filling up the posts by nomination of the UPSC. As that eventuality had not occurred it was held that the termination of the services of the ad hoc appointees was not justified. The

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decision in Dr. A.K. Pathak's (supra) case, therefore, does not justify a reference of the matter before us to a larger bench.

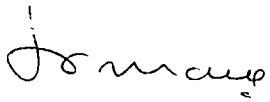
23. We have earlier adverted to the reliefs prayed for by the petitioner and the relief now being urged before us. We are of the opinion that the relief now being prayed for is not one of the reliefs which is claimed in the O.A. We agree with the learned counsel for the respondents that the petitioner cannot be allowed to set up a new case at this stage. There is no dispute in this case that the petitioner was appointed on purely ad hoc and her service was continued from time to time by giving short breaks. The appointment letters given to her clearly specify that the appointment was on purely temporary and ad hoc basis and subject to termination till a regular incumbent is appointed whichever is earlier. The petitioner was holding the post of LDC in a different department participating in the Central Secretariat Clerical Service. The recruitment and appointment in the Central Secretariat Clerical Service is regulated by the Central Secretariat Clerical Service Rules, 1965. It is not her case that she was not aware of this fact. This fact was known to her. It is more so when the specific circulars asking ad hoc employees to apply to appear in the qualifying examination to be held by the SSC for regularisation of ad hoc employees were got noted by such employees including the petitioner. The petitioner did not apply for appearing in the qualifying examination nor did she appear in the examination held by the SSC for direct recruitment from time to time. The petitioner failed to offer herself for regularisation through the


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examination conducted by the SSC nor did she make any grievance about it if indeed her applications were not forwarded to the SSC, it follows that she accepts that her case for regular appointment was rightly not considered. Further this is a solitary case and not a grievance of large number of employees, as it happened in many of the case dealt with by the Supreme Court. Granting all reliefs to the petitioner on equitable and humanitarian grounds also is not proper, as it would deprive appointment to a candidate regularly selected in accordance with the statutory provisions.

24. It is pertinent to note here that Shri P.P. Khurana, learned counsel for the respondents produced a list of candidates recommended by the Staff Selection Commission for appointment as LDCs whom it has not so far been possible to accommodate. In this situation, the continuation of the petitioner or for that matter any other ad hoc employee will be unfair and unjust to a person who has worked hard and has been recruited for appointment in accordance with the rules.

25. For the reasons stated above we do not see any merit for our interference in the petition and the same is accordingly dismissed. We, however, direct the respondents that the petitioner shall not be replaced by another ad hoc employee and shall be replaced only by a candidate duly selected by the Staff Selection Commission. The interim order granted on 30<sup>th</sup> 9.1988 and continued from time to time hereby stands vacated. No costs.

  
(J.P. SHARMA)  
MEMBER (J)

  
(I.K. RASGOTRA)  
MEMBER (A)

san.