



**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(CIRCUIT BENCH AT SHIMLA)**

O.A.NO.063/00926/2017
(Reserved on: 28.02.2020)
Chandigarh, this the 09.07.2020

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. NAINA JAYASEELAN, MEMBER (A)**

1. Khem Raj Verma S/o Late Sh. Moti Ram, R/o Village Saijari, P.O. Sainj, Tehsil Suni, District Shimla, H.P.
2. Pushap Lal S/o Late Sh. Hira Lal Sharma, R/o IIAS Colony, Block-C, Room No. 68-69, Boileauganj, Shimla, H.P.
3. Soni Kumar S/o Sh. Shiv Charan R/o Quarter No. 31-32, Fireman Line, B Block, R.P. Niwas, Shimla-5, H.P.
4. Saroj Devi W/o Sh. Sushil Kumar, R/o House No. 7-8, Barighat Line, near Advance Study, Chaura Maidan, District Shimla, H.P.
5. Smt. Savita Devi, R/o Quarter No. 26-27, Military Barack No. 1, IIAS R.P. Niwas, Shimla, H.P.
6. Som Prakash S/o Sh. Chander Pal, R/o Set No. 1, Transit House, Bilaspur House, Lower Summer Hill.
7. Jitender Singh S/o Sh. Pyare Lal, R/o Care of Bili Ram Niwas, Village Frood, P.O. Kamlanagar, Lower Samitree-171006.

....Applicants

(Argued by: **MR. SANJIV BHUSHAN, SR. ADVOCATE WITH
MR. RAJESH KUMAR, ADVOCATE**)

Versus

1. Union of India, through Ministry of Human Resource and Development, Department of Higher Education, New Delhi.

(Argued by: **MR. ANSHUL BANSAL, ADVOCATE**)

2. Indian Institute of Advance Study , Shimla -5 through its Secretary.

(By : **MR. NEERAJ GUPTA, SENIOR ADVOCATE, WITH
MR. PRANJAL MUNJAL, ADVOCATE**)

Respondents



ORDER
[HON'BLE SANJEEV KAUSHIK, MEMBER (J)]

1. The applicants have approached this Tribunal by filing this Original Application (O.A) under section 19 of the Administrative Tribunals Act, 1985, challenging the order dated 13.7.2015 (Annexure A-1), vide which their claim for regularization of services has been declined by the respondents.

2. The facts of the case, which lead to filing of the O.A. are that respondents issued an Advertisement as broadcasted on All India Radio (Rojgar Samachar) and in local newspaper Amar Ujala, inviting applications for the post of Tourist Guide, with the qualification of Bachelor Degree. The applicant No.1 applied against the same and on being successful in selection, was appointed as such on 9.11.1999, on contract basis. Applicant No.2 was appointed as Xerox Attendant on compassionate ground w.e.f. 15.7.2004. Similarly, other applicants were also appointed on contract basis on different dates.

3. The applicants No.1 filed O.A.No.063/00016/2014, Applicant No.2 filed O.A.No.063/00083/2014, Applicant No.3 filed O.A.No.063/00088/14, Applicants No.4 and



5 filed O.A.No.063/00140/2014 in this Tribunal claiming issuance of direction to the respondents to regularize their services. These O.As were disposed of by a common order dated 16.4.2015 to consider the claim of these applicants in the light of law declared by the Hon'ble apex court in the case of **NIHAL SINGH & OTHERS VS. STATE OF PUNJAB & OTHERS**, (2013) 14 SCC 65.

4. It may be noticed here that applicants no.6 and 7 were impleaded as applicants in this O.A., vide order dated 5.10.2017, subsequently as and they had not filed any O.A. earlier thereto, like applicants No.1 to 5, whose claim has been rejected vide impugned order, Annexure A-1, on the premise that their cases do not fall within the parameters laid down in the case of Nihal Singh (supra). Hence, the O.A.

5. The claim of the applicants for regularization has been declined on the ground that in Nihal Singh's case (supra), the decision for creation of temporary posts was taken at highest level, whereas in this case, the posts of Tourist Guide and Supervisor at Institute and eligibility criteria for selection, were taken at the level of Director only. The selection process is also termed to



be not democratic and transparent as advertisement was issued on local basis at All India Radio and in a news paper, bereft of any wide publicity. The nature of job of Ticket Sale at institute cannot be termed to be permanent activity of the Institute, which can be withdrawn by the Institute, whereas in Nihal's case, nature of job was permanent. Applicant No.2 was also only candidate who was interviewed and engaged as such w.e.f. 15.7.2004, on contract basis on a fixed remuneration. The post was not sanctioned one and was created at the level of Director on the proposal of Librarian. There was no advertisement. Moreover, the post comes under IUC program of UGC in a project mode. Applicant No.3 (Soni Kumar) was engaged on contract basis as class-IV employee against the sanctioned post in 2001. He applied against the post as a direct candidate in response to notice displayed on notice board. Since, his name was not sponsored through Employment Exchange, he is not entitled to any benefit. Applicants No.4 (Saroj Devi) and 5 (Savita Devi), are working under UGC sponsored project namely Inter University Center (IUC) as Safai Karamchari. There are no sanctioned posts of Safai



Karamchari and it is a UGC project only under which they were employed. Thus, there is no mention of names of applicants No.6 and 7, as they had not filed any O.A. with other applicants at earlier point of time.

6. The respondents have filed reply opposing the claim of the applicants. They have repeated the reasoning given in the impugned order, Annexure A-1, that the claim of applicants does not fall within the four corners of parameters laid down in the case of Nihal Singh (supra) and as such it has rightly been rejected vide a speaking order, which is liable to be upheld.

7. We have heard learned counsel for the parties at length and examined the material on file minutely, with their able assistance.

8. The learned senior counsel appearing for the applicants vehemently argued that the posts are available and applicants are continuing against the same for more than a decade and as such the action of respondents in rejecting their claim for regularization on hyper-technical grounds is illegal and arbitrary and cannot be sustained in the eyes of law. He argued that



respondents have not even cared to go through the fact and effect of the decision in the case of Nihal Singh (supra) and have tried to distinguish that decision by indulging in hair splitting, which cannot be appreciated by a court of law. On the other hand, learned senior counsel for contesting respondents argued that evidence in this case does not indicate that initial selection and appointment of applicants was valid or through authorised source and as such their services cannot be regularized. Some comments have also been made against the work and conduct of applicants particularly applicant No.1 and as such it is vehemently argued that applicants cannot be regularized, at all, from any angle.

9. We have considered the submissions of both sides minutely.

10. The first objection taken by respondents in the impugned order, written statement and even during course of oral hearing is that applicant No.1 was appointed out of selection process, carried out on local basis by airing of advertisement on All India Radio and in local news paper and as such it cannot be said to be a wide publicity and thus he is not entitled to



regularization. Qua applicant No.2 it is argued that there was no transparent selection process and he was engaged on an application submitted by him in the respondent department. In regard to applicant No.3, it is argued that his name was not sponsored through Employment Exchange, thus he could not be granted any benefit. Similar objection is also taken qua applicants No.4 and 5 who are working as Safaiwala. The objection taken by the respondents that selection of applicant No.1 has taken place at local level only or that of applicant No.3 and not through employment exchange and as such they are not entitled to any benefit, is not tenable in the eyes of law.

11. In the case of **EXCISE SUPERINTENDENT MALKAPATNAM, KRISHNA DISTRICT, A.P. V. K.B.N. VISWESHWARA RAO & ORS.**, (1996) 6 SCC 216, a larger Bench of the Apex Court reconsidered its earlier judgment in **UNION OF INDIA & ORS. V. N. HARGOPAL & ORS.**, AIR 1987 SC 1227, wherein it had been held that insistence of requisition through employment exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the



Constitution. However, due to the possibility of non sponsoring of names by the employment exchange, the Apex Court held that any appointment even on temporary or ad hoc basis without inviting application is in violation of the said provisions of the Constitution and even if the names of candidates are requisitioned from Employment Exchange, in addition thereto, it is mandatory on the part of the employer to invite applications from all eligible candidates from open market as merely calling the names from the Employment Exchange does not meet the requirement of the Article 14 of the Constitution. In other words, the submission of application by applicant no.3 directly, in response to notice displayed on official notice board, was not an irregularity or illegality, rather it was in accordance with Article 14 of the Constitution of India. The claim that advertisement qua applicant no.1 was issued only on All India Radio or local news paper, as such it cannot be said that wide publicity was given, is a plea too far-fetched and has to be rejected. It is apparent that publicity was given and candidates had appeared in the selection process and the applicant



being most meritorious was selected and appointed and as such to term that his appointment was not through a recognized source of recruitment is absolutely incorrect. Learned counsel for the applicant No.1 suffered a statement at the bar that the applicant would be satisfied if he is appointed on regular basis even prospectively.

12. In regard to applicants No.2, 4 and 5, it is argued that they are working under UGC project and as such neither their selection nor appointment was as per rules nor there exist any posts to adjust them and they can continue as long as project is there. However, one thing is very clear that the work of Photocopier was available with the respondents and there was no other than applicant No.2, who was discharging the indicated work for all these years. The respondents were in need of a person to perform the job and applicant No.2 offered himself and he has been continuing with them for all these years and now terming him to be irregular appointee at this stage when he has given his prime youth in service of respondents is not tenable. In so



far as applicants no.4 and 5 are concerned, they are admittedly working with the respondents as Safaiwalas for all these years and there is no denial on the part of the respondents that the work which these applicants are performing is not available. It is admitted position that the Director is the authority who is carrying out the selection and appointment of the incumbents, be it on regular side of establishment or under the project run by the UGC. It is admitted position that regular posts of MTS are available for which advertisement was issued by the Institute. Thus, to claim that UGC project is temporary and as such earlier incumbents cannot be regularized but respondents would recruit fresh hands against regular vacancies is nothing but an excuse on the part of the authorities to defeat the claim of the applicants. The respondents, neither in the written statement nor at the time of arguments, rebutted the arguments raised on behalf of the applicants No.4 and 5, that they are the only Safai Karamcharies in the respondent Institute and are doing entire work though they have been shown as working against the Project.



Same principle applies qua the applicant No.2 as well, who is working as Photocopier for all these years.

13. During the course of arguments, when question was raised qua act and conduct of applicants, the learned counsel for the respondents candidly admitted that there was no complaint, whatsoever, against the work and conduct of applicant(s) prior to the decision dated 16.4.2015 and all hell broke loose only when the claim of the applicants for regularization was to be considered by the authorities.

14. It is agreed at all hands that the respondents were to take a view on the claim of the applicants in the light of observations made by Hon'ble Apex Court in the case of Nihal Singh (supra), in terms of directions dated 16.4.2015 of this Tribunal, in the earlier round of litigation. Let us examine the observations made by Hon'ble Apex Court, which were reproduced in the earlier order and are noticed once again for ready reference :-

"17. It is obvious both from the said section and also the appointment orders, the appellants are appointed by the State in exercise of the statutory power under section 17 of the Act. The appellants are amenable to the disciplinary



control of the State as in the case of any other regular police officers. The only distinction is that they are to be paid daily wages of Rs.35 (which came to be revised from time to time). Further, such payment was to be made by the bank to whom the services of each one of the appellants is made available.

18. From the mere fact that the payment of wages came from the bank at whose disposal the services of each of the appellants was kept did not render the appellants employees of those banks. The appointment is made by the State. The disciplinary control vests with the State. The two factors which conclusively establish that the relationship of master and servant exists between the State and the appellants. A fact which is clearly recognized by the division bench of the High Court in LPA No.209 of 1992. It may be worthwhile mentioning here that under the law of contracts in this country the consideration for a contract need not always necessarily flow from the parties to a contract. The decision of the SSP to reject the claim of the appellants only on the basis that the payment of wages to the appellants herein was being made by the concerned banks rendering them disentitled to seek regularization of their services from the State is clearly untenable.

19. Coming to the judgment of the division bench of the High Court of Punjab & Haryana in LPA No.209 of 1992 where the claims for regularization of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularization of their services, the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts against which recruitments of persons like the appellants herein were made. However, that does not conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under section 17 of the Act. The appointments made have never been terminated thereby enabling various banks to utilize the services of employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are discharging functions similar to the functions that are being discharged by the appellants.

20. No doubt that the powers under section 17 are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to



absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.

22. The question is whether this court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this court in Umadevi's case. To answer this question, the ratio decidendi of the Umadevi's case is required to be examined. In that case, this Court was considering the legality of the action of the State in resorting to irregular appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution.

"4. ... The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over." (emphasis supplied)

23. It can be seen from the above that the entire issue pivoted around the fact that the State initially made appointments without following any rational procedure envisaged under the Scheme of the Constitution in the matters of public appointments. This court while recognising the authority of the State to make temporary appointments engaging workers on daily wages declared that the regularisation of the employment of such persons which was made without following the procedure conforming to the requirement of the Scheme of the Constitution in the matter of public appointments cannot become an alternate mode of recruitment to public appointment. It was further declared that the jurisdiction of



the Constitutional Courts under Article 226 or Article 32 cannot be exercised to compel the State or to enable the State to perpetuate an illegality. This court held that compelling the State to absorb persons who were employed by the State as casual workers or daily-wage workers for a long period on the ground that such a practice would be an arbitrary practice and violative of Article 14 and would itself offend another aspect of Article 14 i.e. the State chose initially to appoint such persons without any rational procedure recognized by law thereby depriving vast number of other eligible candidates who were similarly situated to compete for such employment.

24. Even going by the principles laid down in Umadevi's case, we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

25. In our opinion, the initial appointment of the appellants can never be categorized as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us. The High Court in its decision in LPA No.209 of 1992 recorded that the decision to resort to the procedure under section 17 of the Act was taken in a meeting dated 24.3.1984 between the Advisor to the Government of Punjab and senior officers of the various Banks in the public sector. Such a decision was taken as there was a need to provide necessary security to the public sector banks. As the State was not in a position to provide requisite police guards to the banks, it was decided by the State to resort to section 17 of the Act. As the employment of such additional force would create a further financial burden on the State, various public sector banks undertook to take over the financial burden arising out of such employment. In this regard, the written statement filed before the High Court in the instant case by respondent nos.1 to 3 through the Assistant Inspector General of Police (Welfare & Litigation) is necessary to be noticed. It is stated in the said affidavit:

"2. That in meeting of higher officers held on 27.3.1984 in Governor House Chandigarh with Shri Surinder Nath, IPS, Advisor to Governor of Punjab, in which following decisions were taken:-

i) That it will not be possible to provide police guard to banks unless the Banks were willing to pay for the same and additional force could be arranged on that basis, it was decided that police guards should be requisitioned by the Banks for their biggest branches located at the Distt. and Sub Divisional towns. They should place the requisition with the Distt. SSPs endorsing a copy of IG CID. In the requisition, they should clearly state that the costs of guard would be met by them. It will then be for the police



department to get additional force sanctioned. This task should be done on a top priority. In the meantime depending upon the urgency of the need of any particular branch, police Deptt. may provide from police strength for its protection.

ii) For all other branches guards will be provided by Distt. SSP after selecting suitable ex-servicemen or other able bodied persons who will be appointed as Special Police Officer in terms of Section 17 of the Police Act. Preference may be given to persons who may already be in possession of licence weapons. All persons appointed as SPO for this purpose will be given a brief training for about 7 days in the Police Lines in the handling of weapons taking suitable position for protection of branches. These SPOs will work under the discipline and control and as per Police Act, they will have the same powers, privileges and protection and shall be amenable to same penalty as an ordinary police personnel.”

26. It can be seen from the above that a selection process was designed under which the District Senior Superintendent of Police is required to choose suitable ex-servicemen or other able bodied persons for being appointed as Special Police Officers in terms of section 17 of the Act. It is indicated that the persons who are already in possession of a licensed weapon are to be given priority.

27. It is also asserted by the appellants that pursuant to the requisition by the police department options were called upon from ex- servicemen who were willing to be enrolled as Special Police Officer (SPOs) under section 17 of the Police Act, 1861.

28. Such a procedure making recruitments through the employment exchanges was held to be consistent with the requirement of Articles 14 and 16 of the Constitution by this Court in *Union of India and Ors. v. N. Hargopal and Ors.* (1987) 3 SCC 308.[4]

29. The abovementioned process clearly indicates it is not a case where persons like the appellants were arbitrarily chosen to the exclusion of other eligible candidates. It required all able bodied persons to be considered by the SSP who was charged with the responsibility of selecting suitable candidates.

30. Such a process of selection is sanctioned by law under section 17 of the Act. Viewed in the context of the situation prevailing at that point of time in the State of Punjab, such a process cannot be said to be irrational. The need was to obtain the services of persons who had some experience and training in handling an extraordinary situation of dealing with armed miscreants.

31. It can also be noticed from the written statement of the Assistant Inspector General of Police (Welfare & Litigation) that preference was given to persons who are in possession of licensed weapons. The recruitment of the appellants and



other similarly situated persons was made in the background of terrorism prevailing in the State of Punjab at that time as acknowledged in the order dated 23.4.2002 of the SSP. The procedure which is followed during the normal times of making recruitment by inviting applications and scrutinising the same to identify the suitable candidates would itself take considerable time. Even after such a selection the selected candidates are required to be provided with necessary arms and also be trained in the use of such arms. All this process is certainly time consuming. The requirement of the State was to take swift action in an extra-ordinary situation.

32. Therefore, we are of the opinion that the process of selection adopted in identifying the appellants herein cannot be said to be unreasonable or arbitrary in the sense that it was devised to eliminate other eligible candidates. It may be worthwhile to note that in Umadevi's case, this Court was dealing with appointments made without following any rational procedure in the lower rungs of various services of the Union and the States.

33. Coming to the other aspect of the matter pointed out by the High Court - that in the absence of sanctioned posts the State cannot be compelled to absorb the persons like the appellants into the services of the State, we can only say that posts are to be created by the State depending upon the need to employ people having regard to various functions the State undertakes to discharge.

"Every sovereign Government has within its own jurisdiction right and power to create whatever public offices it may regard as necessary to its proper functioning and its own internal administration."

34. It is no doubt that the assessment of the need to employ a certain number of people for discharging a particular responsibility of the State under the Constitution is always with the executive Government of the day subject to the overall control of the Legislature. That does not mean that an examination by a Constitutional Court regarding the accuracy of the assessment of the need is barred. This Court in *S.S. Dhanoa v. Union of India* (1991) 3 SCC 567 did examine the correctness of the assessment made by the executive government. It was a case where Union of India appointed two Election Commissioners in addition to the Chief Election Commissioner just before the general elections to the Lok Sabha. Subsequent to the elections, the new government abolished those posts. While examining the legality of such abolition, this Court had to deal with an argument[6] whether the need to have additional commissioners ceased subsequent to the election. It was the case of the Union of India that on the date posts were created there was a need to have additional commissioners in view of certain factors such as the reduction of the lower age limit of the voters etc. This Court categorically held that "The truth of the matter as is apparent from the record is thatthere was no need for the said appointments.....".



35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the Legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is – the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities.

37. For all the above mentioned reasons, we are of the opinion that the appellants are entitled to be absorbed in the services of the State. The appeals are accordingly allowed. The judgments under appeal are set aside.

38. We direct the State of Punjab to regularize the services of the appellants by creating necessary posts within a period of three months from today. Upon such regularization, the appellants would be entitled to all the benefits of services attached to the post which are similar in nature already in the cadre of the police services of the State. We are of the opinion that the appellants are entitled to the costs throughout. In the circumstances, we quantify the costs to Rs.10,000/- to be paid to each of the appellants.”



It is clear from the observations made by Hon'ble Apex Court that even going by the principles laid down in Umadevi's case, the State of Punjab could not be heard to say that the appellants were not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State and these observations take care of the objections raised in this case as well. Thus, we can safely conclude that the cases of the applicants No.1 to 5 have not been considered in a proper manner.

15. The Hon'ble Apex Court in the case of **BHIKHUBHAI VITHLABHAI PATEL & ORS. VS. STATE OF GUJARAT & ANR.**, (2008) 4 SCC 144, while interpreting the word consider and application of mind on a particular issue by department, has held that "The court is entitled to examine whether there has been any material available with the State Government and the reasons recorded, if any, in the formation of opinion and whether they have any rational connection with or relevant bearing on the formation of the opinion. The court is entitled particularly, in the event, when the formation of the opinion is challenged to



determine whether the formation of opinion is arbitrary, capricious or whimsical. It is always open to the court to examine the question whether reasons for formation of opinion have rational connection or relevant bearing to the formation of such opinion and are not extraneous to the purposes of the statute."

16. We can take judicial notice of the fact that as per the DoPT Instructions issued vide O.M. No. No.AB-1401716/2009-Estt (RR) dated 30-04-2010, the duties of the MTS have been illustrated, as physical Maintenance of records of the Section; General cleanliness & upkeep of the Section/Unit; Carrying of files & other papers within the building; Photocopying, sending of FAX etc.; Other non-clerical work in the Section/Unit; Assisting in routine office work like diary, despatch etc., including on computer Delivering of dak (outside the building); Watch & ward duties; Opening & closing of rooms; Cleaning of rooms; Dusting of furniture etc.; Cleaning of building, fixtures etc; Work related to his IT1 qualifications, if it exists; Driving of vehicles, if in possession of valid driving licence; Upkeep of parks, lawns, potted plants etc; Any other work assigned by the superior authority. It is not



disputed that in the changed scenario, MTS can be asked to perform duties of photocopier and other duties as given above. Once posts of MTS are available in the institution, it cannot be said that applicants No.1 to 5, who have been performing their duties for the last so many years, cannot be adjusted against them same. If they cannot be regularized, at least respondents can adjust them for fresh appointment prospectively.

17. In the wake of the above discussion, we are of the considered opinion that the ends of justice will be met by directing the respondents to consider the cases of the applicants for appointment against the available vacancies, as they have been working with them for all these years and cannot be left in lurch when vacancies have become available for such appointment.

18. In the wake of aforesaid discussion, this O.A. in so far as applicants No.1 to 5 is allowed and disposed of by quashing impugned order, Annexure A-1, qua them only. The respondents are directed to consider the case of these applicants in the light of observations made hereinabove and law laid down (ratio decidendi) in the case of Nihal Singh (supra) for appointment



against available posts prospectively within a period of two months from the date of receipt of a certified copy of this order.

19. The O.A. qua applicants No.6 and 7 is dismissed as not maintainable as there is no pleading qua them, with liberty to them to file a fresh O.A., if so advised, as per rules and law.

20. The parties are however left to bear their own costs.

(NAINA JAYASEELAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Place: SHIMLA

Dated: 09.07.2020

HC*