

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-1866/91

Date of decision: 28.08.1992.

Shri Chander Mohan Verma Applicants
and Others

Versus

U.P.S.C. & Another Respondents

For the Applicants Shri B.B. Sharma, Advocate

For the Respondents Shri M.L. Verma, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *yes*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

We have gone through the records of the case and have heard the learned counsel for both the parties. The nine applicants before us have worked as casual Clerks in the office of the respondents from 1986 to 1991. They are praying for a direction to the respondents that their services should be regularised in the post of Lower Division Clerk from the date of their respective appointment and that

a

....2...

they should not be made to sit for any examination to be conducted by the Staff Selection Commission.

2. On 16.8.1991, when the application was admitted, the Tribunal passed an interim order directing the respondents not to compel the applicants to appear in the open competitive examination which was proposed to be held by the Staff Selection Commission (S.S.C.). The respondents were also directed not to dispense with the services of the applicants.

3. Admittedly, the applicants have worked as Lower Division Clerks on daily-wage basis for various periods ranging from 1986 to 1991.

4. Some colleagues of the applicants had filed OA-65/87 in the Tribunal which was disposed of by judgement dated 14.12.1990 (Shri Bhagwan & Others Vs. UPSC & Others). They were also having the same grievance as that of the applicants before us. They were also engaged after they had been duly sponsored by the Employment Exchange and after verification of their educational qualifications. They were selected in an interview held by the U.P.S.C. out of the candidates sponsored by the Employment Exchange. In the order of appointment issued to them, it was, however, stipulated that the appointment was as purely casual Clerks on daily-wage basis, and that the same will not entitle them to any

u

consideration for regular or long-term appointment. It was also stipulated that their services may be dispensed with at any time without notice or without assigning any reason.

5. The respondents had contended that the applicants had not been recruited against any permanent post, that they had been engaged as casual Labourers on daily-wage basis, that their wages were drawn from 'Contingent Head' and not from 'Salary Head', and that the Lower Division Clerks of the Office of the U.P.S.C. are governed by the Central Secretariat Clerical (Service) Rules, 1962 which envisage appointment of such Clerks on nomination made by the Department of Personnel & Training on the basis of Clerks Grade Examination conducted by the S.S.C. The Tribunal relied upon the judgement of the Supreme Court in Jacob M. Puthuparamdil and Others Vs. Kerala Water Authority & Others, J.T. 1990 (4) S.C. 27. In that case, the Supreme Court had considered a similar issue relating to the regularisation of persons who had been appointed on ad hoc basis for several years. The Supreme Court has directed the respondents to regularise the services of such employees who have put in continuous service of not less than one year as a separate block in consultation with the Kerala Public Service Commission. In doing so, the Kerala Public Service Commission has been

a

directed to take the age factor as waived. In arriving at this conclusion, the Supreme Court relied upon its earlier decision in Smt. P.K. Narayani & Others Vs. State of Kerala & Others, 1984 Suppl.S.C.C. 212 and in Dr. A.K. Jain & Ors. Vs. Union of India & Others, 1987 Suppl. S.C.C.497. In Narayani's case, the Supreme Court directed that the petitioners and all others similarly placed should be allowed to appear at the next examination, that the Public Service Commission may hold without raising the question of age bar; till then they may be continued in service provided there are vacancies. The Court, however, clarified that this will not confer any right on the employees to continue in service or of being selected by the Commission otherwise than in accordance with the extant rules and regulations. The Court gave the above directions describing the case as "a human problem which has more than one facet". In Dr. A.K. Jain's case, the services of ad hoc Assistant Medical Officers who were initially appointed for six months but were continued for periods ranging upto 4 years, were sought to be terminated to accommodate the candidates selected by the U.P.S.C. The petitioners claimed that their services should be regularised. The Supreme Court directed the regularisation of the services of all members appointed upto October 1, 1984



in consultation with the U.P.S.C. on the evaluation of their work and conduct based on the confidential reports in respect of the period subsequent to October 1, 1982.

6. The Supreme Court also relied upon its earlier decision in Daily-rated casual labour employed under P & T Department Vs. Union of India & Others, 1988 (1) S.C.C. 122.

7. Keeping the above trend of the judicial decisions of the Supreme Court, the Tribunal held in Shri Bhagwan's case that the respondents should take steps to regularise the services of the applicant in consultation with the S.S.C. While doing so, they should relax the upper age-limit for appointment as LDCs in case the applicants were within the prescribed age-limit at the time of the initial appointment. Till the applicants are so regularised, their services shall not be dispensed with. They should also be given the minimum of the pay-scale of LDCs till they are regularised with effect from the date of the judgement.

8. After the aforesaid judgement was pronounced, the respondents filed MP-1818/91 praying for granting extension of time to comply with the directions contained in the judgement. In para.7 of the M.P., the respondents had indicated as to the manner in which they proposed to implement the judgement. The learned counsel for the

an

applicants submitted that it ran counter to the directions contained in para.7 of the judgement of the Tribunal. After hearing both the parties, the Tribunal, in its order dated 16.9.1991, directed that the respondents shall implement the judgement in the manner indicated in para.7 of the judgement which contained the direction to the respondents to regularise the services of the applicant in consultation with the S.S.C. on the basis of the evaluation of the work and conduct based on the confidential reports of the applicants and not on the basis of an open competition.

9. Thereafter, the respondents filed MP-332/92 praying for granting them further extension of time to comply with the directions given in the judgement. The respondents had prayed in the said M.P. that the applicants be regularised on the basis of a Special Suitability Examination to be conducted for this purpose by the S.S.C. The Tribunal had already clarified in its order dated 16.7.1991 as to the manner in which the respondents were to implement the judgement. According to the said order, the regularisation is to be made on the basis of the evaluation of the work and conduct based on the confidential reports of the applicants and not on the basis of an open competitive examination. It was further observed that the work and conduct is normally ascertained

α

from the confidential reports. In the absence of confidential reports, the respondents have to see whether there had been any adverse remarks/reports during the period of service of the applicants. A person who has worked for several years without any adverse remarks/report about his work and conduct, is presumed to have a good record. The Tribunal, therefore, made it clear that if anyone is proved to be guilty of any misconduct or if he is not upto the mark in his performance, the respondents are at liberty to take appropriate action against him under the relevant rules.

10. The applicants in the present case are also similarly situated and we are of the opinion that they should also be entitled to the same relief as was given in the case of Shri Bhagwan Singh & Others. Accordingly, we partly allow the application and dispose it of with the following orders and directions:-

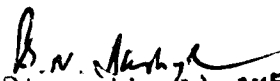
- (i) The respondents shall take steps to regularise the services of the applicants in consultation with the S.S.C. While doing so, they should relax the upper age-limit for appointment as LDCs in case the applicants were within the prescribed age limit at the time of their initial appointment.


a

- (ii) The services of the applicants are to be regularised in consultation with the S.S.C. on the basis of the evaluation of their work and conduct based on the confidential reports and not on the basis of an open competition.
- (iii) In the absence of confidential reports, the respondents shall satisfy themselves that there are no adverse remarks/reports about the applicants during their period of service. The applicants who have worked for several years without any adverse remarks/reports about their work and conduct, should be presumed to have a good record.
- (iv) We make it clear that if anyone is proved to be guilty of misconduct or if he is not found upto the mark in his performance, the respondents shall be at liberty to take appropriate action against him under the relevant rules.
- (v) Till the applicants are regularised as directed above, their services shall not be dispensed with. They should also be given the minimum of the pay-scale of L.D.C. till

they are regularised with effect from the date of this order.

- (vi) The respondents shall comply with the above directions as expeditiously as possible and preferably within a period of six months from the date of communication of this order.
- (vii) There will be no order as to costs.


(B.N. Dheundiyal) 28/8/82
Administrative Member


28/8/82
(P.K. Kartha)
Vice-Chairman(Judl.)