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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2208/2004

This the 31st day of August, 2006

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI MUKESH KUMAR GUPTA, MEMBER (J)

Smt. Snehlata,
Junior Stenographer,
Office of the Official Liquidator,
A2, W2, Curzon Road Barracks,
Kasturba Gandhi Marg,
New Delhi-110001.

... Applicant

(By Shri A. K. Behera, Advocate)

versus

1. Union of India through
Secretary, Department of Company Affairs,
Ministry of Law & Justice and Company Affairs,
5th Floor, Shastri Bhawan,
New Delhi-110001.
2. Regional director,
Department of company Affairs,
Company Law Board,
Ali Ganj, Kanpur (UP). |
3. Official Liquidator,
Department of Company Affairs,
Ministry of Law Justice & Company Affairs,
5th Floor, Shastri Bhawan,
New Delhi-110001. | ... Respondents

(By Shri Noor Alam for Shri Nasir Ahmed, Advocate)

ORDER (ORAL)

Hon'ble Shri V. K. Majotra, Vice-Chairman (A):

Through this application has been challenged Annexure A-1 dated 3.9.2004 whereby the Official Liquidator has rejected applicant's request for regularization of her services as *ad hoc* Junior Stenographer.

Vb

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2. Applicant was initially working in the company named Anand Finance (P) Ltd., which was ordered to be wound up. She was appointed as a company paid Assistant with respondent No.3 in 1982. She continued to work on consolidated salary for a period of four years. On 10.1.1986 she was appointed as *ad hoc* Junior Stenographer, among four others, after qualifying the test/examination conducted by respondent No.3 (Annexure A-2). The Official Liquidator sought for approval of the Regional Director, Company Law Board, Kanpur to the appointment of applicant as Junior Stenographer. She was appointed as such by the Official Liquidator vide Annexure A-3 dated 10.1.1986. This appointment was approved by the Regional Director, Company Law Board, Kanpur vide his letter dated 5.2.1986 as is clear from Annexure A-4 dated 10.2.1986. It is averred that the services of applicant were not regularized despite long and continuous service of applicant on the ground that selection of applicant had not been held through the Staff Selection Commission (SSC). Applicant filed OA No.1246/1988 which was disposed of vide order dated 31.1.1994 (Annexure A-5) with the following directions:

“The petitioner shall take the first available Staff Selection Commission test for selection to the post of Junior/Grade ‘D’ Stenographer. The Staff Selection Commission on the petitioner making an application for that purpose enclosing a copy of this order, permit her to take such a test without raising any objection on the ground that she is not eligible being age barred. In the event of the petitioner meeting the minimum requirement of passing the said test, the result shall be communicated by the Staff Selection Commission to the respondents whereupon they shall proceed to make a regular appointment of the petitioner with effect from the date of the order. In the event of the petitioner not taking the first available test or taking the test and failing in the same, the respondents shall proceed to terminate her services. It is obvious that in the event of the petitioner being appointed she would be entitled to count her service for the purpose of seniority only from the date of regular appointment in pursuance of the directions issued in this case.”

Vb



2. Admittedly, applicant appeared in the test held by the SSC but did not qualify the same. She filed another OA No.2073/1999 seeking directions against respondents to assess her performance in accordance with the old criteria and in the alternative consider regularization of her services for any equivalent post as if she had continued to work as a company paid Assistant. In the meanwhile the Hon'ble supreme Court decided the cases of *Government of India & Others v Court Liquidator's Employees Association & Others, etc.* (Civil Appeal No.5642 of 1994 with WP(C) No.473 of 1988 with CA No.5677 of 1994, decided on August 27, 1999) reported as (1999) 8 SCC 560. On the basis of these cases services of S/Shri Nandan Singh Bisht and Nitish Sharma who were similarly placed company paid employees were regularized. The OA was allowed to be withdrawn by order dated 24.4.2001 (Annexure A-8). CWP No.7049/2003 filed by the Union of India against the Tribunal's orders dated 27.4.2001 was dismissed on 5.11.2003 by the Delhi High Court. Before this, applicant had already made a representation seeking benefit of the decision of the Hon'ble Supreme Court. In the backdrop of the writ petition having been dismissed, it was directed by order dated 4.6.2004 in OA No.1441/2004 that applicant's claim be considered in accordance with law by respondent No.3. Thereafter respondents have rejected applicant's representation vide Annexure A-1 dated 3.9.2004 stating that applicant had not qualified in the examination held for the post of Junior Stenographer by the SSC; she had been appointed as Junior Stenographer only on *ad hoc* basis w.e.f. 10.1.1986 vide Official Liquidator's letter dated 10.2.1986; the Hon'ble Supreme Court vide aforesaid order dated 27.8.1999 had directed the department to formulate a scheme for absorbing the company paid staff modeled on the 1978 Scheme for application to the company paid staff,



who were on the rolls as company paid staff as on 27.8.1999; the Scheme is not applicable to applicant as she had ceased to be a company paid staff w.e.f. 10.1.1986 when she was appointed on *ad hoc* basis in the office of the Official Liquidator.

3. The learned counsel pointed out that if applicant had not been appointed on *ad hoc* basis in the office of the Official Liquidator and continued as a company paid staff, her services would have been regularized under the Scheme formulated under directions of the Supreme court; she was appointed as Junior Stenographer on *ad hoc* basis in the exigencies of service and as such she should not be denied regularization of services on the flimsy ground that she had not continued as a company paid staff. The learned counsel stated that while the impugned orders dated 3.9.2004 be quashed and set aside, respondents should be directed to regularize her services as Stenographer w.e.f. 10.1.1986 with consequential benefits, or, in the alternative, on the expiry of the tenure as *ad hoc* Stenographer she should be taken back in her services as a company paid staff, the intermediate period during which she had served as *ad hoc* Stenographer being treated as service rendered as a company paid staff, and entitled to all benefits and concessions as contained in judgment dated 27.8.1999 of the Apex Court, and in that event in view of her long experience she should be regularized as Stenographer under the scheme for company paid staff, as certain other similarly situated persons such as Shri Nandan Singh Bisht, Shri Nitish Sharma and Shri Md. Usman, were regularized as Junior Stenographers in scale Rs.4000-100-6000 vide order 21.2.2000 (Annexure A-7). The learned counsel further pointed out that one Ms. Anita Arora (now Anita Sethia) participated in the test but did not

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qualify and as such continued as a company paid staff, however, her services were regularized as a company paid Assistant.

4. Respondents have refuted the averments/contentions made on behalf of applicant. The learned counsel maintained that applicant had failed to qualify in the test held by SSC. He further stated that in terms of the Supreme Court judgment and the Scheme, only company paid staff could be considered for regularization of services. While company paid staff is paid salary from the common pool fund of the companies under liquidation, the *ad hoc* employees are paid salary from the Consolidated Fund of India. Thus, the Supreme Court ruling as also the Scheme under that would not be applicable to applicant's case.

5. We have considered the pleadings and contentions of the parties, the case law on the subject and material on record.

6. Admittedly, applicant has continuously functioned as a company paid employee for four years from 1982 till 9.1.1986 and then as *ad hoc* Junior Stenographer from 10.1.1986 which appointment, as is clear from Annexures A-3 and A-4, was approved by the Regional Director, Company Law Board, Kanpur. Applicant has continued to function as such eversince. Obviously, applicant has worked as Assistant/Junior Stenographer since 1982. She has made several efforts by representing to respondents and through litigation for regularization of her services, however, she has not been successful in her attempts so far.

7. *Government of India & Others v Court Liquidator's Employees Association & Others, etc.* (supra) deals with identical cases of regularization of services of staff appointed in the office of Court

Vb



Liquidator/Official Liquidator. Calcutta High court had held that company paid staff was entitled to full status as permanent Central Government employees on expiry of 360 days of service, fitment in appropriate pay scale, promotion, pension, provident fund and gratuity. Kerala High Court by taking note of the earlier scheme of regularization issued in 1978, had held that company paid staff was entitled to regularization of service as LDC in the office of the Official Liquidator with benefit of pay fixation and all admissible allowances. Both High Courts had found as a fact that duties of company paid staff were identical to those of Government paid staff and they had been discharging these duties for years together without break. The Supreme Court did not interfere with the directions given by the High Courts. The plea of the Central government that company paid staff being appointed under Court orders were not entitled to parity, regularization and retiral benefits though they had been working for 10-25 years, was rejected. However, another opportunity was given to the Central Government to frame a scheme for regularization, similar to the one framed by it in 1978 and to implement it within six months.

8. In the present case respondents have stated that applicant had ceased to work as company paid staff and that only company paid staff receiving salary from the common pool fund of the companies under liquidation could be regularized in service. The plea of respondents on the face of it looks preposterous. While company paid staff could be considered for regularization of services, it does not stand to reason at all that company paid staff which had been offered *ad hoc* appointment on administrative exigencies should not be considered for regularization of services despite continuous service of several years. The distinction being made by respondents between company paid staff and *ad hoc* employees



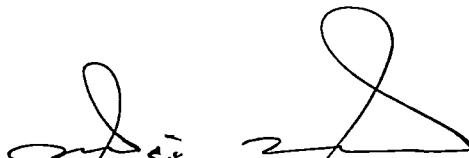
paid from the Consolidated Fund of India for denial of consideration for regularization of services persons like applicant, is superficial, illogical and deserves rejection straightway. Our view gets reinforced from the latest judgment of the Supreme Court in (2006) 4 SCC 1 – *Secretary, State of Karnataka & Others v Umadevi (3) & Others*, wherein it was held that cases of irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts who had continued to work for ten years or more, but without intervention of courts or tribunals may have to be considered for regularization on merits in light of the principles laid down in this case as a one-time measure, within six months of the date of the judgment.

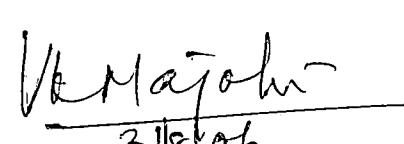
9. Respondents have admitted that they have regularized the services of Ms. Anita Sethia, Shri Nandan Singh Bisht, Shri Nitish Sharma and Shri Md. Usman, stating that they were company paid staff meaning thereby that if applicant had continued to function as a company paid employee since 1982 and not accepted the *ad hoc* appointment in the Government in 1986, she would certainly have been accorded the benefit of regularization of her services. Obviously she was more meritorious than persons who were not selected for *ad hoc* appointment and were left behind as company paid. If working on *ad hoc* appointment with Government at the behest of Government was a sin, she has certainly been more sinned against than sinning. This kind of superficial and unreal distinction cannot be accepted. Applicant had been appointed after a test by the Official Liquidator and on approval of the Regional Director. Not only that she had functioned as a company paid staff for four years since 1982, she has also been discharging her duties as *ad hoc* Junior Stenographer in the Government continuously for the last twenty years. Working in the

Government though on ad hoc basis is an additional qualification of the applicant. When S/Shri Nandan Singh Bisht, Nitish Sharma, Md. Usman and Ms. Anita Sethia, company paid staff, have been regularized, applicant cannot be denied similar benefit. Hon'ble supreme court's judgment in the case of *Government of India & Others v Court Liquidator's Employees Association & Others, etc.* (supra) cannot be interpreted to the detriment of applicant. Her claim has to be considered not on a hypertechnical and superficial distinction being made by respondents but with empathy and fairness as also taking into consideration the observations of the Hon'ble Supreme Court in the case of *Umadevi* (supra).

10. Resultantly, impugned orders dated 3.9.2004 are quashed and set aside and respondents are directed to consider regularization of applicant's services as Junior Stenographer on the basis of her continuous *ad hoc* service as Junior Stenographer from 10.1.1986 following the formalities adopted in the case of S/Shri Nandan Singh Bisht, Nitish Sharma, Md. Usman and Ms. Anita Sethia (Annexure A-7). On appointment applicant will be entitled to the same benefits as the aforesaid persons. Respondents are directed to effect compliance of these directions expeditiously and preferably within a period of three months from the date of communication of these orders.

11. OA is allowed in the above terms.


(Mukesh Kumar Gupta)
Member (J)


3/8/06
(V. K. Majotra)
Vice-Chairman (A)

/as/