

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 162 of 2009

Monday, this the 3rd day of August, 2009

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

P. Shyju,
S/o. Balakrishnan Nair,
Gramin Dak Sevak Mail Deliverer II,
Pokkunnu, Kozhikode District,
Residing at 'Pilavily House',
Karaparmpu P.O., Kozhikode District.

...

Applicant.

(By Advocate Mr. Shafik M.A.)

v e r s u s

1. Union of India represented by
The Chief Postmaster General,
Kerala Circle, Trivandrum.
2. The Superintendent of Post Offices,
Calicut Division, Calicut.
3. The Asstt. Superintendent of Post Offices,
Calicut South Sub Division, Calicut. ... Respondents.

(By Advocate Mrs. Aysha Youseff, ACGSC)

The Original Application having been heard on 27.07.09, this
Tribunal on 03.08.09 delivered the following :

O R D E R

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant, a foot ball player, having worked under the second
respondents intermittently as GDS in various capacities since 1992, has

been functioning as GDS MD II in Pokkunnu since 2005. According to the applicant, his appointment in that post was on provisional basis, to be continued till regular recruitment is made. When the applicant was sent to represent the postal department in a sport competition, on his return he found some one else functioning as GDS MD II Pokkunnu (not on regular basis) and this forced the applicant to move the Tribunal in OA No. 2/07, and the respondents contended that the applicant was only a substitute and he was not appointed on provisional basis. Negating the contention of the respondents, the Tribunal gave a clear finding in this regard as under:-

"4. When the matter came up today, we have heard both the sides and also perused the records. As regards the rival contention of the parties regarding the nature of appointment of the applicant to the post of GDS MD, Annexure R-1 enclosed to the reply statement by the respondents themselves would show that the applicant was appointed on a provisional basis to the post of GDS MD, Pokkunnu which became vacant as it was not possible to make a regular appointment. Paragraphs 1 & 2 of this order is as under :-

1. Where as the post of GDS MD, Pokkunnu has become vacant and as it is not possible to make regular appointment to the said post immediately the undersigned has decided to make provisional appointment to the said post for a period of 89 days from 11.7.2005 to 7.10.2005 or till regular appointment is made whichever is shorter.

2. Shri.Shyju.P., S/o.A.K.Balakrishnan, Plavili House, Karaparamba is offered the provisional appointment. He should clearly understand that the provisional appointment will be terminated when regular appointment is made and he shall have no claim for appointment to any post.

5. It was made clear in paragraph 2 that "the

applicant should clearly understand that the provisional appointment would be terminated when the regular appointment is made." Against this background the contention of the respondents in Paragraph 10 of the reply statement that the applicant was only engaged to look after the duties for a period of 89 days with intermittent breaks as a purely temporary and stop gap basis on the sole responsibility of the GDS SPM, Pokkunnu is untenable. It is true that the appointment was made to look after the duties of the post which fell vacant consequent on the put off duty of the permanent incumbent but Annexure R-1 order is clear that appointment was on a provisional basis and not as a stop gap/substitute. There was also a mention that the provisional appointment will be terminated only if a regular appointment is made. Such a provision is usually incorporated only when provisional appointments are made and not for stop gap appointments.

6. The next contention of the respondents is that there are no records to show that the applicant was relieved from the post for attending the coaching camp and it is not true that the applicant was in the coaching camp from 22.11.2006. This contention is also belied by the Annexure A-4 letter dated 8.11.2006 from the Chief Postmaster General, Kerala Circle informing the selection of 22 officials in which the applicant's name finds place at Serial No.12 for all India participation at Bangalore and permitting them to be relieved from the duty for attending Kerala Postal Football Coaching Camp at Tirur from 22.11.2006 to 5.12.2006 with copy of the order marked to the Divisional Heads and officers concerned. It is surprising that the respondents are denying the knowledge of this letter. Evidently since the applicant had been engaged for the Kerala Postal Football Coaching Camp at Tirur from 22.11.2006 to 5.12.2006 and also required to proceed to Bangalore for all India participation from 8.12.2006 to 12.12.2006 he could not attend the interview on 4.12.2006 the absence of the applicant at interview should not have been held against him when by Annexure A-7 letter dated 1.12.2006, the applicant had also informed this in writing. He had also pointed out that he was working against the post of GDS MD II and not GDS MD I.

7. DG (P) letter dated 18th May 1979 referred to in Paragraph 11 of the reply statement stipulates that :-



"Where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalised, a provisional appointment may be made, in the form annexed (Annexure B). It should be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent, the provisional appointment will be terminated and that he shall have no claim to any appointment."

8. Respondents contended that the applicant is not eligible for benefit under this rule. We do not find any reason for denying the benefit of this rule to the applicant as the order issued to the applicant, quoted above is very clear that he was appointed on a provisional basis and if the appointment was on provisional basis it was liable to be continued till a regular appointment is made as provided in Paragraphs 1 and 2 of Annexure R-1. Therefore in accordance with the appointment order issued by the respondents themselves and as provided in the rules, we are of the considered view that the applicant was a provisional appointee liable to be continued till a regular appointment was made and the action of the respondents in terminating his appointment on the ground that he was a stop gap arrangement and appointing 4th respondent again on a provisional basis by Annexure A-2 order was clearly illegal and this amounts to also substituting a provisional appointee by another provisional appointee which is against the well settled law laid down by the Apex Court in Pyare Singh's case reported in AIR 1992 SC 2130.

9. Notice has been issued to 4th respondent but he has not chosen to appear nor represented by any counsel. In the light of the above findings, the OA is allowed. Orders at Annexure A-1 and Annexure A-2 are quashed. Respondents are directed to continue the applicant as GDS MD II, Pokkundu till a regular appointment is made. We also direct that the applicant shall be deemed to have been in service from 22.11.2006, the date of his deputation to the coaching camp. These directions shall be complied with within a period of three weeks from the date of receipt of a copy of this order. No order as to costs."



2. The applicant continued in the post of GDSMD II, Pokkunnur. Meanwhile, one GDS official, also a sportsman (volley ball) filed an OA No. 225/2005 for regularization, and when the same was allowed and when the respondents took up the matter before the High Court, the High Court having found that earlier one Mr. Sebi Kuriakose under identical circumstances having been regularized as a GDS, and there being not many who were appointed in sports quota, it would be appropriate that similar treatment is meted to the applicant in the aforesaid O.A. In fact, by the time the judgment was passed, the applicant in the said OA stood appointed on regular basis. The entire case had been appreciated by the High Court in the following words:-

"2. The contention of the learned Assistant Solicitor General is that there is no provision for considering the proficiency in sports quota as basis for selection and appointment. There is no quarrel on that submission. But the fact remains that the proficiency in the discipline of volleyball had weighed with the appellants concerned while engaging the applicant, Shri. Seby Kuriakose and Sri. Aneesh and as a matter of fact, all those three persons had represented the Postal Department in various tournaments including at the national level. In the impugned Annexure A1 order, it is stated that Sri. Seby Kuriakose's case is not identical to that of the petitioner. In what way it is not identical is not stated. It is to be noted that Annexure A1 order was passed pursuant to the directions issued by this Court in W.P.(C). No.36951/2004, filed against the order of the Central Administrative Tribunal in O.A. No. 802/04. It is also to be noted that while passing Annexure A7 order in the case of Seby Kuriakose, the representation of the petitioner which is rejected as per Annexure A1 was pending before



the very same authority. It is also to be seen that Annexure A7 order was passed pursuant to the directions issued by the Central Administrative Tribunal in O.A. No.156/2003. At this stage, learned Assistant Solicitor General made an apprehension that if these are treated as precedents, quite a few temporary employees might claim regularisation. We are afraid, that contention also cannot be appreciated. As noted by us, in the volleyball discipline, there were only three applicants and one has already been regularised as per Annexure A7. The other person has left for good. The only remaining person is the applicant. In such circumstances, it is only appropriate that the applicant also is given a similar treatment as that is given to Sri. Seby Kuriakose, both having entered the service on similar circumstances. In the above circumstances, we dismiss the writ petition.

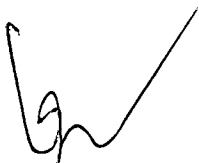
Learned counsel for the respondent/applicant submits that he has already been engaged as G.D.S.M.D. This submission is recorded."

3. The applicant found that there was a notification for appointment on regular basis of the post he was holding and as by that time, he had completed three years service on provisional basis, under the extant rules, he ought to be considered for regularisation, without throwing open the vacancy for direct recruitment. Also taking support of the case of Sebi Kuriakose, the applicant had filed OA No. 611/2007 and the same was disposed of by the Tribunal as under:-

"5. The subject matter in this OA raises an important question, namely, whether sports persons who are hired on a temporary or ad hoc basis by a government department has a right to

be considered for regular appointment after they have been used to represent the Department in various sports competitions. It is admitted that the applicant has been working on a provisional basis as GDSMD. It is also an admitted fact that the applicant has been playing Football for the Postal Department for many years. He has represented the Kerala Postal Department in regional and all-India tournaments. The team in which he was a member became all-India champions in Bangalore in the year 2006. But when he returned from Bangalore after winning the all-India championship he found that his post has been occupied by somebody else. The respondents have relied upon the judgment of the Hon'ble Supreme Court in Uma Devi case. The principle laid down by the Apex Court in the said case is unambiguous. Merely because a temporary employee had been continued for long does not entitle him for regularisation. But in this case the applicant is not seeking regularisation merely because he has served the Department in temporary/provisional capacities for long. He is seeking regularisation on the ground that he was selected because he was an excellent Football player. He represented the Kerala Postal Department in all-India competitions and won laurels for the Department. His plea is based on similar consideration given to another employee Seby Kuriakose who was regularised by the respondent No.1 by her order dated 4.11.2004. In another case also, that of PS Manu also a volleyball player this Tribunal had directed to consider regularisation (OA224/05). Though this order was challenged by the respondents the Hon'ble High Court of Kerala dismissed the WP. The following extract from the orders of the Hon'ble High Court in WP (c) 27829 places the issue in its correct perspective:

"2 The contention of the learned Assistant Solicitor General is that there is no provision for considering the proficiency in



sports quota as basis for selection and appointment. There is no quarrel on that submission. But the fact remains that the proficiency in the discipline of volleyball had weighed with the appellants concerned while engaging the applicant. Sri Seby Kuriakose and Sri Aneesh and as a matter of fact, all those three persons had represented the Postal Department in various tournaments including at the national level." (Emphasis added)

6. The respondents have relied on the judgments of this Tribunal in OA.643/06 and OA.53/03. But the facts in those two cases are different. The candidates involved in those cases were not sports persons. Whereas the applicant is identically placed as Seby Kuriakose except that the applicant played Football and Kuriakose played volleyball. But that cannot be a issue for discrimination. There is ample evidence to support the contention of the applicant that his talent as a football player was utilised by the Department on several occasions. That he was honoured by the Department of proficiency. There is also evidence to show that before working as GDSMS Pokkum since July 2005 he had earlier worked as GDSBPM in Nedungatur, Vengeri. This is borne out by the document at A3 dated 24.5.2005 by which he was selected for Kerala Postal Football team. The applicant's claim that he has altogether served for 10 years in various GDS posts has not been disputed by the respondents. The learned counsel for the respondent has in a very sober and persuasive manner placed before the Tribunal that the regular selection process initiated by the respondent is perfectly legal. We do not disagree. But we see merit in the overall case presented by the applicant that he was selected for his Football proficiency and has served the interests of the respondent Department when they needed him to win laurels We also see merit in the plea that his livelihood is at stake. It is not the fault of the



applicant that the required formalities were not fulfilled before his selection on provisional basis which was clearly based on his proficiency as a Football player. There is also merit in the comparison with the case of Seby Kuriakose. The facts of this case are identical with Seby Kuriakose. Kuriakose had served as GDCMC since 2001. He was regularised in 2004. Having regard to all these considerations we are of the view that the applicant's prayer merits consideration.

7. For the reasons stated above OA is disposed of with directions to respondent No.1 to consider the representation of the applicant dated 15.9.2007 keeping in view the observations supra and the context in which Seby Kuriakose was regularized and pass appropriate orders in respect of his prayer for regularization or for alternate employment as GDS in the same Sub-Division. Till such time appropriate orders are passed the interim orders issued by the Tribunal will continue to operate. No costs."

4. The respondents had disposed of the representation in pursuance of the above direction vide Annexure A-1 order dated 02-03-2009 which is impugned in this O.A. The Chief Post Master General has held as under:-


"(b) With a view to encouraging the sporting and cultural talents of the employees, the Department conducts various sports and cultural activities as a part of the welfare measures. Normally, such facilities are extended to regular employees only. However, in team events provisional appointees are also permitted to be included in a team whenever sufficient number of regular employees is not available to form a team. It was in such context that provisional GDS like the applicant were allowed to participate in the sports events organized by the Department.

(c) The direction of the Hon'ble Tribunal in the

judgment in O.A. No.2/2007 to allow the applicant to continue till regular appointment was made was considering that the proposed appointment violated the principle that one provisional appointee could not be replaced by another provisional appointee. Therefore, the fresh notification issued on 10-09-2007 for making regular appointment as per the rules and in accordance with the judgment, was in order.

(d) It is true that the cases of the applicant and Shri. Seby Kuriakose were similar in several respects like, both were initially engaged in stop gap arrangement and subsequently got provisional appointments, they have availed the sporting facilities existing in the department for regular staff, when action was taken to make regular appointment in accordance with the recruitment rules they approached the Tribunal, obtained stay and consequently were able to continue in the provisional appointment for over three years.

(e) The direction of the Hon'ble Tribunal in O.A. No.156/2003 filed by Shri. Seby Kuriakose was to consider the request of the applicant for regular appointment *in accordance with law* taking into account the fact he had been working as GDS for three years and 'his expertise in the field of volley ball has been utilized by the Department'. Appointment of meritorious sports men in Group 'C' & 'D' posts are regulated under Govt. of India DOP & AR OM No.14015/1/76-Estt.D dated 04-08-1980 as amended by DOP&T OM No.15012/3/84-Estt(D) dated 12-11-1987. There is no preference or quota for sportsmen for recruitment under the GDS (Employment and Service) Rules, 2001. While considering the representation of Shri. Seby Kuriakose in accordance with law, the respondent therein considered that he had put in more than three years provisional service satisfactorily and that as per the then existing rules, such provisional employees could be regularized. Therefore orders



were issued on 04-11-2004 to regularise the provisional appointment of Shri. Seby Kuriakose. This position has changed after the Apex Court Judgment dated 16-11-2006 in Appeal (Civil) 4996 of 2006 arising out of SLP (Civil) No.3862 of 2006, according to which a provisional employee would not be entitled to be absorbed in regular service or made permanent merely on the strength of his continuance for a period beyond the term of his appointment, *if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.* Thus the case of the applicant stands on a different footing as compared to that of Shri Seby Kuriakose. The relaxation shown to Shri Seby Kuriakose cannot be extended to the applicant now, after the above judgment of the Apex Court."

5. The applicant has challenged the above decision on various grounds as given in para 5 of the O.A.

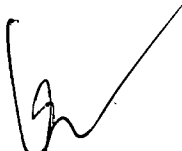
6. Respondents have contested the case. Their version is that the applicant was not appointed on provisional basis but only as a substitute. His appointment was not by calling for applications from general public and after completion of filtration process. As such, his provisional appointment cannot be termed as one as per the rules and hence, by virtue of the decision in *Umadevi*, pronounced by the Apex Court reported in (2006) 4 SCC 1, the applicant cannot claim regularisation. In their additional reply, the respondents have annexed a copy of the judgment of the Apex court in CA No. 4996/2006 dated 16-11-2006, which followed *Umadevi*.

7. Counsel for the applicant argued that the case is identical with the


other two case dealt with by the High Court and as such, there is no question of the applicant not being made entitled to regularization in preference to others. He has stated that all along since 1992 the applicant had been representing the respondents in the sports and won laurals to them and he had by virtue of the latest appointment completed four years and hence, viewed from any angle, he is entitled to regularization. The portions as extracted from the orders of this Tribunal in OA 2/2007, 611/2007 as also of the Writ petition vide extracts made above have all been read over by the applicant to hammer home his point that the applicant is entitled to such a regularisation.

8. Counsel for the respondents invited our attention to para 3 and 11 of the counter and also stated that in so far as the decision in the case of Manu, his case is not identical to that of the applicant. Further, his appointment was prior to the pronouncement of the decision in the case of Umadevi and as such, that case cannot be cited as a precedent by the applicant. Paragraphs 3 and 11 of the counter are as under:-

"3. The applicant Shri. P Shyju is purely an outsider who was engaged on a stop gap arrangement in the post of GDSMD II, Pokunnu from 11.07.2005 to 07.10.2005 pending receipt of approval for filling up of the post from the competent authority, Postmaster General (PMG, for short), Calicut. This was done without issuing proper notification and following the normal procedures of selection. He was again engaged on stop gap arrangement in the same post from 13.10.2005 to 09.1.2006, 16.1.2006 to 10.4.2006, 15.4.2006 to 12.7.2006, 15.7.2006 to 11.10.2006 and 15.10.2006 to 22.11.2006. Since the applicant



was engaged in a stop gap arrangement to man the work of the vacant post, it was absolutely necessary to make a regular appointment in the post after following the normal recruitment procedure, for which permission was received from PMG, Calicut in letter No.EST/Dlg/Pt dated 08.08.2006. Thereupon, the Appointing Authority, the ASP, Calicut South Sub Division (Respondent-3) took action vide notification dated 22.09.2006, for making appointment in the post of GDSMD II, Pokkumnu and also in the post of GDSMD I, Pokkumnu which was also vacant. Both the vacancies were notified. The concerned Employment Exchange sponsored 10 candidates, and 6 candidates responded from open market to the notification for the post of GDSMD I. For the post of GDSMD II similarly, 10 candidates from Employment Exchange were sponsored and 6 Nos responded from open market. The applicant applied for these two vacancies. For the purpose of selection to Gramin Dak Sevak, usually, 5 candidates on merit, based on the marks secured by them in the Secondary School Leaving Certificate (SSLC for short) Examination or qualifying examination are short listed and called for verification of their marks and other required qualification/eligibility. There is no interview for selection to the post of GDS. The applicant who was working on stop gap arrangement in the post of GDSMD II, Pokkumnu was not at all coming among the 5 top scorers for the said post and was not therefore called for marks verification for regular selection to the post even though he had applied for the post. A candidate who secured 517 marks out of 600 in SSLC examination and having the other required eligibility condition won regular selection. The marks of the applicant was only 232. In the case of the other vacancy GDSMD I Pokkumnu for which the applicant had applied was one among the 5 top scorers and he was also called for marks verification. He did not turn up. No intimation about his inability to attend the marks-verification was received. In that case also the



candidate with the highest marks 253 out of 600, and fulfilling the other required eligibility conditions was selected on regular basis. Even if the applicant had attended the marks-verification, the result would not have been in his favour, since he had got lesser marks in the SSLC examination than the selected candidate. When the regularly selected candidate was posted in the post of GDSMD II, the applicant challenged it in OA No. 2/2007 before the Hon'ble Tribunal. This OA was disposed of by the Hon'ble Tribunal in Annexure A4 order dated 19.04.2007 directing to permit the applicant to continue in the post till regular appointment is made.

11. With regard to para 4.9. & 4.10, it is submitted that the direction of the Hon'ble Tribunal in OA No. 156/2003 filed by Shri Sebi Kuriakose was to consider the request of the applicant for regular appointment in accordance with law taking into account the fact that he had been working as GDS for three years and his "expertise in the field of volley ball has been utilized by the department. There is no preference or quota for sports men for recruitment under the GDS (Employment and Service) Rules, 2001. Directorate letter No. 16-245/2001/GDS dated 26.2.2002 is produced herewith and marked as Annexure R-1. While considering the representation of Shri Sebi Kuriakose, the respondents had found that he had put in more than three year professional service satisfactorily and that as per the then existing rules, such provisional employees could be regulated. Therefore, orders were issued on 4.1.2004 to regularize the provisional appointment of Shri Sebi Kuriakose. The position has been changed after the Apex Court judgement dated 16.11.2006 in Appeal (Civil) 4996 of 2006 arising out of SLP (Civil) No. 3862 of 2006 according to which a provisional employee would not be entitled to be absorbed in regular service or made permanent merely on the strength of his



continuance for a period beyond the term of his appointment, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. Thus the case of the applicant stands on a different footing when compared to that of Shri Seby Kruiakose. The applicant was not selected to the post provisionally after going through the recruitment procedures and he was continuing only on the basis of the interim orders of the Hon'ble Tribunal. In the first instance (OA 2/2007) it was up to the time regular appointment was made and in the second instance (OA 611/2007) it was up to the time the CPMG disposed off Annexure A-7 representation of the applicant. Now that the CPMG has disposed off the application of the applicant, the applicant is not entitled to any benefits sought for by him."

9. Thus, the points urged by the counsel for the respondents are (a) that the nature of appointment of the applicant is one of stop gap arrangement; (b) case of Sebi Kuriakose and the applicant cannot be termed identical and (c) in any event, the other cases were decided prior to the pronouncement of the decision in *Umadevi*.

10. Arguments were heard and documents perused. Though the respondents claimed that the nature of appointment of the applicant was one of stop gap arrangement, vide para 3 of their counter, the impugned order clearly states as under:-

"(b) With a view to encouraging the sporting and cultural talents of the employees, the Department conducts various sports and cultural activities as a part of the welfare measures. Normally, such facilities are extended to regular employees only. However, in team events provisional appointees are also permitted to be included in a team whenever



sufficient number of regular employees is not available to form a team. It was in such context that provisional GDS like the applicant were allowed to participate in the sports events organized by the Department.

11. Similarly, though the respondents claimed that the case of Sebi Kuriakose is not identical with that of the applicant, in the impugned order vide para (d) the Chief Post Master General had held as under:-

(d) It is true that the cases of the applicant and Shri. Seby Kuriakose were similar in several respects like, both were initially engaged in stop gap arrangement and subsequently got provisional appointments, they have availed the sporting facilities existing in the department for regular staff, when action was taken to make regular appointment in accordance with the recruitment rules they approached the Tribunal, obtained stay and consequently were able to continue in the provisional appointment for over three years.

12. Thus, what is to be seen is whether in the case of the applicant, the decision in Umadevi has to be applied.

13. In Umadevi, the Constitution Bench has held as under:-

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper



competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.



14. Backdoor entry is the main criticism in Umadevi. The question in the instant case is whether there could be said to be any such nature in the manner of appointment of the applicant. First, it has been admitted that the applicant had been engaged/appointed since 1992. Again, he has been picked up for appointment for representing the department in sports. He has won laurels and has been commended on various occasions as could be seen from Annexures A-2, A-3, A-5 etc., The nature of appointment of the applicant had been states 'provisional' as could be seen from para (b) of the impugned order. Thus, from whatever way the case is analysed, the case of the applicant cannot be treated as that kind of backdoor entry which has been meant by the Apex Court.

15. The applicant is by now about 35 years. He would have passed SSLC long back and it is trite knowledge that earlier, institutions used to award mark only conservatively, unlike now-a-days, where distinctions and above are quite common. To ask the applicant to compete with the present day SSLC holders would not be appropriate. The department has to consider this aspect in such peculiar cases. If at all the applicant could be asked to compete, his case should be with reference to sportsmen quota and not general quota. In one of the recent cases (WP (C) No. 14547/2007 as against OA 290/06, decided on 21.05.09), the Hon'ble High Court has held as under:-

"6. In view of the rights of the applicants to be considered for appointment in the sports quota, we direct the competent authority among the petitioners to invite applications from the open market as well as from among the GDS and casual labourers who were eligible to apply for appointment to the eight vacant posts, as on 31.03.2006, the date which was the last date notified for submission of applicants under Ext.



P1. The competent authority among the petitioners shall consider the claim of the applicants, including those who applied pursuant to the said notification to be issued, and fill up the eight vacancies which were available for recruitment under the sports quota. This exercise shall be completed by the competent authority within six months from the date of receipt of a copy of this judgement."

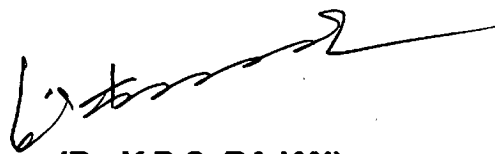
16. In view of the above, justice would be rendered in the instant case as well that the case of the applicant could be considered along with other eligible candidates under sports quota. Accordingly, this OA is disposed of with a direction to the respondents that as and when applications are invited from sportsman for filling up the vacancy on regular basis, the applicant be also considered. As the applicant has already served for more than three years by now, he would also be entitled to the other concessions/benefits available to such persons. As such, should he be retrenched due to appointment of a regular person in his place, his name shall be kept in the list of retrenched GDS for further posting as and when vacancies (short term/provisional) arise.

No costs.

(Dated, the 3RD AUGUST, 2009)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVR.