

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00685/2018

Thursday, this the 3rd day of October, 2019.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

C.B.Lalithakumari, aged 61 years,
W/o A.P.Viswanathan,
Residing at House No.16/2027,
T&R Cross Road,
Thoppumpady, Kochi-682 005.

Applicant

(Advocate: Mr. Arjun S.Raj)

versus

1. Union of India represented by the
Secretary to the Government of India
Department of Company Affairs
(Now Ministry of Company Affairs),
Shastri Bhavan, Dr.Rajendra Prasad Road,
New Delhi-110 001.

2. The Secretary to Government of India
Department of Company Affairs
(Now Ministry of Company Affairs),
Shastri Bhavan, Dr.Rajendra Prasad Road,
New Delhi-110 001.

3. The Regional Director (SR),
Department of Company Affairs (Now Ministry of
Company Affairs), Shastri Bhavan, Block-I,
Vth Floor, Haddows Road, Chennai-600 006.

Respondents

(Advocate: Sri. N.Anilkumar, SCGSC)

The OA having been taken up on 3rd October, 2019, this Tribunal delivered the following order on the same day:

O R D E R (oral)

By Ashish Kalia, Judicial Member

The applicant was appointed as Estate Clerk since 1.3.1984. She worked continuously along with other persons similarly placed. This OA is filed by the applicant seeking the following reliefs:

- (i) To quash Annexure A110.*
- (ii) To declare that the applicant, being 6th petitioner in O.P.No.9732 of 1990-H before the Hon'ble High Court is entitled to all the reliefs as directed in Annexure A1 judgment as affirmed by the Annexure A2 judgment of the Hon'ble Supreme Court.*
- (iii) To direct the 3rd respondent to absorb and regularize the services of the applicant as Estate Clerk (Company Paid Staff) with effect from the date of her appointment as Estate Clerk (Company Paid Staff) with effect from 1.3.1984 as done in the case of the applicants in OA No.249 of 2002 and to grant all consequential reliefs:*

2. Applicant was initially appointed as an Estate Clerk in the office of the Official Liquidator, High Court of Kerala. She claims that her date of absorption should be from the date of initial appointment on 1.3.1984, the date the applicant was continuously working in the same manner as a regular employee in the said office of the respondents. Initially, an OA No.249 of 2002 was filed by some petitioners in O.P. No.9732 of 1990-H. In the said OA, the Tribunal held thus:

In the result, in the conspectus of the facts and circumstances, declaring that Annexures A2 and A3 do not amount to implementation of the directions contained in para 25 of the judgment of the Hon'ble Supreme Court in the decision reported in 1999 (8) SCC 560 (CA 5677 of 1994), we direct the respondents to absorb the applicants as regular Lower Division Clerks in the office of the third respondent herein, with effect from their respective dates of appointments as Estate Clerks, and to grant them the benefits of pay fixation and all admissible allowances and also to pay them the arrears of pay and allowances on such regularization, the arrears being limited for the period from the date of filing of the OP No.9732 of 1990. The above directions shall be complied with in full within a period of four months from the date of receipt of a copy of this order. In the circumstances we do not make any order regarding costs”.

3. Thereafter the said decision was challenged before the Hon'ble High Court and the Hon'ble High Court has observed thus:

“We do not think the respondents in this case could be denied the benefit merely because she was not a party to the writ proceedings. We, therefore, hold that the respondent is entitled to the same benefits as the respondents in W.P.(C) No.22810/2004. However, since the respondent herein has retired, there is no scope for regularizing her service with effect from the date of first appointment for payment of arrears of salary. However, it will be unjust to deny pensionary benefits for the period of service ever since she joined the temporary employment. All what the Tribunal has done by the impugned order is to direct the petitioners to reckon her service from 1975 onwards till regularization for the purpose of pension. We find no ground to interfere with the order of the Tribunal. We therefore, dismiss W.P.(C) No.16471/2007 also”.

4. The Hon'ble Supreme Court later upheld the order passed in OP(CAT) and the benefit of the same has been granted to the applicant herein. The applicant was also a party at Sl.No.6 in OP No.9732/90, against which the respondents had chosen to file an SLP before the Supreme Court. The Hon'ble Supreme Court has upheld the order.

5. After serving of notices, the respondents put up appearance. In the reply statement filed, it has been submitted that since the applicant was not party to OA No.249/2002, she is not entitled for the benefits of the judgment.

6. After hearing the learned counsel for the parties, we see no reason not to extend the benefit of the judgment in the OP (CAT) passed by Hon'ble High Court as well as Hon'ble Supreme Court to the present applicant because those similarly situated have already been granted absorption from the date of initial appointment. The stand taken by the respondents is not convincing that the applicant was not party to the OA No.249/2002 and the Hon'ble Supreme Court in a subsequent Petition *R.P.(C) No.451/2018 in C.A.No.No.5564/2010*

dismissed the Review Petition, leaving the question open. However, this may not be taken as a precedent. In fact, the applicant was a litigant at Sl.No.6 in OP No.9732/1990 before the Hon'ble High Court and the matter went up to the Supreme Court. Thus the applicant's case cannot be termed as future case. Applicant is party to the lis. Thus we hereby declare that OA is liable to succeed and is accordingly allowed. Respondents are directed to grant relief to the applicant, as prayed for, within three months from the date of receipt of this order.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

aa.

Annexures filed by the applicant:

- Annexure A1: Copy of judgment in OP No.9732 of 1990-H dated 27.8.1991.
- Annexure A2: Copy of the judgment of the Hon'ble apex Court dated 27.8.1999 in C.A.No.5642 of 1994 along with other connected matters.
- Annexure A3: Copy of the order in OA No.249 of 2002 dated 31.3.2004 of this Tribunal.
- Annexure A4: Copy of the judgment in W.P.(C) No.22810 of 2004 dated 28.2.2008.
- Annexure A5: Copy of the judgment of the Hon'ble Apex Court in Civil Appeal No.5564 of 2010 dated 16.5.2017.
- Annexure A6: Copy of judgment of the Hon'ble Apex Court in R.P.(C) No.451 of 2018 dated 21.2.2018.
- Annexure A7: Copy of the office order No.F.No.1(48)/2017 dated 8.3.2018 of the 3rd respondent.
- Annexure A8: Copy of the representation filed by the applicant dated 23.8.2017 to the 3rd respondent.
- Annexure A9: Copy of the reminder letter dated 30.1.2018 issued by the applicant to the 3rd respondent.
- Annexure A10: Copy of the reply No.PFR/823 dated 15.3.2018.
- Annexure A11: Copy of the order in C.P.No.180/00089/2008 dated 22.1.2018 of this Tribunal.