

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2856/2003

New Delhi this the 5th day of August, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (ADMN)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Ms. Mohini Sundan,
B-1820, Shastri Nagar,
Delhi-110052.
2. Ms. Sarita Bhardwaj,
H.No.1251, Sector-5,
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3. Shri Parveen Kumar,
Plot No.2260, Hudson Line,
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4. Ms. Poonam Bhasin,
R/o 8/399, Sector-3,
Rajinder Nagar,
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5. Mrs. Veena Grover,
JG-II/383,
Vikas Puri,
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6. Ms. Lalita Rani,
4596/13, Jai Mata Market,
Tri Nagar, Delhi-110035.
7. Ms. Pushpa,
95/11, Gali No.5,
Anand Parbat,
Than Singh Nagar,
New Delhi.
8. Ms. Manju Rajpal,
5/15, Moti Nagar,
New Delhi.
9. Ms. Vidya,
H.No.1248/44,
Zoor Bagh,
Trinagar, Delhi.
10. Shri Yogender Kumar,
2524/193, Omkar Nagar,
Trinagar, Delhi.

-Applicants

(By Advocate Shri Manu Mridul.)

-Versus-

1. Union of India, through
the Secretary,
Ministry of Environment & Forests,
Pariyavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi.

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2. Under Secretary,
Government of India,
National Afforestation and Eco-
Development Board,
Ministry of Environment & Forests,
Pariyavaran Bhawan,
CGO Complex,
Lodi Road, New Delhi.

-Respondents

(By Advocate Shri K.C.D. Gangwani)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicants, ten in number, have prayed for the following reliefs:

"a) direct the respondents to regularise the services of the applicants on and from the date of their initial appointment in the service;

b) declare that the applicants are regularly appointed in the service for all intents and purports;

c) declare that the services of all the applicants are regular on the posts of Computer Operators/Data Entry Operators from the date of their initial appointment in the Respondent No.2 Board and on being so declared direct the Respondents to grant regular pay scales to the applicants along with all consequential benefits and reliefs on and from the date of their initial appointment in the service;

d) declare that the applicants are regular employees of Respondent No.2 Board;

e) set aside Office Memorandum dated 1st October 2003 (Annexure-15) being inapplicable in the case of applicants;

f) further direct the respondents to regularise the services of applicants No. 8 to 10 and grant them the regular pay scale and all consequential benefits attached as applicable to all similarly situated persons in the Respondent No.2 Board.

g) in the alternative it be declared this that the services of all applicants are liable to be regularised without requiring them to undertake the Special Qualifying Examination Notified by Office Memorandum dated 1.10.2003 (Annexure-15).

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h) declare that the services of the applicants are regular to all intents and purports.

i) or in the alternative direct the respondents to regularise the services of the applicants by invoking Rule 12 (i) (b) of the Central Secretariat Clerical Services Rule, 1962 and in case it is found that the applicants have become overage then by invoking the provision of relaxation provided under the Rules.

j) and other order which this Hon'ble court may deem fit in the interest of justice may also be granted.

2. A brief factual matrix is essential to be reflected. National Waste Land Development Board (NWLDB) was transferred to the Ministry of Rural Development. It had a strength of 50, including LDCs and Stenographers who are to be recruited through Staff Selection Commission (SSC). As the process was time consumed and due to increase in the work load daily wagers and ad hoc appointments have been made to the cadre of LDC. This was because the cadre controlling authority failed to provide candidates duly sponsored through SSC. Two of applicants have been appointed on daily wagers and rest as ad hoc LDCs during the period 1986-1990. Except one whose name has been forwarded from Sarkaria Commission applicant had joined after they were sponsored through Employment Exchange and were subjected to prescribed typewriting/stenography test as well as interview. Their services were transferred in the newly created Board. The appointments of applicants No.1-7 were till the regularly selected candidates are available or 120 days, whichever is earlier. For appointments of applicants No.8-10 there was no such condition. Applicants had been continuing with artificial breaks but are working regularly. Representations preferred for regularisation when not paid any heed to led to filing of joint OA before the Tribunal.

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By an order dated 26.5.2000 rejecting the request of applicants have been directed to be considered on selection as a special case on relaxing the age requirement with further direction that applicants shall be continued till regularly selected candidates are appointed by SSC.

3. The aforesaid decision led to filing of CWP No.3169/2000 before the Delhi High Court wherein by an order dated 7.8.2001 with the following directions CWP was disposed of:

"Petitioners may make a representation to the competent authority for relaxing the rules and for regularisation of their services as one time exception. The concerned authority, on receipt of such representation, shall examine their case in terms of proviso to Rule 12 (1) (b) of Central Secretariat Clerical Services Rules and the identical provision in other set of rules and taking in regard peculiar facts and circumstances of the case and pass appropriate orders for regularisation of petitioners' services or alternatively for relaxing their age bar to enable them to take the SSC examination. Meanwhile, status quo shall be maintained in respect of their services status till such orders are passed and should these go against them, they shall be allowed to remain at their posts for one month to enable them to seek any further legal redressal".

4. As a consequence thereof respondents have sought advice of the DoPT and by the impugned order a special qualifying examination has been devised for applicants for their regularisation, which included written as well as skilled test. Those who had not participated and failed to qualify termination of one month's notice has been proposed, giving rise to the present OA.

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5. Relying upon the following decisions, learned counsel for applicants Shri Naresh Kaushik contends that the directions issued by the High Court have not been complied with in true letter and spirit:

i) H.C. Puttaswamy and Others v. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and Others, 1991 Supp (2) SCC 421.

ii) Gujarat Agriculture University v. Rathod Labhu Bechar and Others, (2001) 3 SCC 574.

iii) Buddhi Nath Chaudhary and Others v. Abahi Kumar and Others, (2001) 3 SCC 328.

iv) Bhagwati Prasad v. Delhi State Mineral Development Corporation, (1990) 1 SCC 361.

v) Vijay Goel (Smt.) and Others v. Union of India and Another, (1998) 1 SCC 376.

vi) G.S. Lamba and Others v. Union of India and Others, (1985) 2 SCC 604.

6. According to the learned counsel respondents were duty bound to have examined the cases of applicants in terms of provisions of Rule 12 (1)(b) of the Central Secretariat Clerical Service (CSCS) Rules for regularisation and in the alternative on relaxing the age consider applicants for SSC examination. In this conspectus it is stated that the first part of the direction has not been complied with. There is no application of mind to the CSCS Rules.

7. Shri Kaushik further states that as per Rule 12 (b) proviso 90% of the vacancies shall be filled up by direct recruitment on the basis of the competitive examination held by SSC but when sufficient number of qualified candidates are not available the vacancies are to be filled up either provisionally or on regular basis in the manner prescribed by the Central Government. Accordingly

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applicants had been appointed initially after following the due process of law and subject to their suitability and test of their skills pertinent to the job. As such, their initial appointment was as per rules, i.e., proviso. Accordingly, once they had been discharging the same duties, subjecting them to a special qualifying examination to test their working which had been tested by the passage of time and the performance of applicants remained exemplary this cannot a pre-condition of regularisation.

8. It is further stated that now applicants who have been working on Computers are to be tested approximately at the age of 40 years on manual typewriter on which applicants are out of touch and subjecting them to the same standards with that of freshers is discriminatory and violative of Articles 14 and 16 of the Constitution of India.

9. Learned counsel for applicants further states that it would be cruel on the part of the respondents to subject applicants to written test and viva voce which goes against their long experience. Moreover, it is stated that if a post is continued for long time it has all the components of permanency and the incumbent working on the post cannot be denied the benefits of regularisation. As per proviso to Rule 12 (1)(b) of the Rules on a manner prescribed by the Central Government and DoPT regular appointment can be given without conduct of the examination by the SSC.

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10. Resorting to the doctrine of 'legitimate expectation' and deprivation of long service rendered by applicants for the purposes of qualifying service applicants have raised the issue of fairness in procedure and denial of their fundamental right of equality enshrined under Article 14 of the Constitution.

11. Whereas, respondents' counsel Sh. K.C.D. Gangwani vehemently opposed the contentions. It is contended that the initial appointment as LDC on regular basis has to be done with the respondents through SSC. No assurance at all had been given to applicants at the time of their appointments for regularisation of their services, rather the working on ad hoc would have created no right. Regular candidates from SSC from 1988 to 1996 had joined the Ministry of Environment and Forests. With the decision of the Government to downsize 10% reduction of the posts applicants had no right to stake any claim for regularisation. Though applicants were appointed on ad hoc/daily wage basis the pay fixation was done erroneously and on realisation needful was done. In order to comply with the directions of this Court dated 26.5.2000 DoPT had agreed to allow applicants in the Combined Matric Level Examination, 2001 to be conducted by the SSC. This decision was communicated to applicants as they had never faced SSC in the past. They were avoiding appearing in such competitive examination.

12. It is stated by the learned counsel for respondents that after the directions of the High Court of Delhi in its order dated 7.8.2001 the matter was again examined in consultation with the DoPT. As regards Rule 12

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(1)(b) proviso, on age relaxation applicants were to be subjected to a Combined Matric Level Examination, 2003 with an undertaking that those who fail to qualify in the examination shall be discharged from service. Applicants in addition to work on Computer also take dictation in shorthand and also do routine work as well.

13. In their additional affidavit filed respondents refer to Rule 12 ibid and state that no provision is incorporated for filling up the posts of LDC through limited departmental competitive examination (LDCE). Second proviso to Rule 12 (1)(a)(ii) provides that if more candidates than the number of vacancies available qualify the examination the employees would be considered against the future vacancies. There is no provision under the CSCS Rules, 1962 for diverting the unfilled vacancies. As per the advice as to the appointment in the grade of LDC need has not been felt to prescribe the manner of filling up of the vacancies, the DoPT opined to subject applicants to an examination at the Matriculation level to seek regularisation.

14. We have carefully considered the rival contentions of the parties and perused the material on record.

15. Before we proceed on to adjudicate the controversy, it is relevant to highlight the settled law on the issue.

16. In State of Haryana v. Piara Singh, (1992) 4 SCC 118 the following observations have been made by the Apex Court:

"21. Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirement of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above. The principles relevant in this behalf are stated by this Court in several decisions, of which it would be sufficient to mention two decisions having a bearing upon the issue involved here. They are Dharwad Distt. P.W.D. Literate Daily Wage Employees Association v. State of Karnataka and Jacob M. Puthuparambil v. Kerala Water Authority. In the first case, it was alleged that about 50,000 persons were being employed on daily-rated or on monthly-rated basis over a period of 15 to 20 years, without regularising them. It was contended that the very fact that they are continued over such a long period is itself proof of the fact that there is regular need for such employment".

17. Further the principles have been laid down in the case of Piara Singh (supra) as under:

"44. Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in government service.

45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also complete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirement of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

48. An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

50. The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce

avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

51. So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated April 6, 1990 referred to hereinbefore) both in relation to work-charged employees as well as casual labour".

18. In a Constitutional Bench decision of the Apex Court in Rudra Kumar Sain and Ors. Vs. U.O.I. & Ors. (2000(8) SCC 25) the following observations have been made:

"16. The three terms "ad hoc", "stopgap" and "fortuitous" are in frequent use in service jurisprudence. In the absence of definition of these terms in the Rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is "accident or fortuitous casualty". This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to be "fortuitous". In Black's Law Dictionary, the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortunate". It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression "ad hoc" in Black's Law Dictionary, means "something which is formed for a particular purpose". The

expression "stopgap" as per Oxford Dictionary, means "a temporary way of dealing with a problem or satisfying a need".

17. In Oxford Dictionary, the word "ad hoc" means for a particular purpose; specially. In the same dictionary, the word "fortuitous" means happening by accident or chance rather than design.

18. In P. Ramanatha Aiyar's Law Lexicon (2nd Edn.) the word "ad hoc" is described as : "For particular purpose, Made, established, acting or concerned with a particular (sic) and or purpose". The meaning of word "fortuitous event" is given as "an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God".

19. The meaning to be assigned to these terms while interpreting provisions of a service rule will depend on the provisions of that rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as "ad hoc" or "stopgap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as "fortuitous" in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a "stopgap" arrangement and appointment in the post as "ad hoc" appointment. It is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such a discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the questions of inter se seniority of officers in the cadre.

20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is

appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ad hoc/stopgap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.

21. In view of our conclusions, as aforesaid, we quash the seniority list, both provisional and final, so far as, it relates to the appointees either by direct recruitment or by promotion in the Delhi Higher Judicial Service, prior to the amendment of the Recruitment Rules in the year 1987, and their inter se seniority must be redetermined on the basis of continuous length of service in the cadre, as indicated in Singla case and explained by us in this judgment. Since the future of these officers to great extent depends upon seniority and many of these officers may be on the verge of superannuation, the High Court would do well in finalising the seniority within a period of six weeks from the date of receipt of this judgement".

19. If one has regard to the above, keeping in light the decision in Piara Singh's case (supra) there would be a presumption of a vacancy if one had continued for a long time. Ad hoc employment of applicants had necessitated on account of exigencies and to some extent attributable to respondents but could not carry out regular appointment through SSC. These persons who are requisitioned through employment exchange once appointed on ad hoc basis and continued for a fairly long spell in the present case ranging from 10-13 years and the fact that applicants were qualified in all respects as per the recruitment rules now the decision to subject them to a written examination and viva voce test at the Matriculation level has to be judged in the light of the following decisions.

20. In H.C. Puttaswamy's case (supra) the petitioners on ad hoc basis had put in 10 years of service where the regular appointment was to be undertaken by the State Public Service Commission, the following observations have been made:

"12. Having reached the conclusion about the invalidity of the impugned appointments made by the Chief Justice, we cannot, however, refuse to recognise the consequence that involves on uprooting the appellants. Mr. Gopal Subramaniam, counsel for the appellants while highlighting the human problems involved in the case pleaded for sympathetic approach and made an impassioned appeal for allowing the appellants to continue in their respective posts. He has also referred to us several decisions of this Court where equitable directions were issued in the interests of justice even though the selection and appointments of candidates were held to be illegal and unsupportable.

13. There is good sense in the plea put forward for the appellants. The human problem stands at the outset in these cases and it is that problem that motivated us in allowing the review petitions. It may be recalled that the appellants are in service for the past 10 years. They are either graduates or double graduates or post-graduates as against the minimum qualification of SSLC required for Second Division Clerks in which cadre they were originally recruited. Some of them seem to have earned higher qualification by hard work during their service. Some of them in the normal course have been promoted to higher cadre. They are now overaged for entry into any other service. It seems that most of them cannot get the benefit of age relaxation under Rule 6 of the Karnataka Civil Services (General Recruitment) Rules, 1977. One could only imagine their untold miseries and of their family if they are left at the midstream. Indeed it would be an act of cruelty at this stage to ask them to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection. (See Lila Dhar v. State of Rajasthan".

21. In Gujarat Agricultural University's case (supra) where regularisation had been sought, the following observations have been made:

"17. From the aforesaid, it emerges that the learned Single Judge had concurred with the finding of the Tribunal that the contesting workmen have been working in the appellant University regularly for a long number of years. The existence of permanent nature of work was inferred on this account and also due to the vastness of the appellant's establishment. The regularisation is claimed only in respect of Class IV employees. The main objection which was raised earlier and is raised before us, is that a person could only be regularised on any vacant post and if there be one he should be qualified for the same as per qualifications, if any, prescribed. In fact, the Tribunal has held that on the date of the award, most of the workmen had completed 10 years of their service. It is also well settled, if work is taken by the employer continuously from the daily-wage workers for a long number of years without considering their regularisation for its financial gains as against employees' legitimate claim, has been held by this court repeatedly as an unfair labour practice. In fact, taking work from a daily wage worker or an ad hoc appointee is always viewed to be only for a short period or as a stopgap arrangement, but we find that a new culture is growing to continue with it for a long time, either for financial gain or for controlling its workers more effectively with a sword of Damocles hanging over their heads or to continue with favoured ones in the cases of ad hoc employees withstalling competent and legitimate claimants. Thus we have no hesitation to denounce this practice. If the work is of such a nature, which has to be taken continuously and in any case when this pattern becomes apparent, why they continue to work for year after year, the only option to the employer is to regularise them. Financial viability, no doubt, is one of the considerations but then such enterprise or institution should not spread its arms longer than its means. The consequent corollary is, where work taken is not for a short period or limited for a season or where work is not of a part-time nature and if pattern shows that work is to be taken continuously year after year, there is no justification to keep such persons hanging as daily-rate workers. In such a situation a legal obligation is cast on an employer; if there be vacant post, to fill it up with such workers in accordance with rules, if any, and where necessary by relaxing the qualifications, where long experience could be equitable with such qualifications, If no posts exist then duty is cast to assess the quantum of such work and create such equivalent posts for their absorption".
.....

"27. In the light of the aforesaid decisions we now proceed to examine the proposed scheme. Under clause i it is proposed that all daily wage workers, whether skilled, semi-skilled or unskilled who have completed 10 years or more of

continuous service with a minimum of 240 days in each calendar year as on 31.12.1999 are to be regularised and be put in the time-scale of pay applicable to the corresponding lowest grade in the University. However, the said regularisation is subject to some conditions. Under clause 1 (a) such employees are eligible only if they possess the prescribed qualifications for the post at the time of their appointment. A strong objection has been raised to this eligibility clause. The submission is, those working for a period of 10 or more years without any complaint is by itself a sufficient requisite qualification and any other rider on the facts of this case would prejudice these workers. We find merit in this submission. We have perused the qualifications referred in the aforesaid recruitment rules according to which, qualification for a peon is that he should study up to 8th standard, for operator-cum-mechanic, he should have diploma in Mechanic having sufficient knowledge of vehicle repairing, experience in automobiles or tractor dealers' workshop for two years, for chowkidar, he must be literate and have good physique. Literate is not defined. For Plumber, to have ITI Certificate.

28. We feel that daily-rate workers who have been working on the aforesaid posts for such a long number of years without complaint on these posts is a ground by itself for the relaxation of the aforesaid eligibility condition. It would not be appropriate to disqualify them on this ground for their absorption, hence clause (a) needs modification to this effect.

29. In *Bhagwati Prasad v. Delhi State Mineral Development Corpn.*, this Court observed : (SCC p.364, para 6)

"6. The main controversy centres round the question whether the petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be considered in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986, ever since they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the

appointments were made as daily-rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualification.

30. Thus in view of their long experience, on the fact of this case, and for the posts concerned the prescribed qualification, if any, should not come in the way of their regularisation, Clause 1(b) provides for the regularisation of daily wagers in a phased manner to the extent of available sanctioned post."

22. In **Buddhi Nath Chaudhary's** case (supra) where the appointment was improper and the petitioners were not found to be qualified the following observations have been made:

"5. We fail to understand as to how the matter of selection and appointment to a post could have been entrusted to the Transport Commissioner when the Commission had been specifically entrusted with such a job and such Commission, which is an autonomous authority having a constitutional status, has selected the candidates whose appointments were in challenge. If the selection of these candidates was improper the same should have been set aside with appropriate directions to redo the process of selection or at best, the High Court could have directed the Government, which is appointing authority, to take appropriate steps in the matter. However, in the facts and circumstances of the case, we need not dilate on this aspect nor do we need to examine various

elaborate contentions addressed by either side. Suffice to say that all the selected candidates who are in employment, except one, possess necessary qualification and in regard to that one excepted candidate, it cannot be disputed that he possess equivalent qualification. Thus the dispute narrows down to one aspect, that is, the selected candidates may not possess necessary experience which is now required to be examined by the Transport Commissioner.

6. The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new experience ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long

period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in Ram Sarup vs. State of Haryana; District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M.Tripura Sundari Devi and H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court, Bangalore. Therefore, we must let the matters lie where they are.

23. In Bhagwati Prasad's case (supra) while dealing with regularisation of daily rated workers, following observations have been made:

"6. The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986, ever since they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily-rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualification. In our view, three years' experience, ignoring artificial breaks in service for short period / periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years

period. Since the petitioners before us satisfy the requirement of three years' service as calculated above, we direct that 40 of the seniormost workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We further direct that 16 of the petitioners who are ousted from the service pending the writ petition should be reinstated immediately. Suitable promotional avenues should be created and the respondent should consider the eligible candidates for being promoted to such posts. The respondent is directed to deposit a sum of Rs. 10,000 in the Registry of this Court within four weeks to meet the remuneration of the Industrial Tribunal. The writ petitions are accordingly allowed, but without costs.

24. In Vijay Goel's case (supra) where the LDCs have sought appointment on regular basis the following observations have been made:

"12. Be that as it may. The question that arises for our consideration is; If the appellants were appointed on ad hoc basis from the start and if not were the orders regularising their services necessary. We have seen that recruitment to the LDCs in the hospital is governed by the statutory rules framed by the Central Government under proviso to Article 309 of the Constitution. It is nobody's case that the appellants did not fulfill the requisite qualifications or that they did not qualify the typing test with the speed 30 w.p.m. as required by the rules. It is also not disputed that the appellants were selected after they had undergone the process of selection by the Selection Board. It is correct that by subsequent

government resolution the test was to be conducted by SSC and so also selection for appointment to the post of LDC. We need not go into the question if in the existence of the statutory rules could they be amended to the extent that certain functions were left to be performed by SSC and not by the DPC. It is not that the SSC could prescribe any qualifications different than that prescribed in the Recruitment Rules for appointment to the post of LDCs. The fact, however, remains that when the hospital authorities approached the SSC it expressed its inability to conduct the test and select candidates for appointment to the post of LDCs in the hospital and rather told them that the authorities could themselves make arrangement to fill up the vacancies through other authorised channels if it was urgent. SSC did not say that the authorities could fill up the vacancies on ad hoc basis only till such time candidates sponsored by SSC were made available to the hospital. In pursuance of the communication received from the SSC the hospital authorities asked the local employment exchange to sponsor candidates and at the same time issued a circular allowing the eligible departmental candidates to apply for the post of LDCs. The posts were in existence. The authorities fell back on the Recruitment Rules, conducted the examination, found the appellants to fulfil the qualifications and then selected them by duly constituted DPC. The respondents have neither stated nor contradicted that the selection

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of the appellants was not in conformity with the Recruitment Rules. That being so we fail to see why the order of 19-5-1986 regularising the services of ad hoc LDCs including the petitioners should have been cancelled on technical grounds five years after they had been regularised and absorbed in the cadre."

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.....

16. We are also aware of the decision of this Court that there cannot be any claim for regularisation for having worked for a number of years if the regularisation was not in accordance with the rules. That is not so here. As noted above in the present case appointments were made in accordance with the Rules which appointments have continued for a number of years and cannot be treated as ad hoc or fortuitous."

24. If one has regard to the above, the ratio which is discernible is basically based on equitable consideration. It is trite law that an ad hoc appointee has no right to reckon his service and regularisation if the appointment is not made in accordance with the rules. However, applying a human approach those who had continued for fairly long spells by sheer experience and working acquire the requisite qualifications attached to the post in so far as working is concerned by experience. In that case

subjecting them at the standard of a fresher applying the same criteria would be anti thesis to the principle of equality enshrined in Article 14 of the Constitution.

25. Basically the performance of applicants by subjecting them to a matric level examination is to ascertain their suitability for the posts and to test their professional skills. It is not the case of respondents that applicants had not been performing the same functions and duties attached to the posts of LDC/Stenographer for fairly long spells. It is also not in dispute that the performance of applicants had remained excellent. Accordingly the written examination and viva voce, which is part of the competitive matriculate examination with only object sought to be achieved is to test the suitability of applicants. Once they had been found suitable by virtue of their performing for fairly long period without any adverse material against them, now subjecting them to typewriting test on manual typewriter which they had not been using since inception would be an empty formality to test their performance. If applicants had performed well in the past and are qualified as per the recruitment rules in vogue at the time of their initial appointments we do not find any justification for such a test to be conducted. The Apex Court in the aforesaid decision reiterated the same. However, the problem is to be viewed in the light of the decision of the High Court as well. Though the Tribunal in a common order in the fitness of things taking a human approach on relaxation of the requirement of age ordered consideration of applicants for regularisation in a selection, as a special case, however, while the decision was tested by the Delhi High Court the orders passed on

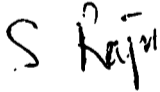
7.8.2001 clearly show that the anomalous position arisen in the present case has been fully attributed to respondents' own deed.^h It is also observed that Rules 24 and 46 ibid of the Rules provide relaxation. Though rules provide induction in the cadre as direct recruitment through SSC but DoPT qualified nominated candidates have not been sought nor applicants have been appointed on regular basis as per proviso to Rule 12 (1) (b). Accordingly, in this conspectus as one time exception on relaxing the rules respondents have been directed to examine their cases in terms of Rule 12 (1)(b) of CSCS Rules and to pass appropriate orders. Respondents were mandated to undertake this exercise, failing which resort to the alternative of relaxing the age to enable applicants to take up examination. We find from the additional affidavit of respondents that DoPT was consulted. Rule 12 (1)(b) proviso of CSCS clearly allows regular appointment in a case where sufficient number of qualified candidates of the competitive examination are included SSC are not available for appointments the vacancies are to be filled provisionally or on regular basis in such a manner as may be prescribed by the DoPT. The manner is conspicuously missing from the rules. We may resort to the instructions on the subject. Looking at the consideration for regularisation under Rule 12 (1)(b) of applicants we find that it has been recorded that need has not been felt to prescribe the manner of filling up the vacancies. Accordingly this aspect of the matter which was a mandamus from the High Court of Delhi has not been complied with in its true letter and spirit. No orders have been passed separately, rejecting regularisation of applicants under Rule 12 (1)(b). Rather the alternative has been picked up to subject applicants to a test on combined

matriculation level examination. We are constrained to observe that the respondents had not applied their mind to regularisation of applicants under Rule 12 (i)(b). It is not disputed that applicants were appointed through employment exchange barring few on ad hoc basis and remaining three on daily wages. They had been subjected to the necessary professional skill test before being inducted. The only impediment to treat their appointment as regular is their appointment through SSC. Having continued applicants in service for fairly long period they cannot be discriminated and denied equal protection of rights which is an essence of Article 14 and 16 of the Constitution of India. Being a model employer in a welfare State the doctrine of legitimate expectation with equitable principle which is an inbuilt in the rule of law, though on legitimate expectation one has no enforceable right but this should be meant for checking arbitrariness in the action of the administrative authorities. We are fortified in our view by the decision of the Apex Court in **State of West Bengal v. Niranjan Singh**, (2002) 2 SCC 326.

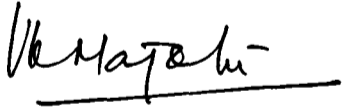
26. From the circumstances attending at the time of appointment of applicants we find that one of the modes had been adopted by the respondents to appoint these applicants. As there were no regularly appointed SSC candidates as per proviso to Rule 12 (i) (b) applicants had been appointed though there was option to go ahead with the appointment provisionally or on regular basis but continuing applicants for a fairly long spell partakes the character of a regular appointment as they had been subjected to all the requisite testing regarding their professional skills.

27. In the result, for the foregoing reasons, having found the respondents not applied their mind to regularisation of applicants under Rule 12 (1)(b) of the CSCS Rules as per the directions of the High Court of Delhi we have no hesitation to deprecate their stand taken before us. The callous attitude of respondents is apparent from the fact that in the proviso to Rule 12 (1)(b) though the manner has been prescribed but need has not been felt to prescribe and apply to applicants. This cannot be countenanced. Accordingly, we set aside the impugned orders. Respondents are directed to re-examine the claim of applicants for regularisation as one time measure under proviso to Rule 12 (1)(b) of the Rules ibid and pass a detailed and speaking order, within a period of three months from the date of receipt of a copy of this order. Till then, status quo as regards continuance of applicants on the posts held by them shall be maintained.

28 With these directions OA stands disposed of.
No costs.


(Shanker Raju)
Member (J)

'San.'


(V.K. Majotra)
Vice-Chairman(A)