
(2017) 01 SC CK 0027

In the Supreme Court Of India

Case No : Civil Appeal No. 283 of 2017 (Arising Out of SLP(C) No. 7928 of 2014)

M. Sitalakshmi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Citation : (2017) 1 Scale 553 : (2018) 15 SCC 259

Hon'ble Judges : Adarsh Kumar Goel, J;Uday Umesh Lalit, J

Bench : Division Bench

Advocate : Mr. Ashok Kr. Panda, Sr. Advocate, Mr. Shankar Divate, Advocate, Mr. Vikas Bansal, Advocate, Mr. Ambrish Kr. Sharma, Advocate, Mr. Interpal, Advocate, Mr. Shreekant N. Terdal, Advocate, Mr. Avnish Ahlawat, Advocate, Dr. Monika Gusain, Advocate, Mr. Anuj Dewan, Advocate, for the Respondents; Mr. Naresh Kaushik, Advocate, Ms. Swega Agarwal, Advocate, Mrs Lalita Kaushik, Advocate, for the Appellant

Final Decision : Allowed

Judgement

1. Leave granted.

2. The appellant joined the office of Regional Director (North), Government of India, Tourist Office, New Delhi as direct recruit Lower Division Clerk ("LDC" for short) on 09.02.1992 while respondent No.4 had joined the same office on 07.07.1987 on ad hoc basis and was regularized w.e.f. 13.06.1988. In the seniority list of LDCs respondent No.4 was shown at serial No.5 while the appellant was at serial No.10. As per Recruitment Rules, an LDC was eligible for promotion to the post of Upper Division Clerk ("UDC" for short) or Junior Stenographer; the post of UDC being a non-selection post to be filled by way of promotion from amongst the LDCs while that of Junior Stenographer was a selection post to be filled from amongst those LDCs who had rendered minimum period of three years and had qualified in the departmental examination in shorthand and typing test.

3. Pursuant to the Circular dated 28.05.1996 inviting applications from all eligible

LDCs to participate in the departmental examination for filling a vacancy in the post of Junior Stenographer, the appellant applied and appeared in the examination. Having been found successful in the examination, she was promoted as Junior Stenographer against a regular vacancy vide order dated 10.09.1997 although her appointment was described as "ad hoc". In the meanwhile respondent No.4 was also promoted as UDC against an ad hoc vacancy. The appellant's promotion to the post of Junior Stenographer was questioned by respondent No.4 as well as the Staff Association in OA No.226 of 1998 which was dismissed by the Central Administrative Tribunal vide order dated 26.05.1998 and the decision was affirmed by the High Court of Delhi by dismissing Writ Petition No.2529 of 2000, preferred by respondent No.4.

4. The appellant thereafter preferred OA No.2520 of 2000 seeking regularization as Junior Stenographer w.e.f. the date of her ad hoc appointment on the ground that she was eligible, fulfilled all qualifications and there always existed a regular vacancy. During the pendency of this OA, respondent No. 4 and the appellant were regularized w.e.f. 13.03.2001 and as such the challenge in the pending OA was confined to the question whether regularization ought to be from the date of ad hoc appointment. This OA was allowed by the tribunal. It was observed as under:

"We have carefully considered the rival pleas canvassed by the learned counsel. It is not disputed that the applicant was selected for promotion to the post of Jr. Stenographer on the basis of a regularly conducted test, in accordance with the Recruitment Rules and against a clear vacancy, though the order termed the promotion as ad hoc in nature. It is also not in dispute that the challenge against, the said order of promotion was negative by the Tribunal, which decision has been endorsed by the Hon''ble Delhi High Court. ??

It is clearly a matter of record that the applicant was selected against a clear vacancy, through a proper selection process, in accordance with the relevant Recruitment Rules and, therefore, she is correctly entitled for getting the benefit of regularization from the date of her ad hoc appointment as laid down by the Hon''ble Supreme Court in the decision cited by the applicant. Respondent's action by their proceedings dated 14.3.2001, giving her the benefit of regularization w.e.f. 13.3.2001, does not meet with legal requirement and calls for modification."

The tribunal thus allowed the application and directed that the appellant be given promotion as Junior Stenographer on regular basis w.e.f. 10.09.1997 with consequential benefits.

5. Soon thereafter respondent No.4 preferred OA No.1351 of 2001 seeking similar benefits and submitted that she was also entitled to regularization as UDC w.e.f. 25.06.1996. The tribunal found that the case of the appellant and respondent No.4 were distinguishable inasmuch as the appellant was promoted against a regular vacancy after having been found eligible and successful in the

test. The tribunal, therefore, dismissed the aforesaid OA No.1351 of 2001.

6. Respondent No.4 filed Writ Petition Nos.3049 of 2002 challenging the order of the tribunal allowing OA No.2520 of 2000 preferred by the appellant as well as Writ Petition No.3050 of 2002 against the dismissal of OA No.1351 of 2001. Both these matters were taken up together and by the judgment and order under appeal the High Court allowed the challenge in respect of OA No.2520 of 2000, inter alia, on the ground that respondent No.4, though a necessary party, was not impleaded in the matter. The High Court, however, upheld the order of the tribunal dismissing OA No.1351 of 2001 i.e. denying retrospective regularization to respondent No.4 in the post of UDC.

7. We have heard learned counsel appearing for the parties and considered rival submissions.

8. In the first round initiated at the instance of respondent No.4 and the Staff Association, the tribunal had found that a post having fallen vacant, applications were invited from all LDCs vide Circular dated 28.05.1996 to appear in the competitive test, in which the appellant was successful. It was observed that the respondent no. 4 and all others were aware and yet did not appear at the test. The challenge was thus negated which decision was later affirmed by the High Court.

9. The appellant having thus been selected for promotion on the basis of regularly conducted test in accordance with the Recruitment Rules and against a clear vacancy, was right in contending that she was entitled to be regularized w.e.f. 10.01.1997. On the other hand, the contention of respondent No.4 seeking similar such entitlement was rejected by the tribunal, which decision also stood affirmed by the High Court. Since the relief claimed by the appellant was pertaining to her appointment pursuant to the aforesaid test conducted in accordance with the Recruitment Rules in which test respondent No.4 had chosen not to appear, in her application requesting for regularization from 10.01.1997, the cause of action was completely independent of respondent no. 4. In such an action respondent no. 4 was not a necessary party at all.

10. We, thus find that the High Court was completely in error in setting aside the decision of the tribunal. We therefore allow this appeal, set aside the judgment and order under appeal and restore the decision of the tribunal rendered in OA No.2520 of 2000. However, there will be no order as to costs.