

(2018) 12 DEL CK 0062

In the Delhi High Court

Case No : Letters Patent Appeal No. 328 Of 2015

Surinder Singh & Ors

APPELLANT

Vs

District & Session Judge Tis Hazari Courts Delhi & Ors

RESPONDENT

Date of Decision : 06-12-2018

Acts Referred:

Citation : (2018) 12 DEL CK 0062

Hon'ble Judges : S. Muralidhar, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Harpreet Singh, Avnish Ahlawat, N.K. Singh

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. This appeal is directed against the order dated 10th March, 2015 passed by the learned Single Judge in W.P.(C) No.7462/2000 holding that the writ Petitioners i.e. Respondent Nos. 2 to 37 herein would be considered seniors above the present Appellant Nos. 1 to 13 in the cadre of Lower Division Clerks ("LDCs").

2. The background facts are that the present Appellants were appointed as LDCs on ad hoc basis in the establishment of District & Sessions Judge, Delhi / Respondent No. 1 on various dates between 1984 and 1986. It is significant that although there were permanent and substantive posts available and lying vacant due to creation of 26 additional courts of Judicial Officers, the appointments were made, pending regular selection, on ad hoc basis. From time to time, the services of the Appellants were continued with artificial breaks. Since they were continued for such a long period without being regularized, they filed W.P.(C) No.1820/1990 in this Court praying for regularization of their services as LDCs from the date of their initial appointments.

3. Due to the pendency of the said writ petition, an advertisement was issued for

filling up of the regular vacancies for the posts of LDCs. The apprehension of the Appellants was that the regularly appointed LDCs might be considered senior to them since the Appellants are yet to be regularized on that basis. In the circumstances, on 20th August, 1994, the following interim order was passed in W.P.(C) No.1820/1990:

"Mr Mahajan seeks time to file reply and also to get instructions. Whereas time has to be allowed, but Mr Sikri states that some interim order may be passed because both the written as well as typing tests are scheduled to be taken on 23.08.1992.

Mr. Mahajan further informs that the test of the outside candidates has already been conducted/and a panel of about 180 candidates, who qualified in the said test, has been prepared. It is the common case that the total number of vacancies is 25. Mr. Mahajan states that liberty may be given to the respondents to till up the vacancies by appointing persons from the panel already prepared, with undertaking that 26 vacancies shall be left reserved for the petitioners, and shall be filled up only under orders of this Court.

Mr. Mahajan further agrees that in case petitioner prayer for regularisation is allowed, on regularisation, their seniority will be protected and appointments made out of the candidates already selected shall be subject to right of the petitioners in the matter of seniority, as and when they are regularised.

In view of this undertaking given by Mr. Mahajan, it is considered explicit to allow the respondents to, proceed with the appointments from out of the panel already prepared of outside candidates with direction that 26 vacancies be kept reserved for (the petitioners and further that their seniority shall be protected, in case their prayer for regularisation is allowed.

Reply be filed within two weeks, with specific reference to the contention of the Petitioner that no written test has been taken of the ad hoc stenographers, who have been regularized under orders of the Supreme Court whereas such a test is also required for appointment to the post of stenographers under the rules, and secondly that in view of the nature of duties, the Petitioners have been performing so far as ad hoc employees, the Petitioners may be given some time for taking the typing test and the orders of regularization can be made conditional on their passing the said test within a stipulated time. Mr Mahajan undertakes to seek instructions on these points.

Copy of the reply be given to the counsel for the Petitioner who may file the rejoinder, if any, before the next date.

To come up on 2.10.1992. In the meantime, the tests - both written as well as typing, fixed for 23.08.1992 be deferred till further orders. Copy of this order be given dasti to counsel for both sides."

4. Subsequently, an application for clarification was filed by the present Appellants in view of the circular issued by the Respondent No. 1 in respect of

the date of conducting of written test as well as typing test for the Appellants. The contention was that while they could be asked to undergo the typing test, they should not be asked to undertake a written test. The learned Single Judge accepted the prayer and ordered that it was a fit case to waive off the written test and directed that "the case of the Petitioners be taken up for regular appointment, after they pass the qualifying test of typing".

5. Some of the Appellants, who had taken the typing test and did not qualify, sought a second chance and filed LPA No.89/1993 before the Division Bench of this Court. By an order dated 6th April, 1994, the said Appellants were given a second chance and it was directed that the second test shall be taken towards the end of September, 1994. However, if they did not qualify the second test, they would not be allowed to continue in service.

6. What triggered the filing of W.P.(C) No.7462/2000 was an order issued by the Respondent No.1 on 17th November, 2000 regularizing the services of such LDCs, including the present Appellants, who qualified the typing test, "from the date of their initial appointment on ad hoc basis" with all other consequential benefits. As had been directed by the learned Single Judge in the order dated 20th August, 1992, the period of break in service was treated as leave of the concerned individual. As a result of the above order, each of the Appellants herein was regularized as LDCs from the date of initial ad hoc appointment as LDCs. Although the said order noted that there were certain others who had filed the writ petition along with the present Appellants, they had not qualified in the typing test and, therefore, there was no question of their regularization.

7. The prayer of the Respondent Nos. 2 to 37, who filed the aforementioned writ petition, was that having been appointed through regular appointment process against regular vacancies, they should be considered senior to the present Appellants who were appointed originally on an ad hoc basis and who did not meet the qualifying criteria for appointment.

8. In the impugned judgment, the learned Single Judge did not find fault with the order dated 17th November, 2000 issued by the Respondent No.1 insofar as it regularized the services of the Appellants from the dates of their respective initial appointment on ad hoc basis in the posts of LDCs. However, on the basis of the decision in Direct Recruit Class II Engg. Officers' Assn. V. State of Maharashtra (1990) 2 SCC 712 and the subsequent decision in Ch. Narayana Rao v. Union of India (2010) 10 SCC 247, the learned Single Judge observed that the settled legal position was that "a person who was appointed only on ad hoc basis and he did not satisfy the relevant eligibility criteria for appointment, then, the period of such an ad hoc appointed person obviously will not be counted towards their seniority."

9. On that basis, in the conclusion paragraph of the impugned judgment, the learned Single Judge quashed the order dated 17th November, 2000 issued by the Respondent No.1 "to the limited extent that the private respondent nos. 3 to

25 are given seniority above the Petitioners". The learned Single Judge clarified that the said order "will remain to the extent that it regularizes the services of the private respondents" but would not have the effect of giving them seniority above the writ petitioners.

10. This Court has heard the submissions of Mr. Harpreet Singh, learned counsel for the Appellants as well as Ms Avnish Ahlawat, appearing on behalf of the Respondent No.1. As noticed hereinbefore, despite service of notice upon them in this appeal, the Respondent Nos. 2 to 37 have chosen not to appear and contest the present proceedings.

11. What weighed with the learned Single Judge in allowing the plea of the Respondent Nos. 2 to 37 in the writ petition was that they should be considered seniors to the present Appellants since the present Appellants took the typing test after the Respondent Nos. 2 to 37 were appointed on regular basis and therefore, the decision in Ch. Narayana Rao v. Union of India (supra) would apply. When it was pointed out to the learned Single Judge that the order issued by the Respondent No.1 on 17th November, 2000 in fact did not fix the seniority, the learned Single Judge responded by pointing out that once the dates of appointments of the present Appellants were fixed from the date of their original appointment on ad hoc basis, then those would be the very dates for determining their seniority.

12. Despite noticing this position, the learned Single Judge has opted to quash the impugned order while not disturbing the dates of regularization of the present Appellants, denying them the seniority that is competent to such date of regularization. This is where the impugned judgment is perhaps unsustainable in law.

13. The facts of the present case, as noticed hereinbefore, show that apprehensive of loss of seniority on account of the holding of the selection process of recruitment of LDCs on regular basis, the Petitioners approached this Court very early on with W.P.(C) No.1820/1990. The order dated 20th August, 1992 was specific to this context of regularization of the Appellants. It was clarified before the Court, at the time of passing the above order, by counsel for Respondent No.1 that in case the prayer of the present Appellants for "regularization is allowed, on regularization, their seniority will be protected and appointments made out of the candidates already selected will be subject to the right of the Petitioners in the matter of seniority as and when they are regularized".

14. The above statement before the Court on behalf of the Respondent No.1 was honoured when the order dated 17th November, 2000 was issued regularizing the services of the Appellants from the date of their initial appointments. Once it was made clear by the order dated 20th August, 1992 that the filling up of the vacancies on regular basis would be subject to the right of the present Appellants in the matter of seniority, as and when they were regularized, it could not have

been contended by the writ Petitioners i.e. Respondent Nos. 2 to 37 that notwithstanding the order dated 20th August, 1992 of this Court, which has become final, the writ Petitioners would be considered seniors to the present Appellants. Once the Appellants had been regularized from a certain date, their seniority obviously had to be counted from that date. That was in fact the whole purpose of the Appellants seeking regularization from the date of their initial appointments.

15. It is also not as if the present Appellants were not qualified and, therefore, could not have been regularized from the dates of their initial appointment. It is another matter that the Appellants did not undergo a written test but then they had worked for nearly seven years as LDCs when they were made to undergo the typing test. Again, pursuant to the judicial orders which were passed on 12th November, 1992 and 6th April, 1994, they underwent tests, but in a sense a modified test of where the written examination was dispensed with and they were made to give the typing-cum-shorthand test in which they qualified. As already noticed, some of them had got a second chance pursuant to the order dated 6th April, 1994 of the Division Bench. Nevertheless, the fact remains that the present Appellants passed the qualifying test they were expected to pass in order to be regularized.

16. It is these peculiar facts that distinguishes the present case from the facts in *Direct Recruit Class II Engg. Officers' Assn. v State of Maharashtra* (supra) and *Ch. Narayana Rao v Union of India* (supra) which have been referred to by the learned Single Judge. 17. On the other hand, learned counsel for the Appellants has drawn attention of the Court to the decision of the Supreme Court in *S. Sumnyan v. Limi Niri* 2010 (4) SCALE 164 which in turn referred to the decision in *Shri L. Chandrakishore Singh v. State of Manipur* (1999) 8 SCC 287 where it is observed as under:

"15. It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of this Court in *G.P. Doval and Anr. v. Chief Secretary, Government of U.P.* (1984) 4 SCC 329."

18. While this Court concurs with the decision of the learned Single Judge that the dates of the regularization of the present Appellants in the post from the date of their initial appointment on ad hoc basis in terms of the order dated 17th November, 2000 issued by the Respondent No.1 should be left undisturbed, this Court disagrees with the learned Single Judge that the seniority of the Appellants

would not count from those very dates of their regularization.

19. To that extent, the impugned order of the learned Single Judge is aside. The net result is that the Appellants will count their seniority from the dates of their respective regularization of the posts as LDCs.

20. The appeal is allowed in the above terms.

CM 11855/2017 (directions)

21. This application does not survive in view of the subsequent order passed. The application is disposed of as such.