

(2025) 06 DEL CK 0615

In the Delhi High Court

Case No : Writ Petition (C) No. 15405 Of 2024 & Civil Miscellaneous Application
No. 64598 Of 2024

Union Of India & Anr

APPELLANT

Vs

Mrs. Shilpi Gupta

RESPONDENT

Date of Decision : 12-06-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2025) 06 DEL CK 0615

Hon'ble Judges : Navin Chawla, J;Renu Bhatnagar, J

Bench : Division Bench

Advocate : Syed Abdul Haseeb, Rashmi Chopra, Puneet Rathi

Final Decision : Dismissed

Judgement

Navin Chawla, J

1. These writ petitions have been filed by the petitioners, challenging the Order dated 26.04.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the learned 'Tribunal') in O.A. No. 1987/2023, titled Mrs. Shilpi Gupta v. Union of India & Anr.; O.A. No. 2081/2023, titled Ms. Arti v. Union of India & Anr.; and, O.A. No. 2082/2023, titled Ms. Neha v. Union of India & Anr., whereby the learned Tribunal allowed the said O.A.s filed by the respondents herein, with the following directions:

"35. Therefore, we allow the Original Application with following order(s) and directions: -

(i) We hold and declare the engagement of the applicant as Stenographer Grade-D on ad-hoc/contract basis with intermittent break, as arbitrary and violative of the provisions of Articles 14 and 16 of the Constitution of India;

(ii) Consequently, we direct the competent authority amongst the respondents to pass an order for the regular appointment of the applicant as Stenographer

Grade-D with effect from the date of her initial appointment/engagement i.e. 22.11.2012.

(iii) To fix the pay of the applicant as a regular Stenographer Grade-D on 22.11.2012 and grant annual increment(s) asadmissible, and also to consider her for promotion/grant ofbenefits under ACP/MACP scheme(s) as per the extant rulesand instructions in this regard; and further to award her other entitlements such as leave, medical cover etc; besides the rest of the consequential benefits arising out of this order.”

2. Since all three petitions are based on similar facts and circumstances, and raise common questions of facts and law, they are being considered together. For the sake of brevity, reference will be made to the facts of W.P. (C) 15405/2022.

BRIEF FACTS:

3. On 23.07.2001, the Department of Personnel and Training (DoPT) issued an Office Memorandum (OM) stating that no appointment shall be made on an ad-hoc basis from the open market. In spite of the same, in the year 2012, the learned Central Administrative Tribunal (CAT) requisitioned suitable candidates through the Directorate of Employment for filling up the post of Stenographer Grade-D in the pay scale of PB-1 (Rs. 5200–20200) with Grade Pay of Rs. 2400/-, on an ad-hoc basis.

4. The names of the respondents were sponsored by the Directorate of Employment, Government of India, New Delhi. A trade test and interview of the respondents was conducted along with other candidates. Upon being duly selected, an offer of appointment was issued to the respondent Shilpi Gupta vide letter dated 12.11.2012 (to Ms. Arti on 25.03.2014; and to Ms. Neha on 21.03.2014), appointing her to the post of Stenographer Grade-D, in the Pay Band of Rs. 5200–20200 with Grade Pay of Rs. 2400/-, purely on an ad-hoc basis for a period of three months from the date of her taking over the charge of the said post or until a regular appointment is made, whichever is earlier. It was mentioned that the ad-hoc appointment would not bestow upon her any claim for a regular appointment, and the service rendered by her would not be counted for the purpose of seniority/eligibility for the next higher grade. Therefore, the respondents were appointed through a legally valid process of selection and not through any backdoor entry or illegally. Moreover, at that time, the Recruitment Rules did not mandate that such selection be made only through the Staff Selection Commission (SSC).

5. With the artificial breaks in service, the service of the respondents continued for over ten years, until, vide Order dated 27.02.2023, the services of the respondents were discontinued, and they were then re-appointed as Stenographer Grade-D on a contractual basis, with a fixed remuneration of Rs.40,000/- per month instead of the regular pay scale, for a period of six months or until further orders, whichever was earlier.

6. Aggrieved by the change of the terms of the appointment, the respondents filed an Original Application(s) before the learned Tribunal.

7. In the O.As., the respondents inter-alia contended, and which was not denied by the petitioners, that in the past, the petitioners had regularized the services of several stenographers who were initially appointed on an ad-hoc basis.

8. In the additional affidavit filed before the learned Tribunal, the respondents further contended that 32 other employees, whose initial appointment/engagement was on an ad-hoc basis, were subsequently given the benefit of regularisation by the petitioners.

9. In response to the O.As., the petitioners, relying upon the terms of the initial appointment of the respondents, contended that the respondents cannot claim regularisation. It was submitted that as per the advisory issued by the Pay & Accounts Office, CAT, the petitioners, vide Office Order dated 27.02.2023 and 01.03.2023, disengaged the services of the respondents, and they were re-engaged to the same post on a contractual basis on a fixed remuneration of Rs.40,000/- in the public interest. The services of the respondents were further extended vide Office Order dated 28.08.2023. It was contended that the SSC has now forwarded the dossiers of 20 candidates for filling up the post of Stenographer Grade-D in the learned Tribunal, Principal Bench, however, since there are only 14 vacant posts, the services of the respondents are required to be disengaged.

10. As noted hereinabove, the learned Tribunal, vide the impugned Order dated 26.04.2024, allowed the O.As. filed by the respondents and directed the petitioners to appoint them with all consequential benefits with effect from the date of their initial appointment/engagement.

11. Aggrieved by the aforesaid order, the petitioners have filed the present writ petitions.

SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE PETITIONERS:

12. The learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate that the offer of appointment of the respondents clearly stated that they were appointed on an ad-hoc basis and that continuation of service will not bestow any right for regularization and their service may be terminated at any time without assigning any reason. Since the appointment of Stenographers through SSC was expected, their services were extended from time to time, however, this would also not change the nature of their ad-hoc appointment.

13. He submits that although the SSC has forwarded the Dossiers of 20 candidates for filling up the posts of stenographer, however, there are only 14 vacancies because of which the services of the respondents were disengaged. He reiterates that the respondents cannot claim regularization of their appointment only because of the long passage of time. He further submits that a similar

direction of regularization had been passed by the learned Central Administrative Tribunal, Allahabad Bench vide Order dated 05.03.2021 in O.A. no.330/1451/2017, titled Mohd. Rashid & Anr. v. Union of India & Ors., however, the High Court of Judicature of Allahabad, in the Writ petition filed challenging the same, being Writ-A No.18147/2021, titled Union of India & two others v. Mohd. Rashid & Anr., disposed of the said writ petition by merely directing that the respondent/original applicant shall be reinstated in service until the appointment/selection of a regular candidate for the post of Stenographer is made. Therefore, the respondent therein was also not granted the relief of regularization.

14. He submits that the learned Tribunal failed to appreciate that, if the impugned order is to be implemented, the appointment of the respondents would be over and above the sanctioned strength in the learned Central Administrative Tribunal (CAT) wherein out of four vacancies, the offer of appointment to three candidates nominated by the SSC in outlying Benches has been issued and their joining is awaited.

15. He submits that the continuation of an ad-hoc appointee for a long period with intermittent breaks, does not create a vested right for regularisation. In support, he places reliance on Dr.(Mrs.) Chanchal Goyal v. State of Rajasthan, (2003) 3 SCC 485, and J&K Public Service Commission & Ors. v. Dr.Narinder Mohan & Ors., (1994) 2 SCC 630.

16. He submits that there was no change made in the service condition of the respondents. Though they were initially stated to have been appointed on an ad-hoc basis, their appointment was in fact contractual in nature. It was merely a stop-gap arrangement and continued only because of a gap between the sanctioned strength and the availability of regularly appointed personnel to the post of Stenographer. In fact, two of the three respondents had failed to qualify for the stipulated skill test but were still given the offer of appointment due to administrative exigencies. He submits that the respondents were given only the minimum of the pay scale, without increments and without other benefits such as CGHS facility, LTC, etc.. Their APARs were also not recorded, unlike those of regular employees.

17. He submits that the respondents cannot be given the benefit of regularization of other employees, as in those cases, they were not to be appointed through the SSC.

18. He submits that the respondents never qualified in the open examination held by SSC for direct recruitment, though many opportunities to appear in the examination came their way.

19. He submits that the impugned order is, therefore, liable to be set aside.

SUBMISSIONS ON BEHALF OF THE LEARNED SENIOR COUNSEL FOR THE RESPONDENTS:

20. On the other hand, the learned senior counsel for the respondents reiterates that the respondents were appointed through an open selection process after obtaining the approval of the Chairman, CAT, and have been continuing in service since then.

21. She submits that the respondents were appointed in accordance with the 1989 Recruitment Rules, which did not mandate the candidates to be nominated by the SSC. Accordingly, the names of the respondents were nominated by the Employment Exchange.

22. She reiterates that similarly situated persons who were earlier appointed on an ad-hoc basis, have been regularized by the petitioners.

23. She places reliance on the Judgments in *Jaggo v. Union of India & Ors.*, 2024 SSC OnLine SC 3826; *Shripal & Anr. v. Nagar Nigam Ghaziabad*, 2025 SSC OnLine SC 221; and on *Union of India by Government of Puducherry & Anr. v. K. Velajagan & Ors.*, 2025 SCC OnLine SC 837.

24. She submits that the relief of regularization has been rightly granted by the learned Tribunal.

25. She submits that the reliance of the petitioners on the Judgment of the Allahabad High Court is ill-founded, as it is distinguishable on facts.

ANALYSIS AND FINDINGS:

26. We have considered the submissions made by the learned counsels for the parties.

27. At the outset, we note that the respondents were appointed based on the nominations by the Employment Exchange and after undergoing a trade test and interview. Though they were initially appointed for a period of three months, their services continued until the filing of the O.A. by them in the year 2023, that is, for a period of 9 to 10 years, albeit with artificial breaks. During their period of service, no complaints or adverse reports regarding their performance have been brought to our notice by the petitioners.

28. In similar circumstances, this Court in *Deen Bandhu Garg & Ors. v. South Delhi Municipal Corporation & Ors.*, 2025:DHC:2591-DB, after considering the Judgment of the Supreme Court in *State of Karnataka v. Uma Devi*, (2006) 4 SSC 1, as well as *Jaggo* (supra), *Shripal* (supra), and *K.Velajagan* (supra), upheld the order of the learned Tribunal granting the relief of regularization to the employee/Assistant Teacher (Primary) in the MCD due to long, uninterrupted service, observing as under:

"27.9 From the above passages, the following propositions emerge:

(i) Unless the appointment of candidates was in terms of the relevant rules and after proper competition amongst qualified persons, no right would be conferred on the appointee.

- (ii) A contractual appointment came to an end with the expiry of the contract.
- (iii) An appointment on daily wages or casual basis came to an end when it was discontinued.
- (iv) Mere long continuance in service after temporary or casual appointment would not confer, on the appointee, a right to regularization.
- (v) Unless the recruitment was made regularly and in terms of the constitutional scheme, High Courts, under Article 226 of the Constitution of India were ordinarily not to issue directions for absorption, regularization or grant of permanence.
- (vi) Accepting the submission that long continuance in service would itself confer a right to regularization would amount to permitting the State to perpetuate illegality in the matter of public employment, which would be a negation of the constitutional scheme adopted by the people of India. It could not be said that the employees had been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution of India.
- (vii) In this context, one had to distinguish between illegal appointments and irregular appointments, in the manner set out in para 53 of the report.

27.10 Thus, the decision in *Uma Devi*, holistically read, was obviously intended to do away with the evil of illegal appointment in violation of the constitutional scheme or the applicable rules, without any proper selection and consideration of all persons similarly situated.

27.11 It does not appear either possible or proper to read *Uma Devi* as laying down an absolute proposition, that long continuance in service after temporary, ad hoc or casual employment would not give rise to a regularization even if the initial appointment was made after a proper selection process and comparative consideration of the merits of rival candidates to the post. Expressed otherwise, if the post was a sanctioned post, and selection to the post took place after inviting applications and consideration of the rival merits of the applicant candidates, it would not be proper to deny such candidates, after having served for long period of time, a right to regularization merely on the ground that their initial appointment was not "regular" in nomenclature.

27.12 One may view this concept differently as well. If vacancies against sanctioned posts are available, and applications are invited for persons who desired to be appointed against such posts, and a comparative consideration of the rival merits of the applicants was undertaken, the State could not, by merely calling the appointment ad hoc, temporary, casual or contractual, deny such appointees the right to regularization against the posts, especially where their appointments were continued for extended periods of time.

27.13 Uma Devi, at any rate, in our view, cannot be said to be sanctioning such a course of action."

29. The Division Bench then outlined the principles emerging from the Judgment in Jaggo (supra), as under:

"28.7 From the afore-extracted passages from Jaggo, the following principles emerge:

(i) The Supreme Court held that the long and uninterrupted service rendered by Jaggo etc., extending well beyond 10 years could not be brushed aside by levelling their initial employments as part time or contractual. Importantly, the Supreme Court held that the "essence of their employment" had to be "considered in the light of their sustained contribution, the integral nature of their work and the fact that no evidence suggests their entry was through any illegal or surreptitious route". This passage denotes an important development in the law, by which the Supreme Court has effectively lifted the veil of the nomenclature conferred to the appointment of the employees. The Supreme Court had held that it is not the nomenclature of the appointment which is of relevance, but the nature of the service rendered by the employees. The nature of the service by the employees would in turn determine the actual nature of their employment. The Supreme Court has identified, for this purpose, the relevant considerations as being (a) the sustained contribution of the employees, (b) the integral nature of their work and (c) whether any evidence exists to indicate that their entry was through any illegal or surreptitious route.

(ii) Where the employees had been engaged in performing essential duties, indispensable for the day to day functioning of the office, on a daily and continuous basis over an extended period, the responsibilities undertaken by the employees had to be treated as akin to those typically associated with sanctioned posts.

(iii) In such circumstances, it could not be sought to be contended by the establishment that the posts held by the employees on ad hoc/part time/casual basis were not regular posts, as the nature of work rendered by the employees was perennial and fundamental to the functioning of the offices. Significantly, the Supreme Court holds that "the recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled".

(iv) Subsequent outsourcing of the same tasks to private agencies fortified the conclusion that the services rendered by the employees were inherently needed by the establishment, and that the work undertaken by them was neither temporary nor occasional.

(v) Consistent satisfactory performance, by the employees, over a long period of time, further solidified their claim for regularization.

(vi) Where the job rendered by the employees was menial in nature, such as

cleaning, sweeping, dusting and gardening, the establishment could not seek to contend that the employees did not possess the necessary educational qualifications for the post. The educational criteria were never central to the engagement by the employees or to the performance, by them, of their duties. Insisting on formal educational requirements would amount, in such circumstances, to "an unreasonable hurdle".

(vii) Where, in such circumstances, the employees' roles were essential and indistinguishable from the roles of other regular employees, the employees had rendered sustained service over extended period and there was no adverse report regarding their performance, equitable treatment and regularization of the services of the employees was warranted. Denial of such regularization amounted to manifest injustice, and required rectification.

(viii) The decision in Uma Devi did not intend to penalize employees who had rendered long years of service, fulfilling ongoing and necessary functions of the establishment. It was intended to prevent back door entries and illegal appointments, which circumvented constitutional requirements.

(ix) Where the appointments were not illegal, but possibly "irregular" and where the employees had rendered sanctioned functions continuously over a long period, the need for a fair and humane resolution became paramount. Thus, held the Supreme Court, "prolonged, continuous and unblemished service performing tasks inherently required on a regular basis (could), over the time, transform what was initially ad hoc or temporary into a scenario demanding fair regularization".

(x) Where the initial appointment of the employee was termed "temporary", but the employee had performed the same duties as performed by regular employees over a considerable period, procedural formalities could not be used to deny regularization by service³⁵.

(xi) The Court was required to look beyond the surface label of the work being undertaken by the employee and to consider the realities of employment, which included continuous, long term service, indispensable duties and absence of any mala fides or any illegalities in their appointments. Refusing regularization to such employees, merely because the original terms of their employment did not explicitly provide for regularization, or because an outsourcing policy had been belatedly introduced, would be contrary to principles of fairness and equity. (xii) Among the ways in which such temporary employees were exploited were

(a) misuse of "temporary" labels,

(b) arbitrary termination,

(c) lack of career progression,

(d) using outsourcing as a shield, and

(e) denial of basic rights and benefits

(xiii) Uma Devi was intended to curtail the practice of back door employments and ensure that appointments adhere to constitutional principles. It was regrettable that Uma Devi was being interpreted and misapplied to deny legitimate claims of long serving employees. The judgment distinguished between "illegal" and "irregular" appointments. It provided for regularisation, as a one-time measure, of employees who were engaged in duly sanctioned posts, and had served continuously for more than 10 years, but whose initial appointment was "irregular", in that it lacked adherence to procedural formalities."

30. The Division Bench analysed the findings of Shripal (supra), as under:

"29.7 Thus, the Supreme Court, in para 15 of its report, reiterated the view adopted by it in Jaggo. Particularly with respect to the case of Shripal etc., the Supreme Court held that,

- (i) the work of upkeep of parks, horticultural task and city beatification, undertaken by Shripal etc., were integral to GNN's municipal functions and was, therefore, inherently perennial, rather than sporadic or project based,
- (ii) the entitlement of Shripal etc to regularization could not be defeated by a mere ban on fresh recruitment, put in place by the State Government,
- (iii) by contracting, from Shripal etc., the same work as was being performed by regular gardeners and not adequately compensating them, the GNN had effectively engaged in an unfair labour practice,
- (iv) the principle of "equal pay for equal work" could not be casually disregarded when the workers had served for extended periods in roles resembling those of permanent employees,
- (v) long standing assignments, under the GNN's direct supervision, belied any notion that the employments of Shripal etc. were in the nature of short-term casual engagement,
- (vi) the reliance, by GNN, on the judgment in Uma Devi, was misconceived because
 - (a) Uma Devi distinguished between appointments which were illegal and those which were merely irregular,
 - (b) appointments which were merely irregular were eligible for regularisation on meeting certain conditions,
 - (c) Uma Devi could not be served as a shield to justify exploitative engagements persisting for years without legitimate recruitment and
 - (d) given the record which showed that there was contractor-based arrangement between GNN and Shripal etc., and a consistent need for permanent horticultural staff, the alleged ban on fresh recruitment could not justify indefinite daily-wage status or continued unfair practices,

(vii) Shripal etc. had continuously rendered services for several years, in some case for more than a decade,

(viii) Indian labour Law strongly disfavoured perpetual daily-wage or contractual engagements in circumstances where the work was permanent in nature, and

(ix) morally and legally, the workers who fulfilled ongoing municipal requirements year after year could not be dismissed summarily as dispensable, particularly where the engagement was not through a contractor. "

31. The Division Bench noted that in *K.Velajagan* (supra), the Supreme Court had upheld the order of the learned Tribunal granting the relief of regularization of appointment, even though the respondent therein had not been called upon to participate in a regular selection process.

32. A plea similar to the one raised before us, which is, that the respondents did not participate in a regular selection process and, therefore, were not entitled to regularization, was also rejected by the Division Bench by observing as under:

"31.8.3 *Jaggo and Shripal* do not carve out any such exception, and we certainly cannot read exceptions into the law enunciated by the Supreme Court, thereby narrowing its scope and amplitude. The right to regularization, that flows from *Jaggo and Shripal*, flows from the initial appointment being after an advertisement followed by a selection process, and continued unblemished service for a number of years. Additionally, in the case of the applicants before us, the appointment was after application in response to an advertisement duly published in the national dailies, and was after the applicants had been subjected to a competitive selection process. Further, the appointments were against sanctioned posts. *Jaggo and Shripal* hold, in clear and unexceptionable terms, that, in such a case, the characterization of the appointment as ad hoc or contractual would amount to an unfair labour practice, which the law cannot tolerate. The right to regularization, that enures as a result of several years of unblemished continuous service in work that is clearly perennial in nature, or part of the essential and inalienable functions of the employer – the MCD in the present case – is absolute, and cannot be eviscerated by holding regular selections in the interregnum. If the applicants had participated in the said selections and succeeded, so be it; that they did not, however, cannot detract from their right to regularization which arises out of the several factors outlined above. Moreover, in the present case, it is an acknowledged case that, even after making regular selections, the need for the applicants continued, as the number of regular appointees were not sufficient to discharge the work that was required to be discharged. The need for the applicants, and their services, therefore, continues.

31.8.4 Ms Chatterjee's emphasis on the fact that a few regular selections had taken place, in the interregnum, in which the applicants did not choose to participate, therefore, cannot detract, in our view, from their right to regularization, flowing from the enunciation of the law in *Jaggo and Shripal*. "

33. The Division Bench, on the facts of the case before it and applying the above principles, granted relief of regularization by observing as under:

“35.2 To reiterate, inasmuch as

(i) the applicants had been appointed pursuant to an advertisement duly published in the newspapers,

(ii) the advertisement required candidates to possess all requisite qualifications prescribed for the posts in question,

(iii) the candidates were also required to fulfil the necessary age stipulations,

(iv) the candidate were subjected to an open selection process,

(v) the appointments were against duly sanctioned posts,

(vi) the applicants had continued in service for several years – in fact for decades – without any complaint at any point of time,

(vii) the service was uninterrupted and continuous except for small breaks during summer vacations,

(viii) the nature of the work undertaken by the applicants were perennial and part of the unalienable sovereign functions of the Municipal Corporations, and

(ix) there was no distinction between the nature of the work undertaken by the applicants and that undertaken by other “regularly appointed” teachers, the applicants cannot be denied the benefit of the decisions in Jaggo and Shripal.”

34. The above parameters also apply to the respondents herein. They have been appointed pursuant to the requisition of nominations from the Employment Exchange and after being subjected to an open selection process. It is not the case of the petitioners that they did not possess the requisite qualifications prescribed for the post in question. The appointments were made against duly sanctioned posts, and the respondents have continued, except for artificial breaks, for a long period of time. There is no distinction in the nature of work undertaken by the respondents and those by other regularly appointed Stenographers. Other stenographers have earlier been regularized in service, with the benefit of their service being granted from the date of their ad-hoc appointment.

35. In view of the above, we find no infirmity in the direction issued by the learned Tribunal, directing the petitioners to consider the respondents for regularization of their service with consequential benefits.

36. As far as the plea of the learned counsel for the petitioners that if the respondents are to be regularized in service, it would exceed the sanctioned strength, we again do not find any merit in the same.

37. The petitioners themselves have submitted that there are four vacancies.

Though an offer of appointment has been made to three candidates nominated by the SSC in outlying Benches, their joining is still awaited. These posts, therefore, have not yet been filled. Even otherwise, the persons who have been nominated by the SSC can be adjusted against future vacancies or by creating supernumerary posts.

38. As far as the Judgment of the High Court of Allahabad in Mohd. Rashid (*supra*) is concerned, the High Court was considering a grievance of the respondents therein that although they had applied for appointment as per an advertisement stating that they would be entitled to a pay band and grade pay of the post of Stenographer, the appointment letter issued was on a contract basis with a fixed remuneration. The High Court agreed with the finding of the learned Tribunal that the terms of the appointment could not have been unilaterally altered by the petitioners. Thus, there was no claim for regularization before the High Court. The said judgment, therefore, cannot come to the aid of the petitioners herein.

39. For the reasons recorded hereinabove, we find no merit in the present petition. The same is, accordingly, dismissed. All the pending applications are also dismissed being infructuous.

40. There shall be no orders as to costs.