

<ITEM NO.1A
(FOR JUDGMENT)

COURT NO.3

SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 4935 OF 2006

GHANSHYAM SHARMA & ORS.

Appellant (s)

VERSUS

STATE OF RAJASTHAN & ORS.

Respondent(s)

WITH Civil Appeal NO. 4936 of 2006
Civil Appeal NO. 4937 of 2006
Civil Appeal NO. 4938 of 2006

Date: 01/12/2010 These Appeals were called on for judgment today.

For Appellant(s) M/S. Parekh & Co.,Adv.

Ms. Pratibha Jain,Adv.

Ms. N.Annapoorani,Adv.

For Respondent(s)

Mr. Milind Kumar,Adv.

Ms. N.Annapoorani,Adv.

Mr. Aruneshwar Gupta,Adv.

M/S. Parekh & Co.,Advs.

Hon'ble Mr. Justice R.V. Raveendran
pronounced the judgment of the Bench comprising of
His Lordship and Hon'ble Mr. Justice Mukundakam
Sharma.

Civil Appeal Nos.4935/2006 and 4938/2006 are
dismissed and Civil Appeal Nos.4936/2006 and
4937/2006 are allowed in terms of the signed
reportable judgment.

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(O.P. Sharma) (Savita Sainani)
Court Master Court Master
(Signed reportable judgment is placed on the file)

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REPORTABLE

THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4935 OF 2006

Ghanshyam Sharma & Ors.

... Appellants

Vs.

State of Rajasthan & Ors.

... Respondents

And

Suresh Kumar Sharma

... Appellant

Vs.

State of Rajasthan & Ors.

... Respondents

With

CIVIL APPEAL NOS. 4937/2006 and 4938/2006.

J U D G M E N T

R.V.RAVEENDRAN, J.

CIVIL APPEAL NOS, 4935/2006 and 4936/2006.

These appeals relate to the claim of the Lower Division Clerks/Upper Division Clerks, who were appointed as regular Stenographers (referred to as "special promotees") on 25.4.1992, under proviso (5A) to Rule 5 of the Rajasthan Secretariat Ministerial Service Rules, 1970 (for short 'the rules'), for retrospective appointment from 1978-1979 and the consequential seniority dispute between them and the directly recruited stenographers. The appellants in CA 4935/2006 are the special promotees. The appellants in CA No.4936/2006 are the direct recruits.

2. Rule 5 of the Rules related to method of recruitment and provided that recruitment to the service after the commencement of the rules shall be made by the following methods:-

"(a) direct recruitment as laid down in column No.3 of the Schedule I in accordance with Part IV of the Rules;

(b) promotion as laid down in column No.3 of the Schedule I in accordance with Part V of the Rules."

Entry (3) in Schedule I related to the post of Stenographers. The third column of the said Entry showed

the sources of recruitment with percentages as follows:

"50% by direct recruitment and 50% from amongst Lower Division Clerks and Upper Division Clerks of the Rajasthan Secretariat according to proviso (5) of Rule 5."

Proviso (5) to Rule 5 (referred in Entry (3) of Schedule

I) read as follows:

"that recruitment to fill 50% of the vacancies of Stenographers in a particular period of recruitment shall be made by selection from amongst such of the Lower Division Clerks/Upper Division Clerks of the Secretariat who have passed the qualifying examination prescribed for the Stenographers in these Rules subject to

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availability of such persons;

their selection shall, notwithstanding anything contained in Part V of these Rules, be deemed to be promotion with effect from the date of their selection. If in any year, the requisite number of such candidates is not available the remaining vacancies shall also be filled by direct recruitment through competitive examination according to the procedure laid down in Part IV."

3. Proviso (5A) was introduced in the Rules by way of amendment to Rule 5, vide notification dated 15.3.1978 and read as follows:

"(5A) that nothing in these Rules shall preclude the appointing authority from making substantive appointment to the posts of stenographer subject to the availability of the vacancies from amongst the persons who were holding the post of stenographer or steno typist either in temporary or a hoc capacity in the Rajasthan Secretariat on 5.5.1970 or 15.9.1972 and whose work is found satisfactory by the appointing authority and who held either of the following qualifications and experience on such date--

(a) Graduate from a University established by Law in India with Shorthand as one of the subject or holder of a diploma in Shorthand; or

(b) Passed the Higher Secondary Examination from the Rajasthan Board of Secondary Education or an equivalent examination with Shorthand as one of the subjects and must have put in two years service as Stenographer or Steno typist excluding breaks, if any; or

(c) Those Stenographers or Steno typists who have put in two years' service as such on 15.9.1972 in the Rajasthan Secretariat excluding breaks, if any and who are certified by the Appointing Authority to have worked satisfactorily and have also passed competitive

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examination mentioned in Part II of Schedule II either in English Shorthand or Hindi Shorthand apart from passing the English and Hindi typewriting tests. x x x"

By Government order dated 19.6.1978 the existing Lower Division Clerks/Upper Division Clerks who were working or required to work against the sanctioned post of Stenographers on purely ad-hoc basis were allowed special pay of Rs.30 per month, provided they possessed one of the following qualifications either in English or Hindi:

"(i) pass in Higher Secondary Examination or degree of a University established under law with Stenography as one of the subjects.

(ii) pass in the examination in stenography held by the HCM State Institute of Public Administration or Bhasha Vibhag.

(iii) a diploma in stenography from Industrial Training Institute.

(iv) completion of training organized by the Organization & Method Department and also passing the test, if any, held by the Organization & Method Department."

The grant of special pay was further subject to the following conditions:-

"(i) The appointing authority certifies in the order sanctioning special pay to the effect that Stenographer regularly recruited through Rajasthan Public Service Commission is not available.

(ii) The special pay shall be granted to the

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lower division clerk till a Stenographer recruited through Rajasthan Public Service Commission is not made available in the Department."

4. Proviso (5A) was amended several times postponing

the cut off date. The said proviso as amended on 23.5.1979

reads as follows:

"(5A) that nothing in these Rules shall preclude the appointing authority from making substantive appointment to the post of Stenographer or the steno-typist, as the case may be, subject to the availability of vacancies from amongst the persons who were holding the post of Stenographer either in temporary or ad hoc capacity in the Rajasthan Secretariat on or before 31.7.1977 and whose work is found satisfactory by the appointing authority and who fulfilled either of the following qualifications on such dates. x x x x"

Proviso (5A) was again amended on 23.1.1985 and the proviso as amended read as follows:

"(5A) that nothing in these Rules shall preclude the appointing authority from making substantive appointment to the post of Stenographer or the steno-typist, as the case may be, subject to the availability of vacancies from amongst the persons who were holding the post of Stenographer either in temporary or ad hoc capacity in the Rajasthan Secretariat on or before 23.5.1979 and whose work is found satisfactory by the appointing authority and who fulfilled either of the following qualifications on such date. x x x x"

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Proviso (5A) was thereafter amended on 18.9.1987, the amendment being deemed to have been made with effect from 23.1.1985. The amended proviso (5A) read as under :

"(5A) that nothing in these Rules shall preclude the appointing authority from making substantive appointment to the post of Stenographer or the steno-typist, as the case may be, subject to the availability of vacancies from amongst the persons who were holding the post of Stenographer either in temporary or ad hoc capacity in the Rajasthan Secretariat on or before 23.5.1979 and also continuously holding the post on 23.1.1985 and whose work is found satisfactory by the appointing authority and who fulfilled either of the following qualifications on such date. x x x x"

5. Due to shortage of Stenographers in the Secretariat

Service, the special promotees, who were working as LDCs/UDCs, were appointed as Stenographers on ad hoc basis, on various dates between 17.3.1978 and 5.5.1979, and were paid the special pay of Rs.30 per month from 19.6.1978 onwards. On 29.2.1980, Rajasthan Public Service

Commission ('RPSC' for short) invited applications for 86 posts of stenographers. After conducting an examination, RPSC appointed several stenographers by way of direct recruitment. The special promotees, who were then working as ad-hoc stenographers, applied in response to the said advertisement and participated in the examination, but were not successful and were not selected. As and when the directly recruited stenographers were given postings, the

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special promotees working as ad-hoc stenographers were reverted from the post of Stenographers to their substantive posts as LDCs/UDCs in the years 1981 and 1982.

6. When proviso (5A) was amended on 23.1.1985 providing that persons who were holding the post of Stenographer either in temporary or adhoc capacity in Rajasthan Secretariat on or before 23.5.1979 could be appointed on substantive basis, the special promotees (who had been reverted as LDCs/UDCs in 1981-82) expected that they will be considered for substantive appointment as Stenographers, as they fulfilled the requirements proviso (5A). But when proviso (5A) was further amended on 18.9.1987 clarifying that only those who were working as Stenographers on or before 23.5.1979 and who continued to hold the post as on 23.1.1985, were eligible for consideration under proviso (5A), they felt that their "right" to be considered for appointment as Stenographers on substantive basis was taken away, as they were not working as ad-hoc stenographers upto 23.1.1985 though they were holding the post of Stenographer on adhoc basis on

23.5.1979. Therefore some of the special promotees approached the Rajasthan High Court and filed WP No.2116/1989 challenging the amendment dated 18.9.1987 to proviso (5A) to Rule 5 of the Rules. The said writ petition was allowed by a Division Bench of the Rajasthan

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High Court on 7.8.1991 striking down the amendment dated 18.9.1987 to proviso (5A) as being unconstitutional. As a consequence, the High Court directed the State Government to consider the writ petitioners (promotees) who were working as LDCs/UDCs for substantive appointment as Stenographers in accordance with the Rules, as amended on 23.1.1985 and if as a result of such consideration, they were found suitable, they should be appointed as Stenographers with consequential benefits.

7. In pursuance of the said order dated 7.8.1991, the State Government by order dated 25.4.1992 appointed 27 LDCs/UDCs (who were working as steno-typists as on 23.5.1979 on special pay of Rs.30 per month), to the post of steno-typists under proviso (5A) to Rule 5 as amended by notification dated 23.1.1985, with a note that separate orders will be issued in regard to their seniority and other benefits. By another order dated 25.7.1994, it was noted that two of appointees had opted to continue in their original position; and that the remaining 25 candidates appointed on 25.4.1992 would be considered as regularly appointed to the post of Stenographer with effect from 1.4.1985 and they will be entitled to notional fixation of salary from 1.4.1985 to the date of taking over charge. It was further provided that the seniority of the said 25 employees shall be fixed in accordance with

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Rule 29 of the Rules and they shall be placed below the persons selected by the RPSC in 1980 and above the persons

selected by RPSC in the year 1985. This was followed by another order dated 15.11.1995 making 22 of the promotees (including the appellants in CA No. 4935/2006) permanent on the post of stenographers with effect from 1.4.1985.

8. The order dated 15.11.1995 gave rise to the following two writ petitions:-

(i) Civil Writ petition No. 2930/1995 by the 22 special promotees praying that their appointment to the post of Stenographers should be made from the respective dates of their initial appointment in the year 1978-1979 against vacant posts as per proviso (5A) to Rule 5 (instead of 1.4.1985) and they should be assigned seniority with effect from such dates with all consequential benefits;

(ii) Civil Writ Petition No. 4663/1996 by four directly recruited stenographers (appellants in CA No.4936/2006) seeking quashing of the notification dated 23.1.1985 amending proviso (5A), and the order dated 15.11.1995 by which 22 special promotees were made permanent in the post of stenographers with effect from 1.4.1985. They also sought drawing up of a seniority list of the Stenographers afresh after placing them above those persons whose names

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were shown in the seniority list dated 15.11.1995.

9. A learned Single Judge by order dated 21.10.2002 allowed C.W.P. No. 2930/1995 filed by the special promotees and dismissed C.W.P. No. 4663/1996 filed by the direct recruits. He directed the State Government to implement the order dated 7.8.1991 in CWP No.2116/1989 and promote the clerks who were appointed in 1978 or 1979 temporarily or on ad-hoc basis, as Stenographers from the date of their initial appointment in 1978 and 1979 against

vacant substantive posts and assign seniority to them as Stenographers from the respective dates of initial appointments in 1978 and 1979.

10. The said order dated 21.10.2002 in CWP No.2930/1995 was challenged in following three special appeals:- (i)

CSA No. 1038/2002 by the four direct recruit stenographers; (ii) CSA No. 79/2003 by the State of Rajasthan; and (iii) CSA No. 454/2003 by other direct

recruits (Govind Ram Ailani and others). The four direct recruits (appellants in CA No.4936/2006) also filed CSA No. 1039/2002 against the dismissal of WP No.4663/1996.

All these four appeals were disposed of by the impugned common judgment dated 19.1.2005 by a Division Bench of the Rajasthan High Court. The division bench held that the

special promotees who were appointed as Stenographers

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after 1.4.1985, that is in the year 1992 were not entitled to seniority from 1978 and 1979, as no vacancies were available after the direct recruitment in 1981. Therefore

the division bench directed the State Government as follows: (a) to assign seniority to the direct recruits

from the respective dates of their appointment; (b) not to assign special promotees appointed as Stenographers in the year 1992 under proviso (5A), seniority prior to 1.4.1985;

and (c) if any directly recruited stenographer was selected and appointed after 1.4.1985 will be junior to the special promotees appointed under proviso (5A) with effect from 1.4.1985.

11. The said order of the division bench dated 19.1.2005 is challenged in these appeals as stated above.

11.1) Civil Appeal No.4935/2006 is filed by the special promotees aggrieved by the finding that stenographers who have selected and appointed under proviso (5A) in 1992 could not be treated as having been appointed prior to

1.4.1985 and that they will be senior only to the direct recruits who were selected and appointed after 1.4.1985. The special promotees submitted that they were not claiming any monetary benefit on the basis of their ad hoc service, but were only claiming that they were entitled to be appointed on regular basis from the date of their initial ad hoc or temporary appointment having regard to proviso (5A) to Rule 5, as the object of the said proviso was to absorb all LDCs/UDCs who were appointed as

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stenographers on ad-hoc basis into substantive vacancies, as regular stenographers from the date they were appointed on ad hoc basis.

11.2) Civil Appeal No.4936/2006 is filed by the four direct recruits who were selected in 1981, 1985 and 1989. They are aggrieved by the decision of the Division Bench that the special promotees are entitled to seniority with effect from 1.4.1985. They contend that the wording of proviso (5A) to Rule 5 does not authorize or enable retrospective appointments; they contended that proviso (5A) did not provide for retrospective appointment; that the said proviso only enabled the appointing authority to appoint prospectively to existing vacant posts, persons who were working as Stenographers either on temporary or ad hoc basis and whose services were satisfactory and who possessed the prescribed qualifications; and that as appointments were made on 25.4.1992 it could be effective only from 25.4.1992 and not from any earlier date. They contended that as all of them were appointed as direct recruits prior to 1992, (that is in the years 1981, 1985 and 1989), they had to be treated as senior to the 22 special promotees who were appointed on 25.4.1992.

12. Therefore, the questions that arise for our consideration are :

(i) Whether the special promotees who were appointed on 24.5.1992 under proviso (5A) to Rule 5 in pursuance of the decision of the High Court dated 7.8.1991 ought to have been appointed with retrospective effect from the years 1978 and 1979 when they were appointed on ad hoc basis with special pay (as claimed by the promotees)?

Or

(ii) Whether the appointment of special promotees under proviso (5A), could be only prospective from the date of

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their appointment (25.4.1992) and not from any retrospective date, (as contended by the Direct Recruits) ?

Or

(iii) Whether the orders dated 15.11.1995 making the LDCs/UDCs appointed as stenographers on 25.4.1992 permanent in the post of stenographers with effect from 1.4.1985 is valid and does not call for interference?

13. The order dated 7.8.1991 in CWP No. 2116/1989 attained finality as challenge thereto was rejected by this Court on 9.12.1991. The issue decided by the High Court in order dated 7.8.1991 was that the amendment dated 19.9.1987 to proviso (5A) adding the words "and also continuously holding the post on 23.1.1985" was invalid and consequently the said addition was quashed. Therefore we have to proceed on the basis that proviso (5A) should be read without the 1987 amendment, that is as follows:

"(5A) that nothing in these Rules shall preclude the appointing authority from making substantive appointment to the post of Stenographer or the steno-typist, as the case may be, subject to the availability of vacancies from amongst the persons who were holding the post of Stenographer either in temporary or ad hoc capacity in the Rajasthan Secretariat on or before 23.5.1979 and whose work is found satisfactory by the appointing authority and who fulfilled either of the following qualifications on such date."

Proviso (5A) gives a clear indication that it could
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be invoked only in regard to temporary or ad-hoc stenographers who were working as such on the date of consideration under the said proviso in addition to the requirement that they should have held such temporary or ad-hoc position on or before 23.5.1979. This is because proviso (5A) uses the expression 'whose work is found satisfactory' and not 'whose work was found to be satisfactory'. As the order dated 7.8.1991 of the High Court had attained finality, we do not propose to disturb the validity of appointment of the special promotees under order dated 25.4.1992, even though their eligibility was doubtful as they had ceased to hold such temporary or ad-hoc position from 1981-82. Be that as it may.

14. The order of the High Court dated 7.8.1991 was construed by the State Government as directing

consideration of the special promotees for substantive appointment as stenographers, if they were in service on or before 23.5.1979 and their work was satisfactory and they possessed the qualifications prescribed in that proviso.

15. The special promotees who were earlier working as LDCs and UDCs were assigned to work against sanctioned vacant posts of stenographers on ad hoc basis in the year 1978-79 to 1981-82 pending regular recruitment by granting

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them a special pay of Rs.30/-. When they were so required to work as stenographers on ad hoc basis with special pay of Rs.30/- in the years 1978 and 1979, proviso (5A) to Rule 5 was inapplicable to them, as at that time, proviso (5A) empowered the appointing authority to make substantive appointment to the post of stenographers against available vacancies, only from among those who were holding the post of stenographers either in temporary or ad hoc capacity in the Rajasthan Secretariat on or before 31.7.1977. As none of the 22 special promotees was holding the post of ad hoc stenographers on 31.7.1977 and all were appointed as ad-hoc stenographers only between 17.3.1978 and 5.5.1979, they could not be considered under proviso (5A) for appointment on regular basis. As they were required to work as stenographers purely on ad hoc basis from the years 1978 and 1979, pending regular recruitment and the regular recruitment was in fact done by the Public Service Commission in pursuance of advertisement dated 29.2.1980, they were all reverted from the post of ad-hoc stenographers to their original positions as LDCs and UDCs in the years 1981-82. As noticed above these 22 special promotees who were working as ad-hoc stenographers in 1980, applied for direct recruitment against the advertisement dated 29.2.1980, but

none of them was successful in the examinations and consequently were not appointed against the direct

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recruitment vacancies filled by RPSC. Significantly, none of the said 22 LDCs/UDCs working as ad-hoc stenographers who were reverted back as LDCs/UDCs in 1981-82 challenged their reversion and their reversion attained finality.

16. Only when proviso (5A) to Rule 5 was further amended on 23.1.1985, by changing the cut off date as 23.5.1979 instead of 31.7.1977, the special promotees became eligible for being considered for substantive appointment to the post of stenographers under proviso (5A). But proviso (5A) did not create a right in those who were working as ad-hoc/temporary stenographers on or before 23.5.1979 for consideration and appointment. As noticed above, the appointment to the post of stenographers was 50% by direct recruitment and 50% by promotion from amongst LDCs and UDCs. Proviso (5A) merely enabled the appointing authority, if he so desired or found it necessary to make substantive appointment as stenographer, anyone who was working as ad hoc/temporary stenographer in the Rajasthan Secretariat on or before 23.5.1979, subject to fulfillment of three conditions :

(i) that there were vacancies in the post of stenographers; (ii) that the appointing authority found that the work of such temporary or ad hoc stenographer was satisfactory; and (iii) that the ad hoc/temporary stenographer possessed the required qualifications on the

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date when he was considered for such substantive appointment. Proviso (5A) starts with the words "that nothing in these rules shall preclude the appointing authority for making substantive appointment to the post of stenographer". This shows that proviso (5A) is purely

an enabling provision which gives the option or liberty to the appointing authority to fill any vacant post of stenographer by making a substantive appointment of a person who had worked as ad-hoc/temporary stenographer on or before 23.5.1979 and possessed the prescribed qualification at the time of substantive appointment.

17. When the Division Bench of the High Court by order dated 7.8.1991 held that the amendment to proviso (5A) on 18.9.1987 was invalid, it only meant that the option or liberty became available to the appointing authority in terms of the said proviso as it stood before the amendment dated 18.9.1987 and that the requirement added by the said amendment that the ad hoc/temporary stenographer should also be continuously working till 23.1.1985 was deleted. The said order dated 7.8.1991 of the High Court by no stretch of imagination could be construed as mandating the appointing authority to consider all LDCs and UDCs who were working as ad hoc/temporary stenographers on or before 23.5.1979 for being regularly appointed as stenographers on substantive basis, even if they had ceased to hold such position in 1981-82. The regular appointments by way of promotion from amongst LDCs and UDCs was to be made in the normal course as per proviso (5) and not under proviso (5A). Proviso (5A) gave an additional option to the appointing authority to fill any vacancy in the post of stenographers by making substantive appointment as special cases or to meet unforeseen contingencies or to meet urgent requirements. This obviously means that the power under proviso (5A) could only be exercised with reference to the current needs and requirements when the consideration under proviso (5A) takes place and not with any retrospective effect.

18. Therefore, any appointment under proviso (5A) could be only by way of current appointment with prospective effect. The order dated 7.8.1991 could not be construed as directing otherwise. In the impugned order, the division bench of the High Court proceeded erroneously in assuming that the retrospective appointment of 22 LDCs/UDCs under proviso (5A) was valid if it was with effect from 1.4.1985. On a careful consideration of the wording of proviso (5A), we are of the view that it does not contemplate or provide for or authorize retrospective appointment thereunder. Therefore, we accept the contention of the direct recruits, reject the contention of the special promotees and set aside the decision of the

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Division Bench of the High Court insofar as it holds that the retrospective appointment could be made with effect from 1.4.1985.

19. In view of the above, we dismiss Civil Appeal No.4935 of 2006 filed by the special promotees and allow Civil Appeal No.4936 of 2006 and declare that the appointment of the special promotees as stenographers on 25.4.1992 was prospective with effect from that date and not with effect from any previous date (either in 1978-79 or from 1.4.1985). We direct the State Government to draw the revised seniority list accordingly.

Re : Civil Appeal Nos. 4937 and 4938 of 2006.

20. The appellant in CA No.4937 of 2006 was initially appointed as an LDC. By order dated 23.11.1972, he was appointed as an ad hoc Stenographer in the Education Department. He was taken on transfer, on the post of Stenographer in the Secretariat, temporarily, continuing his lien on his post in the parent department, vide order

dated 7.3.1977 and he joined the Secretariat on 23.3.1977.

His appointment as Stenographer was made substantive with effect from 15.3.1978 in his parent (Education) department

on 3.7.1979. By an order dated 19.10.1981 made under proviso (5A), his appointment on the post of Stenographer
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in the Secretariat was made substantive with effect from 23.5.1979.

21. The appellants in CA No.4938 of 2006 were initially appointed as LDCs. They were appointed as ad hoc Stenographers on 4.4.1977, 4.4.1977 and 11.4.1977. They were extended special pay by order dated 7.7.1978. They were appointed as regular stenographers with effect from the date of their initial appointment as stenographers, vide order dated 16.11.1981, under proviso (5A).

22. One Kripa Shankar Sharma who was directly recruited as a Stenographer in the Secretariat on 7.2.1981 and confirmed with effect from 25.8.1983 filed a writ petition (CWP No.1433 of 1983) for the following reliefs :

- (a) The notification dated 23.5.1979 which amended proviso (5A) by substituting the date 31.7.1977 in place of the dates 5.5.1970 or 15.9.1972 and the subsequent notification dated 9.6.1983 by which the date 31.7.1977 was substituted as 14.3.1978 in proviso (5A) were invalid.
- (b) For a declaration that the order dated 16.11.1981 by which the State Government appointed the six persons (including appellants 1 to 3 in CA No.4938/2006) as stenographers on regular basis from the date on which they were initially performing the duties as stenographers on ad hoc basis and the subsequent show cause notice dated 15.12.1981 proposing to confirm them in the post of stenographers with effect from 23.5.1979 and inviting objections to the said proposal from affected persons were invalid.

(c) For a declaration that the substantive appointment
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of ad hoc/temporary stenographers under proviso (5A) was null and void and that consequently they

should be declared as ineligible for appearing in the Personal Assistant examination.

He contended that he was senior to the appellants in C.A. No.4938 of 2006 as their appointments as stenographers under Proviso (5A) was by order dated 16.11.1981, whereas he was directly appointed as stenographer on 7.2.1981. The said writ petition was dismissed by a learned single Judge, by order dated 30.11.1999. The special appeal filed by the said Kripa Shankar Sharma against the said decision of the learned Single Judge was allowed by a Division Bench by the impugned order dated 17.5.2005 in terms of the order dated 19.1.2005 which is challenged by the stenographers appointed under proviso (5A) in Civil Appeal Nos.4937 and 4938 of 2006.

23. The appellants in C.A. No.4938/2006 submitted that their cases were different from the cases of special promotees considered in CA Nos.4935 & 4936/2006. It is pointed out that the ad hoc appointment of the special promotees in 1978-79 had come to an end in 1981-82 when they were reverted as LDCs/UDCs and they were not working as stenographers when they were appointed. On the other

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hand, the appellants in CA No.4938/2006 were working as ad hoc stenos both on 23.5.1979 and on 16.11.1981 when the order under proviso (5A) was made. On careful consideration, we find that the said distinction has no relevance to the issue on hand which is whether the appointment under proviso (5A) could be with retrospective effect. As seen from the facts narrated, our decision in Civil Appeal Nos.4935 and 4936 of 2006 that the appointment under proviso (5A) could not be retrospective will apply to Civil Appeal No.4938 of 2006.

24. The position of the appellant in Civil Appeal No.4937 of 2006 is however different. His appointment as stenographer was made substantive in his parent department with effect from 15.3.1978. By order dated 19.10.1981, his appointment was made substantive in the Secretariat with effect from 23.5.1979, by which date he was a stenographer on substantive basis in his parent department. More importantly, the order dated 19.10.1981 under proviso (5A), appointing him as stenographer on substantive basis in the Secretariat was not challenged by Kripa Shankar Sharma in his writ petition (WP No.1433 of 1983). He challenged only the order dated 16.11.1981 under proviso (5A) relating to the appellants in CA No.4938 of 2006. Though Kripa Shankar Sharma had impleaded the appellant in Civil Appeal No.4937 of 2006 as the sixth respondent in

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his writ petition, as Kripa Shankar Sharma had failed to challenge the order dated 19.10.1981 under proviso (5A) made in his case, no relief could have been granted against the appellant in C.A.No.4937 of 2006.

25. In view of the above, following the decision in Civil Appeal Nos.4935 and 4936 of 2006, we dismiss the Civil Appeal No.4938 of 2006. However, Civil Appeal No.4937 of 2006 is allowed and the orders of the learned Single Judge and the Division Bench of the High Court are set aside and the Writ Petition No.1433 of 1983 is dismissed in so far as the appellant in CA No.4937 of 2006 (Hariharan Nair).

.....J.
(R V Raveendran)

New Delhi;
December 1, 2010.

.....J.
(Mukundakam Sharma)