

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No(s). 1394 OF 2011

LOMAN FRANCIS & ORS.

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

O R D E R

1. Heard learned counsel for the parties.
2. The appellants were working as casual labourers against the post of Extra Departmental Mailman (EDMM). They had served for 3 to 11 years in that capacity. They filed OA Nos. 53, 60, 61 and 69 of 1992 before the Central Administrative Tribunal (CAT), Cuttack, Orissa seeking regularization of their services.
3. The CAT vide order dated 7.3.1997 directed the respondents to consider the suitability of the appellants for regularization in the post of EDMM, in accordance with the Rules, subject to giving them relaxation of age, if necessary, to the extent of service rendered by them in the department against the vacant posts which they proposed to fill on regular basis.

4. On 09.08.1997 the respondent No.4 issued an advertisement inviting applications from intended candidates for the post of EDMM and the requisite qualification for the said post was class VIII. It was provided in the advertisement that preference would be given to the incumbents possessing the qualification of matriculation. Advertisement required submission of the documents/certificates to be duly attested. The applications without proper documents shall liable to be rejected.

5. Interviews were held. Later on, on 19.11.1997, Respondent No.4 directed the appointment of the appellants as EDMM; they joined on the post on 19.11.1997, 21.11.1997 and 22.11.1997.

6. All of a sudden, without the issuance of any show cause notice to the appellants, vide review note dated 8.6.1998 prepared by respondent No.4, it was found that there were certain irregularities, omissions and commissions involved in the selection process and the entire selection process was set aside.

7. The Respondent No.3 on 8.6.1998 itself, issued a letter to respondent No.4 regarding setting aside the selection and directed to initiate fresh selection process with respect to 13 vacant posts of EDMM.

8. Aggrieved by the order, cancelling the selection/appointment of the appellants, an original application was filed before the CAT, Cuttack, Orissa on 9.6.1998. Ultimately, the CAT dismissed the application.

9. Against the order of the CAT, Writ Petition bearing No.OJC No.17400 of 1998 was filed on 14.12.1998 before the High Court of Orissa at Cuttack, which was dismissed vide impugned judgment and order dated 15.7.2008. The appellants were working against the same post under the interim order passed by the High Court and by this court on 22.08.2008 in the appeal. They are still continuing in service pursuant to the aforesaid orders is not in dispute.

10. There are other sets of incumbents *i.e.* Respondent Nos.5 to 10, who have filed intervention applications. They claimed that they had been serving with effect from the date they were appointed. They claimed that they had been appointed 1982/1983 onwards in a similar manner and their services have not been regularized and they have been deprived of the regular appointments.

11. We have heard learned counsel for the parties at length and have also gone through the order reviewing the appointment. The appointments had been reviewed mainly on the ground that candidature of certain candidates was rejected for the reason that attested copies of certificates were not filed. The irregularities were found in individual cases. However, the fact is not disputed that opportunity of hearing was not given to the appellants. No show cause notice was given. It was not the case of patent/mass illegality in the process of appointment. It was the condition in the advertisement that certificates were to be duly attested.

The fact whether certificates regarding caste etc. were valid or not; could not have been determined behind the back. The appellants were required to be heard and informed before taking any penal action for cancellation of their appointment. Thus, the order was clearly passed unceremoniously. The cancellation order of appointments was in violation of the principles of natural justice and the principles enumerated in Articles 14 and 16 of the Constitution of India. The appellants, in facts of the case, could not have been removed without affording an opportunity of hearing; particularly when they had served for long period and their appointments came to be made pursuant to the directions issued by the CAT. Even otherwise regularization of the services of such incumbents who had rendered the services for 10 years was even permitted by this Court in the *State of Karnataka vs. Uma Devi* (2006) 4 SCC 1, Para 53 the Court observed:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* (supra), *R.N. Nanjundappa* (supra), and *B.N. Nagarajan* (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments, and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require being filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any

already made, but not *sub-judice*, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

12. In view of the aforesaid, we find that it was incumbent upon the respondent's No.3/ 4 to confer opportunity of hearing before cancelling the order of appointments of appellants; that has not been done. Consequently, we have no hesitation to set aside the orders passed by the respondent No.3/4, CAT as well as by the High Court.

13. However, the respondents Nos.5 to 10 are also continuing in service since long and in the light of decision rendered in *Uma Devi's case (supra)*, regularization of such incumbent is warranted; we direct the respondents to consider the case of the respondent Nos.5 to 10 for regularization of their services within a period of six months from today.

14. The orders passed by the respondent No.3/4, CAT, and the High Court are hereby set aside. The appeal is allowed. No order as to costs.

.....J.
(ARUN MISHRA)

.....J.
(NAVIN SINHA)

NEW DELHI;
MARCH 22, 2018

ITEM NO.113

COURT NO.10

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1394/2011

LOMAN FRANCIS & ORS.

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 22-03-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. Yashobant Das, Sr. Adv.
Mr. Shibashish Misra, AOR

For Respondent(s) Mr. Debasis Misra, AOR
Mr. Bijoy Kumar Jha, Adv.
Mr. Parvez bashista, Adv.
Mr. Rajnish Kumar, Adv.

Mr. Pranav Ranjan, Adv.
Mr. Vijay Prakash, Adv.
Mr. Arvind Kumar Sharma, AOR

Mr. K. L. Janjani, AOR

UPON hearing the counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

Pending application, if any, also stand disposed of.

(NEELAM GULATI)
COURT MASTER (SH)

(JAGDISH CHANDER)
BRANCH OFFICER

(SIGNED ORDER IS PLACED ON THE FILE)