

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 672 OF 2012

KIRAN CHAWLA & ORS.

APPELLANTS

VERSUS

UNION OF INDIA

RESPONDENT

WITH

CIVIL APPEALS NO. 1639-1644/2012

ORDER

CIVIL APPEALS NO. 1639-1644/2012

1. The appellants are aggrieved by the judgment dated 02nd May, 2011, passed by the Division Bench of the High Court of Delhi at New Delhi in a batch of writ petitions¹ wherein, they had challenged an order dated 16th January, 2006 passed by the Central Administrative Tribunal, Principal Bench² in an Original Application³ moved by them. The Tribunal had disposed of the captioned Original Application³ with directions issued to the respondents to call for the nomination through Staff Selection Commission⁴ for making appointment to the post of Junior Stenographers and Lower Division Clerks⁵ - Group 'C' posts with further directions that the appellants be called as per the procedure

¹ In Writ Petitions No. 17473-17478 of 2006

² Hereinafter referred to as 'the Tribunal'

³ OA No.2627 of 2004 titled as "Kiran Chawla & Ors. Vs. Secretary, Ministry of Tourism and Anr."

⁴ For short 'SSC'

⁵ For short 'LDCs'

laid down and be permitted to file their applications for appearing in the examination with relaxation in age and till regular recruitment is made, they be allowed to continue on the same terms and conditions. In case the appellants were selected through selection process, they would be permitted to continue on a regular basis.

2. The dispute in the instant case relates to the period between 1993 to 1999 when the appellants were working as Junior Stenographers and LDCs on an *ad hoc* basis. Invoking the Office Memorandum⁶, they prayed for their continuation as regular appointees. The basis of the said prayer was that they had been regularly working for a long span of time on an *ad hoc* basis with artificial breaks in service of one day on each occasion so as to deprive them of their right of regular appointment.

3. On their part, the respondents took a plea that none of the appellants were appointed through the SSC⁴ and they did not meet the requirements laid down in Office Memorandum⁷ and the DO letter⁸ issued by the Department of Personnel & Training⁹.

4. In the instant case, it is not in dispute that on 11th June, 2004, the respondents had issued an Office Memorandum⁶ regularizing the appellants and placing them on probation for a period of two years. Based on the said order, the appellants had withdrawn the Original Application filed by them

⁶ dated 11th June, 2004

⁷ dated 23rd July, 2001

⁸ dated 29th July, 2004

⁹ For short 'DoPT'

before the Tribunal. Pertinently, in the year 2003, the Department of Tourism was separated from the Ministry of Civil Aviation and Tourism and a separate Ministry called the Ministry of Tourism was carved out by the Central Government.

5. On 29th July, 2004, the DoPT addressed a letter to the Under Secretary, Ministry of Tourism expressing their reservation as to regularizing the *ad hoc* appointments of the appellants and directed the Department of Tourism to rescind its order for regularization.

6. In compliance of the aforesaid directions issued by the DoPT, an Office Memorandum dated 17th September, 2004 was issued by the Ministry of Civil Aviation and Tourism, wherein it conveyed its decision to stop paying salaries to the appellants as per the directions issued by the DoPT and Controller General of Accounts and further, ordered recovery of the salaries already released in contravention of the DoPT instructions.

7. Aggrieved by the aforesaid decision, the appellants preferred an Original Application¹⁰ before the Tribunal seeking protection of their services which was dismissed *vide* order dated 16th January, 2006, holding *inter alia* that all vacant posts were required to be notified to the SSC for appointment and till regular appointments were made, the appellants could continue in service on the same terms and they would be given liberty to appear in the examinations, as and when declared. Thereafter, on 30th March, 2006, the respondents

¹⁰ OM No.2627 of 2004

issued an Office Memorandum notifying the vacancies to the SSC and forwarding the applications of the appellants for participating in the SSC Combined Metric Preliminary Examination held on 30th July, 2006. The appellants appeared in the said examination but when the result was declared on 22nd January, 2007, it transpired that none of them could qualify.

8. Aggrieved by the judgment dated 16th January, 2006 passed by the Tribunal, the appellants approached the Delhi High Court by and filed writ petitions that came to be dismissed by the common impugned judgment. The High Court declined to interfere in the order of the Tribunal and held that the appellants had been appointed on a temporary basis and they could not claim any relaxation.

9. Mr. R. Balasubramanian, learned Senior counsel appearing for the respondents supports the impugned judgment and seeks to place reliance on the Office Memorandum dated 23rd July, 2001 and the letter dated 29th July, 2004 issued by the DoPT wherein, it has been declared that it is impermissible for any department to regularize any *ad hoc* appointment and all appointments on a regular basis have to be in accordance with the provisions of the Recruitment Rules after following the prescribed procedure.

10. We may note that a perusal of the Office Memorandum dated 23rd July, 2001 that places restrictions on regularization of an *ad hoc* appointments itself clarifies in para 6 that no appointments shall be made on an *ad hoc* basis by direct recruitment from open market from the date of issuance of the said

Office Memorandum.

11. In the present case, respondents had appointed the appellants on an *ad hoc* basis in the block period between 1993 and 1999 which was much before issuance of the Office Memorandum dated 23rd July, 2001 by the DoPT and therefore, the same could not have been applied retrospectively. For the very same reason, reiteration of the aforesaid Office Memorandum dated 23rd July, 2001 by virtue of the DoPT letter dated 29th July, 2004, will not take the case of the respondents any further.

12. This Court cannot lose sight of the fact that the respondents have not recalled/rescinded their OM dated 11th June, 2004, regularizing the services of the appellants herein and placing them on probation for two years which period would have expired in the year 2006. The appellants have been discharging their duties in their respective posts to the satisfaction of the respondents for the past several years.

13. Given the aforesaid facts, extreme hardship would be caused to the appellants if it was decided to remove them from service so belatedly on account of their being appointed on an *ad hoc* basis.

14. Learned counsel for the appellants seeks to place reliance on an order dated 11th May, 2023 passed by this Court in Civil Appeals No.13999-14000 of 2015¹¹ and states that in almost similar circumstances, the services of the appellants therein were protected though their appointments were

¹¹ Titled 'Kailash Ben T. Solangi Etc. vs. Union of India Rep. By the Government of Puducherry & Ors.'

contractual in nature and not through the UPSC. However, the said appointments were regularized with some caveats imposed by the Court to ensure that seniority of other employees working in the same cadre were not adversely affected and their monetary benefits were also confined with effect from a particular date.

15. In the instant case, we are of the opinion that an exception should be carved out in favour of the appellants and directions ought to be issued to the respondents to regularize their services with the following directions :

- (i) The respondents shall regularize the services of the appellants from the date of their initial appointments as Junior Stenographers/LDCs, as the case may be, without any benefit of seniority and on a notional basis;
- (ii) The appellants shall be entitled to claim arrears of pay and other monetary benefits on the basis of their deemed regularization of service with effect from 11th June, 2006, on a notional basis without any benefit of seniority;
- (iii) The entire service of the appellants shall be deemed to be regular service rendered by them for purposes of calculation of pension and other retiral benefits; and
- (iv) The pay of the appellants shall be fixed on a notional basis from the date of their initial appointment and they shall be entitled to regular pay scales with full emoluments w.e.f. 11th June, 2006.

16. The aforesaid directions shall be complied with by the respondents within a period of eight weeks from today for release of outstanding payments, if

any, due to the appellants.

17. The present appeals are disposed of with the aforesaid directions while making it clear that this order has been passed in the peculiar facts and circumstances of the instant case and shall not be treated as a precedent in any other case relating to *ad hoc* appointments.

18. Pending application(s), if any, are disposed of.

CIVIL APPEAL NO. 672 OF 2012

In view of the order passed by us in Civil Appeals No. 1639-1644/2012, the instant appeal also stands disposed of on the same lines.

.....J.
(HIMA KOHLI)

.....J.
(AHSANUDDIN AMANULLAH)

**NEW DELHI;
30th NOVEMBER, 2023**

ITEM NO.103

COURT NO.12

SECTION XIV-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. 672/2012

KIRAN CHAWLA & ORS.

Appellant(s)

VERSUS

UNION OF INDIA

Respondent(s)

WITH

Civil Appeals No. 1639-1644/2012 (XIV-A)

Date : 30-11-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Appellant(s) Mr. Manu Mridul, Adv.
Mr. Surya Kant, AOR
Ms. Priyanka Tyagi, Adv.
Mr. Pratap Rawat, Adv.

For Respondent(s) Mr. R.Balasubramanian, Sr. Adv.
Ms. Alka Agarwal, Adv.
Mr. Madhav Sinha, Adv.
Mr. Abhijeet Pandove, Adv.
Mr. Antariksh Singh, Adv.
Mr. Shaurya R Rai, Adv.
Ms. Saumya Tandon, Adv.
Dr. N. Visakamurthy, AOR

Mr. B. Krishna Prasad, AOR
Mr. Gurmeet Singh Makker, AOR

Mr. Arvind Kumar Sharma, AOR

UPON hearing the counsel the court made the following
O R D E R

Civil Appeals No. 1639-1644 of 2012

The appeals are disposed of in terms of the signed order. Pending application(s), if any, are disposed of.

Civil Appeal No. 672 of 2012

In view of the order passed in Civil Appeals No. 1639-1644/2012, the instant appeal also stands disposed of on the same lines. Pending application(s), if any, are disposed of.

(Geeta Ahuja)
Assistant Registrar-cum-PS

(Signed Order is placed on the file)

(Nand Kishor)
Court Master (NSH)