

Vijay Goel

Vs

Union of India

(Sujata V. Manohar, D. P. Wadhwa JJ)

21.10.1997

JUDGEMENT

D.P.WADHWA,J.

1.Ten appellants in this appeal are aggrieved by the order dated August 4, 1995 of the Central Administrative Tribunal (for short 'the Tribunal') dismissing their petition.They had approached the Tribunal seeking to quash: (1) the order dated May 19, 1986 modifying the dates of their regularisation as Lower Division Clerks (LDCs)and (2) the order dated March 27, 1991 of Chief Administrative Officer, Safdarjang Hospital, New Delhi issued in pursuance to the advice received from the Director General Health Services, Government of India, terminating their appointments as regular LDCs till regular candidates sponsored by the Staff Selection Commission took their position.The appellants who were working as LDCs in the hospital represented against the order dated May 19, 1986 which had been issued in supersession of the earlier order dated December 3, 1985 changing their dates of regularisation.Instead they were visited with the order threatening to terminate their services.

2.The appellants have been now working as LDCs for veying period from 18 to 20 years allegedly on ad hoc basis.Their contention is they have been regularly appointed as per statutory rules.Before , however, they have given up their challenge to the order dated May 19, 1986 faced with, perhaps, the consequence of losing their jobs altogether.Before the Tribunal there were 11 petitioners and one (Mr.Udal Singh) seems to have dropped out from these proceedings.

3.The Central Government in the exercise of power under proviso to Article 309 of the Constitution framed rules called The Safdarjang Hospital (Class III Posts) Recruitment Rules, 1973.Under these rules, method of recruitment for LDCs is 100% by direct recruitment; age limit is 18 to 25 years; educational qualification is matriculation or equivalent with speed of 30 w.p.m. in type-writing (and a certain relaxation for a physically handicapped person); period of probation prescribed is three years; and the selection is by D.P.C.These rules were made on December 17, 1973 and were published in the Gazette of India on June 5, 1974.By Resolution dated November 4, 1975 of the Government of India, Cabinet Secretariat in the Department of Personnel and Administrative Reforms, a decision was taken to set up a Subordinate Services Commission ('SCC' for short).Apart from the constitution of the SCC, the Resolution also prescribed its functions.It is to make recruitment to non-technical class III posts in the Departments of the Government of India and in the Subordinate Offices except those posts for which recruitment is made by the Railway Service Commission etc.The Commission is to conduct examinations for recruitment to non-technical class-III post in the Subordinate Services in the Ministries/Departments of the Government of India and their attached and Subordinate Office as may be specified from time to time.Since recruitment to the

Posts of LDCs in the hospital is to be made through SSC, a requisition was sent by the hospital authorities for filling up the posts of LDCs existing in the hospital. SSC by its letter dated April 30, 1977 informed the hospital that the qualified candidates could be expected to be available only in early 1978 and if vacancies were required to be filled up urgently. the authorities might themselves make arrangements to fill up these vacancies through other authorised channels. In this view of the matter, the hospital authorities asked the local employment exchange to sponsor candidates though with clear indication in the requisition that the recruitment would be purely on ad hoc basis till candidates from SSC were made available. Simultaneously a circular was also issued in the hospital allowing eligible departmental candidates to apply for the LDCs post till SSC nominees were available. Employment Exchange sponsored 27 candidates and there were 18 departmental candidates. A written test was conducted on SSC pattern and those who obtained 50% marks and above were selected for the typewriting test. 10 candidates sponsored by the employment exchange were empaneled on the basis of their performance. Similarly, 8 departmental candidates were separately empaneled based on their performance. It is the contention of the petitioners that these panels were prepared after process of selection by duly constituted D.P.C. for the purpose had been gone through as per the recruitment rules. Appointments to the posts of LDC were made from these panels as and when the need arose. In all, 17 such appointments were made, 7 of these in 1978, 4 in 1979 and 2 in 1981. Of all these in 1978, 4 in 1979 and 2 in 1981. Of all these 13 candidates who were recruited as LDCs, one left the service and one retired subsequently leaving 11 of them who, as noted above, were petitioners before the Tribunal. In the offer of appointment letters as well as the orders of their appointment, it was made clear that the appointments were purely on ad hoc and temporary basis and the appointees against the vacancies would be reverted or retrenched as and when candidates sponsored by SSC joined duty or in the case of leave vacancies when the incumbents returned from leave.

4. It is the contention of the respondents that on the basis of memo dated August 7, 1982 received from the Department of Personnel and Administrative Reform stating that special examination for recruitment of LDCs was scheduled to be held on December 12, 1982 for ad hoc LDCs to make them regular, a circular was issued in the hospital on October 11, 1982 requiring the 17 LDCs which included the petitioners to submit their applications along with requisite documents by October 13, 1982 to participate in the examination and that in case they failed to appear in the examination on the specified date and time their appointment to the post of LDCs was liable to be terminated. It is stated that 16 LDCs took the examination out of which only four qualified. The result was declared on March 20, 1983 and instructions were issued that the seniority of the finally qualified candidates may be fixed enblock junior to the candidates who had been appointed as a result of 1981 Clerks Grade Examination. The petitioners nevertheless continued in their respective jobs. Trouble for them arose when they were put down in the seniority and ultimately when their service were sought to be terminated. It is not disputed before us that the selection of the appellants was not made in accordance with the Recruitment Rules or that regular vacancies did not exist against which the appellants were appointed.

5. It may be noticed that petitioners 1 to 5 are employment exchange nominees and remaining are from the hospital staff. One of the specimen letters appointing the petitioners is reproduced as under:

"BHARAT SARKAR

SAFDARJUNG HOSPITAL, NEW DELHI

IMMEDIATE

No.1468 DATED 8.9.78

H.P.PART II

Miss Vijay Gupta is appointed as L.D.C.in this hospital w.e.f.24.8.78 F.N. temporarily till further orders @ Rs.260/- p.m.in the pay scale of Rs.260-6-290-EB-6-326-8-366-EB-8-390-10-400 plus usual allowances as admissible under the rules from time to time vice Sh.K.S.Sehrawat appointed as Store Keeper.

Her date of birth is 10.10.1953.

She had passed the typing test.

Sd/-

(P.N.SOREWALA)

Administrative Officer.

Copy to : Accounts Section in triplicate along with Medical Fitness Medically examined and found fit./Pay & Accounts Officer/leave Group/P.File/C.R. Dossier."

6. There is also on record two office orders appointing some of the petitioner as LDCs in the hospital and in these orders it is mentioned that their appointment is purely on temporary basis till further orders and also that the candidates so appointed would be reverted and retrenched as and when the persons posted by Subordinated Service Commission and persons join their duties after expiry of leave, whichever is earlier.

7. Hospital issued a seniority list of LDCs as on January 1, 1979. The appellants figured in the seniority list and under the column date of confirmation were shown as temporary. There is an office order dated December 3, 1985 wherein it is mentioned that ad hoc appointment of the appellants as LDCs had been regularised with effect from the date as shown against each of them on the existing terms and conditions:

"Sl.No.Name Dte.of App. Date of Remarks

Regularisation

3.Sh Parmanand 7.4.78 7.4.78

Gaur

4.Smt.Veena 8.4.78 8.4.78

Luthra

5.Sh.S.P.Gaur 12.4.78 12.4.78

6.Smt.Veena 18.4.78 18.4.78

Makhija

7.Smt.Geeta24.4.78 24.4.78

Sabharwal

8.Smt.Vijay Goel 24.8.78 24.8.78

9.Sh.Deen Dayal 10.3.79 10.3.79

11.Sh.Nandan K.K.30.9.80 30.9.80

12.Abhoy Ram 30.9.80 30.9.80

8.Shri Narain Parshad will continue on ad hoc basis pending qualifying the typing test.

Sd/-Chief Administrative Officer"

9.Another office order dated May 19, 1986 was issued in supersession of the office order dated December 3, 1985 changing the date of regularisation of the appellants as LDCs and now it was as under:

"Sl.No Name Date of App.Date of Remarks

Regularisation

5.Sh.Parmanand Gaur 7.4.78 30.11.85

6.Smt.Veena Luthra 8.4.78 30.10.85

7.Sh.S.P.Gaur 12.4.78 30.11.85

8.Smt.Veena Mukhija 18.4.78 30.11.85

9.Smt.Geeta Sabhawal 24.4.78 30.11.85

10.Smt.Vijay Goel 24.8.78 30.11.85

11.Sh.Deen Dayal 10.3.79 30.11.85

(S/C)

12.Sh.Nandan K.K.30.9.80 30.11.85

13.Abhoy Ram 30.9.80 30.11.85

14.Shri Narain Pd.4.4.78 4.4.86 Date of (S/C) exemption from type writing test after completion of 8 yrs.of service.

Sd/-

Chief Administrative Officer"

10. Then there is a seniority list of LDCs issued on June 1, 1987. The appellants have been shown as temporary with the remarks that their ad hoc appointment has been regularised with effect from November 30, 1995. In the case of Narain Pd. (S/C) remark column records "that his ad hoc appointment had been regularised." A footnote mentioned that seniority list was being circulated among the staff concerned and if any individual had any objection he/she should send his/her objection supported by evidence on or before July 30, 1987. After the objections were considered a fresh seniority list was issued on September 9, 1987 of the LDCs in the hospital as on June 1, 1987. As far as the appellants are concerned they were shown as temporary with the remarks as aforesaid in the provisional seniority list.

11. Some of the appellants objected that they had been regularised on the earlier dates and not from November 30, 1985 as shown in the seniority list. By the memorandum dated November 8, 1989 the appellants were informed that the question of their regularisation to the post of LDCs was reviewed in consultation with the Department of Personnel and Training and it had been held that the regularisation of the services of the ad hoc LDCs who could not qualify any special Qualifying Examination held by the SCC was not in order. They were also told that the order regularising their services had been passed by an officer below the appointing authority and that the hospital had been advised by the Government to issue revised orders cancelling the regularisation of the appellants who were ad hoc appointees and treating them as ad hoc employees only. The appellants were advised to submit their representations against the above decision of the Government. They represented and in one of the representations on record which is dated November 30, 1989 materials were given as to how appellant had been appointed and how she had worked in the post of LDCs for all these 11 years and that her appointment had been on regular basis though as temporary from the initial stage. By the impugned letter dated March 27, 1991 the appellants were informed that their regularisation was hereby cancelled and that the resultant vacancies would be reported to the SSC for sponsoring candidates for regular appointment as LDCs and that the appointment of the appellants as ad hoc LDCs would be terminated as and when the nominees from the SSC reported for duty. This letter certainly came as a bolt from the blue for the appellants.

12. The appellants approached the Tribunal challenging the action of the respondents. They were, however, unsuccessful though it would appear that during the period the matter was pending before the Tribunal they continued in their position. When the matter came before this Court while granting leave status quo was ordered to be maintained. The appellants are continuing in service. We were not told if, in the meanwhile, any candidate for appointment to the post of LDC in the hospital was sponsored by the SSC.

13. Be that as it may. The question that arises for our consideration is: if the appellants were appointed on ad hoc basis from the start and if not were the orders regularising their services necessary. We have seen that recruitment to the LDCs in the hospital is governed by the statutory rules framed by the Central Government under proviso to Article 309 of the Constitution. It is nobody's case the appellants did not fulfil the requisite qualifications or that they did not qualify the typing test with the speed 30 w.p.m. as required by the rules. It is also not disputed that the appellants were selected after they had undergone the process of selection by the Selection Board. It is correct that by subsequent Government resolution the test was to be conducted by SSC and so also selection for appointment to the post of LDC. We need not go into the question if in the existence of the statutory rules could they be amended to the extent that certain functions were left to be performed by SSC and not by the DPC. It is not that the SSC could prescribe any qualifications different than that prescribed in the recruitment rules for appointment to the post of LDCs. The fact, however, remains that when the hospital authorities approached the SSC it expressed its inability to conduct

the test and select candidates for appointment to the post of LDCs in the hospital and rather told them that the authorities could themselves make arrangement to fill up the vacancies through other authorised channels if it was urgent. SSC did not say that the authorities could fill up the vacancies on ad hoc basis only till such time candidates sponsored by SSC were made available to the hospital. In pursuance to the communication received from the SSC the hospital authorities asked the local employment exchange to sponsor candidates and at the same time issued a circular allowing the eligible departmental candidates to apply for the post of LDCs. Posts were in existence. The authorities fell back on the recruitment rules, conducted the examination, found the appellants to fulfil the qualifications and then selected them by duly constituted DPC. The respondents have neither stated nor contradicted with the recruitment rules. That being so we fail to see why the order of May 19, 1985 regularising the services of ad hoc LDCs including the petitioners should have been cancelled on technical grounds five years after they had been regularised and absorbed in the cadre.

14. In *Rabinarayan Mohapatra Vs. State of Orissa and others* (1991) 2 SSC 599 this Court was considering the applicability of Section 3 of the Orissa Aided Educational Institution (Appointment of Teachers Validation) Act, 1989 (Validation Act, for short). The High Court held the provisions of Section 3 were not applicable to the appellant. The appellant had been appointed a Hindi teacher in a Government aided school for a period of 89 days or till a candidate selected by the State Selection Board was made available. The appellant joined the school on July 12, 1982 and his appointment was made by the District Inspector (Schools) on the recommendation of the managing committee of the school. He continued to serve the school with repeated spells of 89 days-appointments and one day break in between the spell, till May 25, 1986. The appellant was not paid the salary for the period of summer vacations during all these years. Although the appellant continued to serve the school to-date under orders of the managing committee yet his appointment had not been approved by the educational authorities. It is not necessary for us to set out Section 3 of the Validation Act as mentioned above. The Court observed that the appellant was appointed on July 12, 1982 and had been working with the approval of the authorities for almost four years with short breaks. He was still serving the school. The Court said that the High Court erred in denying the benefit of the Validation Act to the appellant on the ground that his initial appointment for 89 days was conditioned by the stipulation that he would continue unless replaced by a candidate from the select list. The Court set aside the judgment of the High Court and directed that the appellant be treated as regularly appointed teacher in the school with effect from July 12, 1982 and entitled to his salary, including the salary for summer vacations and other breaks which must be taken as non est, from the date of his regular appointment i.e. July 12, 1982.

15. In *H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others* 1991 Supp (2) SCC 421 appointments to the posts of typists were made by the Chief Justice of the High Court of Karnataka in contravention of the provisions of the Karnataka Subordinate Courts (Ministerial and other Posts) Recruitment Rules, 1977 under which power to make selection was vested in the State Public Service Commission. The selection was required to be made by written test followed interview. The appointing authority was District Judge of the particular district where appointments were to be made. In a writ petition filed by certain candidates the High Court of Karnataka set aside the appointments being violative of Articles 14 and 16(1) of the Constitution. This Court agreed that the appointments made by the Chief Justice of the High Court were not legal. This Court further found that the candidates had been working for over 10 years and they possessed qualifications more than what was the requirement under the Rules. Some of the candidates even earned higher qualification during their service and some were promoted to higher cadre as well. They were now overaged for entry into any other service. This Court observed:

"One could only imagine their untold miseries and of their family if they are left at the mid-stream. Indeed, it would be an act of cruelty at this stage to ask them to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection." The Court also referred to certain precedents where on equitable consideration this Court did not set aside the appointments even though the selection of the candidates was held to be illegal and unsupportable. The Court said: "The precedents apart, the circumstances of this case justify a humanitarian approach and indeed, the appellants seem to deserve justice ruled by mercy." The Court, therefore, directed that the candidates should be treated to be regularly appointed with all the benefits of the past service.

16. In *Baleshwar Dass & Ors. Vs. State of U.P. & Ors.* [(1980) 4 SCC 226], this Court while examining, in the context of the case before it, as to what is a substantive capacity vis-a-vis an appointment to a post, observed as under:

"If a public servant serves for a decade with distinction in a post known to be not a casual vacancy but a regular post, experimentally or otherwise kept as temporary under the time-honoured classification, can it be that his long officiation turns to ashes like a Dead Sea fruit because of a label and his counterpart equal in all functional respects but with ten years less of service steals a march over him because his recruitment is to a permanent vacancy? We cannot anathematize officiation unless there are reasonable differentiations and limitations."

17. We are also aware of the decision of this Court that there cannot be any claim for regularisation for having worked for a number of years if the regularisation was not in accordance with the rules. That is not so here. As noted above in the present case appointments were made in accordance with the Rules which appointments have continued for a number of years and cannot be treated as ad hoc or fortuitous.

18. Accordingly, the appeal is allowed, impugned order dated August 4, 1995 of the Tribunal is set aside and DA filed by the appellants is allowed to the extent that the office order dated March 27, 1991 is set aside.