

Government of India

Vs

Court Liquidator's Employees Assn.

Civil Appeal No. 5642 of 1994

(K. Venkataswami, A. P. Misra JJ)

27.08.1999

JUDGMENT

K. Venkataswami, J. –

1. The respondent Nos. 2 to 64 in Civil Appeal No. 5642/94 are the employees in the office of the Court Liquidator in the Calcutta High Court. Aggrieved by the disparity in pay-scales and deprivation of allowances and retiral benefits, they moved matter No. 756 of 1991 before a learned Single Judge of the Calcutta High Court. They claimed that they must be treated as employees of the Central Government and should be given full status of permanent Central Government employees on the expiry of 360 days of joining their service besides regular pay-scales with avenues for promotion, pension, provident fund and other service benefits on the basis of their length of service.

2. The learned Single Judge of the Calcutta High Court ruled that writ petitioners/respondent Nos. 2 to 64 herein should be given the full status of permanent Central Government employees on the expiry of 360 days of their joining the service. However, the learned Judge restricted the arrears for a period of three years prior to the date of the said judgment. The learned Judge safeguarded the right with reference to their fitment in the appropriate scale and the benefit of promotion having due regard to the length of service. Likewise, the learned Judge ordered their entitlement for pension, provident fund, gratuity again with regard to their length of service.

3. Aggrieved by the order of the learned Single Judge, the appellants preferred an appeal to the Division Bench of the Calcutta High Court.

4. The learned Judges, after carefully considering the rival submissions, found that the respondent Nos. 2 to 64 had been working for the last 20-25 years. Their service was neither regularised nor they were given the status of Government employees; their pay-scales were not in conformity with that of the pay-scales of their counterparts in various other Departments/Offices; that they were given very low scale of pay without any permanent or quasi-permanent status and they were required to retire on attaining the age of 58 years but empty handed. The Division Bench also found that the appellants could not substantiate the contention that the respondents were not in work of perennial nature and as such cannot be absorbed as Central Government employees. The learned Judges further found that there was no reasonable basis for making classification or denial of equal treatment between the employees of the Court Liquidator and the Official Liquidator when they were found to turn out the same and similar nature of work. Ultimately, the learned Judges found that the respondents herein could not be denied the benefits and status which were enjoyed by their counterparts employed in the Office of Official Liquidator. It was further held that there was no

rational basis for making classification between the two groups of employees and, therefore, the respondents were conferred and enjoyed by the employees attached to the Office of Official Liquidator should be extended to them as well. In the light of the findings as noticed above, the Division Bench dismissed the appeal preferred by the appellants. Hence, the present appeal.

5. Let us now give the facts in Civil Appeal No. 5677/94. This appeal is preferred against the judgment dated 27.8.1993 of the Division Bench of the Kerala High Court in O.P. No. 9732 of 1990-H. The contesting respondents, who were the petitioners in the High Court, were working as Estate Clerks, otherwise known as Company Paid Staff (hereinafter referred to as 'Company Paid Staff'), in the Office of the Official Liquidator, High Court of Kerala. It is not in dispute that the said Company Paid Staff were working in the Office of the Official Liquidator continuously and without any break for years together. They were appointed by the Official Liquidator pursuant to the orders of the High Court under Rules 308 and 309 of the Companies (Court) Rules, 1959. It is also common ground that the Company Paid Staff had been discharging their duties and functions identical to those of the staff employed by the Central Government in the Office of the Official Liquidator. The Company Paid Staff moved the High Court seeking absorption on a regular basis. They brought to the notice of the Court that on an earlier occasion on 1.7.1978 similarly situated Company Paid Staff were absorbed as regularly paid staff.

6. The petition was opposed by the appellants (respondents before the High Court) contending that the Company Paid Staff were not employed by the Government; that their employment was of casual nature; that they were paid out of the funds of the Companies in liquidation and not from the consolidated fund of India; that such appointments were made by the Official Liquidator to meet administrative exigencies to discharge the functions entrusted to him as Official Liquidator and that, therefore, they cannot claim regularisation or absorption in the Government service. The High Court, on the basis of the pleadings and arguments raised before it, considered two questions, namely, (a) whether the continuous employment of petitioners enable them to claim regularisation in service and other benefits; (b) whether the principle of 'equal pay for equal work' applies to them. The learned Judges, after referring to a number of decisions of this Court, found that the Company Paid Staff were appointed according to law and by a qualified Central Government functionary and that their appointments were regular and proper; that they had been in employment for periods ranging from five to ten years; that it has not been pointed out that any of the Company Paid Staff is unsuitable for the post now held by him; that the respondents (appellants herein) have not made out any case that the services of the Company Paid Staff are no longer required in the discharge of the functions of the Official Liquidator; that there is no reason why a precedent of absorption on 1.7.1978 should not be adopted in the case of the Company Paid Staff, who were under 'the expectation' that their services would also be regularised in due course and that in the course of the judgment the learned Judges have observed that during the pendency of the petition the Court by an order dated 24.9.1991 had expressed the hope that considering the human problem involved the authorities to take a practical view of the matter and take a step similar to that was taken in the year 1978, so that justice could be meted out to the Company Paid Staff, many of whom were in service for more than a decade. The learned Judges, after referring to the answers given by the concerned authorities, found that the stand of the first respondent before them in not considering the claim of the Company Paid Staff for regularisation was unfair and was not justifiable in the circumstances and especially in view of the precedent of regularising the services of similarly situated employees in the year 1978. The learned Judges further observed that the Company Paid Staff also deserved similar treatment as meted out to the similarly situated employees in the year 1978 and, therefore, were entitled to regularisation of their services in the establishment of the Official Liquidator. Ultimately, the learned Judges allowed the petition and directed the appellants herein to absorb

Company Paid Staff as regular Lower Division Clerks in the Office of the Official Liquidator with effect from their respective dates of appointments as Estate Clerks. There was a further direction given by the Court to grant benefits of pay fixation and all admissible allowances to the Company Paid Staff. The arrears of salary and other allowances due to them on such regularisation shall be computed and paid without delay. There was a further direction to reckon the arrears from the date of the original petition.

7. Aggrieved by the decision of the High Court, the appellants have preferred this appeal.

8. Writ Petition (C) No. 473 of 1988 is preferred by the Company Paid Staff in the office of the Official Liquidator High Court of Delhi. The petitioners claim that they are better qualified than the regularly appointed staff, their duty hours are more and they are assigned more onerous and tedious work under the threat of termination of their employment at any time. They are employed in a permanent Office of the Official Liquidator and the duties which they are performing are not of transitory nature. Their claim for regularisation/absorption are not merely on the basis of their having completed more than 240 days, but on the basis of their proper selection and possession of requisite qualification and the long experience in the Department. Factually, it is claimed that their appointments were made on the basis of advertisement in the National dailies and by subsequent selection by the Official Liquidator. It is stated that the Registrar of the Delhi High Court directed the Official Liquidator to take up the matter of absorption with the Central Government on the basis of seniority in service. It is also brought to our notice that the Central Government was also keen to regularise the service of company paid staff on priority basis. Accordingly, the Government of India vide its letter dated 24.3.1988 sought for complete data from the Official Liquidator, Delhi. The Official Liquidator was called upon to furnish the required details on or before 15.4.1988. In spite of passing of more than a decade, the Official Liquidator has not sent the requisite details to the Government of India. The petitioners have complained that the appellants have deliberately concealed about the number of posts sanctioned in the Office of the Official Liquidator, New Delhi. The appellants must be compelled to disclose whether number of permanent posts sanctioned initially was ever increased keeping in view the heavy increase of work in the Office of the Official Liquidator. The grievances in substance are similar to the one placed by similarly situated employees in the High Court of Kerala, which we have noticed earlier. The stand taken by the respondents in this Writ Petition is also similar to the stand taken by the authorities before the Kerala High Court. Hence, what applies to the Company Paid Staff of the Kerala High Court will also apply to the petitioners in this petition.

9. In I.A. No. 5 of 1998, the Company Paid Staff in the Office of the Official Liquidator, High Court of Bombay, sought to intervene/implead in Civil Appeal No. 5677/94 to support the case of the contesting respondents in that appeal. They have also brought to our notice the similar matter pending in the High Court of Bombay and interim orders passed thereon.

10. In I.A. No. 9 of 1998, the Company Paid Staff of the Official Liquidator, High Court of Madras, have sought to implead/intervene in Civil Appeal No. 5642/94. This Court by an order dated 24.3.1998 allowed I.A. Nos. 5 and 9 of 1998. It was also brought to our notice that the similar issue is pending before the Madras High Court.

11. Before proceeding further, it is advantageous to have a minimal background fact relating to the origin of both the offices of the Official Liquidator and the Court Liquidator in the High Courts. We may at once point out that though Section 38A of the Banking Regulation Act, 1949 provides for appointment of Court Liquidator in the matter of liquidation of banking companies, the office of the

Court Liquidator was sanctioned only for the Calcutta High Court and it is stated that no other High Court has a Court Liquidator. Winding up and liquidation of business of companies had been viewed by the Government as an inevitable results in certain cases. The Companies Act, 1913 as well as 1956 provided for winding up of companies under the control and supervision of Courts except in the case of voluntary winding up, which is of insignificant in number. The matter of winding up of companies and securing public interest was vested with the High Court and the Central Government was expected to aid this power of winding up as part of sovereign functions of the State. Upto the period of 1949, the legislature did not maintain any distinction between the banking and non-banking companies under the Companies Act, 1913 and the grounds and procedure for winding up of banking and non-banking companies were the same. The distinction between the banking company and the non-banking company, broadly speaking, is that a banking company is a company which deals with banking business and a non-banking company, on the other hand, deals with the non-banking business. The general law applicable to both categories of companies is the Companies Act.

12. The provisions of law relating to banking companies up to the year 1949 formed a subsidiary portion of the general law applicable to companies as contained in the Indian Companies Act, 1913. The Government of India considered that a separate legislation was necessary for the regulation of banking in India. Accordingly, the Banking Regulation Act, 1949 (initially, the Act was called 'The Banking Companies Act') [hereinafter called the '1949 Act'] was enacted by the Parliament. This 1949 Act, as seen from Section 2 of the said Act, was in addition to and not in derogation of the Companies Act, 1913 or 1956.

13. Even under the 1949 Act there was no Court Liquidator till the Act was amended in 1953 by inserting Section 38A. It is stated that the Central Government had appointed a Court Liquidator under Section 38A for the Calcutta High Court. It is further stated that in no other High Court in India the Central Government had appointed a Court Liquidator. In the year 1976, the Court Liquidator (Class-I Post) (High Court of Calcutta) Recruitment Rules, 1976 were notified and published on 14.8.1976. Again in the year 1989 another notification dated 5.9.1989 was issued under Article 309 of the Constitution of India by framing the Court Liquidator (Group 'A' Post) (High Court of Calcutta) Recruitment Rules, 1989. Under these 1989 Rules, there were two posts, one post of Court Liquidator and two posts of Assistant Court Liquidator was abolished on 10.12.1993 and as far as the post of Assistant Court Liquidators, as on date only one post remains and the other post has been abolished. To assist the Court Liquidator in the matter of winding up of Banking Companies, the High Court of Calcutta enabled the Court Liquidator to appoint the staff under Rules 308 and 309 of the Company Court Rules, 1959. The salaries for the staff so appointed were paid from the assets of the Banking Company under liquidation. Those staff appointed by the Court Liquidator under the orders of the High Court of Calcutta are the contesting respondents in Civil Appeal No. 5642 of 1994.

14. Let us now consider the case of the Company paid staff appointed by the Official Liquidator under the orders of the High Court. It may be noted that under the Companies Act, 1913 there was no post of Official Liquidator. Under 1913 Act, the matters relating to winding up of the Company were administered by the Courts and the administration of the Companies was entrusted to the respective States. Different High Courts framed their own procedure and rules regarding winding up of the Companies. There was no uniformity in the matter among the High Courts in framing the Rules. It is only after the coming into force of the 1956 Act that uniform position has been brought upon. Under the 1956 Act, an Official Liquidator is appointed by the Central Government under Section 448 of the Act. Under Article 309 of the Constitution of India, the Recruitment Rules were

made for the post of Official Liquidator, Assistant Official Liquidator and staff of the Company Law Board. Those rules were called 'Department of Company Law Administration (Classes-I, II and III Posts) Recruitment Rules, 1962, the Central Company Law Service Rules, 1956 and Central Company Law Service Rules, 1997'. The Companies (Court) Rules, 1959 were framed by the Supreme Court. In the Office of Official Liquidator, there are two kinds of staff. One kind of staff is the employees of the Central Government appointed under the Central Company Law (Service) Rules, 1956. The other kind of staff is appointed by the Official Liquidator under the orders of the Company Judges under Rules 308 and 309 of the Company Rules at the instance of the Official Liquidator. The staff appointed under Rules 308 and 309 is called 'company paid staff'. The company paid staff appointed by the Official Liquidator are the contesting respondents in Civil Appeal No. 5677 of 1994 and also the petitioners in Writ Petition (C) No. 473 of 1988.

15. The grievances of company paid staff appointed by the Court Liquidator and the company paid staff appointed by the Official Liquidator are identical and what applies to one, equally applies to other category.

16. We have already set out the findings of the Calcutta High Court and the Kerala High Court on the basis of the pleadings presented before them.

17. Having regard to the human problem involved, the Kerala High Court asked the Central Government to come forward with an amicable solution. Finding that there was no proper response, the High Court decided the case on merits. When the case was heard by us, it was felt that another opportunity should be given to the Central Government to come forward with a practical solution. With that view, an interim order was passed on 14.1.1988 in the following terms :-

"In all these cases, the common question that arises for consideration is whether the persons appointed by the Official Liquidator/Court under Rules 308/309 of the Companies (Court) Rules, 1959 are entitled to equal pay and regularisation as the employees appointed by the Central Government in the Office of the Official Liquidator. Learned senior counsel appearing for the appointees brought to our notice the findings of the High Courts rendered on the basis of the materials placed before them. They are broadly stated that the appointees were discharging identical duties and functions as that of regular employees in the Office of the Official Liquidator; that they have been continuously without break working for a period ranging from 10 to 25 years; that they have been paid only a fixed salary without any benefit of pension, gratuity; that such employees appointed upto 1.7.1978 had been regularised by the Government; that though the Central Government appreciated the human problem involved in these matters and came forward before the Kerala High Court to amicably settle the issue ultimately has shown an unsympathetic attitude and that in the light of the several judgments of the Supreme Court, the appointees are entitled to regularisation and salaries as paid to the regular employees in the Office of the Official Liquidator at least from three years prior to the date of the judgment of the Single Judge of the Calcutta High Court and in the Kerala cases from the date of appointment. On the other hand, Mr. Malhotra, learned senior counsel appearing for the Union of India, submitted that the appointees were not appointed by the Government and they were not paid salaries from the consolidated fund. On the other hand, they were paid salaries from the concerned companies under liquidation. In certain High Courts, there are Official Liquidators and Court Liquidators appointed under Section 38A of Banking (Regulation) Act. The Banking Companies under

liquidation originally were 75, now only there are 32 banking companies under liquidation. The appointment under Court orders are not for a permanent department like Official Liquidator's Office and, therefore, the appointees cannot demand regularisation and payment of equal salary as that of salaries paid to regular employees in the Office of the Official Liquidator. The hard reality is that the appointees are continued on the basis of fixed salary without any retiral benefits such as pension and gratuity for more than 25 years and the functions they are discharging are similar to the one discharged by the employees in the office of the Official Liquidator without getting equal treatment. In the circumstances, before rendering a decision on merits by the Court, Mr. Malhotra, learned senior counsel, desired that the government be given an opportunity to consider the matter in the light of the findings rendered by the High Courts and to come forward with an acceptable solution. The matters are adjourned by four weeks."

18. In response to the above order, the appellants through its Under Secretary to the Government of India, Ministry of Finance, Department of Company Affairs, New Delhi, have filed an additional affidavit setting out the circumstances leading to the filing of the appeal and after referring to the Absorption Scheme of November, 1978, it is stated in paragraphs 14 to 16 as follows :-

"14. That in pursuance to the order dated 14.01.1998, the Government considered various options to find out an acceptable solution in regard to the company paid staff. The following three options were discussed :-

(i) One option that was discussed was to repeat scheme for absorption of Company Paid Staff as was done through the 1978 Scheme of Department of Company Affairs. There are certain practical problems in following this course of action. As per the 1978 scheme such absorption is possible to the extent of 50% only under the direct recruitment quota in the appropriate grade. As the position obtains in the Department of Company Affairs, there is lack of adequate number of vacancies in the aforesaid category (direct recruitment) for the purpose to facilitate absorption of all these company paid staff in the Department of Company Affairs.

(ii) The second alternative that was discussed was to continue the present arrangement without absorption of these company paid staff. In such a situation, their salaries and service conditions could suitably be revised by the Hon'ble Company Judges with reference to funds available with the OLs in the various High Courts. According to information gathered, most of the OLs attached to various High Courts have annual surpluses. The balances in the funds maintained by many OLs are substantial; and

(iii) The third option that was discussed was to grant them age relaxation and ask them to sit in the open competitive examination as a one time measure. This would give them a general opening not restricted to jobs in these two Departments.

15. The Government has considered the above three alternatives and is of the view that out of the said solutions, proposals at No. (ii) and (iii) of para 14 can be considered subject to the orders of this Hon'ble Court.

16. I further say and submit that the precedent of regularisation of the company paid

staff referred to in the judgment of the Hon'ble High Court relates to only those staff which was absorbed in pursuance of 1978 Scheme. There has been no regularisation, except for the cases of absorption falling under said 1978 Scheme."

19. We have already set out at more than one place about the findings of the Calcutta High Court and the Kerala High Court rejecting the contention put forward on behalf of the Union of India that the company paid staff were only appointed as per the order of the concerned Company Judge and the salaries were fixed by the Company Judge; that their appointments were purely on temporary basis and solely for the purpose of the work of liquidation proceedings under the charge of the Official Liquidator and that, therefore, they cannot be absorbed as regular Government servants. Both the High Courts have found that the company paid staff had been discharging the duties years together without any break identical to that of the government paid staff in the same Liquidator's Office. It was also found that the company paid staff working both under the Court Liquidator and the Official Liquidator were grossly under paid and they have no retiral benefits even after working for 10-25 years.

20. In view of the peculiar facts of these cases and the positive findings of the High Courts with which we concur, we are unable to agree with the contention of the learned senior counsel for the appellants that the company paid staff cannot be absorbed/regularised as they were not employed by the Government in accordance with the rules; that they knew their appointments were only temporary and that their pay was not from the consolidated fund.

21. Undoubtedly, counsel on both sides cited numerous authorities of this Court on earlier occasions sustaining the orders of absorption and setting aside the orders of absorption. We do not consider it necessary to refer to those decisions inasmuch as the facts presented before us and the findings rendered by the High Courts speak for themselves. As a matter of fact, the Government had considered as one of the options to absorb the company paid staff as was done through the 1978 Scheme of Department of Company Affairs.

22. In the circumstances, we are satisfied that the orders of the High Court challenged in these appeals do not call for any interference having regard to the facts presented before the High Courts. Accordingly, we dismiss the appeals with no orders as to costs.

23. In view of the above, the Writ Petition is allowed as the relief prayed for is similar to the one claimed by the contesting respondents/company paid staff in the connected Civil Appeals, without costs.

24. However, we want to give an opportunity to the appellants in the interest of justice and to balance the equities between the parties to come forward to accept and act on the first option given in the additional affidavit, as extracted above, and absorb the company paid staff working both under the Court Liquidator in the Calcutta High Court and the Official Liquidator in other High Courts by framing a Scheme modelled on the 1978 Scheme within six months. In other words, we stay the operation of the judgment of the High Courts under appeal and the order in W.P. (C) No. 473/1998 for a period of six months to enable the appellants to frame the Scheme as suggested above and to give effect to it, failing which the judgments under appeal and the order in W.P. (C) No. 473/1988 will stand confirmed.

25. The Appeals, Writ Petition and the I.As are disposed of accordingly.

