

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 7535 OF 2021
(Arising out of SLP(Civil) No(s). 3896 of 2019)

SHYAM SUNDER OBEROI & ORS.APPELLANT(S)

VERSUS

**DISTRICT AND SESSION JUDGE
TIS HAZARI COURT, DELHI & ORS.RESPONDENT(S)**

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The instant appeal has jointly been filed by the employees who are substantively appointed as Lower Division Clerks(in short “LDC”) after going through the regular process of recruitment and qualifying written and typing tests in the year 1987 assailing the

judgment passed by the Division Bench of the High Court of Delhi dated 6th December, 2018 directing the respondents who were appointed on ad-hoc basis in the years 1983-1989 and later qualified the typing test in the first or second attempt in the year 1992 or thereafter are placed en-block senior to the appellants in the seniority list of LDC on being regularized by Order dated 17th November, 2000 from the date of their initial ad-hoc appointment.

3. Although in the Order dated 17th November 2000, it was clearly mentioned that the seniority of the respondents ad-hoc employees who are regularised after qualifying typing test from the date of their initial appointment, shall be fixed separately according to rules. Admittedly, there are no rules/guidelines available for determining seniority of the employees appointed in the cadre of LDC of the ministerial staff under the subordinate judiciary of Delhi.

4. Admittedly, the respondents were initially appointed as LDC on ad-hoc basis during the period 1983-1989 and their term of appointment was extended from time to time. Since they were continued for a long period of time, Civil Writ Petition No. 1820 of

1990 was filed by them before the High Court of Delhi seeking regularization of service.

5. During the pendency of Civil Writ Petition No. 1820 of 1990, a fresh appointment process was initiated, pursuant to which a panel of 180 candidates was prepared and it was notified that the written test and typing test is scheduled to be held on 23rd August, 1992 and their grievance was that if such candidates are being appointed, that will jeopardize their claim of seniority and taking note thereof, by an interim Order dated 20th August, 1992 while keeping 26 vacancies reserved for ad-hoc employees, granted them protection of seniority and deferred the test which was to be held on 23rd August, 1992.

6. By a subsequent order dated 12th November 1992, the learned Single Judge of the High Court while granting exemption to the ad-hoc employees from appearing in the written test directed to consider them for regularization after qualifying typing test. It was further directed by the High Court in its Order dated 12th November, 1992 that the seniority of the respondent ad-hoc employees in the cadre of LDC vis-à-vis fresh recruits, who were to

be appointed from the panel of 180 candidates shall remain protected.

7. Such of the employees/LDCs who were working on ad-hoc basis and qualified the typing test pursuant to an order dated 12th November, 1992 passed by the High Court in Civil Writ Petition No. 1820 of 1990 followed with the Order of the Division Bench of the High Court dated 6th April, 1994 in the earlier proceedings initiated at their instance, the District and Session Judge, Delhi (respondent no. 1), by an Order dated 17th November, 2000 regularised the services of such ad-hoc LDCs who qualified the typing test from the date of their initial appointment. At the given point of time, it was specifically mentioned that such of the LDCs who stand regularized from the date of initial appointment pursuant to an Order dated 17th November 2000, their seniority shall be separately fixed in accordance with rules.

8. The order passed by the District and Session Judge, Delhi dated 17th November 2000 became a subject matter of challenge by filing of Civil Writ Petition No. 7462 of 2000 before the learned Single Judge of the High Court at the instance of the present

appellants and few others who are similarly situated appointed as LDCs through open selection during the year 1987, after going through the process of selection for making substantive appointment.

9. The learned Single Judge of the High Court by Order dated 10th March 2015, after taking into consideration the material available on record, and as there was no rule existing in determining seniority of LDCs working in the ministerial cadre of the subordinate Courts, placing reliance on the judgment of this Court in ***Direct Recruit Class II Engg. Officers' Association Vs. State of Maharashtra*** 1990(2) SCC 712 in para 47(B) held as under:-

“In view of the above, the writ petition is allowed. Impugned list/order dated 17.11.2000 is quashed to the limited extent that the private respondent nos. 3 to 25 are given seniority above the petitioners. The order dated 17.11.2000 will remain to the extent that it regularizes the services of the private respondents, of course however the same is not to have the effect of giving private respondents seniority above the petitioners as claimed by the private respondents and also supported by the respondent no. 1/employer. No costs.”

10. Since the respondents were deprived of their seniority from the date of appointment, the order of the learned Single Judge dated

10th March, 2015 came to be challenged at their instance by filing Letters Patent Appeal No. 328 of 2015.

11. While examining the question in regard to determining seniority of ad-hoc employees who qualified the typing test at the later stage and were regularized from the initial date of appointment by Order dated 17th November 2000, the emphasis of the Division Bench was on the Order dated 20th August, 1992 passed by the High Court in the earlier round of litigation in Civil Writ Petition No. 1820 of 1990 noticing the apprehension shown by the respondent ad-hoc employees that 180 candidates who are in the panel, their typing test is being scheduled on 23rd August, 1992 and at the given point of time, such of the candidates who qualified the written and typing test, on being appointed may jeopardize their right of seniority and at least their seniority qua them be protected and by an interim Order dated 20th August, 1992, seniority of such of the ad-hoc employees who were considered for regularization were directed to be protected qua the panel of 180 candidates who qualified the written and typing test and that was noticed by the

learned Single Judge of the High Court while disposing of Civil Writ Petition No. 1820 of 1990 by its Order dated 12th November, 1992.

12. It may be relevant to note that the present appellants are not concerned/related to the candidates who were in the panel of 180 candidates of which a reference has been made by the learned Single Judge of the High Court in its Order dated 20th August, 1992 but the Division Bench of the High Court, in its impugned judgment, took note of the Order dated 20th August 1992 passed by the learned Single Judge of the High Court in the earlier proceedings of which a reference has been made allowed the LPA preferred by the respondents by Order dated 6th December, 2018 and observed as under:-

“14. The above statement before the Court on behalf of respondent no. 1 was honoured when the order dated 17th November, 2000 was issued regularizing the services of the appellants from the date of their initial appointments. Once it was made clear by the order dated 20th August, 1992 that the filling up of the vacancies on regular basis would be subject to the right of the present appellants in the matter of seniority, as and when they were regularized, it could not have been contended by the writ petitioners i.e. Respondent nos. 2 to 37 that notwithstanding the order dated 20th August, 1992 of this Court, which has become final, the writ petitioners would be considered seniors to the present appellants. Once the appellants had been regularized from a certain date, their seniority obviously had to be counted from that date. That was in fact the whole purpose of the appellants seeking regularization from the date of their initial appointments.

15. It is also not as if the present appellants were not qualified and, therefore, could not have been regularized from the dates of their initial appointment. It is another matter that the appellants did not undergo a written test but then they had worked for nearly seven years as LDCs when they were made to undergo the typing test. Again, pursuant to the judicial orders which were passed on 12th November, 1992 and 6th April, 1994, they underwent tests, but in a sense a modified test of where the written examination was dispensed with and they were made to give the typing-cum-shorthand test in which they qualified. As already noticed, some of them had got a second chance pursuant to the order dated 6th April, 1994 of the Division Bench. Nevertheless, the fact remains that the present appellants passed the qualifying test they were expected to pass in order to be regularized.

18. While this Court concurs with the decision of the learned Single Judge that the dates of the regularization of the present appellants in the post from the date of their initial appointment on ad hoc basis in terms of the order dated 17th November, 2000 issued by the respondent no. 1 should be left undisturbed, this Court disagrees with the learned Single Judge that the seniority of the appellants would not count from those very dates of their regularization.

19. To that extent, the impugned order of the learned Single Judge is set aside. The net result is that the appellants will count their seniority from the dates of their respective regularization of the posts as LDCs.

13. We have heard learned counsel for the parties and perused the material available on record with their assistance.

14. The facts are not in dispute and culled out that the present group of appellants are the members of the ministerial cadre(LDC) appointed on substantive basis after going through the process of selection prescribed for holding regular selection after they have

gone through the written test followed with the typing test in the year 1987. At the given point of time, the respondents were appointed on ad-hoc basis for a fixed term during the period 1983-1989 and after they were granted exemption from appearing in the written test by the High Court in Civil Writ Petition No. 1820 of 1990 preferred at their instance, all of them qualified the typing test in the first or second attempt in the year 1992 or thereafter and were regularized by the District and Session Judge by an order dated 17th November, 2000 from the date of their initial appointment. So far as the question of seniority is concerned, it was specifically mentioned that it shall be separately determined in accordance with rules but as there were no rules/guidelines at that time for determining seniority of the employees of the ministerial cadre in the subordinate service of Delhi, a presumption was drawn as they were regularized from the date of appointment that entails consequential seniority but that came to be clarified by the learned Single Judge that they will not be entitled to claim seniority over such of the employees who were appointed on substantive basis unlike the present appellants but that came to be set aside by the

Division Bench of the High Court by the impugned judgment dated 6th December, 2018 primarily relying on the interim order passed by the High Court in the earlier proceedings dated 20th August 1992 which was in reference to panel of 180 candidates who qualified the typing test held pursuant to Orders passed by the High Court of Delhi dated 12th November, 1992 and 6th April, 1994 respectively.

15. Indisputedly, the Order dated 20th August, 1992 in no manner was related to determination of seniority qua the present appellants who were recruited through open selection after qualifying the written test followed by typing test in the year 1987.

16. In the facts and circumstances, a question certainly arises if the employees who were appointed in the first instance on ad-hoc basis for a fixed term which has been extended from time to time, and have qualified the typing test at a later point of time, which is one of the pre-qualification for regular/substantive appointment, can claim regularization from initial appointment but since the learned Single Judge and the Division Bench of the High Court in the impugned judgment have not interfered with the order passed by the District and Session Judge dated 17th November, 2000 in

granting the benefit of regularization from the date of initial appointment, after such a long passage of time, it would not have been advisable for this Court to interfere so far as such appointees seeking regularization from the date of initial appointment although acquire the pre-requisite qualification at the later stage, but at the given point of time, the interim order dated 20th August, 1992 of the High Court in the earlier proceedings has been misread by the Division Bench of the High Court while passing the impugned judgment dated 6th December 2018.

17. We consider it appropriate to observe that the employees who were appointed on ad-hoc basis and qualified typing test at the later stage, in absence of the scheme of rules in determining seniority, at least could not have a right to march over such of the employees who were appointed on substantive basis after going through the process of selection for holding regular selection and their right of seniority in no manner be relegated qua such of the ad-hoc employees who qualified typing test at a later stage and regularized subsequently from the date of initial appointment like in the instant case by an Order dated 17th November, 2000.

18. In our considered view, the Division Bench has committed a manifest error under the impugned judgment in granting them the benefit of seniority who were appointed on ad-hoc basis as LDCs from the date of their regularization which was neither granted by the District and Session Judge by its Order dated 17th November, 2000 nor they were entitled for under the law.

19. Consequently, the appeal succeeds and is allowed. The judgment passed by the Division Bench of High Court of Delhi dated 6th December, 2018 is accordingly set aside. No costs.

20. Pending application(s), if any, stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(ABHAY S. OKA)

NEW DELHI
DECEMBER 08, 2021