

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) Nos.12292-93/2005**

% ***Date of Decision: 04.04.2011***

Govt. of NCT of Delhi & Anr. *Petitioners*

Through Ms. Avnish Ahlawat and Ms. Latika
Choudhary, Advocates

Versus

Mrs.Usha Anand & Ors. *Respondents*

Through Petitioner No. 1 in person

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | <i>To be referred to the reporter or not?</i> | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioners, Govt. of NCT of Delhi and Anr., have challenged the order dated 3rd March, 2005 passed by the Central Administrative Tribunal, Principal Bench in OA 1501/2004 titled as “Mrs. Usha Anand & Ors. Vs. Govt. of NCT of Delhi and Ors.”, allowing the Original Application of the respondents and setting aside the order dated 29th April, 2004 passed by the petitioners and quashing the seniority list issued by the petitioners and directing the petitioners to grant regularization to the respondents from the date of their *ad hoc*

appointment, i.e., 12th December, 1988 and also to reckon their seniority from the said date for all the purposes, including promotion, pension and retirement benefits.

2. The relevant facts to comprehend the controversies are that the respondents were working as lecturers in Guru Nanak Dev Polytechnic, Pusa Polytechnic in the Department of Electronics and Electrical Communication Engineering, New Delhi and as Lecturer (Mechanical Engineering) in G.B. Pant Polytechnic, Delhi. The respondents had joined the service of the petitioners in different years as Instructors and Demonstrators and later on they were promoted to the post of Junior Lecturers in 1977-79.

3. In order to examine the issue and to revise the staff structure in engineering institution, the All India Council for Technical Education had appointed an Expert Committee under chairmanship of Professor PJ Madan, Pro-Vice Chancellor, M.S. University, Baroda. One of the recommendations of the Committee including others was that the lowest post of teaching staff should be that of a Lecturer. This was approved by Ministry of Education and Social Welfare and all the State Govts. and UTs were requested to revise the staff structure of respective engineering colleges and polytechnics.

4. The Department of Education, Govt. of India and Administrator of Delhi by letter dated 25th September, 1987/10th November, 1988 sanctioned the appointment of 51 teaching staff as detailed in letter dated 12th December, 1988 as Lecturers (on *ad hoc* basis) in the pre-revised scale of Rs.2200-4000 on the basis of Madan Committee recommendations. While appointing 51 teaching staff, it was categorically stipulated in the letter dated 12th December, 1988 that the formal appointment orders on regular basis will be issued after the approval of UPSC and *ad hoc* appointment will not confer upon the officer concerned to claim seniority etc. on the said post or any other equivalent post. The relevant portion of the letter dated 12th December, 1988, is as under:-

“ Formal appointment orders on regular basis will be issued only after the approval of Union Public Service Commission is received.

The above ad-hoc appointments will not confer upon the officers concerned to claim seniority etc. on the said post or any other equivalent post.

All the above officials will continue working at their existing place of posting except the one mentioned at S.No.23 & 27.”

5. Despite the appointment by letter dated 12th December, 1988, formal appointment on regular basis was not done by the petitioners, therefore, Association of Gazetted Officers, Technical Education filed an original application being OA No. 1263/1991, before the Principal Bench of Central Administrative Tribunal seeking regularization of the

services from the date of their appointment on *ad hoc* basis as lecturers. In OA 1263/1991, the Principal Bench passed an order dated 3rd January, 1992, directing the petitioners to pass the formal order regarding the regular appointments of the respondents. While directing the petitioners to issue formal orders regarding the appointments, it was also held that the respondents would also be entitled to reckon their seniority from the dates of their *ad hoc* appointments and the said period will also be counted as qualifying service for the purpose of pension and other retirement benefits.

6. While directing the petitioners to take the respondents' seniority from the date of their appointment, the Tribunal also considered the letter dated 28th May, 1990 issued by UPSC. In para 2 of the said judgment it was held as under;-

“.....The applicants who were working as demonstrators/Junior Lecturers/Instructors etc. were appointed as Lecturers in various disciplines on *ad hoc* basis. On a reference made to the UPSC, their suitability was assessed and recommended appointment of 57 persons, including the applicants, on the regular basis vide their letter dated 25-5-90. However the respondents have not issued orders for their regular appointments in terms of those recommendations.”

7. The Tribunal also held that once the UPSC has recommended the regularization of the respondents, no one else can review the said recommendation and consider the suitability of the persons by applying

criteria which is not disclosed. The Tribunal therefore, passed the following order:-

“5. In view of the foregoing, the respondents are directed to take all necessary steps to implement the recommendation made by the UPSC and pass formal orders regarding the regular appointment of the applicants and those similarly situated including the applicant in MP 2564/91 (Dr.Usha Khurana) as lecturers. **The applicants would also be entitled to recon their seniority from the dates of their ad hoc appointment** and the said period will also count as qualifying service for the purpose of pension and other retirement benefits. The respondents shall implement the above directions within a period of three months from the date of communication of this order. The interim order passed on 27.08.1991 is hereby made absolute. MP 2564/91 is also allowed.”

8. The said order was not challenged by the petitioners on any ground including that while reckoning their seniority, the services have not to be computed from the date of their *ad hoc* appointment but from the date recommended by UPSC. The said order therefore, became final.

9. On 10th April, 1992, the services of the respondents were regularized, however, the seniority list giving their seniority from the date of their *ad hoc* appointment was not finalised.

10. From 1992 till 2000, the seniority list of the respondents was not finalised taking into consideration the directions of the Tribunal in the order dated 3rd January, 1992 in OA 1263/1991. According to the respondents on 7th July, 2000, a final seniority list of lecturers under

the Directorate of Training and Technical Education, Delhi was issued without circulating any tentative/original seniority list before that.

11. In the final seniority list circulated on 7th July, 2000 the respondents were not shown appointed on *ad hoc* basis from 12th December, 1988 nor their seniority was computed from the said date.

12. Against the action of the petitioners in issuing a final seniority list on 7th July, 2000 in which the seniority was not given from the date of their *ad hoc* appointment in terms of letter dated 12th December, 1988, which was approved by the Tribunal in its order dated 3rd January, 1992 in OA No. 1263/1991, the respondents filed representation and after not getting any response to the representation, OA No. 3065/2002 was filed before the Principal Bench of Central Administrative Tribunal challenging the faulty finalised seniority list circulated on 7th July, 2000. In the said OA 3065/2002, the respondents claimed seniority to be granted to them i.e. 12th December, 1988 instead of 28th May, 1990 and for counting the said period as regular service for the purpose of seniority with all the consequential benefits and to issue an up to date seniority list and to pay difference of pay and allowances from 12th December, 1988 according to the revised seniority and to hold the DPC only thereafter.

13. The said petition was opposed by the petitioners on the ground that employees, who had filed the petition being OA 3065/2002 were the members of the Association, which had filed OA 1263/1991 and the issues raised therein had become final and could not be agitated being barred by doctrine of *res judicata*. The petitioners also contended that the issue of the claim of the respondents being barred by limitation. It was also contended that the order dated 10th April, 1992 passed by the petitioners pursuant to order dated 3rd January, 1992 in OA 1263/1991 clearly stipulated that the regularisation of the respondents would be from 28th May, 1990 and since no objection was taken for 10 long years and since tentative seniority list was issued vide letter dated 11th November, 1999, with liberty to file the objection to finalise the seniority and as no objections had been put forth by the respondents, the final seniority list dated 7th July, 2000 was issued. The petitioners also contended that the respondents' *ad hoc* service cannot be treated as qualifying service in view of Madan Committee. The respondents were only appointed on *ad hoc* basis being Group-A employees and for regularisation, UPSC's approval was mandatory. However, as special dispensation, respondents had been promoted as lecturers on *ad hoc* officiation and such *ad hoc* officiation would not confirm any claim for seniority. In any case, UPSC has regularised them w.e.f. 1990, which has been followed by the petitioners. It was asserted by reckoning *ad hoc* seniority the claim of those who stood tested on merit on account of competitive recruitment would be adversely affected.

14. The petitioners also asserted that the decision of the Tribunal in OA 1263/1991 dated 3rd January, 1992 was partly complied with as *ad hoc* officiation was counted towards qualifying service for pensionary benefits, however, no orders had been passed as far as seniority is concerned and the final seniority list had been issued in the year 2000.

15. The Tribunal, after hearing the parties, held that once the directions had been issued to reckon the seniority from the date of *ad hoc* appointment in OA 1263/1991 by order dated 3rd January, 1992, the same consideration should have been made in the said case by the petitioners in OA 3065/2002 also.

16. The Tribunal further directed the petitioners to treat the OA 3065/2002 as supplementary representation apart from the original representations made to the petitioners and to consider the claim of the respondents and to pass a detailed speaking order in the light of the decision passed in OA 1263/1991 within three months from the date of receipt of the copy of the order dated 3rd October, 2003.

17. Consequent to the decision dated 3rd October, 2003 in OA 3065/2002, which was not challenged by the petitioners, they passed an order dated 29th April, 2004 on the representations of respondents. The petitioners relied on the order dated 10th April, 1992 passed

pursuant to order dated 3rd January, 1992 in OA 1263/1991, whereby the respondents were regularized and it was also held that the respondents shall be entitled for the benefit of qualifying service for the period of *ad hoc* service which will count for pensioners' benefits. The petitioners further agreed that the seniority list was, however, issued after 10th April, 1992 on 7th July, 2000, when it was proposed to fill up the vacant post of head of the department.

18. Reliance was also placed by the petitioners on OM No. 28036/1/2001-Estt.(D) dated 23rd July, 2001. The petitioners held that the benefit of seniority was not to be given with effect from the date of *ad hoc* appointment to the respondents appointed under Madan Committee recommendation as the seniority was to be reckoned with reference to the date of regular appointments.

19. The petitioners also held that when the tentative seniority list was circulated before finalization, no objections were raised, however to the seniority list issued on 7th July, 2000, the objections had been raised and the seniority had been claimed with effect from the date of *ad hoc* appointment. The petitioners in their order dated 29th April, 2004 also held as under in para 5:-

“5..... In view of the fact that the said relaxation of the provisions of the then existing recruitment rules was accorded by the commission only in that year 1990 and before that there were no statutory recruitment rules for the upgraded post of lecturer, the commission advised the

Government of NCT of Delhi that the appointment of the officer found fit for regular appointment to the upgraded post of Rs. 2200-4000 (Group 'A') could be from a date not earlier than from that date of recommendation of the UPSC. The said advise of the commission were vests on valid consideration and there was no legal infirmity in this advice.

The commission has also observed that the applicant in OA 1263/1991 have not alleged for more than ten years, any non-ful compliance of the Hon'ble Tribunal Order dated 03.1.1992 in the said OA, therefore, it is not enforceable at this belated stage."

Thus, representation of the respondents was declined.

20. The respondents aggrieved by the order dated 29th April, 2004 of the petitioners filed the original application being OA 1501/2004 titled as "Ms. Usha Anand & Ors. Vs. Govt. of NCT of Delhi & Ors." seeking directions to the petitioners to update the seniority list by interpolating the names of the respondents at appropriate places after allowing them appropriate seniority from 12th December, 1988 and from September, 1987 along with arrears of dues of pay and allowances along with other benefits admissible to the respondents to allow career advancement from due date by counting their seniority as lecturers from the date of their appointment, i.e., 12th December, 1988.

21. The petitioners contested the petition contending, inter alia, that before issuing the order dated 29th April, 2004, the UPSC and Law Department of Govt. of NCT of Delhi were duly consulted. The respondents contended that subsequent to decision of Govt. of Delhi to

restructure the existing pattern of polytechnics, as recommended by Madan Committee the teaching post below the rank of lecturers such as Jr. Lecturer, Demonstrator, instructor, Studio Assistant, etc. were upgraded as lecturers and the incumbents working on these posts were appointed as lecturers subject to their fulfilling the requisite educational qualification prescribed for the post of Lecturers and consequently, the order dated 12th December, 1988 was issued to appoint the respondent and others on *ad hoc* basis.

22. The petitioners categorically contended that UPSC vide letter dated 28th May, 1992 had conveyed its approval for regularization of above mentioned lecturers stipulating that the officers may be appointed to the upgraded post of lecturers on a regular basis from a date not earlier than the date of recommendation of the Commission, i.e., not earlier than 18th May, 1990 and consequently, the petitioners issued orders for regularization of the lecturers w.e.f. 28th May, 1990. It was admitted that the seniority list was finalised in the year 2000 and was circulated on 7th July, 2000. Reliance was again placed on DOPT OM No. 28036/1/2001-Estt. (D) dated 23rd July, 2001 stipulating that no claim of the seniority had to be entertained, which matter was again agitated by the respondent by OA No. 3065/2002. It was contended that against the final seniority list the proper procedure for the respondents was to represent against the list and not to approach the

Tribunal and in the circumstances, the original application is premature.

23. The Tribunal, however, allowed the application being OA 1501/2004 holding that the relief claimed by the respondents was allowed in OA 1263/1991, which was decided on 3rd January, 1992 and the pleas of the petitioners cannot be accepted, as the Tribunal after consideration of the relevant aspects of the case, had passed the appropriate directions not only to regularise the respondents by passing formal orders but had also held that they would also be entitled to reckon their seniority from the dates of their *ad hoc* appointment and the said period would also be counted as qualifying service for the purpose of pension and other retirement benefits. The Tribunal held that if the petitioners were aggrieved by the order of the Tribunal their remedy was to file either a review or to challenge the order by filing a writ petition in the High Court. The observation made by the Tribunal in para-9 of the order is as under:-

“9. After hearing the rival contentions of both the parties, we are convinced that the respondents have not really implemented the order dated 3.1.1992 passed by the Tribunal in OA No.1263/1991 in the letter and spirit. In this order clear direction were issued to the respondents to reckon their seniority from the date of their *adhoc* appointment, i.e. 12.12.1988. The plea now taken by the respondents that this relief was not asked for by the applicants cannot be accepted. The Tribunal after considering all the relevant aspects of the case deemed it fit to issue the above directions. In case the respondents were not satisfied by the above directions, the remedy was

in filing a review petition or to challenge the order in the Hon'ble High Court but neither of these options was exercised by them. **The order thus had achieved finality and cannot be challenged at this stage. The same directions were reiterated by the Tribunal in its order dated 3.10.2003 in OA No.3065/2002 in which it was stated that the representations made by the applicants be considered and a speaking order passed, in the light of the decision in OA No.1263/1991.** The only reason advanced by the respondents for not giving the applicants the benefits of their ad hoc service in counting seniority, is that the UPSC gave its recommendations on 18.5.1992 and as such their regularization was made w.e.f. 28.5.1992. While we agree that the recommendations of UPSC were necessary for granting them regularization, but we are not convinced that its benefit could not have been given from the date of their ad hoc appointment. **It must be appreciated that this case of adhoc appointment is not the normal case when an employee is promoted on ad hoc basis for want of regular vacancy. In this case ad hoc upgradation was given, as a result of Madan Committee report, pending clearance for regularization by UPSC.** Once UPSC had given clearance for regularization, it should have been made effective from the date of issue of the final order, rather than from the date UPSC gave clearance. The learned counsel for the applicant during the course of arguments raised a very valid point. He argued that if UPSC had taken say 5 years to give their recommendations for regularization, does it mean that the regularization would have been effective from a date 5 years later. The obvious answer is No. We are inclined to accept the reasoning advanced by the learned counsel."

24. The plea of the petitioners placing reliance on OM dated 23rd July, 2001 was also repelled on the ground that the instructions of the said OM were applicable only in those cases, where persons appointed on *ad hoc* basis to a grade are to be replaced by persons approved for regular appointment by direct recruitment, promotion or transfer (absorption).

Therefore, it was held that these instructions would not be applicable in case of respondents as the respondents were not intended to be replaced by direct recruits and they were given *ad hoc* upgradation based on Madan Committee report pending clearance of regularization by UPSC. Reliance was also placed by the Tribunal on the case of the Supreme Court titled as Ajit Kumar Rath Vs. State of Orissa and Ors., AIR 2000 SC 85, Rudra Kumar Jain vs. UOI, 2000 SCC (L&S) 1055 and I.K. Sukhija Vs. UOI (1999) 1 SLJ 88 SC holding that once an incumbent is appointed to a post according to the Rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Consequently, the Tribunal set aside the order dated 29th April, 2004 and the seniority list dated 7th July, 2000 issued by the petitioners and directed the petitioners to grant regularization to the respondents from the date of their *ad hoc* appointment from 12th December, 1988 and also reckon their seniority from that date.

25. The order is impugned by the petitioners primarily on the ground that the reliefs claimed by the respondents were barred under Section 27 read with Section 21 of Administrative Tribunals Act, 1985. The petitioners also contended that the issue in OA No. 1263/1991 was the non-regularization of the respondents inspite of recommendations of UPSC and the issue that they should be regularised from the date they were given *ad hoc* appointment was not before the Tribunal.

26. According to Mrs. Ahlawat, the Ld. Counsel for the petitioners, once the Tribunal directed regularization from the date of UPSC's recommendation, the plea of regularization with effect from the date of *ad hoc* appointment does not arise, which had not been considered by the Tribunal. It was also contended that after regularization the appointment was not challenged by any of the respondents.

27. The petitioners also asserted that the tentative seniority list was prepared in the year 1999 and no objections to the same were raised by any of the respondents. Reliance on Rudra Kumar Sen (*supra*) and Ajit Kumar Rath (*supra*) was also sought to be distinguished on the ground that in case of respondents, they were not selected by any selection committee but they were given *ad hoc* appointment for the first time, they were considered by UPSC for regularisation on the basis of service record as well as qualification as per recommendation of Madan Committee.

28. Learned counsel for the petitioner, Mrs. Ahlawat has also relied on (1997) 4 SC 284, Hukam Raj Khinvsara vs. Union of India & Ors. and (2010) 2 SCC 59, UOI & Ors. vs. M.K. Sarkar in support of her contention.

29. The petition is opposed by the respondents by filing a counter affidavit dated 14th March, 2006, contending, *inter alia*, that most of the information given by the petitioners is wrong and is with a view to mislead the Court. It was contended that the petitions filed being OA 3065/2002 and OA 1501/2004 were not barred by time as had been alleged by the petitioners. The order dated 3rd January, 1992, was not challenged by the petitioners where specific directions were given to reckon the seniority of the respondents from the date of their *ad hoc* appointment. If the petitioners were aggrieved by the same they should have challenged the same. Since the seniority list was issued on 7th July, 2000, pursuant to order dated 3rd January, 1992, therefore, relief claimed by the respondents and original applications filed by them are not barred under Section 21 and 27 of the Administrative Tribunal Act, 1985. The respondents also contended that seniority list dated 7th July, 2000 and another tentative seniority list dated 21st October, 2003, did not incorporate the directions of the Tribunal in OA 1263/1991 dated 3rd January, 1992. According to the respondents this has led to the anomalous situation leading to mother becoming younger to her own daughter, i.e., the student of respondent No. 1 who had joined the department through UPSC in 1989 would become senior to respondent No. 1 though respondent No. 1 was initially promoted on *ad hoc* basis as lecturer on 12th December, 1988 and was regularized on 28th May, 1990.

30. This court has heard the learned counsel for the parties in detail and have also perused the entire record especially all three original applications filed by the respondents and their orders. This is not disputed that the OA No. 1263/1991 was filed by the Association of Gazetted Officers, Technical Education and Anr., which would be a petition in representative capacity of even the respondents. The Tribunal by the said order directed the petitioners to implement the recommendation made by the UPSC and pass formal orders regarding the regular appointment of the respondents. This is not the case that the UPSC recommendations were not considered by the Tribunal as it was categorically held that the respondents would be entitled to reckon their seniority from the dates of their *ad hoc* appointment and the said period will also count as qualifying service for the purpose of pension and other retirement benefits. The petitioners have not denied that the period from their *ad hoc* appointment from 1988 till regularization in 1990 is to be counted as qualifying service for the purpose of pension and other retirement benefits and has rather has been done. The order dated 3rd January, 1992 was not challenged and the respondents were appointed on regular basis. Despite directions by the Tribunal to reckon their seniority from the date of their *ad hoc* appointment, the seniority list was not drawn.

31. Since the final seniority list was drawn on 7th July, 2000, which was challenged by the respondents by filing the OA 3065/2002, it

cannot be held that the relief claimed by the respondents was barred under Section 27 or Section 21 of the Administrative Tribunals Act, 1985. Though the direction was given by the Tribunal in 1992, however, the seniority list was issued in July, 2000 and therefore, that seniority list, not complying with the directions of the Tribunal, could be challenged by the respondents by filing an application being OA 3065/2002. The findings in OA 1263/1991 cannot be re-agitated by the petitioners. In fact, the petitioners themselves in the reply to the OA 3065/2002 in paragraph- 6 had contended that the findings in OA No. 1263/1991 are *res judicata*. By order dated 3rd October, 2003, the OA No. 3065/2002 regarding representation against the seniority list of 7th July, 2000 were directed to be considered and disposed of along with the pleas and contentions raised in OA 3065/2002. If the pleas regarding correcting the seniority list on 7th July, 2000 in consonance with the order passed in OA 1263/1991 dated 3rd January, 1992 was barred by limitation, the petitioners ought to have challenged the order dated 3rd October, 2003, which was not done. Pursuant to the order dated 3rd October, 2003, the petitioners passed the order dated 29th April, 2004, which had been challenged by the respondents by filing another OA in 2004 being OA 1501/2004, which would also be not barred by time in the facts and circumstances of the case. Rather the plea that implementation of the order dated 3rd January, 1992 would be barred by limitation would be barred by principle of constructive *res judicata* as the said plea ought to have been taken by the petitioners in

OA 3065/2002. The order passed in OA 3065 of 2002 was also not challenged by the petitioners.

32. In any case, it cannot be denied that the seniority list was finalised by the petitioners on 7th July, 2000 and therefore, whether the order dated 3rd January, 1992 has been implemented or not could be ascertained only after knowing the final seniority list. Therefore, the final seniority list of 7th July, 2000 will give a cause of action to the respondents and their petitions challenging the seniority list of 7th July, 2000 will not be barred under Section 21 and 27 of the Administrative Tribunals Act, 1985. The case of Hukam Raj Khinvsara (supra) relied on by the petitioners is apparently distinguishable as in that case the order of dismissal passed against the employee were set aside and while setting aside the order of dismissal, he was also granted consequential benefits by order dated 13th March, 1992. Consequential benefits were not given to the said employee, so he filed a contempt application on 11th December, 1992, which was dismissed on 29th July, 1993. After more than one year from the order dated 13th March, 1992, the employee filed another original application for directions to implement the order dated 13th March, 1992, which was dismissed on the ground of limitation. Apparently the case of the respondents is distinguishable as final seniority list was issued on 7th July, 2000. Before that date the respondents could have known whether they have not been given seniority during the period they were appointed on *ad hoc* basis

pursuant to the order dated 3rd January, 1992. In the circumstances, the OA 3065/2002 filed by them was not barred by time. The order passed in OA 3065/2002 was also not challenged by the petitioners. Rather no objection was taken by the petitioners nor was the relief claimed by the respondents declined while passing the order dated 3rd October, 2003. If the claim of the respondents was barred by time, the petitioners should have challenged the order dated 3rd October, 2003. The petitioners rather complied with the order of the Tribunal and passed the order dated 29th April, 2004, which could be challenged by the respondents by filing another OA 1501/2004. From the perusal of the order of the Tribunal, it appears that this plea was not even raised before the Tribunal as the relief claimed by the respondents being barred by time has not been considered by the Tribunal and no affidavit has been filed on behalf of the petitioners that the point was agitated before the Tribunal and had not been considered. No such ground has been taken in the writ petition also that the relief of implementation of order dated 3rd January, 1992 being barred by limitation was taken before the Tribunal and has not been adjudicated. Consequently, on this ground, the order of the Tribunal dated 3rd March, 2005 cannot be faulted.

33. The Tribunal has also distinguished the OM dated 23rd July, 2001 holding that the instructions of the said office memorandum are not applicable to the case of the respondents. The learned counsel for

the petitioners is unable to show any such facts and grounds on the basis of which the instructions in the said OM dated 23rd July, 2001 can be applied to the case of the respondents and they can be deprived of the relief granted to them by the Tribunal. In any case, the petitioners have not denied that the respondents are entitled for counting their service from the date of their *ad hoc* appointment till regularisation in 1990 for the purpose of pension and other retirement benefits. In the circumstances, the order of the Tribunal dated 3rd January, 1992, which was not challenged by them granting seniority from the dates of their *ad hoc* appointment also cannot be faulted or can be held to be illegal in any manner.

34. The precedent M.K. Sarkar (*supra*) relied on by the petitioners' counsel is also distinguishable and the ratio of the said precedent is not applicable in the facts and circumstances of the present case. In the precedent relied on by the petitioners, it was held that service of notice would include constructive or informal notice. The Supreme Court had held that a person who is aware of the availability of option cannot contend that he was not served a written notice of the availability of the option after 22 years. Apparently, the case of the respondent is distinguishable as despite directions by the Tribunal in OA 1263/1991 by order dated 3rd January, 1992, to count their period of *ad hoc* service, the seniority list was not finalised till 7th July, 2000. Till the seniority list was finalised, the respondents could have not known

whether their seniority for the period they were appointed on *ad hoc* basis has been considered or not. It was only after 7th July, 2000 that the petitioner had a cause of action and consequently, their claim cannot be held to be barred by time nor it can be held that the respondents had sought implementation of the order dated 3rd January, 1992 beyond the period as prescribed under law in the peculiar facts and circumstances of the case.

35. In the totality of the facts and circumstances, there is no such illegality or unsustainability in the order of the Tribunal or such perversity which will require any interference of this court in exercise of its jurisdiction under Article 226 of the Constitution of India.

36. The writ petition is without any merit and it is, therefore, dismissed. Parties are left to bear their own costs.

ANIL KUMAR, J.

April 04, 2011
'rs'

VEENA BIRBAL, J.