

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

+ **W.P.(C) No. 7462/2000**

% **10th March, 2015**

SHRI SHYAM SUNDER OBEROI & ORS. Petitioners

Through: Mr. Pramod Gupta, Advocate with
Ms. Yogyata Verma, Advocate.

versus

THE DISTRICT & SESSIONS JUDGE TIS HAZARI COURTS, DELHI &
ORS. Respondents

Through: Ms. Latika Chaudhary, Advocate for
respondent Nos.1 and 2.
Mr. Harpreet Singh, Advocate for
respondent Nos.3 to 25.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Articles 226 & 227 of the Constitution of India, the petitioners who were Lower Division Clerks-LDCs(Stenographers) with the respondent no.1/the District & Sessions Judge Delhi, impugn the order dated 17.11.2000 by which the private respondents have been given seniority above the petitioners. This seniority has been given to the private respondent nos. 3 to 25 (also Stenographers) by the private respondent nos. 3 to 25 being regularized from the dates of their

initial appointment on *ad hoc* basis. Petitioners, who were appointed on a regular basis to the regular posts after undergoing a proper selection process, although appointed later on than the private respondents, state that since the petitioners have been appointed through the regular recruitment process i.e against vacancies in sanctioned posts and were duly qualified for appointment in terms of the relevant rules, the private respondents cannot be given regularization from their original appointment on *ad hoc* basis inasmuch as private respondents were not even qualified for being appointed to the posts when they were originally appointed on *ad hoc* basis.

2. For deciding the writ petition, the following admitted aspects are required to be noted:-

(i) Petitioners were admittedly appointed after the appointments of the private respondent nos.3 to 25, but, the private respondent nos.3 to 25 were appointed originally only on an *ad hoc* basis and without the private respondent nos. 3 to 25 meeting the qualifying criteria for appointment.

(ii) Petitioners were appointed through a regular recruitment process against vacancies in sanctioned posts and these petitioners satisfied the eligibility criteria for appointments.

(iii) Respondent no.1 has passed the impugned order dated 17.11.2000 not on the ground that the private respondent nos. 3 to 25 in law were entitled to regularization from their initial dates on *ad hoc* appointments and consequent seniority, but, impugned order is passed basing itself upon the order dated 6.4.1994 in C.M. No. 772/1994 in L.P.A. No.89/1993 read with order passed in C.M. No.5411/1992 in C.W.P. No.1820/1990. Putting it differently, in deciding the dates from which private respondent nos. 3 to 25 should be regularized, the respondent no.1 while passing the impugned order dated 17.11.2000 has done so simply because as per the respondent no.1 it was required to do so in compliance of the court order dated 6.4.1994.

(iv) The orders passed by Single Judges of this Court, the Division Bench of this Court and orders in connected matters by the Supreme Court only state that the private respondents should be regularized and their seniority should be protected, however, it is not stated in any of these orders that the specific date of seniority to be given to the private respondents should be from the original dates of their *ad hoc* appointments.

3. The issue in the present case is as to between two groups of persons which is the group which is entitled to seniority; one group of persons being those persons who have been regularly appointed by a regular selection process and who satisfy the eligibility criteria and were

appointed on vacancies in sanctioned posts and the other group being of persons who were appointed prior to the first group stated, but, these persons in the second group though appointed earlier to the persons in the first group were only appointed on *ad hoc* basis without being asked to comply with any criteria whether of written test or typing test or shorthand test etc. Since the terms of appointments of the private respondents are more or less in terms of similar letters of appointment, two sample appointment letters are reproduced as under:-

**“OFFICE OF THE DISTRICT AND SESSIONS JUDGE; DELHI
ORDER**

The following candidates are hereby appointed as Lower Division Clerks in the pay scale of Rs.950-1500 on purely adhoc basis w.e.f. 23.4.1990 (F.N) or from the date they take over the charge, against the vacancies reserved for Scheduled Castes & Scheduled Tribes. The appointment is valid upto 31.5.1990 (A.N) or till the vacancies are filled up on regular basis, whichever is earlier:-

SL. NO.	NAMES	PLACE OF POSTING
1.	Ms. Pushpinder Walia	L.D.C. in the Copying Agency (Civil)
2.	Sh. Gopal Gossain	L.D.C. in the Account Branch.
3.	Sh. Shailender Sharma	Asstt. Ahlmad in the Court of Sh. L.D. Malik, A.R.C./Delhi

SD/-
(JASPAL SINGH)

Dated: 23.3.1990

DISTRICT & SESSIONS JUDGE
DELHI

No.18263-18328/F.1(3)/90

Dated, Delhi the 23.3.1991.

Copy for forwarded for information and necessary action to:

1. The Officer Incharge, Accounts Branch (3 Copies)
2. The Pay and Accounts Officer No.VI, Tis Hazari, Delhi, through the Accounts Branch.
3. Personal file of the officials.
4. Officials concerned.

SD/-
(JASPAL SINGH)
DISTRICT & SESSIONS JUDGE
DELHI

OFFICE OF THE DISTRICT AND SESSIONS JUDGE, DELHI
ORDER

The following candidates are hereby appointed as Lower Division Clerks/Ahlmad/Asstt. Ahlmads/Copyist in the pay scale of Rs.950-1500 on purely adhoc basis w.e.f. 21.4.1990 (F.N) or from the date they take over the charge, against the vacancies reserved for Scheduled Castes & Scheduled Tribes. The appointment is valid upto 18.7.1990 (A.N) or till the vacancies are filled up on regular basis, whichever is earlier:-

SI NO.	NAMES	PLACE OF POSTING
1.	Sh. Satbir Singh	L.D.C. in the Record Room (Civil)
2.	Miss Mohini	-do-
3.	Sh. Iqbal Ahmed	Typist in the court of Smt. R. Kiran Nath, M.M. New Delhi.
4.	Sh. Ashok Kumar	Asst. Ahlmad in the court of Mrs. Mamta Sengal, ARC, Delhi

5.	Miss Sangita Rani	Asst. Ahlmad in the court of Mrs. Rekha Sharma, ADJ, Delhi
6.	Mrs. Asha Rani	Asst. Ahlmad in the court of Mrs. Rekha Rani, SJ, Delhi
7.	Sh. Rajesh Malik	L.D.C. in the Record Room (Crl.)

SD/-
(JASPAL SINGH)
DISTRICT & SESSIONS JUDGE
DELHI

Dated:

No.21829-21849/F.1(3)/90 Dated, Delhi the 18.4.1996.

Copy forwarded for information and necessary action to:

1. The Officer Incharge, Accounts Branch (7 Copies)
2. The Pay and Accounts Officer No.VI, Tis Hazari, Delhi, through the Accounts Branch.
3. All the officials concerned.
4. Personal file of the officials concerned.

SD/-
(JASPAL SINGH)
DISTRICT & SESSIONS JUDGE
DELHI”

4. Petitioners place reliance upon the judgment of the Supreme Court in the case of ***Ch. Narayana Rao Vs. Union of India and Ors. (2010) 10 SCC 247***. This judgment considers and discusses the ratio of all the other earlier relevant judgments on the point of *inter se* seniority between *ad hoc* appointed employees who were not appointed in a regular appointment

process by satisfying the eligibility criteria and on existence of vacant sanctioned posts and those persons who were regular appointees on satisfying the eligibility criteria and such appointments being against vacancies in sanctioned posts undergoing a regular selection process. The relevant paras of this judgment are paras 3 to 7, 11 and 15 to 20 and which paras read as under:-

“3. The factual matrix of the case lies in narrow compass: the appellant was appointed on 26-11-1981 on the post of Stenographer (OG). His appointment was against a temporary vacancy of Stenographer, with the following rider:

“His appointment is purely on an ad hoc and temporary basis and his services may be terminated any time without assigning any reasons.”

4. Thus, his letter of appointment clearly stipulated that it was not only ad hoc but temporary too, terminable at any time without assigning any reasons. However, he continued in service, but after few years, an apprehension arose in the mind of the appellant and other similarly situated stenographers that their services may be terminated. Thus, the Appellant and others were constrained to approach the Jabalpur Bench of the Tribunal by filing original application, claiming that the respondent be restrained from terminating their services and they be regularised. The Tribunal vide its order dated 23-10-1989 directed that the services of the appellant and other similarly situated stenographers, be not terminated, instead they be regularised subject to qualifying requisite test.

5. The operative part of the order of the Tribunal is reproduced hereinbelow:

“The Government may examine and review the position as whether it is possible to regularize the services of these

petitioners by relaxing the rule requiring their recruitment through the Staff Selection Commission. If it is not considered feasible by the Government, then we direct that the petitioners should be continued in service and the respondents are restrained from terminating their services but two opportunities be given to the petitioners to attain proficiency in Stenography and clear the test with the requisite standard of speed in shorthand, etc. before their regularisation. In other words their appointments as stenographers will be treated as officiating appointment although not confirmed but also not ad hoc pending such a regularisation.”

6. It is clear from a reading of the aforesaid direction that the respondents were restrained from terminating the services of the appellant and two opportunities were directed to be given to the appellant to clear proficiency test so that he becomes entitled for regularisation.

7. On the strength of the said order of Tribunal, his services were not terminated and he continued in employment with the respondents. He, thereafter, qualified the proficiency test in Stenography conducted by the Staff Selection Commission in 1992. Thus, he was regularised with effect from 12-04-1992, the date on which he was declared successful in the test. 50% of his past service was also ordered to be counted for the purpose of computation of pensionary benefits.

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11. The contention of the respondents from the very beginning had been that the appellant was one among several persons who were appointed as Stenographers (OG) on purely temporary and ad-hoc basis. However, they were given their regular appointment as Stenographers (OG) in the Department only from the date of passing the qualifying test with approval by the Staff Selection Commission. All those who had been appointed alongwith appellant were treated alike and were given their regular appointment only from the date of their passing the requisite test. Thus, no case of discrimination was made out by the appellant as likes were treated alike.

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15. The said question, as has been projected above, should not detain us long as the same has been considered in the matter of *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra*,: (1990) 2 SCC 712 by a Constitution Bench of this Court. After eloquent discussion with regard to inter se seniority of direct recruits and promotees, the same has been summed up in para 47. The relevant portion of the said para applicable to the facts of this appeal is reproduced hereinbelow: (SCC PP. 744-45, para 47)

“47. To sum up, we hold that-

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the **procedure** laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.”

16. On the strength of the aforesaid Constitution Bench Judgment, Mr. Sushil Kumar Jain strenuously submitted before us that Clause (B) thereof should be invoked for the purpose of grant of seniority to the appellant. We have minutely examined the same but are unable to accept the said contention as according to us corollary of Clause (A) of para 47 of the aforesaid judgment would be applicable to the appellant's case.

17. It cannot be disputed that the initial appointment of the Appellant was only ad-hoc and for a temporary period and was also not in accordance with the Rules of 1990 as he did not appear in the requisite test, which is conducted by Staff Selection Commission,

before his appointment. The same was only a stop gap arrangement. Therefore, his officiation on such a post cannot be taken into account for considering the seniority. Thus, in our considered opinion neither Clause (A) nor Clause (B), as reproduced hereinabove, would be applicable to the appellant's case and he cannot draw any advantages therefrom. On the other hand, he would be squarely covered by the corollary appended to Clause (A).

18. This judgment of Constitution Bench in *Direct Recruit's case (supra)* has been followed by three learned Judges of this Court in the case of *State of W. B. v. Aghore Nath Dey*: (1993) 3 SCC 371 authored by most illustrious learned Judge of this Court, Hon'ble Mr. Justice J.S. Verma (as he then was).

19. After considering the scope and ratio decidendi of *Direct Recruit's case (supra)*, it has been held in SCC paras 24 and 25 in lucid and concise words as under: (*Aghore Nath Dey case (supra)*, SCC pp.382-83)

"24. The question, therefore, is of the category which would be covered by Conclusion (B) excluding therefrom the cases covered by the corollary in Conclusion (A).

25. In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, **except for the deficiency of certain procedural requirements** laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the latter expression 'till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in

every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stopgap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."

20. According to us, corollary appended to Clause (A) of *Direct Recruit case* (supra) and the aforesaid judgment in *Aghore Nath Dey* (supra) case squarely decide the issue.” (emphasis added)

5. A reading of the aforesaid paragraphs shows that the main judgment on this issue is the Constitution Bench judgment of 1990 in the case of *Direct Recruit Class II* (supra) and para 47(A) of which stated that

if the original appointment is only *ad hoc* being not in accordance with the rules and made as a stopgap appointment, the period of officiation in such posts cannot be taken into account for considering the seniority. The exception carved out to this position was that if the appointment is made of the *ad hoc* persons only in violation of the procedure i.e there is appointment which otherwise is a regular appointment in terms of satisfying the eligibility criteria and appointment against vacancies in sanctioned posts but appointment is irregular inasmuch as the procedure laid down by the rules is violated, then in such latter case, the period of officiating service of the *ad hoc* employee would be counted. This paragraph 47(A) of the judgment in the case of ***Direct Recruit Class II (supra)*** was explained in the judgment in the case of ***Aghore Nath Dey (supra)*** and para 24 of which has been reproduced in para 19 of the judgment in the case of ***Ch. Narayana Rao (supra)*** clarifying that the situation envisaged in para 47(B) of the judgment in the case of ***Direct Recruit Class II (supra)*** only pertains to irregular appointment in violation of the procedure and it did not cover cases where persons who were appointed on *ad hoc* basis were not eligible and qualified for being appointed to the posts. The law is hence that a person who is appointed only on an *ad hoc* basis and he did not satisfy the relevant

eligibility criteria for appointment, then, the period of service of such *ad hoc* appointed persons obviously will not be counted towards their seniority.

6. Let us therefore examine as to whether appointment of the private respondents were irregular so as to fall within para 47(B) of the judgment in the case of ***Direct Recruit Class II (supra)*** or the appointments were illegal appointments covered under para 47(A) of the judgment in the case of ***Direct Recruit Class II (supra)***. For this purpose, it will be necessary to reproduce the entire order dated 12.11.1992 which was passed by a learned Single Judge of this Court in C.M. No.5411/1992 in C.W.P. No.1820/1990 and which order reads as under:-

“CM 5411/92

By this application, the petitioners seek clarification in respect to the directions given by this Court by order dated 28th July 92, for passing the qualifying test for their regular appointment as Lower Division Clerks in the establishment of the District & Sessions Judge, Delhi. The petitioners plead that after the aforesaid order, the office of the District & Sessions Judge issued a circular notifying 23rd August 1992 as a date for holding written test as well as typing test. It was thereafter that the petitioners approached this Court with the present application praying that the said notice be quashed and they may be ordered to be regularised without holding any test, and consider them for regularisation on the basis of their past performance.

This prayer, as such, cannot be allowed, because there is already an order of the Court that the petitioners be regularised against regular posts of L.D.Cs. in the establishment of the District & Sessions Judge after they pass the qualifying test. Therefore, there cannot be a complete waiver of the test, as the petitioners now seek. However, the order dated 28.7.92 was passed on the basis of some

directions given by the Supreme Court in the writ petition filed by some Stenographers, who were also working on ad hoc basis, in the establishment of the District & Sessions Judge.

After notice of this application, the matter has been adjourned from time to time. Mr. Mahajan states that there are no specific rules on the subject, and the draft rules, which had been sent to the Delhi Administration, are still under consideration, and that so far the only rule on the subject, as contained in the Punjab High Court Rules and Orders, is Rule 5, reads as under:

“V. Appointment.- (1) Appointment to ministerial posts shall ordinarily be made either by open competition or by selection from a list of qualified candidates or apprentices accepted by the District Judge, Judge of Small Cause Court, or Sub-Judge to whom powers of appointment have been delegated, as the case may be. Any departure from either these methods should be reported to the High Court for confirmation.

(2)

(3) When appointment to a permanent post is made from candidates, preference must be given to the senior candidate unless, he has shown himself, unfit, provided that when candidates possessing higher educational qualifications for a post, for which an examination standard is fixed, such as graduates, are available they should be given preference over less well qualified candidates.”

This rule obviously does not speak of any test, but I am given to understand that over the years the office has prescribed written as well typing test for recruitment to the ministerial staff of the establishment of the District & Sessions Judge on regular basis. It is, however, admitted that in so far as the stenographers are concerned, who were working on ad hoc basis and were regularised pursuant to the directions of the Supreme Court, they were not subjected to any written test and that they have been given regular appointment, after a typing-cum-shorthand test only.

The cases of the present petitioners, who are working as L.D.Cs on ad hoc basis from about 3 to 9 years, ought to be given the same

treatment as given to the stenographers who were working on ad hoc basis and were regularised after passing the qualifying test for typing-cum-shorthand, because otherwise the procedure adopted by the District & Sessions Judge will suffer from the vice of discrimination or arbitrariness. The position would have been different if there had been any specific rules on the subject.

It is further pointed out by Mr. Sikri, appearing for the petitioners, that the shorthand test for stenographers is very basic to the nature of their duties, and that so far as L.D.C.s are concerned, the requisite qualifying test for them should be only of typing. This position is not disputed from the side of the respondents.

I, therefore, think it a fit case to waive the written test and direct that the case of the petitioners be taken up for regular appointment, after they pass qualifying test of typing. In view of the submission that the petitioners have been assigned duties so far where they had no typing work, and they are out of practice, as compared to the ad hoc stenographers, whose normal duty was to take dictation and do typing work, and they being amenable to taking of qualifying test for typing their prayer for some time, is allowed.

Since the petitioners were aware of the requirement of passing qualifying typing test for regularisation, they are expected to have made preparations for the same. I, therefore, think that a maximum period of four months be given to them for qualifying the typing test and the office of the District & Sessions Judge shall proceed accordingly, and fix a date for holding the typing test for the petitioners immediately after four months, and regularise those petitioners who qualify the said test.

It has been further submitted by Mr. Sikri that in the case of ad hoc stenographers, those who could not clear qualifying typing-cum-shorthand test in the first attempt, were given a second chance to qualify such test after a gap of three months. Same treatment can be given to the petitioners also, and those who fall to qualify the typing test in the first instance, shall be given three months time, and a second test shall be taken after a gap of three months, and those who qualify in the second test, shall be given regular appointment. The seniority of the petitioners, vis-à-vis fresh recruits, shall be protected in terms of the order dated 20th August, 1992.

This disposes of the writ petition itself.

No order as to costs.”

7. The aforesaid order dated 12.11.1992 has to be read in the context of an earlier order passed in the same proceedings on 20.8.1992 and which reads as under:-

“CM 5411/92

Mr. Mahajan seeks time to file reply and also to get instructions. Whereas time has to be allowed, but Mr. Sikri states that some interim order may be passed because both the written as well as typing tests are scheduled to be taken on 23.8.1992.

Mr. Mahajan further informs that the test of the outside candidates has already been conducted and a panel of about 180 candidates, who qualified in the said test, has been prepared. It is the common case that the total number of vacancies is 255. Mr. Mahajan states that liberty may be given to the respondents to fill up the vacancies by appointing persons from the panel already prepared, with undertaking that 26 vacancies shall be left reserved for the petitioners, and shall be filled up only under orders of this Court.

Mr. Mahajan further agrees that in case petitioner's prayer for regularisation is allowed, on regularisation, their seniority will be protected and appointments made out of the candidates already selected shall be subject to right of the petitioners in the matter of seniority, as and when they are regularised.

In view of this undertaking given by Mr. Mahajan, it is considered expedient to allow the respondents to proceed with the appointments from out of the panel already prepared of outside candidates with direction that 26 vacancies be kept reserved for the petitioners and further that their seniority shall be protected, in case their prayer for regularization is allowed.

Reply be filed within two weeks, with specific reference to the contention of the petitioners that no written test has been taken of the ad hoc stenographers, who have been regularised under orders of the Supreme Court whereas such a test is also required for

appointment to the post of stenographers under the rules, and secondly that in view of the nature of duties, the petitioners have been performing so far as ad hoc employees, the petitioners may be given some time for taking the typing test and the orders of regularisation can be made conditional on their passing the said test within a stipulated time. Mr. Mahajan undertakes to seek instructions on these points.

Copy of the reply be given to the counsel for the petitioner who may file rejoinder if any, before the next date.

To come up on 21.9.1992. In the meantime the tests-both written as well as typing, fixed for 23.8.1992 be deferred till further orders. Copy of this order be given dasti to counsel for both sides.”

8(i) It is the contention of the private respondents in terms of these orders that since their seniority was to be protected and they were to be regularized, regularization of the private respondents has been rightly done in terms of the impugned order dated 17.11.2000 by giving the private respondents benefit of regularization from the original dates of their *ad hoc* appointments.

(ii) The contention of the private respondents is however misconceived and I do not agree with the same inasmuch as reference to the language used in the aforesaid orders only talk of seniority of the private respondents being protected, but it is nowhere stated that seniority of the private respondents must be fixed in violation of the law. Once seniority needs to be fixed and private respondents are to be regularized, the same has to be done in accordance with the law because the orders reproduced above

do not state that regularization of private respondents should be done from the original dates of their *ad hoc* appointments. Admittedly, the private respondents cleared the requirement of passing the qualifying typing test after appointments of the petitioners and therefore private respondents complied with the requirements for their regularization only after appointments of the petitioners and which petitioners were regular appointees on regular basis as the petitioners had complied with all the requirements of a regular recruitment process including meeting of the eligibility criteria and petitioners were appointed on vacancies in sanctioned posts after competition inter se among candidates who were called through the Employment Exchange by passing the tests.

9(i) Learned counsel for the private respondents sought to distinguish the judgment in the case of ***Ch.Narayana Rao (supra)*** and sought to take benefit of the aforesaid orders passed by a learned Single Judge of this Court in C.M. No.5411/1992 in C.W.P. No.1820/1990 by arguing that once there were no recruitment rules in force on the date of appointment of the private respondents there did not arise any issue of illegal appointment of the private respondents. It is argued that appointments of the private respondents are only irregular appointments and not illegal appointments inasmuch as the appointments could have been illegal

appointments only if recruitment rules existed and the requirements of which existing rules were not complied with.

(ii) The argument urged on behalf of the private respondents is misconceived for the reason that the aforesaid orders reproduced above passed in C.M. No.5411/1992 in C.W.P. No.1820/1990 show that though there were no existing recruitment rules but there were existing eligibility criteria for appointment of the LDCs/Stenographers and these persons for their appointments had to clear a written test as also a typing-cum-shorthand test. This requirement of candidates/Stenographers/LDCs clearing the written test as also the typing-cum-shorthand test was a criteria which was followed historically for appointments made by the respondent no.1 of persons to the posts of LDCs/Stenographers and therefore once eligibility criteria exist it cannot be argued by the private respondents that since recruitment rules did not exist as to the eligibility criteria it cannot be said that there is eligibility criteria. Surely, in the absence of any extant rules, eligibility criteria fixed and applied by the respondent no.1 historically, and which was also prevalent when the private respondents were appointed, would be the eligibility criteria for appointment and admittedly the private respondents did not satisfy this eligibility criteria till after appointment of the petitioners on a regular basis. In fact, the private respondents had an

advantage not only of regularization although they were only *ad hoc* appointees, they got the additional benefit that they did not have to clear any written test but only had to clear a typing test and which orders were passed because certain other persons in terms of the Supreme Court order dated 16.3.1990 were only required to pass a typing test. This order of the Supreme Court dated 16.3.1990 reads as under:-

“UPON hearing counsel the court made the following

ORDER

Application for exemption from paying court fee is allowed, as prayed for.

Issue notice returnable within four weeks from today.

In addition to usual service dasti service is also permitted.

Petitioners who are ad hoc employees of the District and Sessions Court, Delhi are candidates for selection for appointment to the regular post of stenographers. Applications for the said post are also invited from outsiders. There shall be an interim stay of the test proposed to be held for the outsiders. There is, however, no objection to the test being conducted in so far as the petitioners are concerned. Their selection shall be subject to the result of the Writ Petition. The petition for stay is accordingly ordered.”

10. Indubitably therefore, whereas the private respondents satisfied the eligibility criteria of passing the typing test only after petitioners were regularly appointed on regular basis, consequently the ratio of the judgment in the case of *Ch. Narayana Rao (supra)* squarely applies and private respondents by being regularized in terms of the impugned order dated

17.11.2000 cannot by its effect be given seniority from the dates of their initial appointments on *ad hoc* basis. At this stage, I also reject the specious argument urged on behalf of the private respondents that the impugned order dated 17.11.2000 does not fix the seniority and hence the same does not affect the petitioners, inasmuch as, once the dates of appointments of the private respondents are fixed from the date of their original *ad hoc* appointments then for the purpose of their seniority such would be the dates of their appointments for determining seniority and surely it cannot be otherwise because the private respondents are not agreeable to their being treated as regularized from the dates from which they cleared typing test for satisfying the eligibility criteria for being regularly appointed as Stenographers/LDCs.

11. Reliance placed by the private respondents upon the judgment of the Supreme Court in the case of ***Sumnyan & Ors. Vs. Limi Niri & Ors. 2010 (4) SCALE 164*** is misplaced inasmuch as para 29 of this judgment which is relied upon has been understood and explained in the judgment in the the case of ***Ch. Narayana Rao (supra)*** by reference to ***Aghore Nath Dey (supras)***'s case that para 47(B) of the judgment in the case of ***Direct Recruit Class II (supra)*** deals with irregular appointments by violating the procedure and not those appointments which are illegal appointments made

by not satisfying the eligibility criteria of appointment. No doubt, period of officiating service whether on probation or otherwise will be counted towards regular services but unless such service is by persons who were duly qualified for appointment, and their appointments were only irregular, only in such circumstances, such service can be counted for seniority purposes and not otherwise.

12. On behalf of private respondents, reliance was placed upon the judgment in the case of *Santosh Kumar Vs. State of A.P. and Ors. AIR 2003 SC 4036* and para 11 whereof interprets the Constitution Bench judgment in the case of *Direct Recruit Class II (supra)* but these observations of the Supreme Court in para 47(B) of the judgment in the case of *Direct Recruit Class II (supra)* have already been sufficiently dealt with above and therefore reliance placed upon the judgment in the case of *Santosh Kumar (supra)* on behalf of the private respondents is misconceived and rejected.

13. I may state that respondent nos.1 and 2 have taken up a very curious argument. This curious argument is that oral observations were made by the court while passing the aforesaid order in LPA No.89/1993 and therefore the private respondents because of these oral observations were given seniority above the petitioners. This argument urged on behalf of

respondent nos.1 and 2 is rejected *in limine* because courts only speak through its orders and judgments and never have oral observations made by the courts during the course of hearing been allowed to be a basis to create vested rights of parties and much less which will be prejudicial to persons such as the petitioners who were not even a party in LPA No.89/1993. If any reference in this regard is required to be made, reference can be made to the ratio of the judgment of the Supreme Court in the case of ***State of Maharashtra Vs. Ramdas Shrinivas Naik and Anr., (1982) 2 SCC 463*** and which ratio has been consistently followed thereafter including in the judgment of the Supreme Court in the case of ***D.P. Chadha Vs. Triyugi Narain Mishra & Ors. (2001) 2 SCC 221*** that only what is written in the record of judicial proceedings is final and binding.

14. Learned counsel for the respondent nos.1 and 2 finally argued that the writ petition is barred by delay and *laches*, however, this argument of the respondent nos.1 and 2 is misconceived because the present writ petition is of the year 2000 and the order impugned is the order dated 17.11.2000. This argument of respondent nos.1 and 2 is also therefore rejected.

15. 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.

MARCH 10, 2015

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VALMIKI J. MEHTA, J