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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 285 OF 2016

1] Varsha Ramesh Chavan
Age:40 years, presently working as
Lower Division Clerk, in the Income
Tax Appellate Tribunal, Pratishtha Bhavan,
3rd floor, Maharshi Karve Road, Churchgate,
Mumbai-400 020 and Residing at 6(A),
Zawba Wadi, Thakurdwar, Mumbai-400 020.

2] Sanjay Sakharam Malegaonkan
Age:38 years, presently working as
Lower Division Clerk, in the Income
Tax Appellate Tribunal, Pratishtha Bhavan,
3rd floor, Maharshi Karve Road, Churchgate,
Mumbai-400 020 and Residing at 5/505/Shramil Niwas
Sane Guruji Marg,
Chinchpokli, Mumbai-400 012.

3] Sankalp L. Nare
Age:37 years, presently working as
Lower Division Clerk, in the Income
Tax Appellate Tribunal, Pratishtha Bhavan,
3rd floor, Maharshi Karve Road, Churchgate,
Mumbai-400 020 and Residing at 5, Kaveri, Arya
Swanand Nagar Gavdevi Road, Near Gavdevi Mandir,
Kulgaon, Badlapur (E),
Pin Code- 421 503.

4] Prashant N. Waradkar,
Age:38 years, presently working as
Lower Division Clerk, in the Income
Tax Appellate Tribunal, Pratishtha Bhavan,

3rd floor, Maharshi Karve Road, Churchgate,
Mumbai-400 020 and Residing at Room No.23/3, Mutkta
Devi Vadi, Near Mukta Devi Mandir, Sion
Chunabhatti-22.

5] Sangeeta Gopinath Chavan
Age:36 years, presently working as
Lower Division Clerk, in the Income
Tax Appellate Tribunal, Pratishtha Bhavan,
3rd floor, Maharshi Karve Road, Churchgate,
Mumbai-400 020 and Residing at Jadhav C/o Sunil, Room
No.1, Ramchandra Nevale Chawl,
Ambewadi, Kurur Village, Malad (E).
Mumbai-400 097.

6] Sheetal Shrihari Ghotge
Age:40 years, presently working as
Lower Division Clerk, in the Income
Tax Appellate Tribunal, Pratishtha Bhavan,
3rd floor, Maharshi Karve Road, Churchgate,
Mumbai-400 020 and Residing at B-1, Amar Hind Co-op. Housing
Society Ltd., Nanda Patkar Road, Vile Parle (E),
Mumbai-400 057.

7] Usha Bhalchandra Warang
Age:36 years, presently working as
Lower Division Clerk, in the Income
Tax Appellate Tribunal, Pratishtha Bhavan,
3rd floor, Maharshi Karve Road, Churchgate,
Mumbai-400 020 and Residing at 16 Art Cottage, Ceasar Road
Amboli, Andheri (W),
Mumbai-400 058.

8] Smita A. Ambre
Age:36 years, presently working as
Lower Division Clerk, in the Income
Tax Appellate Tribunal, Pratishtha Bhavan,
3rd floor, Maharshi Karve Road, Churchgate,

Mumbai-400 020 and Residing at 99/6,
Sarvashree Co-Op Housing Society Ltd.,
Belgrami Road, Kurla (West),
Mumbai-400 070.

9] Sujita Prabhakar Nagolkar
Age:35 years, presently working as
Lower Division Clerk, in the Income
Tax Appellate Tribunal, Pratishtha Bhavan,
3rd floor, Maharshi Karve Road, Churchgate,
Mumbai-400 020 and Residing at C/o Ramdas Vithal Kamtekar
Kashinath Dhruruchi Kharwadi,
Nr. Ravi Prakash Company
A.V. Marg, Old. Prabhadevi
Mumbai-400 028. **...Petitioners.**

Versus

1] Union of India through the Secretary of
Ministry of Law and Justice Dept. of
Legal Affairs of India,
Government of India
Shastri Bhavan, Ashok Road
New Delhi- 110 003.

2] The President,
Income Tax Appellate Tribunal,
3rd & 4th Floor, Old CGO Building
Mharshi Karve Road,
New Marine Lines, Churchgate,
Mumbai- 20.

3] The Registrar
Income Tax Appellate Tribunal
Lok Nayak Bhavan, 10th and 11th Floor,
Khan Market,
New Delhi- 110 003.

4] The Deputy Registrar,
Income Tax Appellate Tribunal
Old CGO Building
Mharshi Karve Road,
New Marine Lines, Churchgate,
Mumbai- 20. **...Respondents**

WITH

WRIT PETITION NO.1093 OF 2016

1] Union of India through the Secretary of
Ministry of Law and Justice Dept. of
Legal Affairs of India,
Government of India
Shastri Bhavan, Ashok Road
New Delhi- 110 003.

2] The President,
Income Tax Appellate Tribunal,
3rd & 4th Floor, Old CGO Building
Mharshi Karve Road,
New Marine Lines, Churchgate,
Mumbai- 20.

3] The Registrar
Income Tax Appellate Tribunal
Lok Nayak Bhavan, 10th and 11th Floor,
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New Delhi- 110 003.

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Income Tax Appellate Tribunal
Old CGO Building
Mharshi Karve Road,
New Marine Lines, Churchgate,
Mumbai- 20. **..Petitioners**

Versus

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Mumbai-400 020 and Residing at 16 Art Cottage, Ceasar Road
Amboli, Andheri (W),
Mumbai-400 058.

8] Renuka Ramakant Pawar
Age:36 years, presently working as
Lower Division Clerk, in the Income
Tax Appellate Tribunal, Pratishtha Bhavan,
3rd floor, Maharshi Karve Road, Churchgate,
Mumbai-400 020 and Residing at Room No. 403 “B” Wing,
Sukhshanti Apts., Shimpoli Chikoowadi,
Borivali (West),
Mumbai-400 092.

9] Smita A. Ambre
Age:36 years, presently working as
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Mumbai-400 020 and Residing at 99/6,
Sarvashree Co-Op Housing Society Ltd.,
Belgrami Road, Kurla (West),
Mumbai-400 070.

10] Sujita Prabhakar Nagolkar
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Kashinath Dhruruchi Kharwadi,
Nr. Ravi Prakash Company
A.V. Marg, Old. Prabhadevi
Mumbai-400 028. **...Respondents**

Ms. Ramesh Ramamurthy a/w Mr. Saikumar Ramamurthy for Petitioners in Writ Petition No.285 of 2016 and for Respondents in Writ Petition No.1093 of 2016.

Mrs. Neeta Masurkar a/w Mr. Vinod Joshi for Respondents in Writ Petition No.285 of 2016 and for Petitioners in Writ Petition No.1093 of 2016.

CORAM: R.M. BORDE AND
A.S. GADKARI, JJ.

Reserved On : 14 February 2017.
Pronounced On: 09 JUNE 2017.

JUDGMENT [PER A.S. GADKARI, J.]:-

1] The petitioners in Writ Petition No.285 of 2016 are the respondents in Writ Petition No.1093 of 2016 and the respondents in Writ Petition No.285 of 2016 are the petitioners in Writ Petition No.1093 of 2016.

For the sake of brevity, hereinafter the petitioners in Writ Petition No.285 of 2016 and the respondents in Writ Petition No.1093 of 2016 will be termed as "petitioners" and the respondents in Writ Petition No.285 of 2016 and petitioners in Writ Petition No.2016 will be termed as "respondents".

The petitioners in Writ Petition No.285 of 2016 have impugned the Order dated 27.11.2014 passed in Review Petition No.45 of 2014 by the Central Administrative Tribunal (C.A.T.), Bombay Bench, Mumbai and have prayed for issuance of writ of mandamus or other appropriate writ, order or direction, directing the respondents to give full effect to the directions issued by the Tribunal in its Judgment dated 21st

July 2014 in OA No817 of 2011 and regularize the petitioners from the initial date of their appointment in the Income Tax Appellate Tribunal (ITAT) as Lower Division Clerks (LDCs).

The petitioners in Writ Petition No.1093 of 2016 have impugned the Orders, dated 27.11.2014 in Review Petition No.45 of 2014 in OA No.817 of 2011 and dated 21.7.2014 in OA No.817 of 2011 passed by the C.A.T., Mumbai and for declaration that the respondents therein are not selected by due procedure established and by due process of law and their services cannot be regularized.

As both petitions involve same facts and impugns the same orders passed by the CAT, Mumbai, both the petitions are being decided by this common judgment.

2] It is the case of the petitioners that I.T.A.T. Group "C" Post Recruitment Rules come into effect on 10.12.1984 and there was no requirement under the said Rules that Group-'C' Post of L.D.C. should be filled up by the Staff Selection Commission. The petitioners were appointed as LDC's on various dates between 1998 to 2001 in the ITAT, Mumbai after being sponsored by the Employment Exchange and by following the procedure prescribed by the Recruitment Rules with the sanction of the Competent Authority and against sanctioned vacant posts.

That the petitioners have been signing their Muster Roll from the date of their first appointment as regular employees and without any distinction between the petitioners as ad-hoc employees and other regular employees in the post of LDC. That their services were extended from time to time since the date of their initial appointment and they have been working continuously since then. That there is no compulsion for the ITAT to recruit its staff to the Group 'C' and Group 'D' posts through the Staff Selection Commission, since ITAT is a statutory body and cannot be said to be a Central Ministry or Department or attached or subordinate office of Central Ministry or Department. That the Assistant Legal Advisor, Ministry of Law and Justice by its letter dated 17.1.2008 has accordingly informed the ITAT that, the statutory body can recruit its staff directly without reference to the Staff Selection Commission.

3] It is the specific contention of the petitioners that, the Principal Bench of the Central Administrative Tribunal, Delhi in the case of Uma Vaidyanathan, L.D.C., ITAT, Delhi Bench Vs. Union of India& Ors in O.A. No.1744 of 2004 by its Order dated 18.7.2005 has held that, as per ITAT Recruitment Rules, there is no requirement that the L.D.Cs in ITAT should be recruited only through Staff Selection Commission. That the said Judgment in the case of Uma Vaidyanathan has been implemented by the respondents by its Order dated 10.4.2006 and the said person was regularized as a LDC with effect from 1.11.1993. That further promotion has also been given to the said Uma Vaidyanathan as U.D.C. (Upper Division Clerk) on regular basis by Order dated 12.7.2006. It is further contended that, by letter dated 17.1.2008 issued by the Ministry of Law and Justice to the ITAT, it is mentioned that DOPT has informed that Staff Selection Commission does not recruit for Autonomous bodies/Organisations like ITAT and that the Staff Selection Commission has no objection for the ITAT to directly recruit its staff. That on or about 4.12.2009 the petitioners made individual representation to the President, ITAT for regularization of their services from first date of appointment with consequential benefits. That on 24.6.2010 the petitioners received replies from the Assistant Registrar, ITAT, Mumbai informing that, action will be taken on the representation after decision of the CAT, Mumbai Bench in the case of similarly situated LDC.

4] The C.A.T. Mumbai, delivered its Judgment dated 20th July 2010 in OA Nos.593 of 2007 to 598 of 2007 in the case of Uday R. Rane & Ors., wherein the Tribunal directed the ITAT to consider the case of the said persons for regularization and in case the applicants therein are so considered and found fit for regular appointment, they shall be entitled to all notional benefits of seniority, pay fixation, etc from the date of their initial appointment, but no arrears would be paid to them.

The ITAT thereafter passed Orders dated 10.3.2011 in the case of Uday R. Rane and Others regularizing their service as LDC's with effect from 27.1.2008. In view of the decision of the Tribunal in the case of Uday R. Rane, the petitioners made further representation dated 28.3.2011 with the respondents, however, the respondents did not reply the same. It is stated that, the respondents have implemented and had given full effect to the Orders passed by the Tribunal in the case of Uma Vaidyanathan (O.A. No.1744 of 2004) and Uday R. Rane & Ors. (O.A .Nos.593 to 598 of 2007) and as the petitioners case is similarly situated, they also deserves to be regularized as LDCs from the date of their first appointment with all consequential service benefits and therefore the present petitioners filed OA No.817 of 2011 before the Central Administrative Tribunal, Bombay Bench, Mumbai.

5] It is the case of the respondents that, the appointment of the petitioners to the post of LDC's with ITAT can be made only by the Staff Selection Commission. That the petitioners were sponsored through the Employment Exchange, for appointment as LDC's, on ad-hoc basis to meet the exigency of work load of ITAT against available vacancies. That it will not bestow any claim for regular appointment in that grade and that their services are liable to be terminated at any time without assigning any reasons. It is stated that, the contention of the petitioners that there is no distinction between them and other regular employees working against the post of LDCs is false and misleading. That the annual increment, provident fund, and other consequential benefits are available only to regular the employees and not extended to the applicants who are ad-hoc employees. It is contended that as per Government of India O.M dated 4.11.1975/21.5.1999, it is mandatory that all recruitment to the posts of LDCs in the Central Government are to be made through the Staff Selection Commission. That although the Ministry of Law and Justice has communicated by its letter dated 17.1.2008 that it may not be mandatory for ITAT to go in for recruitment of staff of Group 'C' and Group 'D' posts through the Staff Selection Commission, for such recruitment policy decision may be taken to move from the above position and make their own arrangement.

It is however admitted by the respondents that, the petitioners were sponsored through the Employment Exchange for appointment as LDC on ad-hoc basis and the petitioners have also qualified as required in the test viz. written, typing and interview at the time of their initial appointment. It is also admitted that the appointments have prior approval and sanction of the Competent Authority. It is also not in dispute about the contents of the letter dated 17.1.2008 addressed by the Ministry of Law and Justice. That initial appointment of the petitioners were extended on ad-hoc basis from time to time since requisite number of candidates from the Staff Selection Commission were not sponsored. It is further admitted that the Orders passed by the Tribunal in O.A No.593 of 2007 to 598 of 2007 (Uday R. Rane & Ors.) and the directions issued therein for considering the regularization of services of the persons concerned therein was not challenged by the respondents and the services of the said employees were regularized.

6] The learned Members of the Tribunal after scrutinizing the entire material made available before them, were pleased to allow the said O.A. No.817 of 2011 by its Judgment and Order dated 21.7.2014 and directed the respondents to consider the case of the petitioners for regularization in service with all consequential benefits from the date of their initial appointment on an urgent basis and to complete the process within a period of three months from the date of receipt of certified copy of the said Order by passing appropriate Office Order to that effect and to communicate the same to the applicants at the earliest.

7] The respondents thereafter preferred a Review Petition bearing No.45 of 2014 and the learned Members of the Tribunal in view of Order passed in the case of Uday R. Rane & Ors, reviewed its earlier Order and by its Order dated 27.11.2014 directed that the "consequential benefits" appearing in their Order dated 21.7.2014 cannot be extended/given to the petitioners, as it creates two different class of LDC's and paragraph-14 of the Order dated 21.7.2014 was accordingly modified. That after directing the said modification, the Tribunal was pleased to dismiss the Review Petition.

The record discloses that, after Order dated 21.7.2014 was passed by the Tribunal, the respondents have regularized the services of the petitioners as LDC's in ITAT with effect from 24.4.2014 by its Order dated 6.1.2015.

8] The learned Counsel for the petitioners contended that though the Tribunal had directed the respondents to consider the case of the petitioners for regularization in service with all consequential benefits from the date of their initial appointment, the ITAT has given them appointment with effect from 24.4.2014 and not from the date of their initial appointment against the sanctioned posts ranging from 1998 to 2001, thereby depriving them from all consequential benefits. He submitted that the Tribunal has committed error in reviewing its own Judgment and Order dated 21.7.2014 and has further erred in deleting the words "consequential benefits" from it. He submitted that the said Review Petition was dealt with and decided by the Tribunal as if it was hearing an appeal against the original Order. That the Tribunal has directed that the petitioners be considered at par with Rane's case without consequential benefits, the petitioners would suffer substantial loss and now will be entitled only for nominal seniority, pay fixation etc. He therefore prayed that the Order passed in Review Petition No.45 of 2014 dated 27.11.2014 therefore be quashed and set aside and the Order passed by the Tribunal dated 21.7.2014 in O.A. No.817 of 2011 be restored in its entirety.

9] The learned Counsel appearing for the respondents vehemently opposed the contention of the petitioners and submitted that, the appointments of the petitioners on ad-hoc basis to the post of LDC's are not in conformity with the rules and regulations prescribed by the respondents and as their appointment to the said post is without recommendation of the Staff Selection Commission, the services of the petitioners cannot be regularized. She further submitted that the regularization or absorption of the petitioners in the services of the respondents is not a matter of course and cannot be dehors of rules for such regularization/absorption. In support of her contention, she relied on the decision of the Supreme Court in the case of *Nand Kumar Vs. State of Bihar [AIR 2015 SC 133*].

The learned Counsel for the respondents has however fairly conceded the admitted facts recorded in para No.5 hereinabove, wherein the respondents have given certain unqualified admissions before the C.A.T. during the course of hearing of Original Application No.817 of 2011. She lastly prayed that the petition filed by the petitioners be dismissed and the petition filed by the respondents may be allowed.

10] A useful reference at this stage can be made to the decision of the Supreme Court in the case of ***State of Karnataka & Ors. Vs. M.L. Kesari & Ors. [(2010) 9 SCC 247]*** and in particular to para Nos.6 and 7 which reads as under:

> "6.This Court in *Umadevi* further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence 4 of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below : (SCC p.42, para-53
>
> > "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [1967 (1) SCR 128], R.N.

Nanjundappa [1972 (1) SCC 409] and B.N. Nagarajan [1979 (4) SCC 507] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. ...."

7.It is evident from the above that there is an exception to the general principles against `regularization' enunciated in Umadevi, if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

11] A minute perusal of the record would reveal that the petitioners were appointed to the post of LDCs (Group 'C') with the ITAT, Mumbai against sanctioned vacant posts by following due procedure as per recruitment rules and regulations with the sanction of competent authority. The petitioners were sponsored by the Employment Exchange and the procedure in that behalf was also complied with by following the due procedure. It is an admitted position that the Ministry of Law and Justice by its letter dated 17.1.2008 has informed the ITAT that the Staff Selection Commission does not recruit for Autonomous bodies/Organisations like ITAT and that the Staff Selection Commission has no objection for the ITAT to directly recruit its staff. It is also an admitted fact that the appointments of the petitioners on the said posts are against sanctioned vacant posts and after following due procedure prescribed by recruitment rules. That the appointment of the petitioners are not illegal appointments.

12] As stated earlier, the appointment of the petitioners on the said posts were effected by following due procedure and against sanctioned posts and therefore even otherwise the said appointments cannot be even termed as irregular appointments. The record clearly discloses that the respondents have complied with the directions issued in the case of Uma Vaidyanathan (OA No.1744 of 2004) & Sushila Butola w/o Dilwar Singh

Butola (OA No.1825 of 2004) and Uday R. Rane & Ors (OA Nos.593 to 598 of 2007). The respondents have not only implemented, but also gave full effect to the said Orders. In our view, the case of the petitioners is similarly situated as that of Uday R. Rane & Ors. case (O.A. Nos.593 to 598 of 2007) and the principle of parity squarely applies to the petitioners.

13] In the case of Uday R. Rane & Ors. (A.O. Nos.593 to 598 of 2007), the Tribunal by its Order dated 20th July 2010 had directed the ITAT to consider the case of the said persons for regularization and in case the applicants therein are so considered and found fit for regular appointment, they shall be entitled to all <u>notional benefits</u> (emphasis supplied) of seniority, pay fixation, etc from the date of their initial appointment, but no arrears would be paid to them. In the present case, the Tribunal by its Order dated 21.7.2014 had initially directed the respondents to consider the case of the petitioners for regularization in service with all <u>consequential benefits</u> (emphasis supplied) from the date of their initial appointment on an urgent basis. That in Review Petition preferred by the respondents, the Tribunal by its Order dated 27.11.2014 has clarified that the Order in the present case has been passed on the basis of precedence established in the case of Uday R. Rane (supra) which has been implemented by the respondents and therefore the reference to <u>consequential benefits</u> cannot result in creation of two different classes of LDCs and has to be read with the operative para-14 of the impugned Order. We are in full agreement with the view taken by the Tribunal in Review Petition No.45 of 2014, as the case of the petitioners is based on the principle of parity with the case of Uday R. Rane (supra).

14] As stated hereinabove, there was no direction for consequential benefits in the case of Uday Rane & Ors. and it was held that the applicants therein were entitled to all notional benefits of seniority, pay fixation etc. As the case of the petitioners is squarely based on the principle of parity with the case of Uday Rane & Ors., we are of the considered view that the petitioners herein cannot claim consequential benefits and are entitled for notional benefits. However, we are of the further view that the petitioners are entitled for regularization of their service as LDCs in the ITAT with effect from their initial appointment as has been directed by the Tribunal by its Order dated 21.7.2014 and not with effect from 24.4.2014 as has been ordered by the I.T.A.T.

15] With aforestated clarification, we partly allow the Writ Petition No.285 of 2016 filed by the petitioners, with no order as to costs.

16] As far as Writ Petition No.1093 of 2016 preferred by the respondents is concerned, after minutely perusing the entire record and in view of aforestated discussion, the challenge by the respondents to the impugned Orders, in our view, is dehors of any merits. The Writ Petition No.1093 of 2016 is accordingly dismissed.

(A.S. GADKARI,J.) **(R.M. BORDE, J.)**