

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2183 of 2017 (O&M)

Date of Decision: 06.02.2017

Union of India & Anr.

... Petitioner

VS.

Dharminder Kumar & Anr.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

Present: Mr. Manish Dadwal, Advocate for the petitioners

SURYA KANT, J. (Oral)

(1) Union of India and the Principal Chief Commissioner of Income Tax, North West Region have laid challenge to the order dated 21.11.2016 passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal') whereby the petitioners' order rejecting the claim for regularization of services passed against the first respondent has been set aside and the matter has been remitted to the petitioners to re-consider such claim in the light of the observations made by the Tribunal, and regularize his services in the same manner as the services of 15 Stenographers were regularized.

(2) The facts are not in dispute.

(3) The first respondent was appointed as Lower Division Clerk on *ad hoc* basis through Employment Exchange in April, 1994 (A3). He continued to serve for a year or so but apprehending that his services were likely to be terminated, he approached the Tribunal by way of OA No.324/PB of 1995. The Tribunal granted *ad interim* stay against the termination of his services on 31.03.1995. The said OA along with other cases was allowed by the Tribunal on 28.04.1995 (A4) with a direction that

regular selected candidates by the Staff Selection Commission were available and that no break in service shall be made. In the case of first respondent, the Tribunal further observed that the *ad interim* stay granted on 31.03.1995 shall continue to operate and be complied with.

(4) The petitioners did not challenge the Tribunal's order dated 28.04.1995 before any superior forum. Similarly, the first respondent was not replaced by any regularly selected candidate by the Staff Selection Commission. Resultantly, he continued in service.

(5) It further appears that there were 15 Stenographers who too were appointed on *ad hoc* basis like the first respondent and their claim for regularization of services though was turned down by the authorities but was accepted by this Court and the authorities were directed to consider them for regularization of services. The petitioners admittedly regularized their services vide order dated 11.04.2014/20.05.2014 though with a self-styled rider that the said order "*will not be treated as precedent for any further case*". The first respondent also approached the Tribunal by way of OA No.060/00746/2015 which was disposed of with a direction to reconsider his claim for regularization of his services on the analogy of Stenographers.

(6) A perusal of the order dated 20.07.2016 (P4) unfolds that the authorities rejected the claim of the first respondent on the premise that he has continued in service due to stay order granted by the Tribunal, hence in view of the observations made by the Constitution Bench in **Secretary, State of Karnataka vs. Uma Devi (2006) 4 SCC 1**, the first respondent was not entitled to regularization of services.

(7) The Tribunal has disapproved the above-stated reasoning vide impugned order dated 21.11.2016 and has held that the first respondent is unnecessarily being discriminated against as his case is not distinguishable or different than that of 15 Stenographers. Consequently, a direction has been issued to re-consider and regularize his services.

(8) Having heard learned counsel for the petitioners, we do not find any merit in this writ petition. There is an inherent fallacy in the reasoning given by the authorities that the first respondent continued in service due to the stay order granted by the Tribunal. The fact of the matter is that the Tribunal vide its order dated 28.04.1995 had granted short-term temporary relief to the first respondent, namely, that he will continue in service till the regularly selected candidate was to be appointed in his place. Neither the petitioner challenged order before any forum nor the first respondent was replaced by a regularly appointed candidate. Thus, it cannot be said that the first respondent remained in service due to stay order of the Tribunal. It is the petitioners who did not replace him and allowed him to continue in service.

(9) By now the first respondent must have spent 23 years in service of the petitioners. It would be too late, iniquitous and harsh as well, to say that the first respondent is still an *ad hoc* employee for he might be very soon nearing the age of retirement. The case of the first respondent squarely falls within the four corners of the exceptions carved out in **Uma Devi's** case (supra) wherein it was held that the services of the *ad hoc* appointees can be regularized. We thus do not find any fault with the orders passed by the Tribunal.

(10) The writ petition is devoid of any merit and is accordingly dismissed.

(Surya Kant)
Judge

06.02.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	No