

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO.850 OF 2013

1. Director General,
Sports Authority of India,
A Society registered under the
Societies Registration Act, an
autonomous body of the
Govt. of India, under the Ministry
of Sports and Youths Affairs,
Jawaharlal Nehru Stadium,
New Delhi – 110 003

2. Director,
Sports Authority of India,
Netaji Subhash Western Centre,
Sector - 15,
Gandhinagar
(Gujarat) – 383 016

3. Dy. Director,
Sports Authority of India,
Western Training Centre,
Dr. Babasaheb Ambedkar
Marathwada University Campus,
Aurangabad – 431 004

... **PETITIONERS**

VERSUS

Iftekar Ahmed Deshmukh,
Working as L.D.C. In Western
Training Centre,
Sports Authority of India,
Aurangabad,
R/o Nizamuddin Aulia Road,
Shahgunj, Aurangabad

... **RESPONDENT**

.....
Mr. Ruturaj C. Patil, Advocate for petitioners,
Mr. R.S. Deshmukh, Advocate for respondent
.....

**CORAM: T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

DATED : 21st March, 2018

JUDGMENT (PER SUNIL K. KOTWAL, J.) :

1. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. Vires of the judgment passed by Central Administrative Tribunal, granting seniority and direction to treat the period from 1.12.1990 to 12.6.1995 for qualifying service of pension and entitlement to grant of first financial upgradation under the A.C.P. Scheme on completion of 12 years of service, is challenged by respondents in Original Application No.705/2007. The respondent in this petition is original applicant.

3. The petitioner No.1 is Director General of Sports Authority of India. Petitioner No.2 is Director of Sports Authority of India and petitioner No.3 is Deputy Director of Sports Authority of India, run under the control and supervision of Government of India. The respondent is working as Lower Division Clerk (hereinafter referred as "L.D.C.") of the petitioners.

4. Learned Advocate for the petitioners submitted that, under the Government of India as also under Sports Authority of India

Service Bye-laws and Conditions of Service (Regulation) Rules, 1992, prescribed the maximum age limit for the appointment on the post of L.D.C., as 25 years. However, the respondent was born on 5.12.1960 and on the date of his appointment on 1.12.1989, on daily wages basis, he was already 29 years of the age and, therefore, over age, and not eligible for appointment on regular basis. He submitted that, therefore, even the first appointment of respondent was illegal as contrary to the Service Rules and, therefore, even the respondent was erroneously regularised on the post by order dated 25.9.1995, without the knowledge of petitioner No.1 Director General, Sports Authority of India (hereinafter referred as "SAI").

5. Next submission of learned Advocate for the petitioners is that, the learned Tribunal ignored the illegal regularisation of respondent and erroneously directed that the ad-hoc service rendered by respondent be counted w.e.f. 1.12.1990 for the purpose of seniority, eligibility and qualifying service for pension. He submitted that, the Tribunal erroneously directed to grant to the respondent financial upgradation under A.C.P. Scheme on completion of 12 years of service counting regular service from 1.12.1990. He has drawn attention of this Court to the landmark judgment in the case of **"Secretary, State of Karnataka Vs. Uma Devi"** reported in **[(2006) 4 SCC 1]**, wherein the Apex Court ruled that, illegal employment cannot be entitled to any right to absorb and made

permanent in service. He pointed out that, in the case of "**State of Haryana Vs. Surinder Kumar**" reported in [AIR 1997 SC 1997], in which the Supreme Court ruled that, the Courts will not legitimise illegal acts of the officers. In the case of "**UCO Bank & anr. Vs. Rajinder Lal Capoor**" reported in [(2007) 6 SCC 694], the Supreme Court ruled that, illegality cannot be perpetuated. He has drawn our attention to the case of "**Sarabjeetsingh Vs. Punjab University, Patiala**" reported in [1988(1) SLR 360]. The Apex Court ruled that, wrong appointment cannot be perpetuated by misrepresenting the provisions of Statute.

6. In reply, learned Advocate for respondent submitted that, under Service Rules, for departmental candidates, relaxation of age limit was up to 10 years and, therefore, on the date of initial appointment, the respondent was not age barred.

7. His next submission is that, the respondent rendered his service as Stenographer from 1.12.1989 to 11.6.1995 on daily wages and, therefore, needs to be treated as departmental candidate.

8. Next submission of learned Advocate for respondent is that, at the time of initial appointment, he was eligible for appointment for the post of Stenographer and he was appointed after following due procedure, by passing written as well as oral examinations conducted by the Department.

9. In the case at hand, the respondent has admitted that from 1.12.1989 to 11.6.1995, he was daily wager employee of the petitioners. Even the various orders of appointments filed by the respondent show that in the years 1990 and 1991, the respondent was appointed purely on temporary adhoc basis on the post of Stenographer, for the period of six months. After regularisation, on 20.5.1995, fresh appointment was given to the respondent as L.D.C. This order itself speaks that the appointment of the respondent was on probation for a period of two years which can be extended by appointing authority at its discretion. This order also shows that the appointment of the respondent was provisional. In fact, in view of law settled by Apex Court in "Secretary, State of Karnataka Vs. Uma Devi" (cited supra), absorption, regularisation or permanent continuance of temporary contractual, casual, daily wager and adhoc employee is not permissible when his original appointment was not made by following due process of selection as envisaged by relevant rules.

10. In the case at hand, the recruitment rules of the petitioner Department show that, for the post of LDC, maximum age limit was 25 years which was relaxable up to ten years in case of departmental candidate. As the respondent was daily wager, he cannot claim relaxation as departmental candidate. Thus, even the appointment of respondent on daily wages when he was age barred, is against the

recruitment rules and, therefore, illegal. In fact, such illegal appointment should not have been regularised by the Department in the year 1995.

11. Though the respondent claims that he was appointed by following due procedure of recruitment i.e. he passed the written test and oral interview etc. The advertisement relied by the respondent does not show that it was the advertisement regarding regular recruitment of the candidates as per recruitment rules. In that advertisement there is no reference of written or oral examination or reference of constitutional reservation of the post. Thus, no substance is placed on record by the respondent to show that he was appointed on daily wages only after following due procedure of recruitment rules. When the respondent was not appointed by following statutory rules and guidelines, he cannot claim any right in respect of payment of wages and other benefits like legally recruited and appointed employee of the petitioners. So also, in "State of Haryana Vs. Surinder Kumar" (cited supra), the Apex Court has made it clear that, the Court cannot give legitimacy to illegal acts done by the officers and cannot grant relief on the basis of wrong or illegal actions of the superior officers. In view of this settled position of law, when regularisation of the respondent on the post of L.D.C. in the year 1995 was itself illegal, the Tribunal cannot give retrospective effect to the said regularisation of the service of the respondent by

giving directions to count adhoc services rendered by the respondent from 1.12.1990 to 12.6.1990 for the purpose of seniority, eligibility, qualifying services for pension. The Tribunal cannot award entitlement to the respondent for grant of first financial upgradation under the A.C.P. Scheme on completion of 12 years of service w.e.f. 1.12.2002. Thus, the order passed by learned Tribunal giving retrospective effect to the regularisation of daily rated appointment, is illegal and deserves to be set aside by allowing this Writ Petition. Hence, we pass the following order :

ORDER

- (i) Writ Petition is allowed.
- (ii) The order of Central Administrative Tribunal, giving seniority and direction to treat the period from 1.12.1990 to 12.6.1995 for qualifying services for pension and grant of first financial upgradation under A.C.P. Scheme, stands quashed and set aside.
- (iii) The Original Application stands dismissed.
- (iv) Rule is made absolute in those terms.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE