

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS Nos.20135, 24624 of 1999 & 2419 of 2001

COMMON ORDER:

1. Since the issue involved in all these writ petitions is one and the same, they are heard together and are being disposed of by this common order.

2. W.P.No.20135 of 1999 is filed seeking a writ of Mandamus directing the respondent-organization to fix the inter-se seniority of the petitioners by duly taking into consideration the initial service rendered from the date of their initial appointment into service and extend all other benefits including regularization, arrears of salary, increments etc.

3. W.P.No.24624 of 1999 is filed seeking a writ of Mandamus declaring the action of the 1st respondent in issuing the impugned order dated 12.8.1999 giving the dates of regularization to respondents Nos.2 to 4 with effect from 1.4.1986, 5.6.1986 and 16.6.1987 respectively as illegal and arbitrary; and to set aside the same.

4. W.P.No.2419 of 2001 is filed seeking a writ of Mandamus declaring that the judgment in W.A.No.1353 of 1991 dated 29.11.1996 is not applicable to the petitioners herein as they are not parties to the W.P. or alternatively to issue a direction to

the respondent to evolve the procedure, by which all the junior office assistants working in the 1st respondent institute are applied the same principle for fixing seniority.

5. Heard Sri Karanam Ramesh, Sri S. Satyam Reddy and Sri D. Linga Rao, learned Counsel for the petitioners; Sri M. Srinivasa Rao, Vedula Srinivas and Sri N. Srinivas, learned Counsel for the respondents.

6. Brief facts of the case of the petitioners in these writ petitions are as follows:

(i) The petitioners in all these writ petitions were appointed after undergoing selection process and though their appointment orders were described as temporary, they were appointed in the regular vacancies and they have been continued regularly from the date of their initial appointment. The 1st respondent issued notification on 1.3.1989 calling for applications for selection of the candidates on regular basis for absorption of in-service candidates. Some of the employees i.e., unofficial respondents, who were appointed on temporary basis filed W.P.No.4157 of 1989 for regularization of their services from the date of initial appointment i.e., 1986 without subjecting to another selections pursuant to the notification dated 1.3.1989 for regularization. The said writ petition was dismissed, against which, the appeal i.e., W.A.No.1353 of 1991 preferred by the employees and the same was allowed

observing that the appellants shall be treated as regular employees from the date of initial appointment without subjecting to the tests for regularization, and be extended all benefits of the regular service as L.D.C-cum-typist and their seniority shall accordingly be fixed reckoning from the date of their initial recruitment. Accordingly, the respondent-institution regularized the services of the appellants in WA No.1353 of 1991 with effect from the date of their initial appointment and also paid the consequential benefits of arrears of salary and increments.

(ii) It is the case of the petitioners that they were appointed earlier than appellants in W.A.No.1353 of 1991 and the petitioners herein were also subjected to selection process before appointment on temporary basis. The petitioners were called for interview for regular absorption into service vide Notification dated 1.3.1989 and their services were regularized by proceedings dated 2.2.1990. The appellants in W.A.No.1353 of 1991 were appointed on temporary basis in leave vacancy or temporary vacancies and their services were also terminated along with the petitioners and subsequently, they were also engaged along with the petitioners, and since the petitioners were appointed in substantial vacancies their service shall be counted from the date of their initial appointment as it was done in respect of unofficial respondents. When the respondent-organization gave the benefit of initial

service to some of the employees, it is under obligation to extend the same benefit to the petitioners also. The petitioners submitted a detailed representation to the respondent-organization requesting to regularize their services with effect from the date of their initial appointment as was done in the case of others. But the respondent-organization has not passed any orders till date.

7. Respondent-organization filed counter-affidavit stating that it is adopting a procedure for appointment of the Ministerial staff. After conducting the preliminary tests and after selection process, the candidates are being appointed on temporary basis. The respondent-organization is conducting another test for regularizing the services of the candidates. The services of the candidates, whoever is successful in the tests, are being regularized, whereas some of the candidates filed W.P.No.4157 of 1989, for regularization without undergoing any tests. The said writ petition was dismissed. On the appeal preferred by the petitioners therein, WA No.1353 of 1991 was allowed directing the respondent-organization to regularize the services of the appellants therein from the date of their initial appointment without subjecting to any tests for regularization. The respondent-organization implemented the orders of this Court.

8. The respondent-organization filed additional counter-affidavit stating that three candidates viz., A.S.V.N.B. Sankaram; V.V. Prem Kumar and B. Sulochana Devi filed W.P.No.4157 of 1989 for regularization of their services without applying to the posts of LDC-cum-Typist and prayed for absorption based on the nature of their job performed on temporary basis with customary breaks. Even though their writ petition was dismissed, but on appeal, their case was considered. In view of the judgment in WA No.1353 of 1991, the petitioners seek to extend similar benefit on par with the appellants in the above WA. Though the appellants in the above WA had not made any application to the post of LDC-cum-typist against the notification issued by the organization, just on the basis of their temporary service, their services were regularized from the date of their initial service with all benefits. The petitioners in the present writ petitions rendered similar service on temporary basis in the organization and the petitioners applied to the post of LDC-cum-Typist against the notification issued by the CIEFL and they were selected to the posts through proper process and the appointments were made from the prospective date of joining in the service without counting their past service on temporary basis is not justified. Similarly another set of employees also worked on temporary basis against leave vacancy in the post of LDC-cum-typist from 1985 to 1986, even these employees were also deprived the

benefit of counting the past service on temporary basis with customary break as was extended to the appellants in WA No.1357 of 1991. In view of the situation prevailing in the organization, it is a sign of de-motivation to the employees who are in service and are deprived of availing the benefit of past service on temporary basis. The appellants in WA No.1353 of 1991, who did not go through the process of selection became employees of the organization and gained the seniority over and above the petitioners, whereas the petitioners were appointed through proper selection process twice. Thereby, the petitioners became juniors to the unofficial respondents. As per the Court order in WA No.1353 of 1991, the seniority of many employees in the cadre will be affected. It is admitted that the respondent-organization extended the benefit of regularizing the temporary service in different spells with customary break and also appointed the appellants in the above WA, without any application against the notification. Due to implementation of the orders in the above WA, there was a big hue and cry from the employees of similar cadre. After implementation of the orders of this Court in the above WA, the seniors in the cadre whose seniority was affected adversely filed these three writ petitions. Therefore, it is prayed to examine the whole issue and pass appropriate orders.

9. The Counsel appearing for the unofficial respondents contends that the benefit extended to unofficial respondents in pursuance of the orders in WA No.1353 of 1991 cannot be extended to the petitioners as the petitioners were party-respondents to the WA and this Court did not grant any relief to the petitioners and more over, the names of unofficial respondents were sponsored by the employment exchange whereas the petitioners' names were not sponsored by the employment exchange, and on the above said submission, he contends that there are no merits in the writ petitions and the same are liable to be dismissed.

10. From the material available on record, it is obvious that the petitioners were appointed at earlier point of time than the unofficial respondents. The official respondents have issued notification for regularizing the services of the existing employees, on 1.3.1989. The petitioners have participated and their services were regularized vide proceedings dated 2.2.1990, whereas unofficial respondents, who were appointed on temporary basis in the year 1986, filed W.P.No.4157 of 1989 contending that they cannot be subjected to another process of selection and it should be deemed that their services have been regularized from the date of their initial appointment. The said writ petition was dismissed on 29.7.1991. Thereafter, the petitioners therein preferred W.A.No.1353 of 1991 which was

allowed on 29.11.1996 holding that the appellants therein, who are unofficial respondents in these writ petitions, need not be subjected to subsequent selection for regularization of their services. The petitioners herein themselves got impleaded in W.P. as well as in W.A. preferred by the unofficial respondents herein. W.A.No.1353 of 1991 preferred by the unofficial respondents herein was allowed on 29.11.1996. But it doesn't mean that the same benefit, which was granted in WA No.1353 of 1991, should not be extended to the petitioners herein. The judgment passed in WA No.1353 of 1991 is judgment in rem but not in personam, and principle was set into regularize without subjecting to another test and there was no adjudication that the said principle is only applicable to the unofficial respondents i.e., appellants and the same be denied to the petitioners herein. In the absence of the same, the benefit of orders in WA No.1353 of 1991 cannot be denied to the petitioners herein.

11. Admittedly, the petitioners herein were appointed earlier to the unofficial respondents. When a principle of law has been adjudicated in W.A.No.1353 of 1991 vide judgment dated 29.11.1996, the same yardstick would apply even to the petitioners also by regularizing their services from the date of their initial appointment as it was done in the case of unofficial respondents. This Court is of the opinion that the petitioners are

entitled for regularization of their services from the date of their initial appointment in terms of the principles laid down in W.A.No.1353 of 1991 dated 29.11.1996.

12. Accordingly, these Writ Petitions are allowed directing the official respondents to extend the similar benefit to the petitioners as it was done in the case of the unofficial respondents in terms of W.A.No.1353 of 1991 dated 29.11.1996 with all consequential benefits. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 28th December, 2018.
Nn.



HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS Nos.20135, 24624 of 1999 & 2419 of 2001



28/12/2018

Nn.