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CHIEF OF NAVAL STAFF AND ANR.

v.

G. GOPALAKRISHNA PILLAI AND ORS.

DECEMBER 8, 1995

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[G.N. RAY AND G.T. NANAVATI, JJ.]

Service Law :

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Seniority—Ad hoc appointment—Subsequent regularisation of—Continuous officiation—Held, when initial appointment was made by way of ad hoc arrangement without following the procedure laid down by Rules benefit of continuous officiation not to be given for fixing seniority.

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The respondent was given *ad hoc* appointments to the post of Storekeeper and was subsequently regularised in that post. He was given seniority only from the date on which he was regularised in the post of Storekeeper. He made a representation to the Department claiming seniority by computing the period spent on *ad hoc* service as Storekeeper. The Department rejected the representation. The Respondent moved an application before the Central Administrative Tribunal which directed that the Respondent should be given seniority from the date he started officiating in the post of Storekeeper and all consequential benefits should be given to him. Hence this appeal by the Department.

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Allowing the appeal, this Court

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HELD : If an employee had been appointed on *ad hoc* or temporary basis exceeding the quota fixed for such appointment such employee would be entitled to get the credit of continuous officiation in fixing seniority provided such *ad hoc* or temporary appointment had been made by a regularly constituted body for holding the selection of the candidates to be appointed. In the instant case, the respondent was not selected by a regularly constituted selection body for giving *ad hoc* appointments to the post of Storekeeper and on such selection he had continued in *ad hoc* service till regular appointment to such post was made. On the contrary, the case of the respondent is that while he had been holding *ad hoc* posts, he got selected on a regular basis to the said post of Storekeeper. In our

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view, the principle enunciated in *Direct Recruits Class II Engineering Officers*

Association is not applicable in the facts of this case because the initial appointment of the respondent by way of *ad hoc* arrangement, was not made by following the procedure laid down by the Rules as referred to in Condition-B in the said decision. [363-B-E] A

Direct Recruits Class II Engineering Officers Association v. State of Maharashtra and Other, [1990] 2 SCC 715 and *Union of India v. Ansusekhar Guin and Others*, [1989] 1 SCC 283, distinguished. B

Union of India & Anr. v. S.K. Sharma, [1992] 2 SCC 728, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11923 of 1995. C

From the Judgment and Order dated 2.6.94 of the Central Administrative Tribunal, Ernakulam Bench in O.A. NO. 1507/93.

Dr. Anand Prakash, Mrs. Anil Katiyar and Ms. A. Subhashini for the Appellants. D

J.B. Dadachanji & Co., A.Z. Singh Pasrich for the Respondents.

The following Order of the Court was delivered :

Leave granted. E

Heard learned counsel for the parties. The short question which arises for consideration is whether or not the Central Administrative Tribunal by the impugned judgment dated June 2.1994 passed in O.A. No. 1507 of 1993 has correctly decided the question of seniority of the respondent Sri G. Gopalkrishnan Pillai. It is an admitted case that the said Sri Pillai was given *ad hoc* appointment to the post of Storekeeper at Goa and while he had been continuing in such *ad hoc* appointments, he was regularised in the post of Storekeeper. The Naval Department has given appropriate fitment in the scale of a Storekeeper to Sri Pillai after giving credit for the officiation in the said post but so far as the seniority to the cadre of Storekeeper is concerned, the seniority has been given only from the date when he was regularised in the post of Storekeeper. Sri Pillai felt aggrieved for not getting seniority by computing the period spent on *ad hoc* service as a Storekeeper. Claiming seniority by reckoning *ad hoc* service, he made a representation to the Naval Department which was rejected. F G H

- A Thereafter, the Central Administrative Tribunal was moved by the respondent contending *inter alia* that as he had been officiating on *ad hoc* basis in the post of Storekeeper continuously till he was selected and regularly appointed to the post of Storekeeper, the entire period of continuous officiation would enure to his benefit for the purpose of fixing seniority in the cadre of Storekeeper. Such contention has been accepted by the Central Administrative Tribunal by the impugned order. It has been directed that Sri Pillai should be given seniority to the post of Storekeeper from the date he started officiating in the said post and all consequential benefits flowing from such seniority should also be given to him.
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- C The learned senior counsel appearing for the appellant has submitted before us that *ad hoc* appointments to the said post of Storekeeper had been given to the respondent by clearly indicating in the orders of *ad hoc* appointment that such appointment on *ad hoc* basis would not confer any right to claim seniority in the said post. That apart, law is well settled that in the absence of any specific rule of service by which a person holding an *ad hoc* post will be entitled to get seniority to the said post if he is later on selected on a regular basis to the post, the holder of *ad hoc* post is not entitled to claim seniority on the basis of *ad hoc* service. In support of such contention reliance has been made to a decision of Court in *Union of India & Anr. v. S.K. Sharma*, [1992] 2 SCC 728. It has been held in the said decision that *ad hoc* service cannot be counted for determining seniority. In the said decision, the earlier decision of the Constitution Bench of this Court in *Direct Recruits Class II Engineering Officers' Association v. State of Maharashtra and Ors*, [1990] 2 SCC 715 has also been referred to and relied on.
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- F The learned counsel for the respondent engaged by the Supreme Court Legal Aid Committee, has, however, submitted that it is an admitted position in this case that Sri Pillai has been regularly selected to the post of Storekeeper and appointed to such post. Prior to such selection and appointment to the post of Storekeeper on regular basis, Sri Pillai had continuously officiated in the post of Storekeeper on the basis of *ad hoc* appointments given to him. If an employee is ultimately selected on a regular basis to a post in which he had continuously officiated, then even if such employee had held the post only on *ad hoc* basis, he will be entitled to claim seniority from the date of *ad hoc* appointment. In support of such contention, the learned counsel has relied on a decision of this Court in
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Union of India v. Anusekhar Guin and Others, [1989] 1 SCC 283. It, however, appears to us that in the said case, this Court has only reiterated the principle that if an employee had been appointed on *ad hoc* or temporary basis exceeding the quota fixed for such appointment such employee would be entitled to get the credit of continuous officiation in fixing seniority provided such *ad hoc* or temporary appointment had been made by a regularly constituted body for holding the selection of the candidates to be appointed. In the instant case, the respondent Sri Pillai was not selected by a regularly constituted selection body for giving *ad hoc* appointments to the post of Storekeeper and on such selection he had continued in *ad hoc* service till regular appointment to such post was made. On the contrary, the case of Sri Pillai is that while he had been holding *ad hoc* posts, he got selected on a regular basis to the said post of Storekeeper. Hence, the decision relied on by the learned counsel for the respondent is not applicable in the facts and circumstances of this case. It also appears to us that the Tribunal in passing the impugned order has relied on condition 'B' as referred to in the decision of the Constitution Bench in *Direct Recruits Class II Engineering Officers' Association* (supra) in support of the impugned order. In our view, the principle enunciated in the said case is not applicable in the facts of this case because the initial appointment of Sri Pillai by way of *ad hoc* arrangement, was not made by following the procedure laid down by the Rules as referred to in Condition-B in the said decision. Hence, the decision of the Tribunal cannot be sustained. We, therefore, allow this appeal and set aside the impugned order without however any order as to costs.

G.N.

Appeal allowed.