

ANIS PARVEZ AND ORS.
v
THE DIRECTOR GENERAL, COUNCIL OF SCIENTIFIC AND
INDUSTRIAL RESEARCH AND ORS.

MAY 7, 2002

[S. RAJENDRA BABU, MRS. RUMA PÁL AND
BISHESHWAR PRASAD SINGH, JJ.]

Service Law:

*Absorption of casual workers to Group D post under absorption scheme—
Subsequent absorption of another set of casual workers in Group C post
under separate scheme—Claimed by Group D post workers for quashing of
absorption in Group C post and for promoting them to the post—Held, Group
D post workers since already absorbed, cannot be considered again for
absorption under later scheme—They could not be considered for promotion
since the workers in the later scheme were not considered by way of promotion.*

**Appellants and respondent Nos. 3 to 12 were serving respondent Nos. 1
and 2 as casual workers. In 1985, respondent Nos. 3 to 12 were absorbed in
Grade D post according to their seniority pursuant to a scheme framed by
respondent No. 1 for regularisation of casual workers. In 1991 appellants were
absorbed and regularised against Group II/C post under different scheme for
regularisation of casual workers pursuant to a decision of this Court.**

**Respondent Nos. 3 to 12, filed applications before Central Administrative
Tribunal seeking quashing of regularisation of the appellants and sought for
direction to respondent Nos. 1 and 2 to fill up the regular Group C post by
promoting them to the post. Appellants were not made parties therein. The
application were allowed by the Tribunal directing respondent Nos. 1 and 2 for
considering them for Group C post by quashing the appointment of the
appellants.**

**High Court dismissed the writ petition filed against order of the Tribunal.
Appeal against the same in this Court by respondent No. 1 was dismissed *in
limine*.**

A In appeal by the appellant against the order of the High Court, appellants and respondent Nos. 1 and 2 contended that the case of respondent Nos. 3 to 12 for absorption in promotional grade could not be considered as they were already absorbed as per availability of vacancies at the relevant time.

B Respondent Nos. 3 to 12 contended that the absorption of appellants, who were junior to them, was contrary to rules of seniority.

Allowing the appeal, the Court

C HELD: 1. Since respondent Nos. 3 to 12 had already been absorbed six years earlier against Group D posts according to their seniority and, therefore, the question of considering them again for absorption under the later scheme did not arise. [847-C]

D 2. Absorption of the appellants in Group II/Grade C cannot be faulted with. It is only by way of concession that a scheme of absorption was framed pursuant to a direction issued by this court and when there were vacancies of higher scale at the relevant time and respondent Nos. 3 to 12 were not serving in those posts consideration of their cases for absorption in that Grade could not be considered. Further when the absorption of the appellants came up for consideration the posts were available in Group II/Grade C and, therefore, their cases could not again be considered. Though the Tribunal has thought fit to give a direction to consider the cases of respondent Nos. 3 to 12 for promotion to the Higher scale, the cases of the appellants were considered not by way of promotion but by way absorption in those posts. [847-D, E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2935 of 2000.

F From the Judgment and Order dated 24.9.99 of the Delhi High Court in W.P. (C) No. 5758 of 1999.

WITH

G I.A. Nos. 2 and 3 in S.L.P. (C) No. 18382/1999.

Mukul Rohtagi, Additional Solicitor General, Raju Ramachandran, Ms. Suman Bala Rastogi, Ms. Madhu Sikri, V.K. Rao, Mrs. Santosh Singh, B.B. Raval and Ms. Janani for the appearing parties.

H The Judgment of the Court was delivered by

RAJENDRA BABU, J.

A

C.A No. 2935 of 2000

The appellants in this appeal are employees of respondent No. 2 who were regularised on Technician Grade II as highly skilled or skilled workers on 9.12.1991 under a scheme formulated by respondent No. 1 pursuant to a decision of this Court in WP (C) No. 6331/88 *Mrs. Kamlesh Kapoor v. Union of India*. In that writ petition, a direction was issued to respondent No. 1 to prepare a scheme for the absorption of all persons who were working on casual basis for more than one year and to absorb such of those persons who satisfy the scheme as regular employees in the respective posts held by them. Certain other incidental reliefs were also given by that order. Subsequently, a scheme was prepared pursuant to the order of this Court known as "Casual Workers Absorption Scheme 1990" and in terms of the said scheme, the appellants were considered for absorption for regularisation against Group II/ C posts on which they were already working and after a trade test followed by an interview held on 18th, 19th and 20th November 1991 and on the basis of the recommendations of the Selection Committee, were regularised as temporary Technician Grade II in respondent No. 2 institute on a probation for a period of one year. Thereafter on successful completion of probation they have been duly confirmed on their posts.

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Aggrieved by this regularisation, respondent Nos. 3 to 12 filed O.A. No. 1430/92 before the Central Administrative Tribunal, Principal Bench, New Delhi [hereinafter referred to as 'the Tribunal'] and sought for a direction to respondent Nos. 1 and 2 to fill up the regular Group C post of Technician Grade II only from their rank at least from the date their juniors were appointed or considered in those posts. In this application, appellants were not made parties. During the pendency of this application, another application [O.A. No. 2095/93] was filed seeking quashing of the regularisation of the appellants as well as some of the respondents as Technician Grade II and to promote them in their place. The Tribunal allowed both the applications [O.A. No. 1430/92 and O.A. No. 2095/93] and directed respondent Nos. 1 and 2 to consider the cases of respondent Nos. 3 to 12 for promotion to Technician Grade II/Grade C post and promote them to that from the date of promotion of their juniors and fix their *inter se* seniority by quashing the appointments of the appellants.

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The High Court, on writ petition being filed against the same in W.P. 2308/98 dismissed the same and upheld the order of the Tribunal. The writ

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A petition filed by the appellants as well as that of the CSIR were dismissed. Against the order passed by the High Court in writ petition filed by CSIR, special leave petition was preferred before this Court, which was dismissed by this Court in limine and to those proceedings the appellants were not parties. The appellants subsequently filed the present special leave petition and leave was granted by this Court.

B

It is contended by the appellants which is supported by respondent Nos. 1 and 2 that at the time of appointment of respondent Nos. 3 to 12, only Group D posts were available and, therefore, they were absorbed accordingly and they could not be considered again for absorption in Group II/Grade C since they had already derived the benefit of absorption under the scheme and that absorption also depended upon the availability of the post at a given point of time. In other words, the seniors stood already absorbed in the lower category. There were no vacancies of a higher scale at the relevant time of subsequent consideration and hence their case for absorption in promotional grade could not be reconsidered. It is contended that the appointment of

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D appellants in posts vacant at the relevant point of time, though higher than those of respondent Nos. 3 to 12, is valid in law. It is a matter of chance that at the time of appointment of the appellants, posts in a higher grade were vacant than at the time of appointment of respondent Nos. 3 to 12. As respondent Nos. 3 to 12 were already absorbed when the Technician Grade II posts fell vacant, the appellants were given the chance to be appointed in those posts. The appointment was in the natural course of events and hence cannot be challenged on the ground of arbitrariness or discrimination.

E

The stand of the contesting respondents is that the absorption made by the respondents was contrary to rules of seniority. Options have been called for and given in time by the contesting respondents for the purpose of considering their cases for promotion or appointment in those posts. Respondent Nos. 1 and 2 were bound to prescribe an objective and rational method of selection of candidates depending upon the job requirement and fulfilment of necessary qualifications prescribed for the post. The fact that consideration has not taken place though the contesting respondents were within the eligibility zone of promotion and possess necessary and desirable qualification and are senior enough for consideration of promotion has not been denied. The appointment of junior candidates by pick and choose method without adhering to the principle of seniority is unsustainable in law.

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Both the appellants and the contesting respondents were serving in the H establishment of respondent Nos. 1 and 2 on daily wage basis or as casual

workers. Respondents 3 to 12 were absorbed in Grade 'D' posts according to their seniority pursuant to a scheme framed by respondent No.1 for regularization of the services of daily wage workers giving preference to those who had worked for 240 days in each of the two preceding years and were fully qualified. The scheme was introduced by respondent No.1 on 19th April, 1984 and the selection committee selected the candidates for absorption on 25th October, 1985. Respondents 3 to 12 were accordingly absorbed in the year 1985 against group 'D' posts. So far as the appellants are concerned they were absorbed in different posts under a different scheme framed by respondent No.1 pursuant to a decision of this Court in WP(C) No. 6331 of 1988 and were regularized against Group II/C posts on 9th December, 1991. It is clear that so far as respondents 3 to 12 are concerned, they had already been absorbed six years earlier against Group 'D' posts according to their seniority and, therefore, the question of considering them again for absorption under the later scheme did not arise. In fact when the appellants were sought to be absorbed against available posts in the establishment in the year 1991, respondents 3 to 12 already stood absorbed in service and hence could not claim benefit under the scheme framed pursuant to the orders of this Court.

It is only by way of concession that a scheme of absorption was framed pursuant to a direction issued by this Court and when there were vacancies of higher scale at the relevant time and they were not serving in those posts consideration of their cases for absorption in that Grade could not be considered. Further when the absorption of the appellants came up for consideration the posts were available in Group II/Grade C and, therefore, the cases of respondent Nos. 3 to 12 could not again be considered. In those circumstances, absorption of the appellants in Group II/Grade C cannot be faulted with. Though the Tribunal has thought fit to give a direction to consider the cases of respondent Nos. 3 to 12 for promotion to the higher scale, the cases of the appellants were considered not by way of promotion but by way of absorption in those posts. Hence we do not think the matters that have become final so far as respondent Nos. 3 to 12 were concerned could be reopened and if that process goes on every time a person has to be absorbed in the service those who have been absorbed earlier will have to be considered again when the higher post becomes available and in such an event, the process cannot be completed.

In that view of the matter, we allow this appeal, set aside the orders made by the High Court and that of the Tribunal and dismiss the applications filed by respondent Nos. 3 to 12 before the Tribunal. No costs.

A I.A. Nos. 2-3 in SLP(C) No. 18382/1999

In the light of the order we have made in C.A. No. 2935/2000, it is unnecessary to deal with the relief sought for in I.A. Nos. 2-3 in SLP(C) No. 18382/1999. The I.As. stand disposed of accordingly.

B K.K.T.

Appeal Allowed.
I.As disposed of.