

MUKESH BHAI CHHOTABHAI PATEL

A

v.

JOINT AGRICULTURE AND MARKETING ADVISOR,
GOVT. OF INDIA AND ORS.

AUGUST 18, 1994

B

[K. RAMASWAMY AND N.P. SINGH, JJ.]

*Service Law—Temporary appointment—Scheme for regularisation of—
Conditions of applicability—Held inapplicable to employee who has not
passed the qualifying test.*

C

The appellant was appointed on May 21, 1977 but was removed from service subsequently. He unsuccessfully challenged his removal before the Tribunal. In appeal to this Court it was contended on his behalf that in view of the scheme framed by the Union of India vide its Circular No. 19/50/80-Estt. I dated 8.6.84, which prescribed that all persons appointed temporarily to Group C posts on or prior to November 4, 1978 should be regularised, the appellant was entitled to regularisation; a proper construction of the circular would show that failure of the appellant to pass the test is not a ground to deny him regularisation.

D

Dismissing the appeal, this Court

E

HELD : Regularisation has to be considered in the light of the scheme framed by the Department. It is not an automatic regularisation. A reading of the Circular clearly indicates that the question of regularisation has to be done by a committee duly constituted for regularisation of the persons appointed temporarily to Group C posts. Admittedly, the appellant did not pass the qualifying test conducted by the competent committee. Therefore, he could not be regularised. Thus, there is no illegality in the order passed by the Tribunal. [761-E, C-D]

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Bhagwati Prasad v. Delhi State Mineral Development Corporation, [1990] 1 S.C.C. 361, cited.

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5713 of 1994.

From the Judgment and Order dated 19.4.90 of the Central Ad-

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A administrative Tribunal, Additional Bench at New Bombay in O.A. No. 368 of 1987.

B.K. Mehta, Ms. Divya Bahal, Ms. Meeta Sharma and B.V. Desai for the Appellant.

B K.N. shukla, Avtar Singh Rawat and S.N. Terdol for the Respondents.

The following Order of the Court was delivered :

C Leave granted.

The appellant was appointed on May 21, 1977 and was removed on April 13, 1987. When the appellant approached the Tribunal, the Tribunal in the impugned order dated April 19, 1990 made in O.A. No. 368/87 dismissing the petition. Thus this appeal by special leave.

D Shri Mehta, learned senior counsel for the appellant placing heavy reliance on the decision of this Court in *Bhagwati Prasad v. Delhi State Mineral Development Corporation*, [1990] 1 SCC 361, contended that the Union of India, Ministry of Irrigation had issued the circular No. 19/50/80-Estt. I, dated 8.6.1984, directing that all those candidates temporarily appointed on or prior to November 4, 1978 should be regularised and that the question of the appellant appearing for the test asked for by the Department and his nonclearance should not be a ground to deny him regularisation of his temporary appointment on the proper construction of the above circular, it is clear that he is entitled to that relief. Therefore, E the Tribunal has committed gravious error in dismissing the appellat's O.A. F

The said circular reads as under :

"Sub : Regularisation of appointmnets made by CWC to the grade of LDCs/Steno prior to taking over of recruitment by the S.S.C.

G Sir,

I am directed to refer to the correspondence rusting with the CWC letter No.8/11012/2/82-E.VII dated 19th Jan' 89, on the above subject and to say that it has been decided with the approval of H DPAR, that all *ad-hoc* appointments made in the grade of

LDCs/Stenos prior to 4.11.1978 may be regularised as a special case. The DPAR vide their OM No. 24012/41/78-Estt.(B) dated 4-11-1978 and made it mandatory for every Deptt. that recruitment to Group 'C' posts in the attached and sub-offices should be made only through the SSC. Hence 4.11.1978 has been fixed, as the cut-off date for regularising the *adhoc* appointment in the grade of LDCs/stenos.

2. I am to request that necessary action may now be taken immediately under intimation to all concerned."

A reading of it clearly indicates that the Government have approved the proposal made by the DPAR that all *adhoc* appointments made in the grade of LDCs/Stenos prior to November 4, 1978 be regularised as special case. It is also made mandatory for every department that the recruitment to group 'C' posts in the attached sub-offices should be made only through S.S.C. thereafter. In that context, November 4, 1978 has been fixed as a cut-off date for regularisation of *adhoc* appointments in the grade of LDCs/Stenos. It is clear that the question of regularisation has to be done by a committee duly constituted for regularisation of the persons appointed temporarily to Group C posts, namely, LDCs/Stenos. Admittedly, the appellant had appeared thrice. It is stated that on one occasion the result was not declared. Admittedly on two occasions results were declared and he did not pass the qualifying test conducted by the competent committee. Therefore, he could not be regularised. Regularisation in that context has to be considered in the light of the scheme framed by the Department. It is not an automatic regularisation as contended for. Under these circumstances, we do not find any illegality in the order passed by the Tribunal.

The appeal is accordingly dismissed. No Cost.

T.N.A.

Appeal dismissed.