



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 14915 OF 2024

Maya P.C. & Ors.

... Appellants

versus

The State of Kerala & Anr.

... Respondents

with

CIVIL APPEAL NOS.14916-14917 OF 2024

CIVIL APPEAL NO.14918 OF 2024

and

CIVIL APPEAL NO.14919 OF 2024

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellants in these Civil Appeals are persons with benchmark disabilities, each with a physical disability exceeding 40%. They were engaged in various public institutions in the State of Kerala under Rule 9(a)(i) of the Kerala State and Subordinate Service Rules, 1958 (for short, “the KS & SSR”), which governs temporary

appointments made in public interest, for a period not exceeding 179 days.

2. By a Government Order (for short, “the G.O.”) dated 18th May 2013, the State Government of Kerala (first respondent) resolved to regularise the services of 2,677 physically disabled persons against supernumerary posts, who had been engaged temporarily through employment exchange under Rule 9(a)(i) of the KS & SSR between 16th August 1999 and 31st December 2003. According to the said G.O., the appellants were to be reappointed to supernumerary posts created solely for their absorption. The said G.O. further stipulated that such supernumerary posts would stand abolished upon the retirement of the incumbents.

3. Pursuant to the above G.O., the appellants were reappointed on a regular basis in their respective departments. However, by a subsequent G.O. dated 3rd February 2016, the first respondent, inter alia, declared that such reappointed persons shall not be eligible for declaration of probation, inclusion in the combined seniority list, or consideration for promotion.

4. The appellants, feeling aggrieved by the imposition of these restrictions, adopted their remedies as discussed herein below. It is in the backdrop of the aforesaid common

facts that the cases of individual appellants must now be adverted to.

5. In this batch of Civil Appeals, Civil Appeal Nos. 14915 of 2024, 14916-17 of 2024 & 14918 of 2024 arise out of a common impugned judgment dated 1st February 2021, delivered by the Division Bench of the Kerala High Court. Whereas, Civil Appeal No. 14919 of 2024 arises out of the impugned judgment dated 5th March 2021, delivered by the co-ordinate Division Bench of the Kerala High Court by relying upon the above judgment dated 1st February 2021.

6. Civil Appeal No. 14915 of 2024

6.1 The appellants herein were appointed as Assistants in Mahatma Gandhi University (second respondent), through employment exchange for 179 days under Rule 9(a)(i) of KS & SSR, between 16.08.1999 and 31.12.2003. Pursuant to G.O. dated 18th May 2013 and 7th August 2013, appellant nos. 1 to 10 were reappointed by an order dated 10th December 2013, and appellant nos. 11 and 12 were reappointed by a subsequent order dated 27th March 2014. Notably, appellants Nos. 11 and 12 were earlier holding regular posts as peons in the revenue department and had

resigned from their posts to avail themselves of the benefit under the G.O. dated 18th May 2013.

6.2 Upon completion of probation and passing the requisite departmental tests, the appellants were included in the final seniority list of assistants. However, following the G.O. dated 3rd February 2016, their names were excluded from the combined seniority list, and they were denied the benefit of promotion.

6.3 The appellants challenged the said G.O. dated 3rd February 2016 by filing Writ Petition (Civil) No. 9832 of 2016 before the Kerala High Court. The learned Single Judge allowed the writ petition on 13th September 2017 and directed the respondents to grant the petitioners the benefits of seniority, declaration of probation, and promotion. The learned Single Judge held that G.O. dated 3rd February 2016 was contrary to the principles of equality and fair treatment and noted that once the person is appointed to a post, he is entitled to be treated equally on par with his counterparts. However, in a writ appeal by the first respondent, the Division Bench of the High Court reversed the judgment of the Single Judge. The Division Bench upheld the provisions of the

said G.O. dated 3rd February 2016, prompting the appellants to approach this Court.

7. Civil Appeal No. 14916-14917 of 2024

7.1 The appellant, who has 50% disability, was initially engaged on a temporary basis in the Kerala Public Service Commission (KPSC) under Rule 9(a)(i) of the KS & SSR for 179 days. Thereafter, she was selected through regular recruitment and appointed as Lower Division Clerk (LDC) at Central Plantation Crops Research Institute (CPCRI) under the Indian Council of Agricultural Research. On the issuance of G.O.s dated 18th May 2013 and 7th August 2013, she resigned from CPCRI and rejoined the KPSC as Assistant on 12th December 2013, pursuant to appointment against a supernumerary post.

7.2 Having cleared the relevant departmental examinations, the appellant sought a declaration of probation and inclusion in the seniority list. However, her request was declined, citing the G.O. dated 3rd February 2016. Aggrieved thereby, the appellant filed an Original Application before the Kerala Administrative Tribunal (for short, “the tribunal”). On 12th July 2019, the tribunal allowed

her claim by following the judgment of the Single Judge of the Kerala High Court in W.P. (C) No. 9832 of 2016, dated 13th September 2017. However, the Division Bench of the Kerala High Court reversed the tribunal's order *vide* impugned order dated 01st February 2021, holding that the appellant's appointment being against a supernumerary post was a policy concession, and therefore, the benefits of promotion and seniority could not be claimed as a matter of right. The present Civil Appeal arises therefrom.

8. Civil Appeal No. 14918 of 2024

8.1 The appellant was appointed as LDC in the Civil Supplies Department under the G.O. dated 18th May 2013. He completed his probation and successfully cleared the departmental tests. Despite his inclusion in the provisional seniority list, he was excluded from the final list in view of the restrictions contained in the G.O. dated 3rd February 2016.

8.2 He approached the tribunal by filing an Original Application, which was allowed on 11th October 2019 by following the order of the Single Judge of the Kerala High Court in aforesaid W.P. (C) No.

9832 of 2016 dated 13th September 2017. The tribunal granted him full-service benefits. However, the Division Bench of the Kerala High Court *vide* impugned order dated 01st February 2021 reversed the order of the tribunal, holding that the appellant's appointment being against a supernumerary post was a policy concession, and therefore, the benefits of promotion and seniority could not be claimed as a matter of right.

9. Civil Appeal No. 14919 of 2024

9.1 The appellant, with 40% permanent disability, was appointed as Rehabilitation Technician Grade II under Rule 9(a)(i) of KS & SRR and subsequently reappointed against a supernumerary post in the Medical Education Department. His appointment was regularised with effect from 15th October 2013, and he was declared to have completed his probation. On 9th March 2017, he was promoted to the post of Grade I Technician (Prosthetics).

9.2 However, the Health Department issued an order dated 7th April 2018, cancelling his promotion and regularisation, citing the G.O. dated 3rd February 2016 and stating that those appointed to

supernumerary posts do not have claims to regularisation or promotion.

9.3 The appellant challenged the aforesaid order by filing an Original Application before the tribunal, which ruled in his favour *vide* order dated 16th October 2019 and set aside the order of the Health Department dated 7th April 2018. The tribunal found that the restrictions were discriminatory and contrary to the Rights of Persons with Disabilities Act, 2016. The Division Bench of the Kerala High Court, however, set aside the tribunal's order *vide* impugned judgment dated 05th March 2021, relying on the common judgment rendered by the co-ordinate Division on 1st February 2021 in connected matters, wherein it was held that appointments made against supernumerary posts under a concessional scheme do not confer enforceable rights to promotion or seniority.

SUBMISSIONS

10. The learned senior counsel appearing for the appellants submitted that neither of the aforesaid G.O. nor the appointment orders issued to the appellants contain any stipulation to the effect that the appellants would be denied promotion or other service benefits, or that they

would be compelled to remain in the same post until their retirement.

11. It was submitted that the appellants were included in the seniority list and, in several cases, probation had also been declared. Thus, the G.O. dated 3rd February 2016, by which the first respondent purported to deny the appellants the benefits of probation, seniority, promotion and transfer, was issued after the appellants had completed more than three years of satisfactory service. The learned senior counsel drew our attention to the fact that some of the appellants, including appellants nos. 11 and 12 in Civil Appeal No. 14915 of 2024, had voluntarily resigned from regular government service in the expectation that they would be treated as regular employees of the university upon reappointment.

12. Learned senior counsel for the appellants further submitted that the High Court committed a further error in holding that the appellants could not claim parity with regular employees solely on the ground that they were not appointed pursuant to a reservation under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the 1995 Act) or the Rights of Persons with Disabilities Act, 2016 (the 2016 Act). It was submitted that such reasoning negates the constitutional mandate under Articles 14 and 16.

13. Learned senior counsel appearing for the appellant submitted that the action of the respondents is completely against the mandate of Section 33 of the 2016 Act, which provides for a 3% reservation for the persons with disability. His submission is that denying the benefit of completing probation and promotion would be contrary to the spirit of the 1995 and 2016 Acts. He submitted that the G.O. dated 18th May 2013 grants regularisation to the persons with disability who were working temporarily. He submitted that what is given by this G.O. dated 18th May 2013 cannot be withdrawn subsequently to the prejudice of the beneficiaries of the G.O. dated 18th May 2013.

14. The learned senior counsel for the first respondent submitted that the objective of the G.O. dated 18th May 2013 was to ensure a reasonable accommodation for persons with disabilities and that no further competition procedures had been applied in favour of the beneficiaries. It was submitted that the G.O. dated 18th May 2013 clearly stated that the respective posts of the beneficiaries will be cancelled as and when the employee retires from their post.

15. The learned senior counsel further contended that the benefits conferred under the G.O. dated 18th May 2013 already include salary, increments, pension, leave and other allowances. Extending further service benefits, such

as promotion, would set an unfair precedent and disrupt the rights of regularly appointed employees. It was thus submitted that the action taken by the first respondent in issuing the clarification dated 03rd February 2016 was corrective in nature and does not suffer from any illegality or arbitrariness.

16. The submission of the learned senior counsel appearing for the first respondent and others is that the G.O. dated 18th May 2023 is by way of concession and therefore, as rightly held by Division Bench of the High Court, the appellants cannot claim anything which is not provided in the G.O. dated 18th May 2013 as a matter of right. Learned counsel appearing for the respondents pointed out the findings recorded by the High Court in the impugned judgment and order. He submitted that the Division Bench has relied upon a binding decision of this Court in the case of **Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors**¹. Learned counsel submitted that supernumerary posts were created to accommodate the appellants and therefore, they cannot be treated as regular employees. They are not entitled to benefits which are available to the regular employees. He pointed out that the Division Bench has not considered the

¹ (2006) 4 SCC 1

provisions of the 1995 Act. He would, therefore, submit that no interference is called for.

CONSIDERATION OF SUBMISSIONS

17. We have perused the G.O. dated 18th May 2013, which was published in the State Government Gazette dated 24th May 2013. A copy of the G.O. is annexed as Annexure P-2 in Civil Appeal No.14915 of 2024. The relevant part of the G.O. reads thus: -

“On the basis of detailed examination conducted by the Government in this regard, order is issued creating supernumerary posts for granting re-appointment to about 2677 physically handicapped who had completed 179 days of service, after being temporarily appointed as per K.S & S.S.R. Part II, Rule 9(A)(i), through employment exchange during the period between 16.08.1999 till 31.12.2003 and granting re/regular appointment to the said employees in exercise of the power under Rule 39 of the General Rules, in such a manner whereby the said supernumerary posts shall cease to exist upon retirement of the said employees from service.

Detailed guidelines regarding regular appointment of the said employees shall be issued later.”

(emphasis added)

18. Thus, the G.O. can be analysed as under: -

- a.** The G.O. authorised the creation of supernumerary posts for granting reappointment to about 2677 persons with disability who have completed 179 days of service;
- b.** The G.O. was applicable to those persons with disability who were employed through the employment exchange during the period from the 16th August 1999 till 31st December 2003;
- c.** The G.O. specifically provided that detailed guidelines regarding the “regular appointment” of the said employees shall be issued later; and
- d.** On the retirement of the employees accommodated in supernumerary posts, the same shall cease to exist on the retirement of the said employees.

19. Thus, the intention was to give regular appointments to those persons with disability who were working on temporary posts through the employment exchange and who were employed between 16th August 1999 and 31st December 2003. Thus, the intention was to grant permanency to those persons with disability.

20. The orders of the reappointment of the appellants in Civil Appeal No.14915 of 2024 at annexures P-6 and P-7 show that :-

- a.** The appointment was made on probation for a period of one year within a continuous period of two years, as per the Mahatma Gandhi University Statutes;
- b.** The posts occupied by the appellants will be exhausted as and when they retire from service; and
- c.** The National Pension Scheme will apply to the appointments from 1st April 2013.

Thus, the employment of the appellants was regular employment on a regular basis, as they were treated as having been appointed on probation.

21. Thereafter, G.O. dated 3rd February 2016 was issued, which was specifically made applicable to the beneficiaries under the G.O. dated 18th May 2013. Clause 3.5 thereof provides that those who are appointed on the basis of the G.O. dated 18th May 2013 shall not be eligible for seniority and completion of probation as other regular employees, as this category of employees was appointed on supernumerary posts. Therefore, there cannot be any combined seniority list also.

22. In case of the appellants in other appeals, the appointment orders do not record that the appellants will not be entitled to the benefits of completion of probation or promotion.

23. The G.O. dated 18th May, 2013, is to ensure that the persons with disability appointed through the employment exchange in a particular post should be regularly appointed. Therefore, all of them were appointed on probation. Now, by the subsequent G.O. dated 3rd February 2016, what is conferred on the appellants by the G.O. dated 18th May 2013 cannot be withdrawn. Moreover, many appellants based on the G.O. dated 18th May 2013 changed their position and opted for other employment for securing the benefits under the G.O. The G.O. contemplates regular appointments to be given. Clause 3.5 of the G.O. dated 3rd February, 2016 seeks to withdraw what is specifically conferred by the G.O. dated 18th May 2013. Hence, the G.O. dated 3rd February 2016 is discriminatory and irrational and therefore, violative of Article 14 of the Constitution of India.

24. Hence, we pass the following order:

- i)** We set aside the impugned judgments of the Division Bench of the Kerala High Court;

- ii)** We restore the judgments of the learned Single Judge of the Kerala High Court and the judgments of the Kerala Administrative Tribunal, which were set aside by the impugned judgments of the Division Bench;
- iii)** The appeals are accordingly allowed.

.....J.
(Abhay S Oka)

.....J.
(Augustine George Masih)

**New Delhi;
May 23, 2025.**