

# **HIGH COURT OF UTTARAKHAND AT NAINITAL**

## **Writ Petition No.1037 of 2008 (S/S)**

**Gopal Singh Gusain** ... Petitioner  
**S/o Shri Dharam Singh** ... Petitioner  
Vs.  
**State of Uttarakhand & others** ... Respondents

## **Hon'ble Tarun Agarwala, J.**

Heard Mr. Pankaj Purohit, the learned counsel for the petitioner and Mr. Lalit Miglani, the learned brief holder for the respondents.

The petitioner was appointed as a Peon on 31.01.1985 in Government District Library, Chamoli at Gopeshwar. The petitioner contends that he is a graduate and also possesses a Diploma in Library Science and is qualified to be appointed as a Library Clerk. Notwithstanding the aforesaid qualification, one Ramakant Bainjwal was appointed as a Librarian on adhoc basis and, accordingly, the post on which Ramakant Bainjwal was working as a Library Clerk fell vacant. Accordingly, the District Education Officer, Chamoli issued an order dated 31<sup>st</sup> July, 2006 appointing the petitioner as a Library Clerk in the pay-scale of Rs.950-1500. Pursuant to this order, the petitioner started working as a Library Clerk and is working continuously since then without any break in service and is receiving the salary of a Library Clerk with necessary increments and other benefits available on that post. The petitioner made a representation for regularization of his services on the post of Library Clerk. This court, by an order of 22<sup>nd</sup> April, 2008 passed in Writ Petition No.752 of 2002 (S/B) titled as "Gopal Singh Gusain Vs. State of Uttarakhand", directed the respondents to consider the case of the petitioner for regularization under the Rules of 2002. Based on the said direction, the impugned order was passed by the respondents rejecting the claim of the petitioner for regularization on the post of Library Clerk on the ground that the

petitioner was appointed as a Library Clerk as a stop-gap-arrangement and was not given an adhoc appointment and, therefore, the petitioner is not eligible under for regularization under the Uttarakhand Regularization of Ad-hoc Appointments (On posts Outside the Purview of the Public Service Commission) Rules, 2002 (*hereinafter referred to as the Rules of 2002*). The petitioner, being aggrieved, has filed the present writ petition.

The respondents in their counter affidavit have reiterated the contention as disclosed in the impugned order, namely, that the petitioner was posted as a Library Clerk on a stop-gap-arrangement and was not given an adhoc appointment. The petitioner has filed the appointment letter, which indicates that the petitioner was appointed as a Library Clerk on a purely temporary basis, but was given a pay scale of Rs.950-1500 which is the payscale of the post of the Library Clerk.

Rule 4 of the Rules of 2002 provides the procedure for regularization. For facility, the said provision is extracted hereunder:-

*“4. Regularization of ad-hoc appointments. – (1) Any person who –*

*(i) was directly appointed on ad-hoc basis before June 30, 1998 and is continuing the service on the date of commencement of these rules;*

*(ii) possessed requisite qualifications prescribed for regular appointment at the time of adhoc appointment; and*

*(iii) has completed or as the case may be, after he has completed three years service as such, shall be considered for regular appointment in permanent or temporary vacancy, as may be available, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant rules or orders.*

*(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories shall be made in accordance with the orders of the Government in force at the time of recruitment.*

*(3) For the purpose of sub-rule (1) the appointing authority shall constitute a Selection Committee.*

*(4) The appointing authority shall prepare an eligibility list of the candidates arranged in order of seniority, as determined from the date of order of appointment and if two or more persons are appointed together from the order in which their names are arranged in the said appointment order, the list shall be placed before the Selection Committee alongwith the character rolls and such other records of the candidates as may be considered necessary to assess their suitability.”*

A perusal of the aforesaid provision indicates that a person, who has been appointed on adhoc basis before 30.06.1998 and is continuing in service on the date of the commencement of the Rule and possesses the requisite qualification prescribed for regular appointment at the time of the adhoc appointment and has further completed three years of service, shall be considered for regular appointment in a permanent or temporary vacancy.

In the present case, the vacancy is available since the petitioner is working on a substantive post. The question is whether a stop-gap-arrangement is equivalent to a adhoc appointment or not. The word 'adhoc' has not been defined in the Rules and therefore, in order to find out what 'adhoc' or 'stop-gap-arrangement' means, one would have to consult the dictionary. In the instant case, it is not necessary to do so since the Supreme Court has considered the meaning of the words "*adhoc*" and "*stop-gap-arrangement*" in the case of **Rudra Kumar Sain & others Vs. Union of India & others 2000 (8) SCC 25** and held:

*"16. The three terms "ad hoc", "stopgap" and "fortuitous" are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression fortuitous in Strouds Judicial Dictionary is accident or fortuitous casualty. This should obviously connote that if an appointment is*

*made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to fortuitous. In Blacks Law dictionary, the expression "fortuitous" means occurring by chance, a fortuitous event may be highly unfortunate. It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression ad hoc in Blacks Law Dictionary, means something which is formed for a particular purpose. The expression "stop-gap" as per Oxford Dictionary, means a temporary way of dealing with a problem or satisfying a need.*

17. *In Oxford Dictionary, the word "ad hoc" means for a particular purpose; specially. In the same Dictionary, the word "fortuitous" means happening by accident or chance rather than design.*

18. *In P. Ramanatha Aiyers Law Lexicon (2<sup>nd</sup> Edition) the word "ad hoc" is described as for particular purpose, Made, established, acting or concerned with a particular and or purpose. The meaning of word fortuitous event is given as an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God.*

19. *The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter-se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as adhoc or stop-gap. If a*

*post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as fortuitous in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a stop-gap arrangement and appointment in the post as ad hoc appointment. It is not possible to lay down any straight-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of interse seniority of officers in the cadre.*

20. *In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be stop-gap or fortuitous or purely ad hoc. In this view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be fortuitous/ad hoc/stop-gap are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.”*

A perusal of the aforesaid would indicate that the words “stop-gap-arrangement” are interchangeable words, which means a temporary way of dealing with the problem or to satisfy the need. In the light of the aforesaid, adhoc and stop-gap-arrangement means that something which is being done for a particular purpose and for a limited period of time. The respondents admit that the petitioner was appointed as a stop-

gap-arrangement and, in the light of the aforesaid decision of the Supreme Court in Rudra Kumar Sain (supra), the stop-gap-arrangement and adhoc arrangement is one and the same.

Consequently, the impugned order rejecting the claim of the petitioner for regularization under the Rules of 2002 cannot be sustained and is quashed. The writ petition is allowed. The matter is remitted to the authority concerned to decide the case of the petitioner for regularization of his service on the post of Library Clerk as per the Rules of 2002 within six weeks from the date of production of a certified copy of this order.

**(Tarun Agarwala, J.)**

Dated 31<sup>st</sup> July, 2012

LSR