KHAGESH KUMAR AND ORS. A

*v.*

INSPECTOR GENERAL OF REGISTRATION AND ORS.

SEPTEMBER 27, 1995

[S.C. AGRAWAL AND B.P. JEEVAN REDDY, JJ.] B

*Service Law—U.P. Regulation of Ad Hoc Appointment (On post outside the purview of the Public Sector Commission) Rules, 1979—Rule 4—Registration Clerks employed on daily wage basis—Regularisation of—Directions issued.* C

**The petitioners were appointed as Registration Clerks on daily wage basis for short period/periods in an year and on the expiry of the period their services were terminated. Such appointments were authorised by the Governor for the particular year only subject to the condition that the posting of Registration Clerks on daily wage basis shall in no case exceed** D **three months in the year. Some of them were appointed on the same basis in the next succeeding year or after a gap of one or two years.**

**A number of writ petitions were filed in the High Court by persons who had worked as registration clerks on daily wage basis in the past or** E **who were actually working as Registration Clerks on daily wage basis wherein the petitioners sought regularisation of their appointment on the post of registration clerk and prayed for quashing of the press notification inviting applications for appointment on the post of registration clerks. In a large number of cases interim orders had been passed directing that the writ petitioners might be allowed to continue in service during the pendency** F **of the writ petitions.**

**Petitioners claimed before the High Court that they had been regularly selected by a duly constituted Selection Committee and their appointment should be treated as regular appointment; that they had been** G **working on daily wage basis for a number of years and, therefore, they were entitled to be regularised on the post. The High Court rejected the claim of the petitioners and held that nothing had been shown that the appointment of the petitioners was made after selection through a Selection Committee; that none of the petitioners were either *ad hoc* employees or even daily wagers continuously for one year or for 240 days and that mere** H

A advertisement in a paper about some posts lying vacant does not confer any right whatsoever on those who seek appointment in pursuance of the advertisement and since the State had specifically stated that they did not require anyone to be appointed as Registration Clerks in pursuance of the advertisement dated March 24, 1991 and they were not proposing to process the said advertisement any further, the said advertisement could not be invoked by the petitioners to seek regularisation as Registration Clerks. The High Court dismissed the Writ Petitions. Hence these petitions.

Petitioners urged that their appointment as Registration Clerks on daily wage basis was made in accordance with the procedure laid down in paragraph 94-A read with paragraph 97 of the U.P. Registration Manual on the basis of the list which was prepared under paragraph 97; that these provisions are statutory rules framed under the Registration Act, 1908; that appointment of a candidate whose name was included in the list of approved candidates under para 97 of the Manual, as the said paragraph stood on 19-1-1974, was to be treated as an appointment under rule 15 of the U.P. Registration Department (District Establishment) Ministerial Service Rules 1978, since the words 'as it stood in January 1974' in Rule 5(2) refer to paragraph 97 of the Manual; that there were vacancies on the post of Registration Clerks and some of the petitioners had been working as Registration Clerks on daily wage basis since much before 1.10.1986 and they would be entitled to be considered for regularisation under the U.P. Regularisation of *Ad Hoc* Appointments (on posts outside the purview of the Public Service Commission) Rules, 1979; that many of them had rendered continuous service for more than 240 days in a year and that they were entitled to be regularised; that their services were availed as an apprentice under provisions of paragraph 101 of the Manual, and finally that even if the petitioners were not entitled to seek regularisation, they should be given preference in the matter of appointment on the post of Registration Clerk whenever regular appointment was made on that post.

The respondents submitted that the provision contained in paragraph 101 of the Manual had been superseded and instructions had been issued by the Inspector General of Registration not to engage any person under paragraph 101 and if any petitioner was required to work without payment as an Apprentice, he will be paid emoluments for the said period.

Disposing of the matter, this Court A

HELD : 1. The appointment of the petitioners as Registration Clerks on daily wage basis could not be regarded as an appointment made under para 94-A r/w para 97 of the U.P. Registration Manual. These paragraphs of the Manual relate to appointment on the posts on the permanent and the temporary strength of the establishment. The posts contemplated in paragraphs 94-A, 95, 96 and 97 are posts sanctioned for appointment on regular basis. The posts of Registration Clerks on daily wage basis on which the petitioners were appointed do not fall under these paragraphs. [127-B-D] B

2. The words 'as it stood in January 1974' in Rule 5(2) of the Uttar Pradesh Registration Department (District Establishment) Ministerial Service Rules, 1978, must be construed as referring to the list of approved candidates that had been prepared under paragraph 97 of the Manual as that list stood in January 1974. [129-C] C

3.1. The petitioners or other similarly placed persons who were employed as Registration Clerks on daily wage basis prior to October 1, 1986 shall be considered for regularisation under the provisions of rule 4 of the U.P. Regularisation of *Ad Hoc* Appointments (on posts outside the purview of the Public Service Commission) Rules, 1979 provided they fulfil the requirements of rule 4(1)(ii) and they had completed three years continuous service. The said period of three years service shall be computed by taking into account the actual period during which the employee had worked as Registration Clerk on daily wage basis. The period during which such an employee had performed the duties of Registration Clerk under paragraph 101 of the Manual shall be counted as part of service for the purpose of such regularisation. [136-E-F] D E F

3.2. In the event of appointment on regular basis on the post of Registration Clerks, the petitioners or other similarly placed persons who had worked as Registration Clerks on daily wage basis may be given one opportunity of being considered for such appointment and they be given relaxation in the matter of age requirement prescribed for such appointment under the Rules. [136-B] G

3.3. The Subordinate Service Selection Commission while making selection for regular appointment to the posts of Registration Clerks shall give weightage for their experience to the Registration Clerks who had H

A **worked on daily wage basis and shall frame suitable guidelines for that purpose. [136-H, 137-A]**

*State of Haryana* v. *Piara Singh & Ors.*, **[1992] 1 SCC 118**; *Bhagwati Prasad* v. *Delhi State Mineral Development Corporation,* **[1990] 1 SCC 361** and *Delhi Development Horticulture Employees' Union* v. *Delhi Administra-*
B *tion, Delhi & Ors.,* **[1992] 4 SCC 99, relied on.**

*Prabodh Verma & Ors.* v. *State of Uttar Pradesh & Ors.,* **[1985] 1 SCR 216, distinguished.**

C CIVIL APPELLATE JURISDICTION : Special Leave Petitions Nos. 5624-5625 of 1995.

From the Judgment and Order dated 8.2.95 of the High Court of Judicature at Allahabad in Special Appeals Nos. 267 and 356 of 1994 respectively.

D Manoj Swarup with Ms. Lalita Kohli, Pramod Swarup, Anis Suhrawardy, Prasant Kumar, Satish Vig, Prashant Kumar, V.D. Khanna, D.V. Sehgal, R.B. Misra, R.C. Pandey, Ms. A. Verma, Ms. Monika Gusain, Ms. Nalini Tripathi.

E The Judgment of this Court was delivered by

**S.C. AGRAWAL, J.** Delay condoned in S.L.P. (C) No. 22726-29/95 [C.C. No. 3559/95].

These petitions for special leave to appeal arise out of judgment
F dated February 8, 1995 passed by the Division Bench of the Allahabad High Court in various special appeals and writ petitions involving common questions relating to regularisation of Registration Clerks employed on daily wage basis in the Registration Department of the Government of Uttar Pradesh.

G Under the U.P. Registration Manual (hereinafter referred to as 'the Manual') provision is made in paragraph 94-A for appointment to the post of Registration Clerks in Sub-registrar's offices and in District Registrar's offices by the District Registrar. In paragraph 95 it is provided that the strength and remuneration of registration establishments shall vary according to the amount of work to be performed in each office and will undergo
H periodical review. Under paragraph 96 power has been conferred on the

Inspector General of Registration to sanction temporary establishments within the limits of budget provision and up to a rate of pay not exceeding Rs. 150 per mensem in each case subject to the conditions prescribed in clauses (a) to (d). The District Registrar has also been empowered to sanction, with the previous approval of the Inspector General, the temporary appointment of extra clerks in the Registration offices under his control up to a rate of pay not exceeding Rs. 60 per mensem in each case but before sanctioning the District Registrar is required to see that the permanent clerks have been working up to the standard prescribed by the preceding rule. Paragraph 97 requires that a list of approved candidates for the post of registration clerks shall be maintained by each District Registrar and that except with the previous sanction of the Inspector General, at no time the number of enlisted candidates shall exceed the number fixed by the Inspector General for each registration district according to the needs of each district. The said list of approved candidates is required to be revised by the District Registrar annually in the month of January. In the said rule provision is also made prescribing the conditions which are required to be fulfilled by candidates for enlistment as well as the grounds on which the names of candidates once brought on the list may be removed. It is also prescribed that permanent appointment to the post of registration clerks shall be made from amongst the enlisted candidates strictly by seniority and that officiating or temporary chances of more than a month's duration shall be given to enlisted candidates by rotation.

Apart from the permanent and temporary establishments referred to in paragraphs 95 and 96 of the Manual, a practice was in vogue to appoint Registration Clerks on daily wage basis for the speedy disposal of the pending arrears of documents in the Registration offices. Such appointments were authorised by the Governor for the particular year only subject to the condition that the posting of Registration Clerks on daily wage basis shall in no case exceed three months in the year. One such order is contained in G.O. dated December 23, 1987 which reads as under :

"G.O. No. SR4353/X312(1) (0) 82 dated 23.12.87

From :

Shri Prem Shankar
Joint Secretary, Finance
Stamp and Registration Section
Government of U.P., Lucknow.

A To

Inspector General of Registration
Uttar Pradesh, Allahabad

B Sub. : Appointment of daily wage clerks for purpose of disposal of arrears of documents in Registration Offices

Sir,

C With reference to your D.O. letter No. 85101/VA- 429 dated 26.11.1987, I have been directed to inform that a result of arrear of copying work in various Registration Offices of the State undue delay is being caused in the return of original documents to the parties. Consequently, the parties are being put to inconvenience the Hon'ble Governor has therefore been pleased to sanction post of Clerks on daily wage basis @ 20 (Rupees Twenty) per working D day for the purpose of speedy disposal of the present arrear of documents in Registration Offices on the following terms and conditions :-

E (1) The concerned District Registrar with prior permission of District Magistrate may appoint clerks in minimum possible number in view of unavoidable necessity and ensure in every case disposal of all documents in arrear within a period of three months.

F (2) The standard of work of clerks appointed on daily wage basis be the same as that of regularly appointed clerks. If the output of work on any working day is less than standard prescribed than in that case his wages shall be liable to be reduced in the same proportion.

G (3) The disbursement of wages to the daily wage clerks will be made only after the concerned Sub-Registrar certified that on each working day the work done by the daily wage clerk is not less than the prescribed standard.

H (4) With a view to ensure that copying work does not fall in to arrear in future, weekly monitoring will be done by District Registrars.

(5) The posting of daily wage clerks shall in no case exceed three months during the course of a financial year. A

(6) The District Registrar will prepare a list of candidates for appointment to the post of daily wage clerks in the District and the appointment will be made on the basis of list prepared in the last year's examination. B

(7) The District Registrar will report to the Government and to the Inspector General of Registration, U.P., Allahabad from time to time about the pending work in the district.

(8) The expenditure shall be made in financial year 1987 from serial No. 81 head of account 2030 Stamps and Registration under Non-Plan Expenditure and shall be borne from savings. Here it is also made clear that the entire responsibility of keeping the work in Sub-Registrar Office upto-date shall be that of the District Registrar and they will be responsible for pending work. C D

This order is being issued with the consent of the Finance Department D.O. letter No. E-4/11541/X-87 dated 23.12.1987.

Yours faithfully, E

sd/-
(Prem Shankar)
Joint Secretary"

It has been stated that similar orders were issued in each year and that such appointments were being made since 1983-84. The petitioners in these cases are persons who were appointed on daily wage basis for short period/periods in an year and on the expiry of the period their services were terminated. Some of them were appointed on the same basis in the next succeeding year or after a gap of one or two years. F

On May 12, 1978 the Uttar Pradesh Registration Department (District Establishment) Ministerial Service Rules, 1978 (hereinafter referred to as 'the 1978 Rules') were published. The 1978 Rules provide for recruitment to various category of posts in the U.P. Registration Department (District Establishment) Ministerial Service. The post of Registration Clerk is a post falling in the said service. The 1978 Rules provide for appointment G H

A on the post of registration clerks by direct recruitment and by promotion from amongst Group 'D' employees. Direct recruitment on permanent as well as officiating or temporary vacancies was required to be made in accordance with the procedure laid down in the Subordinate Offices Ministerial Staff [Direct Recruitment] Rules, 1975. By notification dated September 9, 1992 [Published in the U.P. Gazette dated April 10, 1993] B the 1978 Rules were amended by the Amendment Rules of 1982 and direct recruitment for the post of Registration Clerk is to be made through the U.P. Subordinate Services Selection Commission on the basis of competitive examination conducted by the Commission.

C In 1989 the Registration Act, 1908 was amended by the State legislature of U.P. and Section 32-A was inserted whereby it was provided that the document presented for registration should be accompanied by such number of true photostat copies thereof as may be prescribed by the rules under Section 69. There was a further amendment of the Registration Act, 1908 by U.P. Act No. 27 of 1994 whereby Section 32-B was inserted. By D the said provision it has been prescribed that in such cases as may be notified by the State Government every document and the translation of the document referred to in Section 19, presented for registration shall be accompanied by a true copy thereof which shall be neatly and legibly printed, lithographed, type written or otherwise prepared on only one side E of the paper and that such true copy shall be laminated in accordance with the procedure laid down in the section. It has been stated that U.P. Act No. 27 of 1994 has been brought into force with effect from October 1, 1994 vide notification dated September 28, 1994.

F Prior to March 20, 1991 the appointing authority for registration clerks under the 1978 Rules was the District Registrar but by notification dated March 20, 1991 the rules were amended and the Inspector General of Registration became the appointing authority. On March 24, 1991 the Inspector General of Registration issued a Press Notification inviting applications for appointment to the posts of Registration Clerks.

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A number of writ petitions were filed in the Allahabad High Court by persons who had worked as registration clerks on daily wage basis in the past or who were actually working as Registration Clerks on daily wage basis wherein the petitioners sought regularisation of their appointment on H the post of registration clerk and prayed for quashing of the Press notifica-

tion inviting applications for appointment on the post of registration clerks. Many of these writ petitions had been disposed of by learned single Judges of the High Court and special appeals against these judgments were pending before the Division Bench while other writ petitions were pending for disposal before learned single Judges. In a large number of cases interim orders had been passed directing that the petitioners in the writ petitions may be allowed to continue in service during the pendency of the writ petitions. One such writ petition (Civil Misc. Writ Petition No. 3721/90, *Majeed & Ors.* v. *State of U.P. and Ors.*, filed at the Lucknow Bench of the High Court had been allowed by a learned single Judge (S.H.A. Raza J.) and the special leave petition (Civil) No. ...../93 [CC no. 121212/91] filed against the said judgment was dismissed on the ground of delay by this Court by order dated August 10, 1993. All the special appeals and writ petitions that were pending in the High Court at Allahabad as well as at the Lucknow Bench were taken up and were disposed of by the Division Bench of the High Court by the impugned judgment dated February 8, 1995.

On behalf of the petitioners, it was claimed before the High Court that they had been regularly selected by a duly constituted Selection Committee and their appointment should be treated as regular appointment. This claim was, however, contested by the State. The High Court rejected the said claim of the petitioners and held that nothing had been shown that the appointment of the petitioners was made after selection through a Selection Committee. The other contention that was urged on behalf of the petitioners before the High Court was that the petitioners had been working on daily wage basis for a number of years and, therefore, they were entitled to be regularised on the post. The said contention was also rejected by the High Court on the view that none of the petitioners were either *ad hoc* employees or even daily wagers continuously for one year or for 240 days as is generally claimed by the persons seeking regularisation even in industrial establishments and, furthermore the petitioners did not fall in any of the categories referred to by this Court in the *State of Haryana* v. *Piara Singh*, [1992] 1 SCC 118, as entitling regularisation. The High Court has held that in every one of the writ petitions none of the petitioners had worked even for more than a few weeks or at best for a few months in a year and consequently the entire edifice of the claim of the petitioners seeking regularisation was knocked out. As regards the advertisement dated March 24, 1991 issued by the State

A inviting applications for appointment on the post of Registration Clerks it was stated on behalf of the respondents before the High Court that in view of the amendments which have been made in the Registration Act, 1908, the State does not need any more Registration Clerks and that no further steps have been taken for recruitment on the basis of the said advertisement. The High Court has held that mere advertisement in a paper about
B some posts lying vacant does not confer any right whatsoever on those who may be seeking appointment in pursuance of the advertisement and since the State has specifically come up with the case that they do not require any one to be appointed as Registration Clerks in pursuance of the said advertisement dated March 24, 1991 and they are not proposing to process
C the said advertisement any further, the said advertisement cannot be invoked by the petitioners to seek regularisation as Registration Clerks. Referring to the decision of S.H.A. Raza J. in Civil Misc. Writ Petition No. 3721/1990 against which the special leave petition was dismissed by this Court, the High Court has observed that the fact that the special leave petition has been dismissed against the said judgment cannot be a prece-
D dent for permitting the petitioners in these matters to get a benefit which they are not entitled to. The High Court has disagreed with the view of the learned Judge in that case and has reversed the same. The learned Judges have also referred to the judgment of another learned single Judge (Vijay Bahuguna J.) in Civil Misc. Writ Petition No. 17634-A/1991 and has not approved the directions given by the learned Judge in that matter and have
E observed that the said directions are wholly out to bounds of Article 226 of the Constitution of India. The learned Judges have also taken note of the interim orders that were passed by other learned Judges [sitting singly] in various writ petitions, both at Allahabad as well as at Lucknow, and have observed that the said interim orders were obtained by the petitioners on
F the basis of averments which were incorrect and false. The learned Judges have, therefore, dismissed the writ petitions that were filed by the petitioners.

We have heard the learned counsel for the petitioners on the special leave petitions and the learned counsel appearing for the State of Uttar
G Pradesh.

The first question that needs to be considered is whether the appointment of the petitioners on the post of Registration Clerk was in the nature of a regular appointment under the relevant rules governing ap-
H pointment on the said post. On behalf of the petitioners it has been urged

that the appointment of the petitioners as Registration Clerks on daily wage basis was made in accordance with the procedure laid down in paragraph 94-A read with paragraph 97 of the Manual on the basis of the list which was prepared under paragraph 97. As regards the legal status of the provisions contained in paragraphs 94-A to 97 of the Manual it has been submitted by the learned counsel for the petitioners that these provisions are statutory rules framed under the Registration Act, 1908. This has been disputed by the learned counsel for the respondents who has submitted that they contain administrative instructions only. We do not consider it necessary to go into this question because we are of the view that even if the said provisions are treated as statutory in nature, the appointment of the petitioners as Registration Clerks on daily wage basis cannot be regarded as an appointment made under paragraph 94-A read with paragraph 97 of the Manual. The said paragraphs of the Manual relate to appointment on the posts referred to in paragraphs 95 and 96 of the Manual, i.e., posts on the permanent and the temporary strength of the establishment. The permanent strength is fixed for each office on the basis of assessment made having regard to the amount of work to be performed in the office and is subject to periodic review. Similarly the temporary establishment is sanctioned by the District Registrar with the previous approval of the Inspector General. The permanent and temporary posts contemplated in paragraphs 94-A, 95, 96 and 97 are posts sanctioned for appointment on regular basis. The posts of Registration Clerks on daily wage basis on which the petitioners were appointed do not fall under these paragraphs of the Manual. Special sanction was given by the Governor for appointment on these posts of Registration Clerks on daily wage basis for the purpose of disposal of the arrears of documents in Registration offices and the District Registrar had been directed to ensure in every case disposal of all documents in arrears within a period of three months. The sanction was given subject to the condition that such appointment shall in no case exceed three months during the course of a financial year. The appointment on these posts of Registration Clerks on daily wage basis was required to be made on the basis of a list that was to be prepared as per the directions contained in the Government order sanctioning the posts. The said list was not the list prepared under paragraph 97 of the Manual.

In this context, it may also be stated that since 1978 there exist the 1978 Rules making express provisions with regard to recruitment on the post of Registration Clerks in the Registration Department. Rule 15 of the

1978 Rules prescribes the procedure for the direct recruitment to the post of Registration Clerk. Prior to the amendment introduced by the Amendment Rules of 1992 the said Rule provided that "subject to the provisions of rule 5(2), recruitment to the post of Registration Clerk (including against officiating or temporary vacancies) shall be made in accordance with the procedure laid down in the Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1975 as amended from time to time". Rule 5(2) provided as under :

"Rule 5(2) :

| Name of the Post | Source of recruitment |
|---|---|
| Registration Clerk | (1)(a) By direct recruitment. |
| | (b) By promotion to the extent of 10 per cent of the vacancies from amongst the Group 'D' employees in accordance with the provisions of the Subordinate offices Ministerial Staff (Direct Recruitment) Rules 1975 as amended from time to time. |
| | (2) Notwithstanding anything contained in these rules, before direct recruitment is made to the post of Registration Clerk, the appointment shall be made from amongst the candidates whose names are included in the list of approved candidates prepared under rule 97 of the Registration Manual for Uttar Pradesh, Part II (Seventh Edition) as it stood on June, 1974 and in accordance with the procedure laid down therein." |

On behalf of the petitioners it has been urged that appointment of a candidate whose name is included in the list of approved candidates under paragraph 97 of the Manual, as the said paragraph stood on January 19,

1974, is to be treated as an appointment under rule 15 of the 1978 Rules. The submission of the learned counsel is that the words "as it stood in January 1974" refer to paragraph 97 of the Manual. We are unable to agree. The said provision in rule 5(2) was in the nature of a transitory provision which enabled recruitment to be made in the initial period after the coming into force of the 1978 Rules on the basis of the list of the approved candidates that had been prepared under the existing provisions contained in paragraph 97 of the Manual. The words "as it stood in January 1974" must, therefore, be construed as referring to the list of approved candidates that had been prepared under paragraph 97 of the Manual as that list stood in January 1974. The construction placed by the learned counsel for the petitioners on the words "as it stood in January 1974" would mean that even after the 1978 Rules the appointments will have to be made on the basis of lists prepared in accordance with paragraph 97 of the Manual from time to time. This would completely nullify the provisions relating to recruitment contained in rule 15 of the 1978 Rules. A construction which leads to such a result cannot be adopted. We are, therefore, unable to accept the contention urged on behalf of the petitioners that the appointment of the petitioners on the post of Registration Clerks on daily wage basis was in the nature of a regular appointment made in accordance with the provisions of the relevant rules. In our opinion, appointment of the petitioners was made on the basis of the sanction given by the Governor for such posts each year which sanction was subject to the express condition that such an appointment shall in no case exceed three months during the course of a financial year.

The next contention that has been urged by learned counsel for the petitioners is with regard to their regularisation on the post of Registration Clerks. It has been submitted that in letters dated July 6, 1985 and September 20, 1985 from the Inspector General of Registration to the State Government it was pointed out that in June 1985, the number of documents which were pending clearance were about 11,28,000 and as per the requirement prescribed in the Manual about 700 Registration Clerks were required over and above 900 sanctioned posts of Registration Clerks existing in the Department. It has also been submitted that as per letter dated December 22, 1993 from the Inspector General of Registration in November 1993 the total number of documents pending clearance was about 9,12,696 and that, if the certified copies of the documents and the memos of enquiry were to be taken into account, the said number would increase to about 15,00,000 and about 920 Registration Clerks were required for

A that purpose. It has been urged that against the said requirement only 272 posts of Registration Clerks were created between 1985 and 1994 and that at present there are only 1247 sanctioned posts of Registration Clerks out of which 147 posts were vacant in December 1993 and by July 31, 1994 the number of vacant posts had increased to 214 on account of promotion and retirement. On behalf of the respondents it has been submitted that a B requisition for selection for 128 posts of Registration Clerks was sent to the Subordinate Services Selection Commission and the same is pending and that in view of the insertion of Sections 32A and 32B in the Registration Act in the State of U.P., additional hands are not needed and the Government was thinking of withdrawing the requisition. We do not C propose to go into the question whether there is need for appointment of Registration Clerks against the existing vacancies. We will deal with the contention urged by the learned counsel of the petitioners on the basis that there are vacancies on the post of Registration Clerks and examine whether the petitioners can claim regularisation on such posts. In this regard, it may D be stated that in the State of U.P. provisions with regard to regularisation are contained in the U.P. Regularisation of *Ad Hoc* Appointments (on posts outside the purview of the Public Service Commission) Rules, 1979 (hereinafter referred to as 'the Regularisation Rules'). Rule 4(1) of the Regularisation Rules provides as follows :

E "*Rule 4. Regularisation of ad hoc* appointments-

(1) Any person who-

(i) was directly appointed on *ad hoc* basis before January 1, 1977 and is continuing in service as such on the date of commencement F of these rules;

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

G (iii) has completed or, as the case may be, after he has completed three years continuous service,

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 H vacancy in accordance with the relevant service rules or orders."

By the Amendment Rules notified vide notification dated August 7, 1989 the Regularisation Rules were Amended and Rule 10 was inserted which provides that :

> "*Rule 10. Extension of the Rules* -
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> The provisions of these Rules shall apply, *mutatis mutandis*, also to any person directly appointed on *ad hoc* basis on or before October 1, 1986 and continuing in service as such, on the date of commencement of the Uttar Pradesh Regularisation of *Ad hoc* Appointments (On posts outside the purview of the Public Service Commission) (Second Amendment) Rules, 1989."

The petitioners can claim regularisation only if they satisfy the requirements of the said provisions. They should have been directly appointed on *ad hoc* basis before October 1, 1986, they should have possessed the requisite qualifications prescribed for regular appointment at the time of such *ad hoc* appointment and they should have completed three years continuous service. It has been urged on behalf of the petitioners that some of the petitioners had been working as Registration Clerks on daily wage basis since much before October 1, 1986 and they would be entitled to be considered for regularisation under the Regularisation Rules. These provisions are applicable only to an appointment made on *ad hoc* basis. Though the High Court has held that the appointment of the petitioners on daily wage basis was not an *ad hoc* appointment, we are not inclined to take that view and we will proceed on the basis that the appointment of the petitioners was such an appointment. The question which survives is whether any of the petitioners who had been appointed as Registration Clerk on daily wage basis prior to October 1, 1986 can be regarded as having completed three years continuous service. Since the order of the Governor sanctioning appointment on the posts of Registration Clerks on daily wage basis imposes a limitation that such appointment shall in no case exceed three months during the course of a financial year, there are long breaks between the various periods during which the petitioners were employed as Registration Clerks on daily wage basis. In *Bhagwati Prasad* v. *Delhi State Mineral Development Corporation*, [1990] 1 SCC 361, this Court has laid down that for the purpose of counting three years' continuous service for the purpose of regularisation artificial break in service for short period/periods created by the employer could be ignored but "if

A there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period" (at p.364). In view of the said decision for computing three years period of continuous service for the purpose of Rule 4(1)(iii) of the Regularisation Rules, the period of break in service which was longer than three months has to be excluded and only the period during which the petitioners actually worked can be counted. In case any of the petitioners was employed as a Registration Clerk on daily wage basis prior to October 1, 1986 and, after excluding periods of breaks in service which are longer than three months, he has put in three years service, he would be entitled to seek regularisation under Rule 4(1) of the Regularisation Rules provided he fulfils the requirement of clause (ii) of the said rule. He can move the appropriate authority for such regularisation and the said authority will pass appropriate orders after verifying the correctness of the claim of such a petitioner. The petitioners who do not fulfil the said condition of three years service contained in Rule 4(1)(ii) cannot claim regularisation on the basis of the Regularisation Rules.

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It has been urged on behalf of the petitioners that many of them have rendered continuous service for more than 240 days in a year and that they are entitled to be regularised. We find no merit in this contention. In *Delhi Development Horticulture Employees' Union* v. *Delhi Administration, Delhi & Ors.*, [1992] 4 SCC 99, this Court has not accepted the principle that an employee can seek regularisation only on the ground that he has put in work for 240 or more days. Similarly, in the *State of Haryana* v. *Piara Singh & Ors.* (supra) this Court, while setting aside the direction of the High Court that all those *ad hoc*, temporary employees who had continued for more than a year should be regularised, has observed :

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> "None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad hoc* employee for one year, it cannot be presumed that there is need for a regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no 'rule of thumb' in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be

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held that in each any every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations." [p.142] A

In that case, this Court has, however, observed :

If a casual labourer has continued for a fairly long spell - say two or three years - a presumption may arise that there is a regular need for his services and in such a situation it becomes obligatory for the authority concerned to examine the feasibility of his regularisation." [p.153] B

Regularisation in service in the State of U.P. is governed by the Regularisation Rules which prescribes a period of three years continuous service. We cannot say that the said period of three years prescribed under the Regularisation Rules is unreasonable. In these circumstances, it must be held that unless the petitioners fulfil the requirement of the Regularisation Rules, they cannot be regularised. C D

It has been submitted by the learned counsel for the petitioners that even though under the Governor's sanction appointment on the post of Registration Clerks on daily wage basis could be made for a maximum period of three months during the course of a financial year, a practice was prevailing in the Registration Department to avail the services of Registration Clerks appointed on daily wage basis by treating them as Apprentices but they were not paid any emoluments for the period they worked as Apprentices. It is stated that this was done by invoking the provisions of paragraph 101 of the Manual which provided as under :- E

"*101 : Employment of unpaid Apprentice.* F

The employment of unpaid Apprentice in registration offices is strictly prohibited, except in special cases, and with the previous sanction, in writing of the District Registrar of the District or the Inspector General of Registration, which sanction can be at any time withdrawn. It should at the same time, be clearly understood that as the employment of unpaid Apprentice can only be regarded as a convenience of the Sub-Registrar himself, such services will not be recognised as giving any claim of appointment." G

On behalf of the respondents it has been submitted that the said H

A provision contained in paragraph 101 of the Manual has been superseded and instructions have been issued by the Inspector General of Registration from time to time not to engage any person under paragraph 101. Shri D.V. Sehgal has very fairly stated that if any petitioner was required to work without payment as an Apprentice under paragraph 101, he will be paid B emoluments on daily wage basis for the said period. In view of this statement if any of the petitioners or other similarly placed persons was required to perform the duties of Registration Clerk as an Apprentice under paragraph 101 of the Manual he can submit a representation setting out the particulars about such employment and the concerned authority, after verifying the correctness of claim, would pass the necessary order for C payment of emoluments on daily wage basis for the period he is found to have so worked on the post of Registration Clerk. The said period during which he is found to have worked as Apprentice under paragraph 101 of the Manual shall be also counted as a part of his service as Registration Clerk on daily wage basis for the purpose of computing the period of three D years continuous service for the purpose of regularisation.

It has been next urged on behalf of the petitioners that even if the petitioners are not entitled to seek regularisation, they should be given preference in the matter of appointment on the post of Registration Clerk whenever regular appointment is made on the post and reliance has been E placed on the decision of this Court in *Prabodh Verma & Ors.* v. *State of Uttar Pradesh & Ors.*, [1985] 1 SCR 216. In that case nearly 90 per cent of teachers in recognised institutions who were members of the Uttar Pradesh Madhyamik Shikshak Sangh went on an indefinite strike. The said strike was declared as illegal by the State Government and the services of the F striking teachers were terminated. Fresh appointments on temporary basis were made on the posts of teachers whose services were terminated. Thereafter a settlement took place between the striking teachers and the State Government and the services of the newly appointed teachers were terminated. Thereafter, the Governor of Uttar Pradesh promulgated an G ordinance which provided for the absorption of certain teachers in the institutions recognised under the Intermediate Education Act, 1921 and for that purpose a provision was made for maintaining a register of "reserve pool teachers" consisting of persons who were appointed as teachers during the period of the strike and it was further provided that where any H substantive vacancy in the post of a teacher in an institution recognised by

the Board of High School and Intermediate Education was to be filled by direct recruitment, such post should at the instance of the Inspector be offered by the management to the teacher whose name was entered in the said register. The validity of the said ordinance was challenged before the Allahabad High Court by some of the applicants who were not in the reserve pool. The said ordinance was declared as invalid by the High Court on the ground that it was violative of the right to equality guaranteed under Article 14 of the Constitution. Reversing the said view of the High Court, this Court upheld the said ordinance and held that there was an intelligible differentia which distinguishes the teachers put in the reserve pool from other applicants for posts of teachers in recognised institutions inasmuch as the reserve pool teachers were those who had come forward at a time when the teachers employed or a large majority of such teachers, in the recognised institutions, had gone on an indefinite strike and had continued the strike even after it had been declared illegal and had the strike continued almost all the recognised institutions in the State would have had to close down putting the students to great hardship and suffering and causing a break in their education and that it was in these difficult and trying times that the reserve pool teachers came forward to man the recognised institutions. It has also been observed that the reserve pool teachers joined the recognised institutions during the period of the strike in circumstances in which they exposed themselves to great hostility from the striking teachers and that they did so running a certain amount of risk for there was always a possibility of a strike turning violent and that almost all those who applied for these posts and were not in the reserve pool and were seeking to challenge the validity of the ordinance must have qualified to be appointed to the post of teachers in the recognised institutions during the pendency of strike and none of these applicants, however, came forward to join a recognised institution during that period as the reserve pool teachers did and, therefore, they stood in a different class from the reserve pool teachers. We find it difficult to appreciate how the petitioners can claim preference in the matter of regular appointment on the post of Registration Clerk on the basis of this decision. It cannot be said that the petitioners had to undergo any risk when they joined as Registration Clerks on daily wage basis. They joined the posts of their own free will knowing fully well that the said appointment was for a very short duration and would not exceed three months during the course of a financial year. We are,

A B C D E F G H

A therefore, unable to hold that the petitioners who had worked as Registration Clerks on daily wage basis from a separate class and are entitled to claim preferential treatment in the matter of appointment on the post of Registration Clerks as and when recruitment is made for the said post.

B We are, however, of the view that in the event of the recruitment being made on the post of Registration Clerks on regular basis, the petitioners or other similarly placed persons should be given one opportunity of being considered for such appointment and they be given relaxation in age requirement provided for such appointment under the rules. During the process of selection weightage may be given for their experience C to the Registration Clerks who have worked on daily wage basis and suitable guidelines may be framed for that purpose by the Subordinate Services Selection Commission.

For the reasons aforementioned, the impugned judgment of the High Court is upheld with the following directions :-

D

(1) The petitioners or other similarly placed persons who were employed as Registration Clerks on daily wage basis prior to October 1, 1986 shall be considered for regularisation under the provisions of rule 4 of the Regularisation Rules provided they fulfil E the requirements of rule 4(1)(ii) and they have completed three years continuous service. The said period of three years service shall be computed by taking into account the actual period during which the employee had worked as Registration Clerk on daily wage basis. The period during which such an employee has performed the duties of Registration Clerk under paragraph 101 of F the Manual shall be counted as part of service for the purpose of such regularisation.

(2) In the event of appointment on regular basis on the post of Registration Clerks, the petitioners or other similarly placed persons who had worked as Registration Clerks on daily wage basis G may be given one opportunity of being considered for such appointment and they be given relaxation in the matter of age requirement prescribed for such appointment under the Rules.

(3) The Subordinate Services Selection Commission while making H selection for regular appointment to the posts of Registration

Clerks shall give weightage for their experience to the Registration Clerks who have worked on daily wage basis and shall frame suitable guidelines for that purpose. A

(4) If any of the petitioners or other similarly placed person was required to perform the duties of Registration Clerk as an Apprentice under paragraph 101 of the Manual, he may submit a representation to the appropriate authority setting out the full particulars of such employment within three months and the concerned authority, after verifying the correctness of the said claim, shall pass the necessary order for payment of emoluments on daily wage basis for the period he is found to have so worked on the post of Registration Clerk. The said payment shall be made within a period of three months from the date of submission of the representation. B C

The Special Leave Petitions are disposed of accordingly.

No costs. D

R.A. Matters disposed of.