

2025 PLRonline 0107 Ratnank Mishra v. High Court of Judicature At Allahabad | 417801

SUPREME COURT OF INDIA

Before: Hon'ble J.K. Maheshwari and Vijay Bishnoi, JJ.

RATNANK MISHRA & ORS. - Appellants

Versus

HIGH COURT OF JUDICATURE AT ALLAHABAD - Respondent

Civil Appeal No. 428 of 2022, Civil Appeal No. 429 of 2022, Civil Appeal No. 430 of 2022 and Civil Appeal No. 431 of 2022

(i) Constitution of India, 1950 - Articles 14, 16 and 21 - Service Law - Regularization of ad-hoc employees - Differential treatment among similarly situated employees - Where appellants appointed as Operator-cum-Data Entry Assistants/Routine Grade Clerks by Chief Justice of High Court in exercise of powers under Rules 8(a)(i), 41 and 45 of Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 - Numerous similarly placed employees appointed through same channel regularized while appellants denied regularization on ground that their appointment orders stipulated them as ad-hoc appointments - Distinction sought to be drawn solely on basis of stipulations in appointment letter when channel of appointment identical - Nature of work performed identical - Such distinction arbitrary, unreasonable and superficial - Denial of regularization to appellants violates fundamental principle that equals must be treated equally and persons similarly circumstanced should not be treated differently without rational and intelligible differentia - High Courts being Constitutional Courts expected to exemplify standards of model employer - Discriminatory treatment to employees similarly situated within same establishment poses grave threat to sacrosanct principles of non-arbitrariness and reasonableness enshrined under Articles 14, 16 and 21 of Constitution - Appellants rendered over decade of service - Directions issued for reinstatement, regularization and consequential benefits. [Paras 17, 18, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34]

"In the facts of this case, such a distinction solely on the basis of stipulations as contained in the appointment letter, when the nature of work performed is identical, violates the fundamental principle that equals must be treated equally and persons similarly circumstanced should not be treated differently without a rational and intelligible differentia...High Courts, being Constitutional Courts entrusted to uphold equality and fairness, are expected to encompass such principles within their own administrative functioning as well, and must exemplify the standards of a model employer. Such principles are at the risk of being undermined when discriminatory treatment is meted out to employees similarly situated within the same establishment. Such actions pose grave threat to the sacrosanct principles of non-arbitrariness and reasonableness as enshrined under Articles 14, 16 and 21 of the Constitution of India." [Paras 27, 29]

(ii) Constitution of India, 1950 - Article 142 - Extraordinary powers to do complete justice - Service Law - Regularization - Case involving manifest discrimination where similarly placed employees appointed through same channel regularized while appellants denied regularization - Appellants rendered over decade of service - Committee report dated 31.05.2012 creating artificial distinction between three categories of employees all appointed by Chief Justice under same rules - Genesis of discrimination traced back to said report - Services

of appellants dispensed with vide order dated 15.09.2015 - Where ordinarily regularization being matter of policy best left to employer and courts must exercise restraint in issuing directions - Present case exceptional - Supreme Court exercised inherent powers under Article 142 to render complete justice in peculiar facts and circumstances - Directions issued for reinstatement, regularization after one year from respective dates of appointment, and all consequential benefits including seniority, promotion, pay fixation, increments, retiral benefits except salary for period not worked - Directions to be complied with within 8 weeks. [Paras 23, 32, 33, 34]

“While we are cognizant of the fact that ordinarily regularization is a matter best left to policy decisions of the employer, and courts must exercise restraint in issuing directions. However, the present case is exceptional. The Appellants have rendered over a decade of service. Numerous similarly placed employees who were employed through same channel of appointment have been regularized. Therefore, with a view to render complete justice in the peculiar facts and circumstances of the present case, in our view, this is a fit case for exercising our inherent powers under Article 142 of the Constitution of India to issue final operative directions.” [Para 33]

(iii) Service Law - Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 - Rules 8(a)(i), 41 and 45 - Power of Chief Justice to make appointments - Rule 8(a)(i) providing for recruitment to Routine Grade Clerks by direct recruitment through competitive examination or in any manner directed by Chief Justice - Rule 41 conferring residuary powers on Chief Justice regarding matters incidental or ancillary to rules not specifically provided - Rule 45 conferring power on Chief Justice to make orders regarding recruitment, promotion, confirmation notwithstanding anything in rules - Appointments made by Chief Justice in exercise of such powers legal, duly authorized and having same status as those regularized - Where Committee differentiated between employees appointed under ad-hoc stipulation and those without such stipulation despite all being appointed through same channel - Such differentiation not sustainable when channel of recruitment identical. [Paras 2, 3, 17, 24, 25, 26, 27]

“All three categories of employees i.e., Category A, Category B, and Category C (the Appellants), were appointed through the same channel of recruitment, namely the exercise of powers vested in the Chief Justice under Rules 8(a)(i), 41, and 45 of the 1976 Rules sans following the regular recruitment process. Merely because the appointment orders contained different stipulations regarding the nature of appointment i.e. whether labeled ad-hoc or not, or whether containing a condition for examination or not, cannot be a rational basis for differential treatment for purpose of regularization when the channel of such appointments is identical.” [Para 27]

(iv) Service Law - Regularization - Dead cadre - Subsequent amendment in service rules - Where post of Routine Grade Clerk declared dead cadre and merged with post of Computer Assistants requiring computer qualifications as per Allahabad High Court Officers and Staff (Conditions of Service and Conduct) (Amendment) Rules, 2019 - Respondent contending direction for regularization cannot be issued - Where similarly situated employees granted benefit of regularization after one year from date of initial appointment while extending benefit of promotion pursuant to Committee report - Distinction between categories of employees not based on any reasonable classification or intelligible differentia - Denial of similar relief to appellants on pretext of subsequent

amendment in rules not acceptable. [Para 31]

“During the course of hearing, learned counsel for the Respondent also submitted that the post on which the Appellants were appointed, i.e. ‘Routine Grade Clerk’, is now a dead cadre and it has merged with the post of ‘Computer Assistants’...In our view, such argument is also not fair and reasonable in particular, looking to the report of the Committee, as a result of which, similarly situated persons were granted the benefit of regularization after one year from their date of their initial appointment while also extending the benefit of promotion. Once...it has been found that the distinction drawn between Category A, B and C employees is not based on any reasonable classification or intelligible differentia, denial of similar relief to the Appellants on the pretext of subsequent amendment in the rules, is not acceptable.” [Para 31]

Cases Referred to:

- 1.(2006) 4 SCC 1, *State of Karnataka v. Umadevi*, Appointments made by Chief Justice in exercise of powers will be subject to regular selection by direct recruitment and appointees will not be confirmed and regularized, observations of Single Judge based on this case set aside by Division Bench in Special Appeal No. 563 of 2008. [Para 6]
- 2.Writ Petition No. 495922 of 2044, *Devendra Kumar Pandey v. Hon’ble High Court of Judicature at Allahabad*, Writ Petition challenging ad-hoc appointments disposed of by Single Judge with observations regarding non-confirmation of appointees. [Para 6]
- 3.2013 AHC 179951-FB, *In Re: Regularization of Class IV Employees of the High Court of Judicature at Allahabad*, Decided on 18.09.2013, Full Bench decision contended by respondent to have effectively overruled Division Bench judgment dated 20.09.2011, Court declined to go into merits as genesis of discrimination traced to Committee report of 2012. [Paras 21, 32]

FACTS

Appellants were appointed by Chief Justice of Allahabad High Court as Operator-cum-Data Entry Assistants/Routine Grade Clerks between 2004-2005 in exercise of powers under Rules 8(a)(i), 41 and 45 of Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976. Division Bench of High Court vide judgment dated 20.09.2011 in Special Appeal No. 563 of 2008 held that appointments made by Chief Justice under said rules cannot be said illegal or irregular and directed Registrar General to take appropriate steps regarding confirmation/regularization. Chief Justice constituted Committee vide order dated 30.09.2011 to examine cases of such appointees and determine eligibility for regularization. Committee vide report dated 31.05.2012 recommended regularization of some employees categorized as Category A and Category B but rejected claims of appellants (Category C) on ground that their appointments were ad-hoc and they were appointed after cut-off date prescribed in U.P. Regularization of Ad-hoc Appointments Rules, 1979. Pursuant to Committee report, 12 persons regularized and confirmed vide order dated 10.07.2012. Appellants’ representations rejected. Writ petitions filed by appellants dismissed by Single Judge and Division Bench affirmed dismissal. Services of appellants dispensed with vide order dated 15.09.2015. Supreme Court held that distinction between Category A, B and C employees solely on basis of stipulations in appointment letter arbitrary and unreasonable when channel of appointment identical and nature of work performed identical, violating Articles 14, 16 and 21. Court exercised powers under Article 142 and directed reinstatement, regularization after one year from respective dates of appointment, and all consequential benefits except salary for period not worked.

For Appellant: Mr. Nischal Kumar Neeraj, Mr. Paramjit Singh Patwalia, Sr. Advocate, Mr. Shantanu Sagar, Mr. Anil Kumar, Mr. Gunjesh Ranjan, Ms. Deveshi Chand, Advocates.

For Respondent: Ms. Preetika Dwivedi, Mr. Abhisek Mohanty, Mr. Ansh Rajauria, Mr. Anupam Mishra, Advocates.

JUDGMENT

J.K. Maheshwari, J. - - (19-12-2025) - These appeals call into question the correctness of the judgments dated 14.10.2015 In Special Appeal No. 411 of 2015; Special Appeal No. 412 of 2015; Special Appeal No. 410 of 2015 and 30.10.2015 In Special Appeal No. 1109 of 2014 rendered by the Division Bench of the High Court of Judicature at Allahabad affirming the decision of the learned Single Judge dated 31.08.2015 In Service Single No. 5512 of 2013; Service Single No. 5287 of 2013; Service Single No. 5288 of 2013 and setting aside judgment dated 31.10.2014 In Writ - A No. 55500 of 2013, respectively. The controversy arises because of non-regularization or non-confirmation of the employees (hereinafter referred to as "**Appellants**") on the post of Operator-cum- Data Entry Assistants / Routine Grade Clerks by the Respondent i.e., The High Court of Allahabad (hereinafter referred to as "**High Court**"), despite several similarly situated employees having been regularized from time to time.

2. The appointments in the High Court are governed by the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 (hereinafter referred to as '**1976 Rules**') framed under Article 229 of the Constitution of India. The Appellants were appointed by the then Chief Justice of the High Court while exercising the powers conferred to him under Rule 8(a)(i) read with Rules 41 and 45 of the 1976 Rules.

3. The controversy in the present case is that while numerous similarly situated employees appointed in similar fashion have been regularized from time to time, the Appellants contend that they were singled out without there being any reasonable justification and denied regularization. In this background, the power of the Chief Justice of the High Court to make recruitment to Class III posts flows from Rules 8 (a)(i), 41 and 45 of the 1976 Rules, which are relevant and are reproduced as thus:

"8. Sources of recruitment to class III post - *The sources of recruitment to the various class III posts in the establishment shall be as follows:*

(a)(i) Routine Grade Clerks - (I) By direct recruitment through competitive examination conducted by the appointing authority or in any manner so directed by Chief Justice."

XXXX XXXX XXXX XXXX

"41. Residuary powers. - *Nothing in these rules shall be deemed to affect the power of the Chief Justice to make such orders, from time to time, as he may deem fit in regard to all matters, incidental or ancillary to these rules, not specifically provided for herein or in regard to matters as have not been sufficiently provided for:*

Provided that if any such order relates to salaries, allowances, leave or pension, the same shall be made with the approval of the Governor of U.P."

XXXX XXXX XXXX XXXX

"45. *Notwithstanding anything contained in these rules, the Chief Justice shall have the power to make such orders, as he may consider fit, in respect of recruitment, promotion, confirmation or any other matter."*

Factual Matrix

4. The Appellants were engaged by the Respondent on ad-hoc basis as Operator-cum-Data Entry Assistant / Routine Grade Clerk, which are Class-III posts in the High Court. These appointments were made under the orders of the Chief Justice in exercise of powers under Rule 8(1)(a) read with 41 and 45 of the 1976 Rules. A tabulated list of the Appellants along with their respective dates of appointment is produced hereafter for reference:

| S. No. | Civil Appeal | Name of the Appellant | Date of Appointment |
|---------------|------------------------------|--------------------------------|----------------------------|
| 1. | | Ratnank Mishra | 08.12.2004 |
| 2. | | Md. Faiq Naseem Siddiqui | 08.12.2004 |
| 3. | Civil Appeal No. 428 of 2022 | Saif Husain | 08.12.2004 |
| 4. | | Ram Prakash Yadav | 08.12.2004 |
| 5. | | Ashish Kumar Srivastav | 08.12.2004 |
| 6. | Civil Appeal No. 429 of 2022 | Sanjeev Kumar Sharma | 27.05.2005 |
| 7. | | Ajay Kumar Mishra | 27.10.2005 |
| 8. | | Affan Ahmad | 27.10.2005 |
| 9. | | Ashutosh Shukla | 27.10.2005 |
| 10. | Civil Appeal No. 430 of 2022 | Rafeeq Ahmad | 27.10.2005 |
| 11. | | Pawan Kumar Tiwari | 27.10.2005 |
| 12. | | Rohit Kumar Singh | 27.10.2005 |
| 13. | | Mahendra Misra | 23.11.2005 |
| 14. | | Pravesh Kumar | 23.11.2005 |
| 15. | | Ajeet Dixit | 23.11.2005 |
| 16. | Civil Appeal No. 431 of 2022 | Dharmendra Singh Rathore | 01.09.2004 |

Meanwhile, other similarly placed persons were also appointed on the same post from time to time in exercise of the power vested with the Chief Justice of the High Court under Rules 8(a)(i), 41 and 45 of the 1976 Rules, without conducting regular process of recruitment as prescribed in the Rules.

5. The controversy with respect to appointment and regularization of persons appointed on post of Operator-cum-Data Entry Assistant/ Routine Grade Clerk in the High Court in exercise of powers conferred upon Chief Justice under Rules 8(a)(i), 41 and 45 of 1976 Rules was already boiling up even prior to the present dispute. One such dispute culminated in the Division Bench decision dated 20.09.2011 passed by the High Court in Special Appeal No. 563 of 2008 which, although, is not the subject matter of this dispute, it may have material bearing on the present case. Some appointments to the post of 'Routine

Grade Clerk' made by the Chief Justice of the High Court in exercise of powers under Rules 8(a)(i), 41 and 45 of the 1976 Rules, were challenged by a regular recruitment candidate in Civil Misc. Writ Petition No. 45922/2004 before the Single Judge.

6. The learned Single Judge disposed of the Writ Petition vide judgment dated 27.07.2007, *inter alia* observing that no relief can be granted to the candidate therein, since he had become ineligible for the relevant post after amendment in the service rules, and since the post of 'Routine Grade Clerk' was declared a dying cadre and merged into the post of 'Assistant Review Officer'. Nonetheless, learned Single Judge, relied on the judgment of this Court in **State of Karnataka v. Umadevi (2006) 4 SCC 1** and made an observation that appointments made by the Chief Justice of the High Court in exercise of powers under Rules 8(a)(i), 41 and 45 of the 1976 Rules will be subject to regular appointment under Rule 8 of the said rules and the appointees will not be confirmed and regularized.

7. The observations made by the learned Single Judge were challenged by the High Court and the appointees under Rules 8(a)(i), 41 and 45 of the 1976 Rules in Special Appeal No. 563/2008 before the Division Bench, which then passed the judgment on 20.09.2011. The Division Bench essentially held that appointments made in exercise of powers under Rules 8(a)(i), 41 and 45 of the 1976 Rules cannot be said to be illegal or irregular. It was held that the Chief Justice was the best person to judge the need of the institution and any appointment made by him cannot be doubted. Thereafter, the Division Bench issued directions to the Registrar General to take appropriate steps with regard to confirmation / regularization and consequential relief of the employees thereunder.

8. Pursuant to the judgment discussed above, dated 20.09.2011, the Chief Justice of the High Court on the administrative side, constituted a Committee consisting of two Judges of the High Court (hereinafter referred to as "**Committee**") vide order dated 30.09.2011. The objective of the Committee was to examine the cases of appointees serving as Operator-cum-Data Entry Assistants / Routine Grade Clerks and to determine their eligibility for regularization.

9. In the interregnum, the Chief Justice on receiving various representations of Class - III employees seeking regularization, referred them to the Committee. In its report dated 31.05.2012, the Committee made recommendation for regularization of some employees, and rejected the claim of others, including the Appellants herein. The report of the Committee, dated 31.05.2012, is relevant, therefore it is reproduced as under:

"Report

Hon'ble the Chief Justice vide order dated 30.09.2011 had referred the matter for consideration of confirmation / regularization and for grant of consequential relief according to the judgment of Division Bench.

A representation as (sic) been made by 7 persons namely S/Sri Barmeshwar Pandey (EMP No. 7158), Tej Singh (EMP No. 7159), Anand Pal Singh (EMP No. 7160), Ajeet Kumar Srivastava (EMP No. 7163), Santosh Kumar Tiwari (EMP No. 5900), Abhishek (EMP No. 7163) and Sharad Kumar (EMP No. 7164) (hereinafter referred to as the Representationists) requesting the Registrar General to pass appropriate orders as directed by the Hon'ble Division Bench in its judgement dated 20.09.2011 passed in Special Appeal No. 1152 of 2007.

It appears that all the 7 Representationists were appointed as ad hoc Routine Grade Clerks vide office order dated 01.09.2004 with a condition that they shall be permitted to appear in the examination / test to be held for direct recruitment of

Routine Grade Clerks and, their appointment shall be regularized and confirmed only after they are selected in that examination/test. The appointment of these Representationists was challenged by means of **Writ Petition No. 495922 of 2044, (sic) Devendra Kumar Pandey v. Hon'ble High Court of Judicature at Allahabad and others**. The Writ Petition was disposed of by the learned Single Judge vide judgment and order dated 27.07.2007. The learned Single Judge was pleased to make the following observations:

“Following the observations of the Constitutional Bench of the Apex Court, the Court expects that all appointments made by Hon'ble The Chief Justice in exercise of his powers under Rule 41 and 45 of the High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976, will be subject to the regular selection by direct recruitment in accordance with Rule 8 of these Rules and that these appointees will not be confirmed and regularized.”

The Representationists as also the High Court preferred separate Special Appeal Nos. 1152 of 2007 and 563 of 2008. A Division Bench of this Court vide judgment and order dated 20.09.2011 had been pleased to allow both the Special appeals. The Division Bench had passed the following order:

“Thus, in totality, both the appeals succeed and are allowed. The direction given by the learned Single Judge in paragraph 21 of the impugned judgment dated 27th July, 2007 following the observations of the Supreme Court judgment in Uma Devi (supra) stands set aside. The writ petition is treated to be dismissed on the basis of the observations of the Learned Single Judge himself in the earlier paragraphs of the impugned judgment. Registrar General of this Court is hereby directed to take appropriate steps with regard to confirmation/ regularization and consequential benefits of the employees hereunder.

However, no order is passed as to costs.”

The Representations have requested the Registrar General to give effect to the order dated 20.09.2011 passed by the Division Bench.

We may mention here that even though the Division Bench had observed that the cadre of Routine Grade Clerk has been declared as 'dead cadre' by Hon'ble the Chief Justice vide order dated 19.10.2005 and has merged in the cadre of Assistant Review Officer, the State Government vide order dated 04.01.2008 had not given its consent. The pay-scale of Assistant Review Officers and Routine Grade Clerks are entire (sic) different. The revised pay-scale of the Routine Grade Clerk is Rs. 5500-20200 with a Grade Pay of Rs.1900 whereas, the pay-scale of Lower Division Assistant (Assistant Review Officer) is Rs. 5200-20200 with a Grade Pay of Rs.2800. Thus, the pay-scale of the Lower Division Assistant (Assistant Review Officer) is higher than that of the Routine Grade Clerk.

In view of the provisions of Article 229 of the Constitution of India, any Rule relating to salary, allowances, leave or pension made by Hon'ble the Chief Justice require the approval of the Governor of the State. We have also been informed that a Review Application has been filed in the aforesaid two Special Appeals which is pending decision.

We are, therefore, of the considered opinion that notwithstanding anything contained in Article 229 of the Constitution of India, the Representationists be given the benefit of the judgement dated 20.09.2011 passed by the Division Bench in the aforesaid two Special Appeals. As the Division Bench has held that the condition stipulated in the appointment letters of all the incumbents loses force and at another place it has held that the cadre of Routine Grade Clerk was declared as 'dead cadre' and merged with the cadre of Assistant Review Officer, the Committee is of the view that these Representationists be treated as appointed on probation of one year under Rule 32 of the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 (hereinafter referred to as the High Court Rules) and confirmed on the post on which they have been appointed after one year from the date of appointment under Rule 33 of the High Court Rules and they be given all consequential benefits including promotion from the date their juniors have been promoted.

In the order it should be specifically mentioned that their confirmation and promotions etc. shall be subject to the orders which may be passed by the Hon'ble Division Bench in the Review Application filed by the High Court.

The office has further given a list of 13 persons excluding the 7 Representationists.

The Committee finds that 6 person namely, Smt. Sushma Singh, S.Sri. Bikas Tanu Goswami, Samyadeep Ganguly, Sandeep Kumar Ojha, Kaushal Kishore and Indu Singh have been appointed as Routine Grade Clerks by Hon'ble the Chief Justice on various dates. Their appointment has been made by Hon'ble the Chief Justice under Rule 45 of the High Court Rules. Their appointments have not been made on, ad hoc basis. Therefore, their initial appointment is to be treated as appointment on probation for a period of one year in accordance with Rule 32 of the High Court Rules and they are entitled for being confirmed after one year under Rule 33.

The Committee, therefore, recommends that these persons be confirmed after expiry of one year and be given all consequential benefits including promotion from the date their juniors have been promoted.

So far as, the remaining 7 persons namely S/Sri Dharmendra Singh Rathor, Ram Prakash Yadav, Ratnank Mishra, Mohd. F.N. Siddiqui, Saif Husain, Ashish Srivastava and Sanjeev Kumar Sharma are concerned, they have been appointed as ad hoc Routine Grade Clerks on various dates. No Rule has been framed by the High Court for regularization of ad hoc employees. Sub-clause (2) of Rule 40 of the High Court Rules provide that in respect of all matters (not provided for in these Rules) regarding the conditions of service of officers and servants of the Court, including matters relating to their product, control and discipline, the Rules and orders for the time being in force and applicable to Government servants holding corresponding posts in the Government of Uttar Pradesh shall apply to the officers and servants of the Court subject to such modifications, variations and exceptions, if any, as the Chief Justice may, from time to time, specify.

Their (sic) being no other provisions for regularization of the adhoc employees of

this Court, the Rules made by the State Government in this behalf shall apply. The State Government has framed the U.P. regularization of Adhoc appointments (on posts outside the purview of the Public Service Commission) Rules, 1979 (hereinafter referred to as the regularization Rules 1979). As the Hon'ble Chief Justice has not issued any order for modifications, variations and exceptions, the aforesaid rule in terms without any modification would apply. In the said Regularization Rules, 1979, cut-off date provided in Rule 4(i) is 30th June 1998. As all these persons have been appointed on 02.09.2004 or thereafter, they cannot be given the benefit of Regularization Rules, 1979.

The Committee, therefore, recommends as follows:

A. The following persons be confirmed on the post on which they have been appointed after one year from the date of appointment by treating their appointment on probation in accordance with Rules 32 and 33 of the High Court Rules and they be given all consequential benefits including promotion from the date their juniors have been promoted.

In the order, it should be specifically mentioned that their promotion and confirmation, etc. shall be subject to the orders which may be passed by the Hon'ble Division Bench in the Review Application filed by the High Court.

S Employee Name S/Sri

No. No.

1. 7158 Barmeshwar Pandey
2. 7159 Tej Singh
3. 7160 Anand Pal Singh
4. 7161 Ajeet Kumar
Shrivastava
5. 5900 Santosh Kumar Tiwari
6. 7163 Abhishek
7. 7164 Sharad Kumar

B. The following persons be confirmed after the expiry of one year from the date of their appointment and be given all consequential benefits including promotion from the date their juniors have been promoted.

S Name S/Sri

No.

1. Smt. Sushma Singh
2. Bikas Tanu Goswami
3. Samyadeep Ganguly
4. Sandeep Kumar Ojha
5. Kaushal Kishore
6. Indu Singh

C. The following persons have been appointed on 02.09.2004 or thereafter, therefore, they cannot be given the benefit of Regularization Rules, 1979.

S No. Name S/Sri

1. Dharmendra Singh Rathor
2. Ram Prakash Yadav
3. Ratnank Mishra
4. Mohd. F.N. Siddiqui
5. Saif Husain
6. Ashish Srivastava
7. Sanjeev Kumar Sharma

D. Their claim for regularization can be considered only after Hon'ble the Chief Justice makes any Rule for regularization or pass any order varying the Regularization Rules, 1979.

Let the report be placed before Hon'ble the Chief Justice for passing appropriate orders.

| | |
|----------------------------|----------------------------|
| Sd/- | Sd/- |
| (Justice Ashok Bhushan) | (Justice R.K. Agrawal)" |

10. Other representations were also decided by the Committee on different dates, relying on the said report assigning similar reasons. In the interest of brevity, we are mentioning about, but not quoting the other orders.

11. Thereafter, *vide* order of the High Court dated 10.07.2012 issued by the Registrar General, 12 persons who were recommended by the Committee, were regularized and confirmed on the post of Regular Grade Clerk after one year from the date of initial appointment and further promoted to the post of Review Officer (R.O.) on the same date.

12. Out of the employees who were not recommended by the Committee, some of them were communicated with the order of rejection of their representation *vide* OM No. 9514/2012 dated 06.06.2012, making reference to the order of the Chief Justice dated 01.06.2012.

13. The Appellants in Civil Appeal No. 428-430 of 2022, claiming parity with other employees insofar as regularization is concerned, made the representation dated 18.09.2012 to the Registrar General of the High Court. Material placed before us reflects that such representation was rejected and *vide* an undated and unnumbered communication of August 2013 purportedly signed by Deputy Registrar (Establishment) which disposed of the same with the following relevant observation -

"Thus, who have become over age be given relaxation in age in next examinations provided they possess minimum qualification to appointment."

14. The above undated and unnumbered communication was sought to be challenged by the Appellants in Writ Petition No. 5287 (S/S) of 2013 and Judgment dated 20.09.2011 passed in Special Appeal No. 563 of 2008 by High Court was sought to be implemented in respect of Appellants. The learned Single Judge dismissed the writ petition, and the Division Bench on 14.10.2015 affirmed the same *vide* the impugned judgment, directing that the Appellants, if eligible, shall be granted age relaxation for participation in future recruitment processes.

15. Insofar as the Appellant in Civil Appeal No. 431 of 2022 is concerned, he filed Writ-A No. 55500 of 2013 asking to quash letter dated 02.08.2013 of Registrar General and seeking regularization. A writ in nature of mandamus was sought commanding the Respondent to regularize and confirm him on the post of Routine Grade Clerk. The judgment dated 20.09.2011 passed in Special Appeal No. 563/2008 of the High Court was

also relied upon in the Writ Petition, which came to be allowed vide order dated 31.10.2014. Nonetheless, the Division Bench of the High Court vide order dated 30.10.2015 allowed the Special Appeal No. 1109 of 2014 as preferred by the Respondent and set aside the judgment of Single Judge.

16. In the above sequel of facts, the present appeals have been preferred by the Appellants herein.

Arguments Advanced By Appellants

17. Mr. P.S. Patwalia, learned senior counsel for the Appellants, submitted that the appointments were not casual or irregular, but traceable directly to Rule 8(a)(i) of 1976 rules, which enables recruitment "in any manner as the Chief Justice may direct". The residuary powers of the Chief Justice under Rules 41 and 45 further reinforce the validity of such appointments. Therefore, the appointment of the Appellants was legal, duly authorized, and had the same status as that of those persons whose services were later regularized.

18. It was urged that the High Court had, by way of various office orders, implemented the earlier Division Bench directions vide judgment dated 20.09.2011 by regularizing similar persons appointed by the Chief Justice. Failure to consider the Appellants on similar terms constitutes glaring example of hostile discrimination, violating Articles 14, 16, 21 of the Constitution of India.

19. It was finally submitted, remanding the matter at this stage, to the High Court for reconsideration, in particular, after two decades would result in grave injustice. Therefore, this Court ought to issue final directions, if necessary, in exercise of the inherent powers of this Court.

Arguments Advanced By Respondent

20. Learned counsel for the Respondents, Ms. Preetika Dwivedi, submitted with vehemence that appointments outside the competitive channel must not be regularized and that the High Court retains the discretion to determine its staffing patterns. It was argued that regularization is not the right of an employee, and the administrative authorities are entitled to regulate the staffing strength of the institution.

21. It was urged that the Division Bench correctly held that ad-hoc appointments do not confer entitlement of regularization and that the direction enabling the Appellants to participate in future selections with age relaxation was adequate remedy. It was further contended that the Division Bench judgment dated 20.09.2011 passed by the High Court in Special Appeal No. 563 of 2008 sought to be relied upon by the Appellants, has been effectively overruled by a Full bench decision of the High Court in ***In Re: Regularization of Class IV Employees of the High Court of Judicature at Allahabad 2013:AHC:179951-FB vide judgment dated 18.09.2013***. Therefore, interference in these Appeals is not warranted.

Analysis and Reasons

22. Upon perusal of the record of the appeals and submissions made by the learned counsels for the parties, the short question which falls for our consideration is *whether the differential treatment accorded to similarly situated employees is sustainable in the facts of the present case and, what relief is appropriate in the present case, if any?*

23. The material placed before us during course of hearing of these appeals establishes that numerous employees identically appointed as Operator-cum-Data Entry Assistants / Routine Grade Clerks under the orders of the Chief Justice of the High Court in exercise of powers under Rules 8(a)(i), 41 and 45 of the 1976 Rules have been regularized as a consequence of the Report of the Committee. From a bare perusal of the said report, we can decipher that the Committee has dealt with the representations of three categories of

employees in the following manner -

| Category | Names of the Employees | Recommendation of the Committee | Reason Thereof |
|-----------------|--|--|--|
| Category A | 1. Barmeshwar Pandey 2. Tej Singh 3. Anand Pal Singh 4. Ajeet Kumar Srivastava 5. Santosh Kumar Tiwari 6. Abhishek 7. Sharad Kumar | These persons be confirmed on the post on which they have been appointed after one year from the date of appointment on probation in accordance with Rules 32 and 33 of the High Court Rules and they be given all the consequential benefits. | The appointment letter dated 01.09.2004 stipulates the appointment to be ad hoc appointment with a condition that these people shall be permitted to appear in the examination/test to be held for direct recruitment of Routine Grade Clerk and their appointment shall be regularized and confirmed only after they are selected in that examination. The Judgment of Division Bench dated 20.09.2011 notes that once the cadre of Routine Grade Clerk has been declared to be 'dead cadre', the stipulation of examination loses force and thus, these people be treated as appointed on probation of 1 year under Rule 32 and 33 of 1976 Rules. |
| Category B | 1. Smt. Sushma Singh 2. Bikas Tanu Goswami 3. Samyadeep Ganguly 4. Sandeep Kumar Ojha 5. Kaushal Kishore 6. Indu Singh | These persons be confirmed after the expiry of one year from the date of their appointment and be given all the consequential benefits. | These appointments have been made by Hon'ble the Chief Justice under Rule 45 of High Court Rules and not on ad-hoc basis. Therefore, their initial appointment is to be treated as appointment on probation for a period of one year in accordance with Rule 32 & 33 of High Court Rules. |

| | | | |
|---------------|-------------------------------|--|---|
| Category C | 1. Dharmendra Singh Rathor | These people have been appointed on 02.09.2004 or thereafter, therefore, they cannot be given the benefit of U.P. | These appointments have been made on ad-hoc basis on post of Routine Grade Clerks. No rule has been framed by the High Court for Regularization of ad-hoc employees. |
| | 2. Ram Prakash Yadav | Regularization of Ad-hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979. Their claim for regularization can be considered only after Hon'ble Chief Justice makes any rule for regularization or pass any order varying the Regularization Rules, 1979. | Rule 40(2) of the 1976 Rules provide that in respect of all matters (not provided for in these rules) regarding the conditions of service of officers and servants of the court, including matters relating to product, control and discipline, the Rules and orders for the time being in force and applicable to Government Servants holding corresponding posts in the Government of Uttar Pradesh shall apply to the officers and servants of the court subject to such modifications, variations and exceptions, if any, as the Chief Justice may, from time to time, specify. |
| | 3. Ratnank Mishra | | As per the U.P. Regularization of Ad- hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979, these people have been appointed after the cut-off date prescribed therein. |
| | 4. Md. F.N. Siddiqui | | Hence they cannot be given the benefit of regularization. |
| | 5. Saif Husain | | |
| | 6. Ashish Srivastava | | |
| | 7. Sanjeev Kumar Sharma | | |

24. Upon a query being put to the learned counsel for the Respondents, she was unable to point out any reasonable distinction and factors apart from relying on the recommendations of the Committee. It is said that the reasons as assigned in the report of the Committee justifies disparate treatment between the Appellants and other similarly situated employees who were appointed through same channel i.e. in exercise of the powers conferred upon the Chief Justice under Rules 8(a)(i), 41 and 45 of 1976 Rules. It has been contended that the distinguishing factor is that the initial appointment of the Respondents was '*ad-hoc*' in nature, though others were not. Be that as it may, it is clear that the channel of appointment for the persons who have been regularized and the Respondents herein is through the exercise of the powers vested in the Chief Justice of the High Court under Rules 8(a)(i), 41 and 45 of the 1976 Rules.

25. The distinction in treatment of Appellants ('Category C' employees in table contained in paragraph 23 hereinabove) is sought to be justified by the Respondent due to the

stipulation in the appointment order of the Appellants as 'ad hoc' and without there being any rules for regularization of such employees, benefit of regularization cannot be given. At this juncture, it must be said that in case of 'Category A' employees also, the appointments were 'ad-hoc' in nature, however in their appointment orders, there was a stipulation for an examination for regularization. It is not the case of the Respondent that the said examination was ever conducted for them. Rather, the Committee report dated 31.05.2012 found that the stipulation of an examination has become otiose in light of the observations by the Division Bench in its judgment dated 20.09.2011.

26. As far as 'Category B' employees are concerned, the reason why they have been recommended to be regularized by the Committee is that their appointment was not stipulated to be on ad-hoc basis. However, it has not been disputed that 'Category B' employees were also appointed in pursuance to the exercise of powers of the Chief Justice under Rules 8(a)(i), 41 and 45 of 1976 Rules.

27. In the conspectus of these facts, the distinction sought to be established by the Respondents between the Appellants and 'Category A' employees as well as between the Appellants and 'Category B' employees, in our considered view is arbitrary, unreasonable and superficial. Such arbitrariness and unreasonableness becomes evident in light of the principles as enshrined in Article 14 of Constitution of India. All three categories of employees i.e., Category A, Category B, and Category C (the Appellants), were appointed through the same channel of recruitment, namely the exercise of powers vested in the Chief Justice under Rules 8(a)(i), 41, and 45 of the 1976 Rules sans following the regular recruitment process. Merely because the appointment orders contained different stipulations regarding the nature of appointment i.e. whether labeled ad-hoc or not, or whether containing a condition for examination or not, cannot be a rational basis for differential treatment for purpose of regularization when the channel of such appointments is identical.

28. In the facts of this case, such a distinction solely on the basis of stipulations as contained in the appointment letter, when the nature of work performed is identical, violates the fundamental principle that equals must be treated equally and persons similarly circumstanced should not be treated differently without a rational and intelligible differentia.

29. High Courts, being Constitutional Courts entrusted to uphold equality and fairness, are expected to encompass such principles within their own administrative functioning as well, and must exemplify the standards of a model employer. Such principles are at the risk of being undermined when discriminatory treatment is meted out to employees similarly situated within the same establishment. Such actions pose grave threat to the sacrosanct principles of non-arbitrariness and reasonableness as enshrined under Articles 14, 16 and 21 of the Constitution of India.

30. In light of the above discussion, we are of the opinion that the Appellants have been caused grave prejudice by the Respondents, in respect of rejection of their representations for regularization, though similarly placed employees have been granted the same, without there being any reasonable distinction between them.

31. During the course of hearing, learned counsel for the Respondent also submitted that the post on which the Appellants were appointed, i.e. 'Routine Grade Clerk', is now a dead cadre and it has merged with the post of 'Computer Assistants' as per the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) (Amendment) Rules, 2019 which requires computer qualifications and knowledge, i.e. data entry, word processing, etc., therefore direction for regularization cannot be issued. In our view, such argument is

also not fair and reasonable in particular, looking to the report of the Committee, as a result of which, similarly situated persons were granted the benefit of regularization after one year from their date of their initial appointment while also extending the benefit of promotion. Once, as per the discussion made hereinabove, it has been found that the distinction drawn between Category A, B and C employees is not based on any reasonable classification or intelligible differentia, denial of similar relief to the Appellants on the pretext of subsequent amendment in the rules, is not acceptable.

32. It has also been argued by the Respondent that the Division Bench judgment dated 20.09.2011 has been effectively overruled by the judgment of the full bench of the High Court in ***In Re: Regularization*** (Supra). Without going into the merits of this submission, there is no gainsaying that the genesis of the discrimination which has been meted out to the Appellants can be traced back to the report of the Committee way back in the year 2012. The artificial distinction drawn between the Appellants and other similarly situated employees is the discrimination which must be weeded out in pursuit of justice. It has further been informed that the services of the Appellants have been dispensed with by the High Court with immediate effect *vide* order dated 15.09.2015 of the Registrar General, and for this reason also it has been contended that they are not entitled for regularization. In our considered opinion, once we have taken a view that the judgment passed by the High Court denying relief of regularization was not in accordance with law, such a submission does not hold water particularly in light of the manifest discrimination which is palpably clear and evinced from the record.

33. While we are cognizant of the fact that ordinarily regularization is a matter best left to policy decisions of the employer, and courts must exercise restraint in issuing directions. However, the present case is exceptional. The Appellants have rendered over a decade of service. Numerous similarly placed employees who were employed through same channel of appointment have been regularized. Therefore, with a view to render complete justice in the peculiar facts and circumstances of the present case, in our view, this is a fit case for exercising our inherent powers under Article 142 of the Constitution of India to issue final operative directions.

Conclusion and Directions

34. In view of the foregoing, we set aside the impugned judgments passed by the High Court and in exercise of our inherent powers under Article 142 of the Constitution of India, issue the following directions:

- A. Appellants shall be reinstated on the post on which they were working at the time of their discontinuance;
- B. Respondent shall regularize the service of the Appellants after one year from their respective dates of appointment;
- C. During the period in which the Appellants remained out of service, they would be entitled to all consequential benefits, including seniority, promotion, pay fixation, increments, retiral benefits (if applicable), etc., except for the salary for the period that they have not worked;
- D. The aforesaid directions shall be complied with, within a period of 8 weeks from the date of this judgment.

35. It is made clear that the directions issued hereinabove and the observations made in the present judgment are limited to the facts and circumstances of these appeals, and shall

in no manner or form be treated as a precedent.

36. Accordingly, these appeals are allowed in terms of the directions as contained in paragraph 34. There shall be no orders as to cost. Pending applications, if any, shall be disposed of.