

WAHAB UDDIN & ORS.

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v.

KM. MEENAKSHI GAHLOT & ORS.

(Civil Appeal No. 6477 of 2021)

NOVEMBER 13, 2021

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[M. R. SHAH AND A. S. BOPANNA, JJ.]

Service Law: Appointment – Claim for appointment cannot be made on the basis of expired select list.

Service Law: Appointment on leave vacancies – Appointment letter stated that the appointment of appellants would be terminated once the regular employee resumes their duties – Held: Once the regular employees resume their duties, the services of appellants are to be terminated and/or put to an end – High Court was right in setting aside appointment of appellants.

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Service Law: Termination from services – Respondent no. 1 to 3 were selected after due process and in accordance with the Rules, 1947 – High Court was right in setting aside their termination order – Subordinate Civil Courts Ministerial Establishment Rules, 1947.

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Dismissing the appeal, the Court

HELD: Initially the appellants participated in the selection process for the post of English Stenographers in the year 1987. They never applied for the post of Hindi Stenographers in the year 1987. Since there were no vacancies of English Stenographers in the District Court, Moradabad no appointments were made and appellants were not appointed on the post of English Stenographers of which they applied. However, they were placed on the select list on 14.07.1987. As per Rule 14(3) of the Rules, 1947 the validity of the select list was for one year and therefore, the said select list dated 14.07.1987 came to an end on 13.07.1988. Thereafter the appellants could not have claimed any appointment on the basis of the expired select list. However, there were some leave vacancies of temporary nature in the post of Hindi Stenographers and therefore, the appellants were appointed purely on temporary basis on the said leave vacancies,

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- A for a period of one month from 14.10.1987 to 15.11.1987. In the appointment letter itself, it was stated that their appointment shall be terminated once the regular employees resume their duties. It is not in dispute that thereafter a fresh examination was conducted for the post of Hindi Stenographers on 24.09.1988 and Respondent Nos. 1 to 3 were appointed. However, thereafter
- B though the services of the appellants were required to be terminated on the Respondent Nos. 1 to 3 being selected for the post of Hindi Stenographers, pursuant to the communication dated 22.05.1990 by the Deputy Registrar, High Court by which it was directed that the approved list of ex-stenos and Hindi Stenos
- C dated 14.07.1987 be prepared and their names be arranged in the order of merit, and though the appellants failed to clear the speed test for the post of Hindi Stenographers as required as per Rule 5(c) of the Rules, 1947, the District Judge, Moradabad appointed the appellants and terminated the services of Respondent Nos. 1 to 3. The appointment of the appellants and
- D the termination of the Respondent Nos. 1 to 3 has been rightly quashed and set aside by the High Court, firstly on the ground that in the year 1990, no direction could have been issued to make the appointment on the basis of the select list dated 14.07.1987 as the select list dated 14.07.1987 expired and came
- E to an end on 13.07.1988; secondly, the appellants failed to clear/pass the speed test for the post of Hindi Stenographers; thirdly, the appellants were never appointed after following due procedure of selection, against which the Respondent Nos. 1 to 3 were selected and appointed pursuant to the fresh examination which
- F was conducted for the post of Hindi Stenographers on 24.09.1988 and thereafter they were appointed after following due procedure of selection and that the appointment of the appellants in the year 1987 was against the leave vacancies and in the appointment order itself it was specifically mentioned that their appointment shall be terminated once the regular employees resume their
- G duties. [Para 9][297-C-H; 298-A-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No.6477 of 2021.

From the Judgment and Order dated 23.01.2020 of the High Court of Judicature at Allahabad in Special Appeal No.638 of 2012.

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Pardeep Gupta, Parinav Gupta, Mrs. Mansi Gupta, Rahul Kr. Chaudhary, Dr. (Mrs.) Vipin Gupta, Advs. for the Appellants. A

Dr. Ashutosh Garg, Baban Kr. Sharma, Ms. Preetika Dwivedi, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J. B

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Allahabad vide order dated 23.01.2020 passed in Special Appeal No. 638 of 2012 by which the Division Bench of the High Court has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge by which the learned Single Judge has allowed the writ petition preferred by the Respondent No. 4 herein and quashed and set aside the appointment of the appellants herein, the original Respondent Nos. 3 to 5 whose appointments have been quashed by the High Court have preferred the present appeal. C D

2. The facts leading to the present appeal in nutshell are as under:

2.1 In the judgeship of Moradabad in the year 1987, a competitive examination was held for filling up the post of English and Hindi Stenographers. The appellants herein initially participated for the post of English Stenographers. Select list of English Stenographers (containing the names of the appellants herein) and Hindi Stenographers was prepared on 14.07.1987. However, since there were no vacancies in the judgeship for the post of English Stenographers, no appointments were given to the candidates in the select list of English Stenographers (including the appellants herein). As per Rule 14(3) of the Subordinate Civil Courts Ministerial Establishment Rules, 1947 (hereinafter referred to as 'the Rules, 1947') select list was to remain valid for one year and the said select list dated 14.07.1987 came to an end on 13.07.1988. At the same time, Hindi Stenographers were given appointment as per the select list. However, since there were some leave vacancies of temporary nature in the post of Hindi Stenographers, the appellants were appointed on temporary basis against those leave vacancies, for a period of one month from 14.10.1987 to 15.11.1987. At this stage, it is required to be noted that in their respective appointment letters it was specifically stated that their appointments shall be terminated once the regular employees resume their duties. E F G H

A That thereafter fresh examination was conducted for the post of Hindi Stenographers on 24.09.1988. Pursuant thereto Respondent Nos. 1 to 3 herein were appointed on the substantive post of Hindi Stenographers as per merit and the select list. Therefore, as such Respondent Nos. 1 to 3 herein were appointed. As the appellants herein were appointed on leave vacancies of a temporary nature, their services

B were required to be terminated once the regular employees resume their duties. However, representations were made by the appellants to the District Judge, Moradabad. The District Judge, Moradabad forwarded his comments on the same to the Deputy Registrar, High Court. The Deputy Registrar, High Court vide administrative order dated 22.05.1990

C to District Judge, Moradabad directed that the approved list of ex-stenos and Hindi stenos dated 14.07.1987 be prepared and their names be arranged in the order of merit. At this stage, it is required to be noted that in the communication dated 22.05.1990, it was specifically mentioned that the appointment of the appellants was temporary and on leave vacancies. It appears that thereafter a typing/speed test was conducted

D for the appellants for the post of Hindi Stenographers. The Officer-In-charge proceeded and conducted Hindi typing test of appellants and one more candidate on 29.05.1990. In the said examination all the three appellants were found not qualified as per Rule 5(c) of the Rules, 1947 and their typing test was found less than the prescribed. Thus, the

E appellants failed in the speed test for the post of Hindi Stenographers. Despite the above without communicating to the High Court that the appellants have failed the speed test, the District Judge, Moradabad terminated the services of Respondent Nos. 1 to 3 herein who were selected after due process and in compliance of the Rules of 1947 and appointed the appellants on 05.06.1990, against the post held by

F Respondent Nos. 1 to 3 herein by terminating the services of Respondent Nos. 1 to 3. The appointment of the appellants and the termination of Respondent Nos. 1 to 3 was challenged before the High Court by Respondent Nos. 1 to 3 herein. The learned Single Judge allowed the said writ petition and quashed and set aside the appointment of the

G appellants herein and set aside the orders of termination terminating the services of Respondent Nos. 1 to 3 herein. The special appeal against the order and judgment passed by the learned Single Judge has been dismissed by the Division Bench by impugned judgment and order dated 23.01.2020. Hence, the present appeal.

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3. Mr. Pardeep Gupta, learned counsel appearing on behalf of the appellants has vehemently submitted in the facts and circumstances of the case more particularly when the appellants worked for almost 29 years and that too after the High Court of Allahabad vide its order dated 22.05.1990 approved the appointment of the appellants as Stenographers and directed the District Judge, Moradabad to issue the appointment letters and in accordance with the same the appointment letters dated 05.06.1990 were issued, it is not justified to quash their appointments.

It is vehemently submitted that as such Rule 14(3) of the Rules, 1947 shall not be applicable to the recruitment list on merit under Rule 11 and can be made applicable only to the reserved category candidates under Rule 12. It is submitted that the High Court has erred in relying upon the said rule for setting aside the appointment of the appellants.

It is further submitted that the High Court has erred in treating the appellants' appointment against leave vacancy vide orders dated 14.10.1987, 15.10.1987 etc. and has failed to consider that the appellants have continuously worked for more than 30 years.

The High Court has not properly appreciated the fact that though the appointment of the Respondent Nos. 1 to 3 were approved on the basis of the selection list dated 29.11.1988, they were given appointment only in the year 2012, i.e., after a lapse of more than 24 years of select list dated 29.11.1988. It is submitted that therefore there is no justification to approve the appointment of the respondents when they were already become age barred, i.e., 50 years old.

4. Making the above submissions, it is prayed to allow the present appeal and protect the services of the appellants.

5. Present appeal is opposed by Ms. Preetika Dwivedi, learned counsel appearing on behalf of Respondent No.4 – High Court of Judicature at Allahabad. It is submitted that the appellants initially participated for the post of English Stenographers in the year 1987. However, since there were no vacancies, their names were placed on the select list on 14.07.1987. It is submitted that the select list was valid only for one year and came to an end on 13.07.1988, in view of the provisions contained in Rule 14(3) of the Rules, 1947. It is submitted that no appointments were given to the appellants to the post of English Stenographers for want of vacancies for the post of English Stenographers. It is submitted that however in the year 1987, there were

- A some leave vacancies of a temporary nature, in the post of Hindi Stenographers and therefore the appellants were appointed on temporary basis against leave vacancies for a period of one month from 14.10.1987 to 15.11.1987. It is submitted that in the appointment letter it was specifically stated that their appointment shall be terminated once the regular employees resume their duties. It is submitted that thereafter
- B fresh recruitment process was initiated and the fresh examination was conducted for the post of Hindi Stenographers on 24.09.1988 and pursuant thereto, Respondent Nos. 1 to 3 were appointed. It is submitted that however thereafter the representations were made by the appellants to the District Judge, Moradabad which was forwarded to the High Court
- C and the Deputy Registrar, High Court vide administrative order dated 22.05.1990 though noted that the appellants were appointed temporarily, directed that the approved list of ex-stenos and Hindi Stenos dated 14.07.1987 be prepared and their names be arranged in the order of merit. It is submitted that pursuant thereto a speed test was conducted
- D for the appellants in accordance with the Rules and the appellants failed to achieve and possess the minimum speed required for the post of Hindi Stenographers, the fact which was not communicated to the High Court thereafter. It is submitted that despite the above the District Judge, Moradabad continued the appellants and terminated the services of
- E Respondent Nos. 1 to 3 who were appointed after due process and in compliance to the Rules of 1947 and appointed the appellants against the post held by Respondent Nos. 1 to 3. It is submitted that therefore, the High Court has rightly quashed the appointment of the appellants and has rightly quashed the termination of Respondent Nos. 1 to 3.

6. It is submitted that the appellants are not entitled to any relief
- F as they were never appointed to the post of Hindi Stenographers, after following due selection procedure. It is submitted that on the contrary the respondents were appointed after following proper selection procedure. It is submitted that the appointment of Respondent Nos. 1 to 3 was on the substantive sanctioned posts. It is submitted that there cannot be two persons working on one sanctioned post. It is submitted
- G that therefore once the Respondent Nos. 1 to 3 were selected and appointed after following due selection procedure on the post of Hindi Stenographers and the appellants were appointed on leave vacancies, as a consequence the Respondent Nos. 1 to 3 have to be appointed and the appellants have to give way to those who are duly selected after
- H following selection procedure. It is submitted that therefore, the High

Court has not committed any error in passing the impugned judgment and order. It is submitted that no interference of this Court in exercise of powers under Article 136 of the Constitution of India is called for. A

7. Dr. Ashutosh Garg, learned Counsel appearing on behalf of the Respondent Nos. 1 to 3 have supported the impugned judgment and order passed by the learned Single Judge and confirmed by the Division Bench by adopting the submissions made by the counsel on behalf of the High Court. B

8. Heard learned counsel for the respective parties at length.

9. At the outset, it is required to be noted that initially the appellants participated in the selection process for the post of English Stenographers in the year 1987. They never applied for the post of Hindi Stenographers in the year 1987. Since there were no vacancies of English Stenographers in the District Court, Moradabad no appointments were made and appellants were not appointed on the post of English Stenographers of which they applied. However, they were placed on the select list on 14.07.1987. As per Rule 14(3) of the Rules, 1947 the validity of the select list was for one year and therefore, the said select list dated 14.07.1987 came to an end on 13.07.1988. Thereafter the appellants could not have claimed any appointment on the basis of the expired select list. However, it appears that there were some leave vacancies of temporary nature in the post of Hindi Stenographers and therefore, the appellants were appointed purely on temporary basis on the said leave vacancies, for a period of one month from 14.10.1987 to 15.11.1987. At this stage, it is required to be noted that in the appointment letter itself it was stated that their appointment shall be terminated once the regular employees resume their duties. It is not in dispute that thereafter a fresh examination was conducted for the post of Hindi Stenographers on 24.09.1988 and Respondent Nos. 1 to 3 were appointed. However, thereafter though the services of the appellants were required to be terminated on the Respondent Nos. 1 to 3 being selected for the post of Hindi Stenographers, pursuant to the communication dated 22.05.1990 by the Deputy Registrar, High Court by which it was directed that the approved list of ex-stenos and Hindi Stenos dated 14.07.1987 be prepared and their names be arranged in the order of merit, and though the appellants failed to clear the speed test for the post of Hindi Stenographers as required as per Rule 5(c) of the Rules, 1947, the District Judge, Moradabad appointed the appellants and terminated the services of H

- A Respondent Nos. 1 to 3. The appointment of the appellants and the termination of the Respondent Nos. 1 to 3 has been rightly quashed and set aside by the High Court, firstly on the ground that in the year 1990 no direction could have been issued to make the appointment on the basis of the select list dated 14.07.1987 as the select list dated 14.07.1987 expired and came to an end on 13.07.1988; secondly, the appellants
- B failed to clear/pass the speed test for the post of Hindi Stenographers; thirdly, the appellants were never appointed after following due procedure of selection, against which the Respondent Nos. 1 to 3 were selected and appointed pursuant to the fresh examination which was conducted for the post of Hindi Stenographers on 24.09.1988 and thereafter they
- C were appointed after following due procedure of selection and that the appointment of the appellants in the year 1987 was against the leave vacancies and in the appointment order itself it was specifically mentioned that their appointment shall be terminated once the regular employees resume their duties. Considering the aforesaid facts and circumstances,
- D the High Court has rightly quashed and set aside the appointment of the appellants and has rightly quashed and set aside the orders terminating the services of Respondent Nos. 1 to 3 who were selected after due process and in accordance with the Rules, 1947.

- The submission on behalf of the appellants that the Respondent Nos. 1 to 3 were appointed in the year 2012 is factually incorrect as in
- E the year 1988 itself Respondent Nos. 1 to 3 were appointed and their services were terminated in the year 1990 by the District Judge, Moradabad and the appellants were appointed and thereafter pursuant to the interim orders passed by the Division Bench of the High Court, the Respondent Nos. 1 to 3 were also accommodated in the year 2012.
- F Therefore, as such the Respondent Nos. 1 to 3 have suffered for the period between 1992 - 2012 for no fault of them and though they were selected and appointed after following due procedure of selection. In fact, the appellants have gained illegally and they were continued in service pursuant to the interim order of the High Court. Once the appellants continued on the aforementioned post pursuant to the interim
- G order passed by the High Court and their appointment is subsequently held to be bad in law and not only that their continuation in service is also held to be bad in law, thereafter they cannot be permitted to submit that as they worked for a long time their services should be protected, though their appointments are not legally tenable. Once their appointments are

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held to be illegal and it is held that they have no right to continue on the post to be occupied by other eligible candidates, the necessary consequences shall follow. Once the Respondent Nos.1 to 3 are to be accommodated and/or appointed who were selected after due process and the appointment of the appellants were on leave vacancies with a specific condition in the appointment order that their appointment shall be terminated once the regular employees resume their duties, necessary consequences shall follow and the services of the appellants are to be terminated and/or put to an end. Unfortunately, it has so happened that after 2012 on the post of Hindi Stenographers the appellants as well as Respondent Nos. 1 to 3 are working, which is not permissible. There cannot be appointment of two persons on one sanctioned post. Otherwise, there will be financial burden on the State of two persons on one sanctioned post. Under the circumstances the prayer of the appellants to continue them in services and to pay them pensionary benefits etc. also cannot be granted. Appellants are not entitled to any relief. In fact, they are benefitted by continuing in the service after 1988 though their services were required to be put to an end after the fresh selection in the year 1988 and after the Respondent Nos. 1 to 3 were appointed after following due process and procedure as per Rules, 1947.

In view of the above and for the reasons stated hereinabove, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed.

There shall be no order as to costs.