

By Speed Post
Supreme Court Matter

F. No. A-42011/59/2008-Admn.II
GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

R. No. 529 A Wing,
Shastri Bhavan, New Delhi-110001
Dated: 1st December, 2008

To,
The Regional Director,
Ministry of Corporate Affairs,
Mumbai, Kolkata, Noida and Chennai

Sub: Implementation of judgement dated 04-11-2008 of the Hon'ble Supreme Court of India in Civil appeal No.2985 of 2007 titled Official Liquidator Vs Dayanand & Ors. along with 7 other appeals.

Sir,

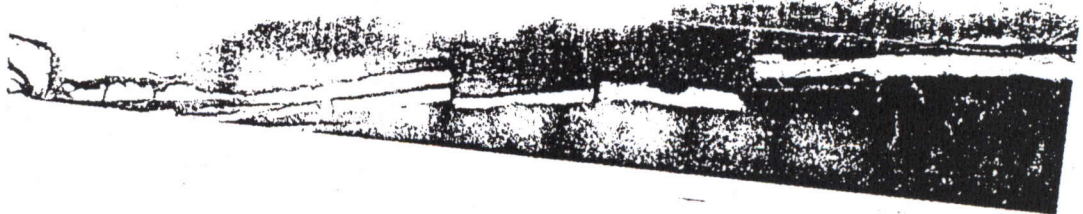
I am directed to say that Union of India and Official Liquidator, Delhi had filed eight Special Leave Petitions in the Hon'ble Supreme Court of India against the judgments of Hon'ble High Courts of Delhi and Calcutta in connection with absorption of Company Paid Staff in Government service. The details of these Special Leave Petitions are as follows:-

- (i) Civil Appeal No. 2985 of 2007
- (ii) Civil Appeal No. 2986 of 2007
- (iii) Civil Appeal No. 2987 of 2007
- (iv) Civil Appeal No. 2988 of 2007
- (v) Civil Appeal No. 2989 of 2007
- (vi) Civil Appeal No. 2990 of 2007
- (vii) Civil Appeal No. 6455 of 2008
- (viii) Civil Appeal No. 6456 of 2008

All these Civil Appeals were clubbed and heard together by the Hon'ble Supreme Court and the judgement has been pronounced on 4.11.2008. A copy of the judgement is at Annexure I.

2. In the above said judgement, the following issues were deliberated by the Hon'ble Supreme Court of India:-

- (i) Whether all the Company Paid Staff are entitled for absorption in Government Service in compliance with judgement dated 27.8.1999 of the Hon'ble Supreme Court of India in Government of India and Others Vs. Court Liquidator's Employees Association and Others [1999 (8) SCC 560].
- (ii) Whether the Scheme for absorption of Company Paid Staff laid down by the Ministry of Corporate Affairs vide letter No. A-12013/1/99-AD.II dated 1.10.1999 is legal and constitutionally valid.
- (iii) Whether the Scheme for Optimization of Direct Recruitment to Civilian posts laid down by the Government of India vide OM No. 2/8/2001-PIC dated 16.5.2001 which resulted in abolition of 245 posts in the then



Department of Company Affairs is vitiated from arbitrariness or malafides.

- (iv) Whether the doctrine of legitimate expectation can be invoked for sustaining the directions given by the High Courts of Calcutta and Delhi for creation of supernumerary posts to facilitate absorption of all Company Paid Staff in the regular cadres.
- (v) Whether the principle of equal pay for equal work is applicable to entertain the plea of the Company Paid Staff for payment of salaries and allowances in the regular pay scales and other monetary benefits at par with regular employees of the Central Government.

3. The Hon'ble Supreme Court of India in its judgement dated 4.11.2008 after discussing all the above said issues held the following:-

- (i) The respondents are not entitled to absorption against the sanctioned posts in Group C of the Department of Company Affairs, Government of India, as of right.
- (ii) The 1999 Scheme does not suffer from any legal or constitutional infirmity insofar as it provides for absorption of the company paid staff only to the extent of 50% vacancies in direct recruitment quota of Group C posts.
- (iii) The decision taken by the Government of India to reduce the number of posts in direct recruitment quota and consequential abolition of posts in the Department of Company Affairs is not vitiated by arbitrariness or violation of the doctrine of equality or malafides.
- (iv) The doctrine of legitimate expectation cannot be invoked for sustaining the directions given by the High Courts of Calcutta and Delhi for creation of supernumerary posts to facilitate absorption of all company paid staff in the regular cadres.
- (v) The respondents are not entitled to have their pay fixed in the regular scales and other monetary benefits at par with regular employees working under the Official Liquidators.

After deciding the issues involved in the above said judgement, the Hon'ble Supreme Court of India has upheld the scheme framed by the Government of India for absorption of Company Paid Staff vide letter No. A-12013/1/99-AD.II dated 19.11.1999 in compliance with judgement dated 27.8.1999 of the Hon'ble Supreme Court in Government of India and others Vs. Court Liquidator's Employees and others [1999(8) SCC 560] and observed that the same does not suffer from any legal or constitutional infirmity in so far as it provides for absorption of Company Paid Staff only to the extent of fifty per cent of the vacancies in direct Recruitment Quota of Group C posts.

While allowing the above Civil appeals, the Hon'ble Court of Supreme Court has set aside the judgments and orders of the Hon'ble High Courts of Calcutta and Delhi subject to the direction for framing of scheme for absorption of eligible regular employees against Group D posts and implementation thereof and

further directed the Official Liquidators attached to the various High Courts to move the concerned Court for increase in the salaries and emoluments payable to the Company Paid Staff. The Hon'ble Supreme Court further directed that such request made by the Official Liquidators should be sympathetically considered by the concerned Courts and the emoluments payable to the Company Paid Staff be suitably enhanced and paid subject to availability of funds.

6. In the light of the judgement of the Hon'ble Supreme Court of India in the above said case the Official Liquidators may be directed to take further necessary action and intimate the steps taken by them in this regard and the out come thereof.

7. As regards the direction of the Hon'ble Supreme Court of India for framing of scheme for absorption of eligible and suitable employees against Group D posts, it is requested that the following details may kindly be furnished to the Ministry to frame the scheme as per directions of the Hon'ble Supreme Court:-

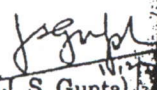
| S. No. | Name of the O.L. office | Names of persons appointed as Company Paid Staff in Group D Posts | D.O.B. (Date of Birth) | Educational Qualification | Date of appt. | No. of Sanctioned Group D Posts in OL, ROC & RD offices | No. of Group D Posts vacant as on 4-11-08 | Remarks |
|--------|-------------------------|---|------------------------|---------------------------|---------------|---|---|---------|
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8. It is also requested that the existing procedure for filling up Group 'D' posts may kindly be intimated alongwith details of rules/instructions/ proceedings of last 2-3 occasions on which appointments have been made.

9. It is brought to notice that there are a number of applications/petitions pending in various Tribunals /High Courts in matters connected with Company Paid Staff. It is requested that necessary steps be taken to bring to the notice of these Tribunals /High Courts about the judgement dated 04-11-2008 of the Hon'ble Supreme Court of India with a request that the applications/ petitions pending before these Tribunal /Courts be disposed off in light of this judgement of the Hon'ble Supreme Court of India.

10. It is further requested that urgent follow up action may please be taken under intimation to this Ministry.

Yours Faithfully,


(J. S. Gupta)

Under Secretary to the Government of India
Tel. No: - 23389782

Copy alongwith annexure to:
(i) All Official Liquidators
(ii) All Registrar of Companies