

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CWP No.16484 of 1998 (O&M)  
Decided on : 09.10.2015**

Smt. Parkash Kaur

... Petitioner

Versus

State of Punjab and another

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA**

Present : Mr. Surmukh Singh, Advocate  
for the petitioner.

Mr. L.S. Virk, Addl., AG, Punjab  
for respondents No.1 and 2.

**G.S. Sandhawalia , J. (Oral)**

**CM-9082-2014**

For the reasons mentioned in the application for early hearing, the same is allowed.

Case has been taken up on board and taken up for hearing on merits.

**Main Case**

In the present writ petition the prayer of the petitioner is for quashing the order dated 20.07.1998 (Annexure P-5) and for direction to finalize the seniority of the petitioner after counting the continuous service and to give the benefit of proficiency step-up after 8 years with all consequential benefits.

The case of the petitioner is that the petitioner alongwith others was appointed as a Clerk in response to requisition made by the respondent-department and sponsored by

the Employment Exchange and the appointment was in accordance with rules. The petitioner joined on 03.02.1982 and the *ad hoc* period from 1982 is to be counted as the regular appointment has been effected from 01.04.1985 vide order dated 22.10.1985 (Annexure P-1). The challenge to the subsequent letter dated 20.07.1998 (Annexure P-5), wherein Condition No.12 of the regularization was varied and in which it was mentioned that the word '*ad hoc*' shall be read as 'regular' is the subject matter of challenge, since the case of the petitioner is that as per Clause 12 of the Regularization Order, seniority was to be determined from the date of *ad hoc* appointment i.e. 03.02.1982.

Counsel for the petitioner has placed reliance upon the judgment of this Court in '**Dr. Surinder Kumar Mishra and others Vs. State of Haryana and another**' 2011 (1) RSJ 735 which was upheld by the Division Bench in '**State of Haryana and another Vs. Dr. Surinder Kumar Mishra and others**' 2012 (2) RSJ 510 to submit that the appointment was made as per the rules by the Chief Conservator. Therefore, the said period was to be counted for the purpose of seniority and for proficiency step-up. Counsel for the petitioner had also placed reliance upon **CWP No.13311 of 1991** titled as '**Sarvshri Jang Singh and others Vs. State of Punjab and others**' in the index itself.

The State in its reply has taken the plea that the

appointment of the petitioner was as a Clerk on *ad hoc* basis for the six months and she was appointed on regular basis w.e.f. 01.04.1985 and confirmed on 15.07.1991. The Condition No.12 was a condition which pertained to the *inter se* seniority of the clerks which were mentioned in the order dated 22.10.1985 and the benefit of *ad hoc* service was not to be provided as per letter dated 01.09.1989 (Annexure R-2), wherein *ad hoc* period was to be excluded for the purpose of grant of proficiency step-up and the date of the regular appointment was to be considered. The petitioner was allowed the benefit of the promotion of Senior Clerk w.e.f. 14.03.1995 and as per circular dated 29.03.1957 (Annexure R-3), the seniority was to be counted from the date of regular appointment. The petitioner had made a representation for determining his seniority by counting *ad hoc* period as Clerk, but the same was not permissible, in view of Rule 9 of the Punjab Forest Subordinates Service (Ministerial Section) Rules 1943 and the same was rejected vide order dated 1.04.1996 (Annexure R-4). The demand was sent to the Employment Exchange for recruitment of temporary clerks and in that way the petitioner was sponsored and she was only recruited for six months and the period was specifically extended. The seniority was to be counted from the date of confirmation as per Rule 9.

After hearing counsels, this Court is of the opinion that

there is no merit in the present case. Admittedly, the petitioner as noticed placed reliance upon the pendency of **Sarvshri Jang Singh's case** (supra). The said case has been decided against the employees by a Coordinate Bench on 19.12.2011 and it has been held that the *ad hoc* officiation cannot be relevant and the *ad hoc* period cannot be counted for the purpose of reckoning of seniority. The relevant portion reads as under:-

*“Please see K. Madhavan and another v. Union of India and others, (2000) 7 SCC 561; Suraj Prakash Gupta and others v. State of J&K and others, (2000) 7 SCC 561; Punjab State Electricity Board and others v. Jagjiwan Ram and others, (2009) 3 SCC 661; and Union of India and another v. Lalita S. Rao, (2001) 5 SCC 384, where it has been held that ad hoc service cannot be counted for seniority. The only exceptional situation would be when at hoc service is itself a method of recruitment sanctioned by the relevant rules that give place to regularization after a period of ad hoc employment. I have not been shown through any such rules governing the case for the petitioners to allow for such appointment on ad hoc basis to entitle them to contend that such ad hoc service should also be counted for the purpose of reckoning seniority. The petitioners' case cannot obtain favourable consideration under such circumstances and, therefore, the writ petitions are dismissed.”*

Even otherwise the Rule 9 specifically provides that the seniority of the members is to be determined by the dates of their substantive appointment to a permanent vacancy in each class. The said rule reads as under:-

*“The seniority of members of the services shall in each class of appointment shown in Appendix A, be determined by the dates of their substantive appointment to a permanent vacancy in each class.”*

The reference to the judgment **Dr. Surinder Kumar Mishra (supra)** is without any basis. In the said case, it was specifically found that appointment of the petitioners in that case had been made by a competent authority, wherein a public advertisement has been issued and thereafter the petitioners were regularized and their cases were duly considered by the Haryana Public Service Commission as per the regularization order. In such circumstances, the *ad hoc* period was to be counted for the purpose of seniority and the said view accordingly was upheld by the Division Bench.

The matter is no longer *res integra* and the issue stand conclusively decided against the petitioners by the Apex Court in **Punjab State Electricity Board & others Vs. Jagjiwan Ram & others 2009 (3) SCC 661**. The relevant portion reads as under:-

*“10. The work charged employees can claim protection under the Industrial Disputes Act or the rights flowing from any particular statute but they cannot be treated at par with the employees of regular establishment. They can neither claim regularization of service as of right nor they can claim pay scales and other financial benefits at par with regular employees. If the service of a work charged employee is regularized under any statute or a scheme framed by the employer, then he becomes member of regular establishment from the date of*

*regularization. His service in the work charged establishment cannot be clubbed with service in a regular establishment unless a specific provision to that effect is made either in the relevant statute or the scheme of regularization. In other words, if the statute or scheme under which service of work charged employee is regularized does not provide for counting of past service, the work charged employee cannot claim benefit of such service for the purpose of fixation of seniority in the regular cadre, promotion to the higher posts, fixation of pay in the higher scales, grant of increments etc.*

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*14. The ratio of the above mentioned judgments is that work charged employees constitute a distinct class and they cannot be equated with any other category or class of employees much less regular employees and further that the work charged employees are not entitled to the service benefits which are admissible to regular employees under the relevant rules or policy framed by the employer.*

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*19. In State of Punjab and others v. Ishar Singh and State of Punjab v. Gurdeep Kumar Uppal, the two-Judge Benches referred to State of Haryana v. Haryana Veterinary & AHTS Association and held that ad hoc service rendered by the respondents cannot be clubbed with their regular service for the purpose of grant of revised pay scales, senior/selection grade, proficiency step-up and for fixation of seniority.”*

Similar view was expressed, subsequently, by the Hon'ble Apex Court in **Surendra Nath Pandey & others Vs. Uttar Pradesh Cooperative Bank Limited & another 2010 (12) SCC 400**. Relevant portion of the judgment reads as under:-

*“9. We are of the view that the real issue is whether*

*persons employed on stop gap or ad hoc basis were entitled to the benefit of pay scales with increments during the period of service on daily or stop-gap or ad hoc basis. Unless the appellants are able to establish that either under the contract, or applicable rules, or settled principles of service jurisprudence, they are entitled to the benefit of pay scale with increments during the period of their stop-gap/ad-hoc service, it cannot be said the appellants have the right to claim the benefit of pay scales with increments.*

*10. Admittedly, the appellants do not claim the said relief on the basis of any rules or contract. This Court in a series of decisions (See for example, State of Haryana vs. Jasmer Singh and State of Haryana vs. Tilak Raj), has held that the daily wage or ad hoc employees were not entitled to the benefit of regular pay scales with increments, by claiming parity with regular employees. Therefore, it is clear that the appellants did not have a right to claim the said relief.”*

Recently, the Hon'ble Apex Court in **State of Haryana & others Vs. Vijay Singh & others 2012 (8) SCC 633** has specifically held that the seniority is to be considered on the basis of the relevant statutory rules and counting of *ad hoc* service cannot be approved for the purpose of reckoning of seniority. The petitioner, in the present case, has not made reference to the rules which govern him and which would help him to submit that the benefit of ad hoc service may be counted for the purpose of seniority. Relevant portion of the judgment reads thus:-

*“23. Before concluding, we consider it proper to notice the judgments on which reliance has been placed by learned counsel for the respondents. This consideration*

*needs to be prefaced with an observation that the cases in which recruitment and conditions of service including seniority are regulated by the law enacted by Parliament or the State Legislature or the rules framed under Article 309 of the Constitution, the general proposition laid down in any judgment cannot be applied de hors the relevant statutory provisions and dispute relating to seniority has to be resolved keeping in view such provisions.*

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*30. None of the aforesaid judgments can be read as laying down a proposition of law that a person who is appointed on purely ad hoc basis for a fixed period by an authority other than the one who is competent to make regular appointment to the service and such appointment is not made by the specified recruiting agency is entitled to have his ad hoc service counted for the purpose of fixation of seniority. Therefore, the respondents, who were appointed as Masters in different subjects, Physical Training Instructor and Hindi Teacher on purely ad hoc basis without following the procedure prescribed under the 1955 Rules are not entitled to have their seniority fixed on the basis of total length of service. As a corollary to this, we hold that the direction given by the High Court for refixation of the respondents' seniority by counting the ad hoc service cannot be approved."*

Accordingly, in such circumstances the relief claimed by the petitioner is without any basis and the present writ petition is dismissed.

**OCTOBER 09, 2015**  
Naveen

**(G.S. SANDHAWALIA)**  
**JUDGE**