

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20072 of 2014
Date of Decision:- 18.9.2015.

R.K. Malik and others

.....Petitioner

Versus

Bhakra Beas Management Board and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

1. Whether Reporters of local papers may be allowed to see the judgment?/Yes
2. To be referred to the Reporters or not?/Yes
3. Whether the judgment should be reported in the Digest?/Yes

Present: Mr. Vivek Sharma, Advocate for the petitioner.

Mr. Ashok S. Chaudhary, Addl. A.G. Haryana.

Mr. Rajesh Garg, Senior Advocate with
Mr. Sumit Gupta, Advocate for respondent No.1.

P.B. BAJANTHRI, J.

1.) In this petition, petitioners have sought for the following relief:-

(i) to issue a Writ in the nature of certiorari quashing the reply dated 6.6.2014 (Annexure P-6) vide which the claim of the petitioners have been rejected in a totally illegal and arbitrary manner without appreciating the

fact that the case of the petitioners is squarely covered in accordance to the judgment passed by this Hon'ble Court and further the respondent No.1 has granted the benefit to the similar situated persons.

(ii) To issue a writ in the nature of mandamus directing the respondent to grant the petitioners the pay scale of ₹ 3000-5600 (with start of ₹ 3000/-) on completion of 9 years of service and subsequently ₹ 4500-6300, on completion of 16 years of service with all consequential benefits including the arrears along with interest @ 18% per annum counting their adhoc service toward a regular service in accordance to instruction dated 26.6.1992, the same had been granted to similarly situated person by this Hon'ble Court in CWP No.1607 of 1998 and the after fixing the pay scale, revised the pension and the same should be granted to the petitioners with all consequential benefits with 18 % interests.

2.) Service particulars of the petitioners are extracted herein:-

	Petitioner No.1	Petitioner No.2	Petitioner No.3
Date of appointment on adhoc basis with respondent no.2-Irrigation Deptt., State of Haryana	01/01/79	14.1.1980	21.12.1978
Transferred to BBMB	05/10/89	05/10/89	1985
Promoted to the Post of Executive Engineer	30.7.2007	30.11.2007	2007

Promoted to the Post of Additional Superintendent Engineer	30.7.2011	30.11.2007	2011
Date of Retirement	30.9.2013	31.1.2013	31.5.2012

3.) These petitioners were initially appointed on ad hoc basis in the Irrigation Department, State of Haryana. Date of appointment of petitioner Nos.1 and 2 are 01.01.1979 and 14.01.1980. Third petitioner was appointed in the year 1985. Their services were drafted to Bhakra Beas Management Board (for short 'BBMB') which is a statutory body constituted by the Central Government as per provisions of Section 79(1) read with Section 80(6) of the Punjab Reorganization Act, 1966.

4.) The petitioners while working in the BBMB, their services were regularized on 24.9.1993 by the second respondent-Irrigation Department, State of Haryana w.e.f. 31.12.1990 vide Annexure P-1.

5.) The first respondent-BBMB managing the Board by borrowing the services of the employees from the Irrigation Department of its partner states namely, Punjab, Haryana, Rajasthan and Himachal Pradesh and their Electricity Board now which is known as Power Utilities by invoking sub-section 5 of Section 79 of the Punjab Reorganization Act, 1966 with reference to their respective share quota. For the reasons that these States provided necessary funds to the BBMB for meeting all expenses including the salaries and allowances of the staff. At the same time BBMB while invoking Section 79 (5) of the Punjab State Reorganization Act, 1966

recruited its own employees under various modes like work charge and ad hoc basis for smooth administration of projects. In this background BBMB consists of two sets of employees those who are posted by different partner States/State Electricity Boards and its own recruited staff.

6.) All the petitioners fall under the first category of employees i.e. those who are posted by the different partner States, namely, State of Haryana insofar as petitioners are concerned. The petitioners were given option for exercising State Scale or BBMB Scale. Since BBMB scale was higher than the State's scale naturally the petitioners opted for BBMB scales. The BBMB had adopted PSEB scale pattern in the year 1992.

7.) On 26.6.1992 revision of pay scales of BBMB employees of Irrigation wing was notified. BBMB had various wings like Irrigation wing, Boards Office, General wing of FAO and CAO's.

8.) The petitioners requested BBMB to invoke para 8 (ii) of 1992 circular vide Annexure P-2 for the purpose of grant of proficiency step-up and time bound promotional/devised promotional scale after 9/16 years service in the respective posts while counting ad hoc service rendered in the Irrigation Department, State of Haryana from 1978-1979-1980 (petitioner Nos.1, 2 and 3) till date of regularization i.e. w.e.f. 31.12.1990. Petitioners relied on earlier decisions of this Court passed in CWP No.1607 of 1998 decided on 20.03.2012 read with LPA No.2120 of 2012 vide legal notice dated

30.3.2014 Annexure P-5.

9.) The first respondent BBMB after duly examining claim of the petitioners rejected their grievances on 06.06.2014 vide Annexure P-6 with reference to the decision of the Supreme Court passed in Civil Appeal No.5411-5433 of 2009 titled **State of Haryana and others Vs. Sita Ram and others** decided on 29.10.2013 in which it was held that ad hoc service cannot be counted for the purpose of extending ACP scales and time bound promotional scales or additional increments. Feeling aggrieved by the first respondent-BBMB decision dated 6.6.2014, the present writ petition are presented.

10.) Learned counsel for the petitioner in support of his prayer to count ad hoc service for the purpose of grant of proficiency step-up and time bound promotional/devised promotional scale after 9/16 years service in the respective posts heavily relied on order/circular dated 26.06.1992 relating to revision of pay scales of BBMB employees of Irrigation wing in particularly Para 8 (i) & (ii). An extract of aforesaid paras is reproduced herein:-

8. The instructions issued by the PSEB from time to time regarding grant of proficiency step-up and allowing time bound promotional/devised promotional scales after 9/16 years service shall be applicable in BBMB subject to the following modifications:-

(i) The past service rendered by a BBMB regular employee as work charged employee in BBMB/BCB prior to his conversion as regular

employee in the BBMB in the same post and the same pay scales without any break in service shall count towards grant of proficiency step-up and the time bound promotional/devised promotional scales admissible after 9/16 years service provided such an employee has got no financial benefit in the enhancement of pay at the time of conversion from work charged cadre to regular cadre at the initial stage.

(ii) The adhoc service rendered by an employee in the Irrigation wing, Board's office and General Wing of FAO and CAO's Office followed by recruitment in regular service by the partner State Govts. In the same post and the same pay scale without any break will count towards grant of proficiency step up and the time bound promotional/devised promotional scale after 9/16 years service in the respective posts."

11.) It was further contended by learned counsel for the petitioner that in identical matter, this Court held that those employees who were appointed on ad hoc basis and the service rendered on ad hoc basis in the Irrigation Department, Haryana State would be counted for the purpose of proficiency step-up and time bound promotional/devised promotional scale after 9/16 years service in the respective posts. In order to buttress petitioners' plea relied on the decision dated 20.03.2012 passed in CWP No.1607 of 1998 and decision in LPA No.2120 of 2012 dated 04.04.2013 vide Annexures P-3 and P-4 respectively.

12.) Learned counsel for the first respondent-BBMB vehemently contended that Para 8(ii) of the order dated 26.6.1992 (P-2) relates to *“subject: revision of pay scales of BBMB employees of Irrigation Wing”*. In other words, adhoc service rendered by the BBMB ad hoc employees are entitled to the benefit of Para 8 (ii) and not to the ad hoc employees of Irrigation Department, State of Haryana whose services have been drafted to BBMB and for the reasons that para 8 (ii) is crystal clear that ad hoc service rendered by an employee in the Irrigation Wing, Boards Office and General Wing of FAO and CAO's office for the purpose of counting the adhoc service towards grant of proficiency step-up and time bound promotional/devised promotional scale after 9/16 years service in the respective posts. Since the petitioners were all recruited on ad hoc basis in the Irrigation Department, State of Haryana, the said clause cannot be extended to other than BBMB ad hoc employees. It was further contended that there is no statutory regulation/Government order/circular to count the adhoc service rendered in the Irrigation Department, State of Haryana for the purpose of granting proficiency step-up and time bound promotional/devised promotional scale after 9/16 years service in the respective posts.

13.) The first respondent counsel further submitted that the decision passed by this Court in CWP No.1607 of 1998 BBMB was not represented by BBMB counsel at the time of disposal of the said matter on 23.02.2012 which is evident from para 2, consequently,

BBMB could not resist claim of the petitioner in the aforesaid case. While appraising this Court that the petitioners therein were on deputation to BBMB and question of extending benefit of order/circular dated 26.6.1992 do not arise. In LPA No.2120 of 2012, the Division Bench did not appreciate the fact that respondents in LPA were initially appointed on ad hoc services in the State of Haryana and Clause 8(ii) of the circular dated 26.06.1992 was not interpreted appropriately. Further the first respondent counsel relied on two decisions one is reported in **(2009) 3 SCC 661** titled **Punjab State Electricity Board and others Vs. Jagjiwan Ram and others.**

He relied on the said judgment for the purpose of counting ad hoc service towards grant of benefits of promotional increments is not permissible. He relied on para 13 of the said judgment. He also relied on Civil Appeal No.5411-5433 of 2009 titled State of Haryana and others Vs. Sita Ram and others decided on 29.10.2013. An extract of the said judgment is reproduced herein:-

“We reiterate that even though Ravinder Kumar's case was delinked from the batch of matters decided vide judgment in State of Haryana Vs. Haryana Veterinary and ALTS Association (Supra) and was independently decided, the same cannot be relied upon for grant of benefit of ACP scales under the 1998 rules of time bound promotional scales or additional increments by counting work charged or adhoc service

where the rules/scheme provide that the employee must have rendered regular service for a particular period.”

14.) In view of Clause 8 (ii) of the circular dated 26.06.1992 read with the aforesaid decisions, the petitioners have not made out a case so as to interfere with Annexure P-6 dated 6.6.2014 and these petitions are liable to be rejected. Learned counsel for first respondent also pointed out that on 10.07.2014 vide Annexure R-1/1, it was further clarified that circular dated 26.06.1992 is applicable to BBMB ad hoc employees.

15.) The second respondent counsel while adopting the arguments of the first respondent counsel submitted that there is no Statutory Rules/Government order/Circular insofar as counting the ad hoc service by an employee in the State for grant of any service benefits. He has also pointed out that ad hoc service rendered by the petitioners in the Irrigation Department, State of Haryana was required to be considered by the State of Haryana in the absence of any regulation question of counting ad hoc service of an employee towards service benefits is impermissible. Annexure P-2 relates to revision of pay scales of BBMB employees of Irrigation wing dated 26.6.1992 which was issued by the BBMB, therefore, the second respondent is only a formal party since the petitioners are claiming relief invoking circular dated 26.6.1992 issued by the BBMB vide Annexure P-2. Therefore, the petitions are to be rejected insofar as

second respondent is concerned.

16.) Heard counsel for the petitioners and perused the impugned orders.

17.) It is undisputed fact that the petitioners were appointed on ad hoc basis in the Irrigation Department, State of Haryana and their services were regularized by the State of Haryana w.e.f. 31.12.1990 on 24.9.1993 when their services were drafted to BBMB. In this background, the service rendered on ad hoc basis in the Irrigation Department, Haryana State could be counted for the purpose of granting proficiency step-up and time bound promotional/devised promotional scale after 9/16 years service in the respective posts. Insofar as petitioners are concerned in the BBMB. The petitioners' ad hoc services in the Irrigation Department, State of Haryana is from 1978-1979-1980 (petitioner Nos.1 and 2) till 5.10.1989 and 1985 (petitioner No.3) in the Irrigation Department, State of Haryana. They were on ad hoc service in the BBMB between 1985 and 1989 till 31.12.1990 for a very short period. Reliance on the Annexure P-2 dated 26.6.1992 **“subject: revision of pay scales of BBMB employees of Irrigation Wing.”** Having regard to the said subject, it is evident that the said circular dated 26.06.1992 applies to those **ad hoc BBMB employees of Irrigation wing** and not to such of those employees whose services have been drafted to BBMB in the Irrigation wing, BBMB through Haryana State etc. Therefore, reliance on the circular dated 26.6.1992 by the petitioner is incorrect.

When the subject of circular dated 26.6.1992 restricted to employees of Irrigation Wing of BBMB question of extending or invoking circular dated 26.6.1992 to those employees whose services were drafted to BBMB does not arise. The petitioner relied upon decision of this Court passed in CWP No.1607 of 1998 dated 20.03.2012. In the said decision, first respondent did not represent so as to highlight the facts of the case that the petitioners in that case were recruited on ad hoc basis in the Irrigation Department, State of Haryana and consequently the circular dated 26.6.1992 is not applicable. Therefore, factual aspects relating to service particulars of the petitioners therein read with the circular dated 26.6.1992 has not been taken note of. Hence, the said decision is not applicable to the petitioners' case. So also decision in LPA No.2120 of 2012 dated 4.4.2013, wherein status of the petitioner therein i.e, he is an ad hoc employee of Irrigation Department, State of Haryana was not noticed.

18.) The first respondent distinguished applicability of circular dated 26.06.1992 stating that it is applicable to those ad hoc employees of BBMB and not to those such of the ad hoc employees like the petitioners. He has also contended that on reading of the subject of the aforesaid circular dated 26.6.1992, it is crystal clear that it is applicable to those ad hoc employees of BBMB. Learned counsel for the first respondent relied on the decision reported as (2009) 3 SCC 661 **Punjab State Electricity Board and others Vs. Jagjiwan Ram and others** wherein the Apex Court has held that ad

hoc service cannot be counted for the purpose of extending service benefits. Relevant extract of Para 13 reads as follows:-

“A reading of the scheme framed by the Board makes it clear that the benefit of time bound promotional scales was to be given to the employees only on their completing 9/16 years regular service. Likewise, the benefit of promotional increments could be given only on completion of 23 years regular service. The use of the term ‘regular service’ in various paragraphs of the scheme shows that service rendered by an employee after regular appointment could only be counted for computation of 9/16/23 years service and the service of a temporary, adhoc or work charged employee cannot be counted for extending the benefit of time bound promotional scales or promotional increments. If the Board intended that total service rendered by the employees irrespective of their mode of recruitment and status should be counted for the purpose of grant of time bound promotional scales or promotional increments, then instead of using the expression ‘9/16 years regular service’ or ‘23 years regular service’, the concerned authority would have used the expression ‘9/16 years service’ or ‘23 years service’. However, the fact of the matter is that the scheme in its plainest term embodies the requirement of 9/16 years regular service or 23 years regular service as a condition for grant of time bound promotional scales or promotional increments as the case may be. For

the reasons mentioned above, we hold that the respondents were not entitled to the benefit of time bound promotional scales /promotional increments on a date prior to completion of 9/16/23 years regular service and the High Court committed serious error by directing the appellants to give them benefit of the scheme by counting their work charged service.”

19.) In view of the principle laid down in the aforesaid judgment, the petitioners are not entitled to count ad hoc service rendered in Irrigation Department, State of Haryana for the purpose of extending step up of pay or promotional benefits.

20.) Rule 6 of BBMB Rules, 1974 – BBMB (Conduct of meetings and Powers and Duties of Chairman and Officers of the Board) Regulations, 1976 BBMB adopted various Rules of the Punjab Civil Services. The said Rule along with Schedule-I read as under:-

“6. Powers and functions of the Board in certain matters

The powers and functions of the Board in relation to technical sanction, administrative approval, other sanctions required for the works, establishment, and for contingent expenditure shall be, so far as may be, those of a State Government under the codes, rules, manuals, orders, regulations and the like specified in Schedule 1 as in force in the State of Punjab (Amendment as per Annexure V)”

SCHEDULE – I

(See rule 6)

1. *The Punjab Civil Services Rules, Volume I part-I Main Rules.*
2. *The Punjab Civil Services Rules, Volume-I part-II (Appendices and forms.)*
3. *The Punjab Civil Services Rules, Volume II (Rules relating to the Pensions and Provident Funds.)”*

21.) Reading of Rule 6 read with Schedule-I, it is clear that BBMB have followed or adopted various Rules of the Punjab Civil Services Rules for the purpose of extending service benefits to its employees. An extract of the Notification No.7/14/88-5PP-1(2269)/18257 dated 1.12.1988 relates to Punjab Government Orders of Proficiency Step-up (PROP) reads as follows:-

“7. For reckoning the period of 8 and 18 years, the entire service in the time scale, senior scale and selection grade (of mere placement and not involving fixation of pay at higher level) etc., wherever available in a cadre, shall be counted. If an employee joins a scale at a stage higher than the minimum as a result of promotion or otherwise, his proficiency step-up would stand postponed by a number of years equal to the number of increments already covered by him from the minimum of the scale at the time of initial fixation of pay in the scale. That the step-up is related to the number of years of service in a particular scale and if an employee's pay is fixed by process of promotion at the

sixth stage of a scale, he will be entitled to earn a step-up in that scale only after 8 years. If an employee serves in a scale of pay for more than 18 years and is not promoted to a higher scale on account of lack of promotion opportunities or non-availability of a vacancy in the promotional scale, he would be granted two step-up(s) in his emoluments.”

22.) Clarification on proficiency step-up and time bound promotional/devised promotional scale after 9/16 years service in the respective posts vide notification No.7/14/88/-5PP1/16200 dated 1.9.1989. Para 6 reads as follows:-

	Points	Clarifications
6	<i>An employee was appointed on ad hoc basis wherein he had put in 3 years of service. Subsequently, he was appointed on regular basis. For grant of Proficiency whether the period of 8/18 years is to be taken from the date of his appointment on ad hoc basis or from the date he joined on regular basis as appointed by the Subordinate Services Selection Board/ Departmental Selection Committee/Punjab Public Service Commission.</i>	<i>The Period of eight or eighteen years is to be reckoned from the date of appointment on regular basis. Service rendered on ad-hoc basis does not count for the purpose of grant of Proficiency.</i>

23.) In view of the aforesaid conditions stipulated, petitioners' ad hoc service rendered in Irrigation Department, State of Haryana cannot be counted towards grant of step up and time bound promotion.

24.) The petitioners have failed to point out that their services were absorbed in BBMB to claim any benefit of circular dated

26.6.1992. I am of the view that petitioners' lien would be still in the Irrigation Department, State of Haryana. Having regard to the fact that their lien is still in Irrigation Department, State of Haryana, the petitioners have not pointed out any statutory regulation/Government order/circular by which ad hoc service rendered in the Irrigation Department, State of Haryana is to be counted towards grant of step-up and time bound promotions. On the contrary, there is a prohibition that service rendered on ad hoc basis does not count for the purpose of grant of proficiency step-up and time bound promotional/devised promotional scale after 9/16 years service in the respective posts.

25.) For all the aforesaid reasons, I am of the opinion that impugned order 6.6.2014 vide Annexure P-6 is in accordance with law. I, accordingly, dismiss the above writ petition.

26.) No order as to cost.

(P.B. BAJANTHRI)
JUDGE

September 18, 2015.

sandeep sethi