

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Civil Writ Petition No.7021 of 2012
Date of decision: 14.10.2015

Amarjit Singh Saini and others ...Petitioners

Versus

State of Punjab and others ...Respondents

2. Civil Writ Petition No.18989 of 2012

Sunder Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

3. Civil Writ Petition No.18983 of 2013

Sardul Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

4. Civil Writ Petition No.21314 of 2013

Manjit Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

5. Civil Writ Petition No.23485 of 2013

Dharam Pal ...Petitioner

Versus

State of Punjab and others ...Respondents

6. Civil Writ Petition No.26437 of 2013

Randhir Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

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

Present: Mrs. Manveer Kahlon, Advocate for
Mr. K.S.Kahlon, Advocate for the petitioners
(in CWP Nos.7201 and 18989 of 2012)

Mr. Dharam Pal Singh, Advocate and
Mr. H.K.Brinda, Advocate for the petitioners
(in CWP Nos.18983, 21314, 23485 & 26437 of 2013)

Mr. Pankaj Mulwani, Deputy Advocate General, Punjab
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

This order shall dispose of Civil Writ Petitions No.7201 and

18989 of 2012, 18983, 21314, 23485 and 26437 of 2013 as common question of facts and law are involved in all these petitions. However, for dictating this judgment, the facts have been taken from CWP No.7201 of 2012.

The claim of the petitioners in the present writ petition is for issuance of a direction to the respondents to count the adhoc/work charge service rendered by them for the purpose of grant of proficiency step up.

The pleaded case of the petitioners is that they are working as Pump Operators/Work Munshi and they have been appointed between 1975 to 1987 as per chart given in paragraph 2 of the writ petition, which is reproduced below:-

Name of the petitioner.	Date of joining	Date of regularisation	Designation	Place of posting/Division
Amarjit Singh Saini	25.10.1976	1.4.1982	Pump Operator	Gurdaspur
Yashpal	28.07.1980	01.04.1986	Pump Operator	Gurdaspur
Vijay Kumar s/o Parag Raj	01.04.1987	18.05.2001	Pump Operator	Gurdaspur
Vijay Kumar s/o Chain Singh	14.1.1978	1.04.1983	Work Munshi	Gurdaspur
Bhupinder Singh	06.01.1975	01.04.1980	Pump Operator	Batala

Perusal of the same would go on to show that they were regularised between the period from 1.4.1980 to 18.5.2001 and on the grant of proficiency step up from the date of regularization, the demand was made from the date of joining on 17.4.1991 (Annexure P/2). Reliance has been placed upon the instructions dated 1.12.1988 (Annexure P/1) to submit that they were entitled for the benefit of proficiency step up from the date of their appointments and only the regular service has been counted for the purpose of grant of proficiency step up inspite of various representation being made. Reliance has also been placed upon the award of the Labour Court dated 10.8.2005 (Annexure P/3) wherein similar benefit had been granted by the Industrial Tribunal, Punjab, which was upheld by a Division Bench of this Court in **CWP No. 20422 of 2005-Principal Secretary, Irrigation Deptt. Punjab and another Vs. President, Sh. Natha Singh, Thein Dam Workers Union (CITU) and another** decided on 9.5.2006 (Annexure P/4) which was further upheld by the Apex Court in **SLP (Civil) No.12754 of 2006-Principal Secretary, Irrigation Deptt. and**

another Vs. President Natha Singh decided on 19.10.2010 (Annexure P/5).

The State in its written statement has submitted that the instructions dated 1.12.1988 (Annexure P/1) was not applicable to the work charge and daily wages employees. Proficiency step up was to be granted on completion of 8 and 18 years of regular service and the service rendered on adhoc basis was not to be counted for the purpose of grant of proficiency step up. Reliance has been placed upon the subsequent instructions dated 1.9.1989 (Annexure R/1) and clarification dated 29.10.1991 (Annexure R/2). Reliance has also been placed upon the judgment of the Apex Court in **Punjab State Electricity Board & others Vs. Jagjiwan Ram and others 2009(3) SCC 661.**

Counsel for the petitioners have vehemently argued that apart from the judgment of the Division Bench in **Natha Singh's case** (supra) (Annexure P/4), judgments of Division Bench of this Court in **Civil Writ Petition No.17315 of 2001-Jarnail Singh Vs. State of Punjab and others** decided on 15.11.2002 and in **Union of India and others Vs. Sher Chand and another 2014(3) SCT 810** cover the issue.

Counsel for the State on the other hand has opposed the said prayer on the ground that position now stands settled and it is not the case of the petitioners that their regularisation order provided that they were to be regularised from the date of their appointments and therefore, they could not be granted the benefit from the period 5 years earlier from the date of their regularisation.

The position stands settled beyond any anvil of doubt. In **Jagjiwan Ram's case** (supra), the Apex Court held 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. 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 re-fixation of the respondents' seniority by counting the ad hoc service cannot be approved.”

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.

The judgments which have been relied upon by the petitioners are distinguishable. In as much as **Natha Singh's case** (supra), the categorical finding was recorded in the order passed by Government that past service rendered by the employees on work charge/daily wages basis would be treated as qualifying service for pensionary and all other consequential benefits. It is in such circumstances the benefit was granted by the Division Bench while upholding the award.

In **Jarnail Singh's case** (supra) also the benefit was granted

on account of the fact that petitioners in that case were getting annual increments even while they were rendering service on work charge basis and in the peculiar facts the relief was granted and whereas in the present case on grant of the proficiency step up from the date of being regularization demand was made from the date of joining as per Annexure P/2, therefore, the said judgment is not applicable to the facts of the present case.

Similarly in **Sher Chand's case** (supra) the Division Bench noted that casual service was to be regularised with consequential reliefs and all financial benefits were to be granted and on that account initial date of appointment could be used for the purpose of grant of benefit of ACP scheme. Nothing in the present case as noticed above shows that regularisation order which has not been placed on record show that the petitioners were granted similar relief.

Reliance placed upon the judgment in **CWP No.16067 of 2012-Niranjan Singh and others Vs. State of Punjab** decided on 22.8.2012 is also without any basis since the said order directs only consideration of the claim of the petitioners and does not decide the issue which has already been decided by the Apex Court. In such circumstances, no benefit can be granted to the petitioners.

Accordingly, all the present six writ petitions are dismissed.

Photocopy of this order be placed on record of each connected case file.

October 14, 2015
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(G.S.SANDHAWALIA)
Judge