

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

LPA No.507 of 2015(O&M)

Date of decision: 10.9.2015

Sarabjit Singh

....Appellant

VERSUS

**State Consumer Disputes Redressal Commissioner, Punjab
and others**

....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. Vishal Sharma, Advocate for the appellant.

Mr. Manoj Bajaj, Additional Advocate General, Punjab
for respondents No.1 and 2.

Mr. Kulwinder Singh, Advocate for respondent No.3.

HEMANT GUPTA, J.

The present Letters Patent Appeal under Clause X of the Letters Patent is directed against an order passed by learned Single Bench of this Court on 09.02.2015 whereby the writ petition challenging the order dated 18/21.05.2012 and 19.07.2012 promoting respondent No.3 to the post of Superintendent Grade-II remained unsuccessful.

The appellant claims that he is senior to respondent No.3, therefore the promotion of the said respondent is illegal more so when his representation to claim benefit of ad-hoc service was declined on 21.02.2012 by the President District Consumer Dispute Redressal Forum, Hoshiarpur (Annexure P-4). But while considering the candidates for

promotion, the President of the State Consumer Dispute Redressal Commission, Punjab granted benefit of ad-hoc service relying upon a circular of the Punjab Government dated 14.12.1981. The order recorded by the President of the State Commission dated 15.05.2012 (Annexure P-7) has granted benefit of ad-hoc service to him. The relevant extract read as under:

“He resides in village and his village is 5 Kms from Hoshiarpur. His son studies in 7th class and his daughter studies in 3rd class. He has done one year course in Stenographer from ITI Hoshiarpur. He has been preparing notings also in the District Forum. He has worked as Jr. Scale Stenographer in District Consumer Forum Hoshiarpur for the period from 4.5.1995 to 4.8.1996 on adhoc basis (89 days basis). His Service was regularized for the purpose of increment by the President of the District Forum Hoshiarpur vide order dated 12.2.2007, entry has been made in his Service Book also and as per circular dated 14.12.1981 of the Punjab Govt. his Ad Hoc period should also be counted for the purpose of promotion. His ACRs range from Good, Very Good to outstanding.

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As per the seniority list placed before me by the registry, Sh. Varinder Singh has been placed at serial No.8. However a note was given against his name that he had worked as Stenographer in district Forum on Ad-hoc basis (89 days basis) for the period from 4.5.1995 to 4.8.1996. His Ad-hoc service was counted for the purpose of increment by the President District Consumer Forum Hoshiarpur vide order dated 12.2.2007. Further order has also been passed by the President District Consumer forum, Hoshiarpur on 21.2.12 which was produced before us by Sh. Varinder Singh at the time of interview. This order was in supersession of earlier order dated 12.2.2007. Sh. Varinder Singh has also produced a copy of circular dated 14.12.1981 according to which the ad-hoc period is also to be counted for the purpose of promotion.

Moreover when the ad-hoc service has been counted for the purpose of increment by the President of the District Forum vide order dated 12.2.2007, it means that his service with effect from 4.5.1995 has been regularized.

If the service of Sh. Varinder Singh starts from 4.5.1995, then he ranks at serial No.1 in Seniority above Sh. Sarabjit Singh. Although Sh. Sarabjit Singh had also worked as Typist (English) for the period from 4.5.1995 to 17.12.1995 on ad-hoc in District Consumer Forum, Patiala but Sh. Varinder Singh had joined as Junior Scale Stenographer and in Hoshiarpur itself. Although Sh. Sarabjit Singh and Sh. Varinder had joined on the same day but Sh. Sarabjit Singh was working as Typist only that too at Patiala. The seniority of Sh. Sarabjit has been counted from 18.12.1995 whereas the seniority of Sh. Varinder Singh has been counted with effect from 4.5.1995.”

The challenge is to the consequential order of promotion of respondent No.3 in the writ petition, out of which, the present appeal arises.

The said assertions of the appellant were resisted by the respondents in the written statement, inter alia, on the ground that in view of judgment of Hon'ble Supreme Court in M.K. Shanmugam and another v. Union of India and others, (2000) 4 SCC 476 and State of Haryana and others v. Vijay Singh and others, (2012) 8 SCC 633, ad-hoc service of an employee is to be counted for the purpose of seniority.

It was also stated that the writ petitioner was appointed as Typist (English) on ad-hoc basis in District Consumer Redressal Forum, Patiala and was appointed as Junior Scale Stenographer vide order dated 26.07.1996. On the other hand, respondent No.3 was appointed as Stenographer in District Consumer Forum, Hoshiarpur on 22.04.1995 on purely temporary / ad-hoc basis. His appointment letter on regular basis was issued on 20.07.1996. It is categorically mentioned that service of respondent No.3 as Junior Scale Stenographer from 04.05.1995 to

04.08.1996 was counted for the purposes of increments, therefore, the said period has been counted for the purpose of seniority.

Learned Single Bench dismissed the writ petition, inter alia, on the ground that the appellant has not challenged the final seniority list (Annexure R-1/11). The Court found that the grievance of the appellant essentially is seniority conferred upon respondent No.3 by counting his ad-hoc service. The Court also found that the appellant as well as respondent No.3 was appointed after their names were requisitioned from Employment Exchange and therefore, such appointment is in accordance with the established mode of public employment/appointment.

In the written statement, there is no reference of the date of circulation of the final seniority list which was appended as Annexure R-1/11.

We have heard learned counsel for the parties and find that the order passed by the learned Single Judge is not sustainable. There is no reference to any specific Rule framed to govern the service conditions of the employees, including the procedure for appointment, of the State Consumer Disputes Redressal Commission or the District Consumer Disputes Redressal, Forum. At least, none has been brought to our notice. Learned counsel for the appellant referred to Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (for short 'the Rules'). As per the Rules, the Rule of 'Seniority' in Rule 8 of the Rules is by the length of continuous service. Such expression means appointment on regular basis in accordance with Rules. It does not contemplate counting of ad-hoc service for the purpose of seniority.

We find that the appointment on ad-hoc basis by seeking names from only the Employment Exchange is not a method of public employment. The reasoning given by learned Single Bench that the employment on ad-hoc basis through the process of Employment Exchange meets the requirement of public employment is not tenable. The notification to the Employment Exchange to fill up the vacancies is in terms of The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 but that is not the only mode of employment. It is a statutory requirement to ask for the names registered with the Employment Exchange but the test of public employment is wide publicity by way of public notices giving opportunity to all eligible candidates to apply and consider them in accordance with law. In State of M.P. v. Sandhya Tomar, (2013) 11 SCC 357, it has been held that calling of names from the Employment Exchange does not meet the requirement of Articles 14 and 16 of the Constitution of India. It was held as follows:-

“8. Initial appointment of Respondent 1 was not made on the basis of any advertisement in any newspaper whatsoever. Hence, applications for the post were not invited. It is a settled legal proposition that considering the candidature of persons by mere calling of names from the employment exchange does not meet the requirement of Articles 14 and 16 of the Constitution of India. (Vide *Excise Supt. v. K.B.N. Visweshwara Rao*, (1996) 6 SCC 216, *Veer Kunwar Singh University Ad Hoc Teachers Assn. v. Bihar State University (C.C.) Service Commission* (2009) 17 SCC 184, *Union of India v. Pritilata Nanda* (2010) 11 SCC 674 and *State of Orissa v. Mamata Mohanty* (2011) 3 SCC 436. Thus, in view of the above, we are of the considered opinion that Respondent 1 was not appointed following the procedure mandatorily required by law, and that such appointment was admittedly in violation of Articles 14 and

16 of the Constitution of India, as several other eligible candidates have been deprived of their right to be considered for the post.”

Reference can be made to another judgment of Hon’ble Supreme Court reported as Secretary, State of Karnataka and others v. Uma Devi and others, 2006 (4) SCC 1 wherein it was held to the following effect:-

“6. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily (see *Basu’s Shorter Constitution of India*). Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedures which specify the necessary qualifications, the mode of appointment, etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognised that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory

rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

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43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.”

It is not the case of the respondents that before making ad-hoc appointments, any public notice was issued or an opportunity was given to all eligible candidates to apply and after considering all eligible candidates the process of selection was culminated. Therefore, even in the absence of any appointment procedure, no appointment against a public post can be made without giving an opportunity to all the eligible candidates to apply for the posts.

In fact, the decision in Vijay Singh’s case (supra) referred to by the respondents in the written statement runs counter to the plea taken by the respondents that ad-hoc service can be counted for the purpose of seniority. In the aforesaid case as well, the candidates were appointed on ad-hoc basis. A Division Bench of this Court directed the counting of ad-hoc service for the purpose of seniority but Hon’ble Supreme Court allowed the appeal of the State and set aside the order passed by this Court. The Court has found to the following effect:-

“21. It was neither the pleaded case of the respondents nor any document was produced before the High Court to show that the State Government had amended the 1955 Rules and empowered the District Education Officer to make appointment on the posts of Masters, Physical Training Instructor and Hindi Teacher or the requirement of consultation with the Board was dispensed with by issuing notification under proviso to Clause 6 of Notification dated 29.6.1973. Unfortunately, the High Court overlooked the fact that the respondents were neither appointed by the competent authority on the recommendations made by the Board nor they were placed on probation. Therefore, the conclusion recorded by the High Court that the respondents’ initial appointments were regular and, therefore, ad hoc service was liable to be counted for the purpose of fixation of seniority is legally unsustainable.

22. The issue relating to fixation of seniority deserves to be considered from another angle. In terms of Rule 9 of the 1955 Rules, the seniority inter se of members of the service holding the same class of posts and in the same/identical grades of pay is required to be determined by the dates of their confirmation. Rule 11 of the 1998 Rules lays down that seniority inter se of members of the service shall be determined by the length of continuous service on any post. The respondents were appointed on purely ad hoc basis for six months and they continued to serve as ad hoc Masters, Physical Training Instructor and Hindi Teacher till the regularization of their service w.e.f. 1.10.2003. Therefore, their seniority could not be fixed either under Rule 9 of the 1955 Rules or Rule 11 of the 1998 Rules by counting their service from the date of initial appointments.

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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 Court also referred to three Judge Bench judgment reported as State of Haryana v. Haryana Veterinary & AHTS Association and another, AIR 2000 SC 3020, wherein the benefit of ad-hoc service rendered by the respondents for the purposes of higher pay-scale on account of regular service was negated. The Supreme Court examined the question of grant of higher pay-scale after rendering 8 years of regular service. A Full Bench of this Court in Rakesh Kumar Singla v. State of Haryana, (1995) 111 PLR 411 held that ad-hoc service is to be counted for grant of higher pay-scale but Supreme Court set aside the same. The relevant extract from the order reads as under:-

"5. The aforesaid two Circulars are unambiguous and unequivocally indicate that a government servant would be entitled to the higher scale indicated therein only on completion of 5 years or 12 years of regular service and further the number of persons to be entitled to get the selection grade is limited to 20% of the cadre post. This being the position, we fail to understand how services rendered by Rakesh Kumar from 1980 to 1982, which was purely on ad hoc basis, and was not in accordance with the statutory rules can be taken into account for computation of period of 12 years indicated in the Circular. The majority judgment of High Court committed serious error by equating expression "regular service" with "continuous service". In our considered opinion under the terms and conditions of the Circulars dated 2nd June, 1989 and 16th May, 1990, the respondent Rakesh Kumar would be entitled for being considered to have the Selection Grade on completion of 12 years from 29th January, 1982 on which date he was appointed duly against a temporary post of Assistant Engineer on being selected by the Public Service Commission and not from any earlier point of time. The

conclusion of the majority judgment in favour of Rakesh Kumar, therefore, cannot be sustained.

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6..... Thus the appointment of respondent Rakesh Kumar was a fresh appointment in accordance with the Statutory Rules after the Public Service Commission adjudged their suitability and the regular service of the respondent Rakesh Kumar must be counted from the date he joins the post pursuant to the offer of appointment dated 29.1.1982 and the prior service rendered by him on ad hoc basis cannot be held to be regular service nor can it be tagged on to the later service for earning the benefit under the Government Circular dated 2nd June, 1989 as well as the Clarificatory Circular dated 16th May, 1990. The conclusion of the majority judgment of the High Court, therefore, is wholly erroneous and cannot be sustained.

7. In view of our conclusions, as aforesaid, the majority judgment of the Punjab and Haryana High Court and the directions contained therein is set aside and it is held that 12 years period of respondent Rakesh Kumar could be counted from year 1982 for being eligible to get the Selection Grade under the Government Circular dated 2nd June, 1989 as well as clarificatory Circular dated 16th may, 1990. The Civil Appeal filed by the State of Haryana stands allowed.”

We find that the decision of the President, State Consumer Disputes Redressal Commission, Punjab, ordering counting of ad-hoc service for the purpose of seniority not only runs counter to the judgment relied upon by the respondents in the written statement but is against the well settled principles of law.

We also find that once the representation of the petitioner for counting of ad-hoc service was declined on 21.01.2012 vide Annexure P-4, the decision to count ad-hoc service subsequently by the President of the Commission while considering the candidates for promotion and that in the case of one candidate is not a fair and equitable decision. Thus, the benefit

of ad-hoc service granted to respondent No. 3 is illegal, unwarranted and not sustainable in law.

We also find that the appellant could not have been non-suited for the reason that he has not challenged the final seniority list as the basic question which has been rightly found by learned Single Bench is whether the benefit of ad-hoc service can be granted to respondent No.3. On such question, reference made by the respondents to a judgment in the written statement, in fact, does not support the proposition canvassed.

In view of the said fact, we find that the judgment of learned Single Bench of this Court dated 09.02.2015 is not tenable in law. Consequently, the same is set aside.

Consequently, the appeal as well as the writ petition is allowed. The orders promoting respondent No.3 (Annexures P-6 and P-8) are set aside and respondents are directed to consider the filling up of post of Superintendent Grade-II in accordance with law.

(HEMANT GUPTA)
JUDGE

SEPTEMBER 10, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE