

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

CWP No.1624 of 1995

Date of Decision: 12.7.2016

Shiv Kumar and another

... Petitioners

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Arvind Galav, Advocate for the petitioners

Ms.Shruti Jain Goel, AAG, Haryana

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

1. The State of Haryana resists this petition on the ground that the period of 18 years of service for selection grade has to be counted from the date of acquisition of qualification which entitles an employee to the regular grade. Therefore, an employee in the provincialized cadre has to be in regular service for 18 years before he is eligible for selection grade. The word “service” in the instructions dated 27th February, 1975 (Annex.P-1) is unqualified but actually means “regular satisfactory service” because selection grade is akin to right to promotion and in fact is made admissible in lieu thereof where the cadres are heavy and chances of promotion few. These instructions have been clarified by the Government of Haryana in the Education Department declaring policy that “for granting the benefit of selection grade the service of the teachers/masters should be counted from the date of award of regular grade, not from the date of appointment.” It is this clarification which has been challenged in this petition as it deprives the

petitioners of their right to selection grade flowing from appointment. However, this argument is taken care of by Ms. Shruti Jain Goel, learned AAG, Haryana by referring to the Punjab Education Service (Provincialized Cadre) Class-III Rules, 1961 as applicable to the state of Haryana after re-organization of States wherein Rule 9 deals with seniority of members of the service. She refers to Clause (e) of Proviso (iii) which reads:-

“In the case of untrained teachers their length of service or date of appointment would count from the date of appointment in a regular grade after they got the training or received special certificate.”

2. It is pointed out that when initially recruited, the petitioners were untrained teachers and earned their qualification while in service by passing the Special Training Certificate in 1961 and another prescribed test in 1967 from which dates the benefits have been granted to them. The challenge to the clarificatory instructions is blunted by the face of the above rule and therefore no interference is warranted in this petition.

3. Reliance placed by the learned counsel for the petitioners on the ruling in *Attar Singh and others vs. The State of Haryana and another* (CWP No.2143 of 1994 decided on 26th May, 1994) is misconceived since it can no longer be considered good law, in view of the decision of the Supreme Court delivered in *State of Haryana vs. Haryana Veterinary and A.H.T.S. Association*, (2000) 8 SCC 4: AIR 2000 SC 3020 which over-ruled the Full Bench decision of this Court in *Rakesh Kumar Singla vs. State of Haryana*, (1995) 111 PLR 411 where service has been held to be countable from the date spent on regular basis when all the parameters laid down in the rules for grant of selection grade stand fully satisfied. The decision in *Attar Singh*,

supra was delivered pre *Rakesh Kumar Singla* and the majority view was authored by same Lordship who was member in Attar Singh with J.L.Gupta, J. dissenting in minority, which minority view has been upheld by the Supreme Court in *A.H.T.S. Association* case. Therefore, the petitioners can avail no benefit from Attar Singh which cannot be considered as a binding precedent.

4. In view of the above, I find no ground in this petition worth interference which is accordingly dismissed.

12.7.2016
MFK

(RAJIV NARAIN RAINA)
JUDGE