

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.1831 of 1996 (O&M)

Date of Decision: 1.6.2016

Balbir Chand

... Petitioner

Versus

State of Punjab and another

... Respondents

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

Present: Mr.Parateek Gupta, Advocate for the petitioner

Mr.Harkesh Manuja, Addl.A.G., Punjab for the respondents

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 petitioner was discharged from the Army on 28th June, 1970 and was appointed to civil service as Clerk on 13th December, 1973. He served during the first emergency and part of the second. It may be noticed that the respondent Department sent a requisition to the Subordinate Service Selection Board, Punjab (for short "the Board") for filling up 6 vacancies of Clerks meant for Ex-servicemen which were advertised in the Department of Cooperative Societies, Punjab. The Board did not find any suitable candidate in the category to recommend to Government. In this situation, the Chief Auditor, Cooperative Department, Punjab resorted to the method of calling names from the Employment Exchange for filling up the posts of Clerk lying vacant in the Department. It was in these circumstances that the petitioner responded to the

employment notice on his name being sponsored by the Employment Exchange and he succeeded in getting appointment on merit. Having secured appointment to civil service the petitioner has been denied benefit of seniority which is governed by Rule 5 of the Demobilised Armed Forces Personnel (Reservation of Vacancies) in the Punjab State Non-Technical Service Rules, 1968 (for short “the Rule”) and his seniority ought to be fixed under Rule 5 (1) of the Rules. Since the petitioner was appointed against a vacancy reserved under Rule 3 of the Rules, therefore, his seniority has to be given to him on the assumption that he joined the service under the State Government at the first opportunity he had after he joined military service or training prior to the selection. The subsequent act of regularization of such services would not deprive the petitioner of the rights he possessed under Rule 5 of the Rules and his seniority accordingly was required to be fixed from the date he was appointed to service [though called *ad hoc* in the written statement filed by the State].

2. The first impugned order rejects the case of the petitioner on the ground that *ad hoc* service cannot be counted towards seniority. The respondents have wrongly treated the case of the petitioner as of *ad hoc* service. The principle is long established that ordinarily *ad hoc* service will not be counted towards seniority in view of number of binding judgments on the point. The Full Bench of this Court can be read in *Chambel Singh v. State of Haryana*, (1995-1) 109 PLR 152 and the Supreme Court in *State of Haryana vs Haryana Veterinary & A.H.T.S.*, (2000) 8 SCC 4 : 2000 Supp(3) SCR 322. However, those principles would not apply to ex servicemen under the 1968 Rules since it is a misnomer to label the service of the petitioner as “*ad hoc*” to deprive Ex-serviceman of the right to seniority based on deeming fiction of first opportunity in accordance with rules.

hoc service. A reading of the appointment order dated 11th December, 1973 (Annex.P-3); where the name of the petitioner falls at Sr.No.4, nails the lie in the written statement. The appointment letter dated 11th December, 1973 does not use the word “*ad hoc*” at all. Still further, the requisition sent to the Employment Exchange (Annex.P-1) for filling up 6 posts of Clerks in the Office of the Chief Auditor, Cooperative Societies, Punjab, Chandigarh, reveals that the vacancy is described as “regular” with the words “yes” written in column No.6. Neither was an *ad hoc* post advertised nor was one filled on *ad hoc* basis as is clear from the reading of Annex. P-1 and P-2. In view of the above discussion, it appears to this Court that the impugned orders have been passed under mistake of law and the principles attached to the Rules have not been applied.

4. It may further be noticed that the petitioner had earlier approached this Court in CWP No.14535 of 1991 (amended) praying for setting aside the order dated 18th June, 1991 (Annex.P-4) and for a direction to the respondents to fix the seniority of the petitioner from 27th November, 1965 according to the 1968 Rules. This petition was dismissed as withdrawn since it was given out that the Administration was in the process of considering the representation submitted by the petitioner. It was clarified by the learned Single Judge that in case the petitioner was not satisfied with the order that may be passed by the appropriate authority, he would be entitled to approach this Court in a fresh writ petition on the same, similar or other grounds as may be available to him. It is in the wake of this order that resulted in the passing of the 2nd impugned order dated 23rd November, 1994 (Annex.P-7) against which the petitioner has filed the instant petition praying for setting aside both the impugned orders (Annex. P-4 and P-7). The sum total of the impugned order (Annex.P-7) records as under:-

“The case regarding above noted subject has been
filed after perusal by Joint Secretary Cooperative.

Therefore, the case file sent by you is being returned with noting.”.

5. This order is even worse than the previous order as it records no reason whatsoever as to why the case of the petitioner was filed and why it was returned to record room. Since the first impugned order (Annex. P-4) is liable to be set aside, as held above, the 2nd order must also fall to the ground. Fall, for another reason that it is totally non-speaking and worse still has been passed behind the back of the petitioner without hearing him.

6. There is yet another aspect which requires to be noticed. In the written statement filed by the State, the respondents have placed reliance on the instructions dated 17th June, 1968 which has been referred to in the DO letter dated 19th September, 1973 (Annex.R-2) attached by the Department with the written statement which reads as follows:-

“Please refer to your D.O. No.14259 dated 29th August, 1973 and afterwards discussion held on telephone on the subject cited above.

2.Presently, this organization has no passed Ex-serviceman candidates for filling up the posts of Clerks reserved for Ex-serviceman. According to Govt. Notification No.G.S.R.63/Const/Art-309/68 dated 17.6.1968.

Vacancies reserved for Ex-servicemen can be carry forwarded temporarily for 4 years. As per message conveyed on telephone, if the Deptt. is not ready to fill up the SC vacancies by other candidates, you can fill up the SC vacancies through Employment Exchange as per Govt. Rules and Instructions.”

Accordingly, the appointment of the petitioner was admittedly regular and came through proper channel. His was not an illegal or irregular appointment. To describe his relevant part of service as ad hoc flies in the face of the requisition to Board and the terms and conditions of the letter of appointment as Clerk. He would thus be entitled to all the consequential benefits if the petition is accepted. The petitioner has a case for the relief claimed.

7. For the foregoing reasons, this petition is allowed and the impugned orders dated 18th June, 1991 (Annex.P-4) and dated 23rd November, 1994 (Annex.P-5) are quashed. As a result of the quashing of the impugned orders dated 18th June, 1991 (Annex.P-4) and 23rd November, 1994 (Annex.P-7), the petitioner is held entitled to the claimed seniority and increments as prayed with all the consequential benefits.

(RAJIV NARAIN RAINA)
JUDGE

1.6.2016
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