

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 9786 of 1995

Date of decision : 04.05.2016

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Udai Singh and others

.....Petitioners

Versus

The State of Haryana and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Arihant Goyal, Advocate for the petitioners.

Mr. Hitesh Pandit, Addl.A.G, Haryana.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The petitioners are seeking directions to the respondents to count the seniority of the petitioners from the date of their initial appointment as they were selected by a duly constituted Selection Committee and rendered uninterrupted service without any break

The respondent-State excluded the posts of Instructors of the Industrial Training Department from the purview of the Subordinate Services Selection Board, Haryana vide Gazette

Notification dated 1.1.1974 (Annexure P-1). A Departmental Selection Committee was constituted for the purpose of appointment of various Instructors in the Industrial Training Institute in the State of Haryana and the petitioners were appointed on ad hoc basis on the recommendations of the Selection Committee. Their selection had been made after completing all formalities of regular selection process. The details of the petitioners regarding their ad hoc appointments as well as their regular appointments are given in Annexure P-2.

The Director, Industrial Training & Vocational Education, Haryana issued a tentative seniority list of Instructors. The grievance of the petitioners is that their seniority was not fixed from the initial date of appointment, rather, it was fixed from the date of their regularization. The seniority of the petitioners has not been rightly fixed. Even the persons who joined later on, they have been shown senior to the employees who joined the service earlier. The petitioner is seeking setting aside of tentative seniority list (Annexure P-6) by following the judgment passed by the Full Bench in the case of **Chambel Singh vs. State of Haryana 1995(1) SLR 1**, wherein it was held that ad hoc service per se cannot be counted to determine seniority of the employee in the cadre unless the appointment was in accordance with the rules, against an existing vacancy not as stop gap arrangement. However, if such appointment was otherwise regular except for certain deficiency on account of procedural defect, such defects stand cured with the subsequent regularization and the

period on ad hoc will count towards seniority in the cadre.

The stand taken in the written statement filed on behalf of respondents no. 1 & 2 is that the service rendered by a person on ad hoc basis before his regular appointment cannot be counted for seniority. It was further submitted that a tentative seniority list of Instructors had been circulated by the respondents and objections had been invited from them so that after considering their representations the final seniority list could be issued. The ad hoc services of the instructors who were working on ad hoc basis were regularized as per Govt. notification w.e.f 1.1.1991 and their names in the seniority list had been incorporated w.e.f 1.1.1991.

The respondents have not disputed the fact in the written statement that the petitioners had been appointed as per the selection made by the Departmental Selection Committee. The appointment was on ad hoc basis as subsequently, the petitioners were regularized as per Annexure P-2. If the regularization of service was mainly the procedural formality than for all intents and purposes, the seniority has to be counted from the initial date of appointment as per a view taken by a Full Bench of this Court in the case of **Chambel Singh's case (supra)**.

In Rakesh Kumar Singla vs. State of Haryana and another, 1995 (4) RSJ 586, a Full Bench of this Court observed in paragraph 43 of the judgment as under:-

*“ In the light of the judgment of the
Supreme Court in Direct Recruit's case (supra)*

Aghore Nath's case (supra) and Full Bench of this Court in Chambel Singh's case (supra) a civil servant is entitled to the benefit of ad hoc service for being counted to determine his seniority if his case is covered under the circumstances referred to an enumerated herein above. It follows, therefore, that if the initial appointment is made by following the procedure laid down by the Rules and the appointee continue in the post uninterruptedly till the regularisation of services in accordance with the Rules his period of officiation/ad hoc service shall be counted. However, if the appointment is not made according to the Rules or the appointee has not continued or is not regularized, such period of officiation/ad hoc service shall not be counted for the purposes of his seniority. The corollary of the rules is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority, if the period of ad hoc service can be counted for the purpose of seniority or for the purposes of computing pension, how can it be denied for giving the benefit of higher scale of pay. permissible on the basis of the length of the service. If such a

position is accepted, the anomaly thus created cannot be resolved but on the other hand the future of a civil servant would be dragged into wrangles on technicalities leading to uncertainties in his service career. Different lengths of service cannot be permitted to be prescribed for the purposes of seniority, promotion, pension and grant of higher scale of pay. It is not disputed that all such benefits are attributed of a service career of an incumbent. If it is accepted that ad , hoc service of a civil servant cannot be taken into account for the purposes of determining his regular service so far as the benefit of salary on the basis of circular is concerned, the result would be that a person who may be senior on the basis of his ad hoc service in the light of the Full Bench judgment of this Court in Chambel Singh's case (supra) may be forced to get lessor scale of pay than a person who is regularly appointed after him. Such could not be the intention of the State. If such intention is accepted it may result in demoralisation in the services of the State and provide avenues and opportunities to employees to fix different dates for the purposes of seniority and promotion or for the grant of senior scale of pay. If the person is eligible to be appointed to a post on

regular basis but on account of certain technicalities of law or the circumstances not within his control he is initially appointed on ad hoc basis and subsequently regularised, can he be punished for such lapse attributable to the employer?. The answer is emphatically 'No'. The appointment not being in the hands of a civil servant could not be made basis for depriving him the benefit of service which are intended to be provided on the basis of the length of the service.”

A Division Bench of this Court in the case of **Surinder Paul Singh vs. Punjab State Electricity Board 1998(1) RSJ 417** in paragraph 5 has summed up some principles for determination of seniority as under:

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but

the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources and if rules are framed in this regard they must ordinarily be followed strictly.

(d) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it is impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax

the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.”

A Division Bench of this Court in ***State of Haryana and others vs. Surindra Kumar Mishra and others 2013 (2) RSJ 368*** reiterated the above said view and held that seniority would automatically follow from the initial date of appointment. Even though an appointment may be described as ad hoc but in reality it is an appointment on regular basis made in accordance with the Rules. Once an appointment is made to the post according to the extant Rule then seniority has to be counted from the date of appointment and not according to the date of confirmation.

Having regard to the aforesaid and by placing reliance on the aforementioned judgments, present writ petition is allowed and the respondents are directed to count seniority of the petitioners from

the date of their initial appointment and to grant them all consequential benefits.

04.05.2016
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(RITU BAHRI)
JUDGE