

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7782 of 1998 (O&M)

Date of Decision: 09.09.2016

Hardev Singh

... Petitioner

Versus

State of Haryana and another

... Respondents

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

Present: Mr. A.P. Singh, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. Heard Mr. A.P. Singh, learned counsel for the petitioner and Ms. Shruti Jain Goyal, AAG, Haryana for the respondents.

2. This petition has to be dismissed for reasons to follow after a short statement of facts.

3. The petitioner served as a Sub-Inspector in the Food & Supplies Department on ad hoc basis from 1973 to September 1978. He was one of 114 Sub-Inspectors whose services were dispensed with following closure of Food Grain Barriers set up in the State of Haryana. The petitioner was rendered surplus.

4. The Chief Secretary to Government of Haryana addressed a letter dated September 29, 1978 to the Managing Directors of Corporations, Boards, Federations and Cooperative Banks etc. asking them to absorb the surplus Inspectors and Sub-Inspectors of Food & Supplies Department. The

scheme failed to elicit response from the Boards, Corporation etc. who had no room to absorb such persons due to lack of vacancies. The Chief Secretary then turned his attention to the Heads of Departments/Commissioners of Ambala and Hisar Divisions and all the Deputy Commissioners in the State of Haryana by communication dated November 07, 1978 on the subject of absorption of the surplus staff. The officers were requested to absorb the staff wherever possible on ad hoc basis against existing vacancies in comparable posts and if possible, on the same pay as they were in the Food & Supplies Department. Details of vacancies were called for by the Chief Secretary, Haryana. But 30 Sub-Inspectors could be absorbed by adjustment in other departments of the State. Ultimately, the department of Food & Supplies appointed the petitioner and 29 other left-over Sub-Inspectors in their own department vide memo dated January 10, 1980.

5. The letter of appointment dated January 10, 1980 denied benefit of past service towards increments, leave etc. as per terms contained in para (viii) that no such benefits or in any other respect will be given till then, that is, retrospectively. If they were willing to join they may come forward by accepting the terms and conditions including at Clause (viii).

6. What are the actionable rights possessed by the petitioner? The matter is not far to see because the issue is not *res integra* and in principle the issue arising in this case is considered by the law declared in State of Haryana v. Amarjit Singh, Civil Appeal No.1107 of 1995 which involved Sub-Inspectors during an earlier period when similar appointments were made and terminated in 1968 and then again in 1971 after they were re-

appointed in the Food & Supplies Department, Haryana for reasons akin to the present situation. The case arose out of a suit claiming decree against the State for fixation of pay and seniority for the period of ad hoc service prior to adjustment after similarly situated plaintiff was redeployed in the Food & Supplies Department, Haryana. The High Court in appeal had granted benefit of ad hoc service for both benefits i.e. pay fixation and seniority. In the appeal filed by the State of Haryana, the Supreme Court held that the High Court was in error in giving the benefit of ad hoc service to the plaintiffs in the matter of fixation of seniority. The appeal was allowed on April 20, 1995. The Supreme Court applied its earlier law in Direct Recruit Class-II Engineers Officers' Association and others v. State of Maharashtra and others, AIR 1990 SC 1607 and the Full Bench judgment of this Court in Chambel Singh v. State of Haryana, 1994 (4) SCT 800. The Full Bench in turn had overruled the Division Bench decision of this Court rendered in *Des Raj v. State of Haryana*, CWP No.8063 of 1991 decided on September 24, 1991. The Supreme Court referred to Rule 11 of the Haryana Food and Supplies Department Sub-Offices (Group-C) Service Rules, 1982 which prescribed that seniority inter se of the members of the service shall be determined by the length of continuous service on any post in the service.

7. As a corollary the prayer of the present petitioner for a direction to the respondents to count his ad hoc service for the period April 09, 1973 to September 11, 1978 and then again from January 15, 1980 to September 14, 1982 as regular service for the purpose of seniority, promotion, increments etc. has to be turned down including by reason of *Amarjit Singh case (supra)* and buttressed by the law laid down in State of Haryana v.

Haryana Veterinary and A.H.T.S. Association, (2000) 8 SCC 4. Ad hoc service obtained through Employment Exchange without resorting to regular mode of recruitment is not countable towards seniority. The entry of the petitioner in 1973 was through the Employment Exchange, a fact admitted by the petitioner. There is yet another reason why relief cannot be granted to the petitioner is by application of the rule of delay and laches in a matter regarding seniority raised after over 15 years. It is well settled that in service matters, the question of seniority should not be re-opened after a lapse of reasonable period because it would result in disturbing the long settled position which would not be justifiable. The Supreme Court observed in B.S. Bajwa and another v. State of Punjab and others, (1998) 2 SCC 523 that when there is an inordinate delay in making such a grievance respecting alteration of seniority this alone would be sufficient ground to decline interference under Article 226 and it would be proper to reject the writ petition. On both these counts, the petition deserves to fail as not warranting any interference.

8. Reliance placed by the petitioner on the decision of the Supreme Court in Secretary, Minor Irrigation Department & R.E.S. v. Narendra Kumar Tripathi, 2015 (3) SLR 685; 2015 (2) SCT 792 (SCI) and S.Sumnyan and others v. Limi Niri and others, AIR 2010 SC 2159; (2010) 6 SCC 791 is misplaced. Both these judgments have been cited by the petitioner to claim right to regularization of services in terms of policies of regularization and such reliance is also found misconceived as both the decisions are distinguishable on facts although deal with ad hoc past service and counting thereof for determination of seniority as in *Tripathi case*

(*supra*). The Supreme Court was confronted with Rules 4 & 7 of the Uttar Pradesh Regularization of Ad hoc Appointments (on posts within the purview of the Public Service Commission) Rules, 1979 ("1979 Rules") which provided for regularization of ad hoc appointments before January 01, 1977 and were continuing. The rule itself provided for constitution of Selection Committees to make appointments under sub Rule 1 of Rule 4 of the 1979 Rules. What was envisioned by the rules was a selection process and, therefore, UP Government had thought it fit to regularize services of employees whose cases fell within the rules by conferring on them a right to seniority under Rule 7 from the date of appointment after selection in accordance with the rules. Rule 7 was evidently designed on appointment after selection and even then the successful candidates had to be placed below the persons appointed in accordance with relevant service rules by the regular prescribed procedure, prior to the appointment of the beneficiaries under the rules.

9. This is not the fact situation arising in the present case. In such a situation, the decision of the Supreme Court in State of West Bengal v. Aghore Nath Dey, (1993) 3 SCC 371 of counting past service would be of no avail and the glaring defect in appointment would not stand cured. The factual situation presented in case *S. Sumnyan* would also not be of any help as aiding the petitioner to count two broken periods of ad hoc service after declaration of surplus and adjustment by way of a concession on sympathetic grounds failing which the petitioner would have lost his job. Those spells of service spent on ad hoc basis in two distinct parts are not to be added to accrued seniority as a matter of right consequent upon regular

appointment in the Food & Supplies Department.

10. I do not think the claim of the petitioner for seniority, promotion etc. based on ad hoc service rendered before and after being declared surplus and on joining in new capacity the old department is bona fide, genuine or legal and valid. The petition at the same time suffers from unexplained delay and laches due to negligence in pursuing remedy for which reasons cumulatively the petition is devoid of substance and is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

09.09.2016
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No