

LPA-1440-2016

[1]

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

LPA No.1440 of 2016 (O&M)
in
CWP No.15479 of 2015
Date of Decision: December 09, 2016

State of Haryana and others

---Appellants

Versus

Rajni Bhalla

---Respondent

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

**Present: Mr.Ankur Mittal, Addl. A.G.Haryana
for the appellants.**

**Mr.Manoj Chahal, Advocate
for the respondent.**

HARINDER SINGH SIDHU, J.

1. This intra-Court appeal under Clause X of the Letters Patent Act has been filed against the judgment dated 21.10.2015 of the learned Single Judge, whereby, CWP No.15479 of 2015 filed by the respondent for counting adhoc service period preceding her regular appointment as Lecturer, has been allowed in terms of the law laid down in CWP No.8604 of 2007 titled **Dr. Surender Kumar Mishra and others vs. State of Haryana and others** decided on 9.9.2010 wherein ad hoc service was directed to be counted towards seniority.

2. Along with the appeal, an application seeking condonation of 207 days delay in filing the appeal has also been filed. For the reasons

stated in the application the delay of 207 days in filing the appeal is condoned.

3. The respondent was appointed as Lecturer in Mathematics on adhoc basis on 2.12.1983. Her services were regularised by appointing her through Haryana Public Service Commission (for short 'the HPSC') w.e.f. 3.10.1988. It was the case of the respondent that though her appointment was termed as adhoc, but for all intents and purposes it was a regular appointment as it was against a sanctioned post after proper advertisement and by following the procedure as per the then applicable rules and by a duly constituted selection committee. Though, the respondent had been granted the benefit of adhoc service for the purpose of higher standard scale, senior scale, selection grade, but the adhoc service had not been counted towards seniority. Aggrieved against the denial of benefit of ad hoc service for seniority, the respondent filed the writ petition praying for directions to count the period of her adhoc service followed by regularisation towards seniority with all consequential benefits. Reliance was placed on a decision of this Court in **Dr. Surender Kumar Mishra's** case (supra), wherein, in the case of identical appointments on adhoc basis which were followed by regularization, directions were issued to count the adhoc period of service towards seniority.

4. On behalf of the appellants, it had been contended that though LPA No.886 of 2011 titled “**State of Haryana & Ors. vs. Surindra Kumar Mishra & Ors.**” decided on 13.10.2011 filed by the State against the decision in Surender Kumar's case (supra) had been dismissed, but in **SLP (Civil) Nos.6327-6331/2012 State of Haryana and anr Vs. Surindra Kumar Mishra & ors**, notice had been issued on 27.02.2012 and further

proceedings in Contempt Petition had been directed to remain stayed.

5. Ld. Single Judge held that mere pendency of the SLP without there being any specific order, would not of itself be sufficient to deny the benefit of the decision in **Dr.Surender Kumar's** case (supra), the ratio whereof was fully applicable to the present case. Accordingly, the petition was allowed in the same terms.

6. Ld. Counsel for the appellants has pointed out that after the decision of the Ld. Single Judge on 21.10.2015, the Hon'ble Supreme Court has granted leave in the aforementioned SLPs vide order dated 13.4.2016.

7. He argued that the respondent was appointed on ad hoc basis on 2.12.1983, her services were regularised on 3.10.1988, but she had filed the writ petition in the year 2015. Thus, the same being highly belated was liable to be dismissed on that score alone. He stated that between her appointment and filing of the petition five seniority lists were issued showing the seniority positions as on 4.12.1987, 1.1.1993, 1.9.1997, 1.1.2004 and 1.12.2009. In all these seniority lists, the respondent had been shown junior and even below the candidates of the colleges taken over by the State. But at no stage the respondent raised any issue regarding these seniority lists. Representation claiming the benefit of ad hoc service for seniority was filed only on 9.10.2012 followed by another representation on 20.6.2014. He further argued that as the respondent has not impleaded the persons, who would be affected on account of re-casting of seniority, the writ petition was liable to be dismissed on this ground as well.

8. Disputing the finding of the Ld. Single Judge in **Dr. Surender Kumar's** case (supra), he stated that it was wrongly held therein that there is no specific requirement in Rule 11 of the Haryana Education (College

Cadre) Group B Service Rules, 1986 (for short “the 1986 Rules”) of a regular service for the determination of seniority. In this context, reliance has been placed on a decision dated 25.3.2004 of a Division Bench of this court in CWP No.8673 of 2003 titled **Dr. Suman Gulab vs. State of Haryana and others**. He has further relied on **State of Haryana vs. Haryana Veterinary & AHTS Association and Anr., 2000(4) SCT 664, Santosh Kumar and Ors. vs. G.R.Chawla and Ors., 2003(10) SCC 513** and **State of Punjab and Anr. vs. Ashwani Kumar and Ors., 2008(12) SCC 572** to contend that the period of ad hoc service cannot be counted for determination of seniority and that only regular service of the employee is to be counted towards seniority.

9. On the other hand, Ld. Counsel for the respondent has argued that the case is squarely covered by the decision in **Dr. Surender Kumar's** case (supra). He has argued that though the appointment was termed as ad hoc, it was in fact regular service as the proper procedure for selection as per the Punjab Educational Service Rules 1937 (for short “the 1937 Rules”) applicable at the time of her selection, had been followed.

10. We have heard Ld. Counsel for the parties and perused the record.

11. In **Dr. Surender Kumar's** case (supra) this Court considered the question in the case of identically situated persons, and concluded that as proper procedure contemplated by the 1937 Rules had been followed, the appointments could not be treated as fortuitous appointments dis-entitling them to the benefit of ad hoc service for seniority. Reliance was placed on decisions of Hon'ble the Supreme Court in **Direct Recruit Class II Engg.**

SCC 715 and **Rudra Kumar Sain and others v. Union of India and others, (2000) 8 SCC 25**, wherein, it was held that when an incumbent is appointed to a post according to the rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

12. It was further noted that even in Rule 11 of the 1986 Rules dealing with seniority there was no specific requirement of regular service and it was provided that the seniority shall be determined by length of continuous service. Accordingly, it was directed that ad hoc service rendered by the petitioners therein be counted towards seniority. Though the LPA filed by the State against this decision was dismissed, but in the SLP leave has been granted and contempt proceedings were directed to remain stayed.

13. In view of various decisions of Hon'ble the Supreme Court some of which have been referred to by the Ld. Single Judge in **Dr. Surender Kumar's** case (supra) as also in the decision in the LPA dated 13.10.2011, there can be no dispute with the proposition that where a person who possesses the requisite qualifications for the post had been appointed as per the applicable rules by the competent authority by following proper procedure and against substantive post and continues in the post for a fairly long time, then such an appointment cannot be treated to be ad hoc or stop gap and his entire service is liable to be counted for purposes of seniority.

14. This was affirmed recently by Hon'ble the Supreme Court in **Minor Irrigation Deptt. v. Narendra Kumar Tripathi, (2015) 11 SCC 80**, by holding that there is no doubt about the above principle. Question in each case is of the application:-

“14. The above principles are undisputed. Question of their application has arisen from time to time in different fact situations. Question to be decided in each case was whether the ad hoc appointment was stopgap and fortuitous as against being to an existing vacancy which continued and initial appointment was made after due selection without violating the rules, if any.”

15. The decisions relied by the Ld. State Counsel are not cases where there was any finding that the initial appointments were made by the competent authority strictly in accordance with the Rules. But we need not go into this question for there are other reasons which impel us to disagree with the view of the Ld. Single Judge allowing the writ petition namely delay and non impleadment of the affected persons.

16. The respondent was appointed on ad hoc basis on 2.12.1983, her services were regularised on 3.10.1988. She has been granted the benefit of ad hoc service for the purpose of higher standard scale, senior scale, selection grade, but the said benefit was not granted for the purpose of seniority. For claiming the benefit of seniority, she filed the writ petition in the year 2015. Before that five seniority lists had been issued depicting the seniority positions as on 4.12.1987, 1.1.1993, 1.9.1997, 1.1.2004 and 1.12.2009. Even though, in all these seniority lists, the respondent had been shown junior and even below the candidates of the colleges taken over by the State, she did not raise any issue regarding her seniority. Representation claiming the benefit of ad hoc service for seniority was filed only on 9.10.2012 followed by another representation on 20.6.2014. Thus, there has been inordinate delay in laying claim to the benefit of her ad hoc service for seniority, which if permitted at this stage, will unsettle the seniority settled decades back. It has been repeatedly held by the Supreme Court that once

the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained.

17. In **Shiba Shankar Mohapatra v. State of Orissa, (2010) 12 SCC 471**, Hon'ble the Supreme Court reviewed the case law on the subject as under :

“18. The question of entertaining the petition disputing the long-standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in Ramchandra Shankar Deodhar v. State of Maharashtra considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in Tilokchand Motichand v. H.B. Munshi, wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under: (Tilokchand case, SCC p. 115, para 7)

“7. ... The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.”

19. This Court in Ramchandra Shankar Deodhar case also placed reliance upon its earlier judgment of the Constitution Bench in Rabindranath Bose v. Union of India, wherein it has been observed as under: (Rabindranath Bose case, SCC p. 97, para 33)

“33. ... It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.”

20. In R.S. Makashi v. I.M. Menon this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in State of M.P. v. Bhailal Bhai, wherein it has been observed that the maximum period fixed by

the legislature as the time within which the relief by a suit in a civil court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured. The Court observed as under: (R.S. Makashi case, SCC pp. 398-400, paras 28 & 30)

“28. ... ‘33. ... we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. ...’

** * **

30. ... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the court with the challenge against the seniority principles laid down in the Government Resolution of 1968. ... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of 22-3-1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition insofar as it related to the prayer for quashing the said Government Resolution should have been dismissed.”

21. *The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in K.R. Mudgal v. R.P. Singh. The Court held as under: (SCC pp. 532 & 536, paras 2 & 7)*

“2. ... A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. ...

** * **

7. ... Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties. ... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches.”

22. *While deciding K.R. Mudgal case, this Court placed reliance upon its earlier judgment in Malcom Lawrence Cecil D'Souza v. Union of India, wherein it had been observed as under: (Cecil D'Souza case, SCC p. 602, para 9)*

“9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

(emphasis added)

23. *In B.S. Bajwa v. State of Punjab this Court while deciding the similar issue reiterated the same view, observing as under: (SCC p. 526, para 7)*

“7. ... It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.”

(emphasis added)

24. *In Dayaram A. Gursahani v. State of Maharashtra, while reiterating the similar view this Court held that in absence of satisfactory explanation for inordinate delay of 8-9 years in questioning under Article 226 of the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained.*

25. *In P.S. Sadasivaswamy v. State of T.N. this Court considered the case where the petition was filed after a lapse of fourteen years challenging the promotion. However, this Court held that the aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. The Court observed as under: (SCC p. 154, para 2)*

“2. ... A person aggrieved by an order promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion.”

The Court further observed that it was not that there was any period of limitation for the courts to exercise their powers under Article 226 nor was it that there could never be a case where the courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claim and try to unsettle settled matters.

26. A similar view has been reiterated by this Court in Sudama Devi v. Commr.; State of U.P. v. Raj Bahadur Singh and Northern Indian Glass Industries v. Jaswant Singh.

27. In Dinkar Anna Patil v. State of Maharashtra this Court held that delay and laches in challenging the seniority is always fatal, but in case the party satisfies the Court regarding delay, the case may be considered.

28. In K.A. Abdul Majeed v. State of Kerala this Court held that seniority assigned to any employee could not be challenged after a lapse of seven years on the ground that his initial appointment had been irregular, though even on merit it was found that seniority of the petitioner therein had correctly been fixed.

29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (Vide Aflatoon v. Lt. Governor of Delhi; State of Mysore v. V.K. Kangan; Municipal Council, Ahmednagar v. Shah Hyder Beig; Inder Jit Gupta v. Union of India; Shiv Dass v. Union of India; A.P. SRTC v. N. Satyanarayana and City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla).

30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”

impleadment of the persons who would be affected by the grant of relief to the respondent.

19. The necessity of impleading persons who would be adversely affected by the grant of relief to the respondent, even if no relief qua them had been prayed for, has been stressed by the Supreme Court on the principle that no order can be passed behind the back of the person that shall adversely affect him.

20. In **State of Rajasthan v. Ucchab Lal Chhanwal, (2014) 1 SCC 144** it was held as under:

“10. Though some argument was canvassed with regard to the relevance of the punishment of censure, yet the said aspect need not be adverted to. On a perusal of the writ petition, the order of the writ court and that of the Division Bench we notice that there were specific averments that juniors placed at Serial Numbers 9, 10 and 11 in the gradation list had been promoted vide order dated 20-8-1997. They have not been arrayed as parties. Needless to emphasise, in the event the order passed by the High Court is affirmed, the persons who are seniors to the respondents in the promotional cadre are bound to become junior regard being had to their seniority position in the feeder cadre. It is well settled in law that no order can be passed behind the back of the person that shall adversely affect him.

11. In this context, we may refer with profit to the decision in Vijay Kumar Kaul v. Union of India wherein it has been held thus: (SCC p. 619, para 36)

“36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.”

12. After so stating this Court referred to the decision in Indu Shekhar Singh v. State of U.P. wherein it has been held thus: (Vijay Kumar Kaul case, SCC p. 620, paras 37-38)

“37. ... ‘56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of

inter se seniority. (Indu Shekhar Singh case, SCC p. 151, para 56)'

38. In Public Service Commission v. Mamta Bisht this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: (SCC pp. 207-08, paras 9-10)

'9. ... in Udit Narain Singh Malpaharia v. Board of Revenue wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called "CPC") provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and Sarguja Transport Service v. STAT.)

10. In Prabodh Verma v. State of U.P. and Tridip Kumar Dingal v. State of W.B., it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.'"

13. In J.S. Yadav v. State of U.P. it has been held as follows: (SCC p. 583, para 31)

"31. No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice."

14. In the case at hand the dispute relates to promotion which will have impact on inter se seniority. The learned counsel for the respondents assiduously endeavoured to convince us that they are agitating the grievance with regard to their promotion and it has nothing to do with the persons junior to them who had been promoted. Despite the indefatigable effort, we are not persuaded to accept the aforesaid proponent, for once the respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties to the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice. On this singular ground the directions issued by the writ court as well as the Division Bench pertaining to grant of promotion to the

respondents are quashed. To elaborate, as far as the conclusion of the High Court relating to the circular is concerned, it is unexceptionable and we concur with the same.”

21. For the aforesaid reasons, this appeal is allowed. The judgment and order of the Ld. Single Judge dated October 21, 2015 is set aside. The writ petition is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

December 09, 2016

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No