

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1743 of 2016 (O&M)

Date of Decision: 14.09.2016

Harpal Singh & Ors.

... Appellants

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

1. Whether Speaking?	Yes
2. Whether Reportable?	Yes
3. Whether Reporters of local papers may be allowed to see the judgment?	Yes
4. To be referred to the Reporters or not?	Yes / No
5. Whether the judgment should be reported in the Digest?	Yes / No

Present: Mr. Anurag Goyal, Advocate for the appellants

Mr. Anilendra Pandey, Advocate for

Mr. CS Bagri, ADocate for respondent No.2-caveator

SURYA KANT, J.

(1) This Intra-Court Appeal is directed against the orders dated 06.10.2015 whereby learned Single Judge allowed the writ petition filed by respondents No.3&4-caveators and quashed the seniority list vide which benefit of *ad hoc* service towards seniority was granted to the appellants. A further direction to re-cast the seniority as per the law laid down by the Supreme Court in **State of Haryana & Ors. vs. Vijay Singh & Ors. (2012) 8 SCC 633** has also been issued to the official respondents. The order dated 01.06.2016 whereby learned Single Judge has dismissed the appellant's application seeking recall of the order dated 06.10.2015, is also under challenge.

(2) Though the appeal could be dismissed summarily as the seniority dispute between the appellants and the private respondents stands settled in terms of **Vijay Singh & Ors.** case (supra) which unequivocally

holds that the appellants are not entitled to the benefit of *ad hoc* service

towards seniority as their appointments were made without following the procedure prescribed under the Punjab Educational Service Class III School Cadre Rules, 1955 Rules (as applicable to the State of Haryana), nevertheless, we are inclined to make a brief reference to the facts and the relevant case-law, for there are numerous brief orders passed by different Hon'ble Single Benches granting the benefit of *ad hoc* service towards seniority without making any attempt to discuss the statutory rules, if any, governing the service conditions, and also without hearing hundreds of employees whose seniority is suddenly affected behind their back.

(3) The private respondents-caveator were appointed as Teachers on regular basis on February, 2002 and March, 2003, respectively.

(4) A batch of Teachers who were initially appointed on *ad hoc* basis and whose services were regularized under a Government policy w.e.f. 01.10.2003, approached this Court through CWP No.2409 of 2008 (Vijay Singh & Ors. vs. State of Haryana & Ors.) claiming the benefit of their *ad hoc* service towards seniority and consequential consideration for promotion to the post of Lecturers. A Division Bench of this Court unfortunately, even without impleading the persons whose seniority was bound to be affected, accepted their claim vide order dated 18.12.2008 and held that :-

“all the petitioners shall be entitled to treat the ad hoc service rendered by them in the respective posts held by them in which they were subsequently regularized for the purpose of their seniority, which, in turn, shall be the basis of being considered for promotion to the post of Lecturers.”

(5) Yet another writ petition i.e. **CWP No.20664 of 2008 (Surinder Kumar & Ors. vs. State of Haryana & Ors.)** claiming similar relief was also allowed in the same terms.

(6) The State of Haryana challenged both the decisions before Hon'ble Supreme Court but meanwhile under the threat of contempt proceedings, the High Court orders were implemented and vide memo dated 23.07.2012 (P2) the benefit of *ad hoc* service towards seniority of the writ-petitioners was granted. This was, however, done subject to three conditions including the following:-

“3. The seniority of the masters/mistresses would be further subject to orders of Hon'ble Supreme Court that may be passed in Special Leave Petition No.29274 of 2009 titled as State of Haryana and others V/s Vijay Singh and others.”

(7) It is also not in dispute that SLP in the case of **Surinder Kumar & Ors.** was dismissed by Hon'ble Supreme court on the ground of delay alone leaving the question of law open, to be decided in another case. Thereafter several SLPs were taken together along with **Vijay Singh's** case and the same were allowed by Hon'ble Supreme Court vide judgment reported as **(2012) 8 SCC 633** laying down that *“therefore, the respondents, who were appointed as Masters in different subjects, Physical Training Instructor and Hindi Teacher on purely ad hoc basis without following the procedure prescribed under the 1955 Rules are not entitled to have their seniority fixed on the basis of total length of service. As a corollary to this, we hold that the direction given by the High Court for refixation of the respondents' seniority by counting the ad hoc service cannot be approved.”*

(8) Since the appellants' seniority was re-fixed granting them the benefit of *ad hoc* service subject to final outcome of pending SLP which stood allowed by Hon'ble Supreme Court, no exception can be taken to the order passed by learned Single Judge who has set aside the seniority based upon *ad hoc* service and has directed to reframe the same in accordance with the Rules. There is thus no merit in this appeal.

(9) Having held so, we are at pains to find out that for want of proper assistance, some of the learned Single Judges, have summarily granted the benefit of *ad hoc* service in so many cases of Education Department alone. None of these orders, with greatest respect, refers to the statutory Rules, relevant Government instructions or the binding *ratio decidendi* of a catena of decisions of the Apex Court, some of which are briefly noticed below.

(10) In **Excise Commr. vs. V.Sreekanta (1993) Suppl. (3) SCC 53**, the respondent was appointed through Employment Exchange on *ad hoc* basis and after granting some extensions, his services were regularized under the Special Rules of Recruitment in 1970. He was held not entitled to claim seniority from the date of his initial appointment on *ad hoc* basis but only “*from the date of his subsequent appointment or regularization under the said Special Rules of Recruitment, 1990*”. **Keshav Chandra Joshi vs. Union of India, (1992) Suppl. (1) SCC 272** also reiterate these principles.

(11) In **Y.H.Pawar vs. State of Karnataka & Ors. (1996) 10 SCC 444**, the appellant was appointed on *ad hoc* basis on 22.03.1960 through Employment Exchange. There were no Recruitment Rules at that time, which came into force subsequently in that very year. His services were regularized on 06.05.1968. He was assigned seniority from the date of

regular appointment only. He claimed the benefit of *ad hoc* service towards seniority and as is done in most of the cases, reliance was placed on the Constitution Bench judgment in **Direct Recruit Class-II Engineering Officers Association vs. State of Maharashtra (1990) 2 SCC 715**. Even though the Recruitment Rules had come into force subsequent to the *ad hoc* appointment, yet the Hon'ble Supreme Court rejected the appellant's claim for the benefit of *ad hoc* service towards seniority.

(12) **Santosh Kumar & Ors. vs. G.R. Chawla & Ors., (2003) 10 SCC 513**, is a case of *inter-se* seniority dispute between the *ad hoc* appointees whose services were regularized subsequently and the direct recruits. The appellants were appointed as Drug Inspectors on *ad hoc* basis, while the others were selected by the Public Service Commission as direct recruits. The State Government regularized services of the *ad hoc* appointees by framing UP Regularisation of Ad hoc Appointment Rules, 1979. The Supreme Court on interpretation of Rule 7 of these Rules held that a person appointed under these Rules shall be entitled to seniority only from the date of appointment after selection in accordance with these Rules.

(13) In **Secretary, Minor Irrigation Department & Ors. vs. Narendra Kumar Tripathi (2015) 11 SCC 80**, the Hon'ble Supreme Court after reiterating the settled law that “...*ad hoc* service, when appointment was against rules and purely as stop gap arrangement, cannot be counted for the purposes of seniority”, distinguished this principle for the reason that the respondent was found entitled to the benefit of *ad hoc* service towards seniority in view of express provision under the Service Rules.

(14) While reversing the decision of this Court in **Vijay Singh's** case (supra), the Hon'ble Supreme Court considered series of decisions relied

upon by *ad hoc* appointees including the Constitution Bench judgment in **Direct Recruit Class-II** case (supra) and has authoritatively ruled that under the 1955 Rules or under the Haryana State Education School Cadre (Group C) Service Rules, 1998, the benefit of *ad hoc* service towards seniority is impermissible. It held that (i) under the 1955 as well as 1998 Service Rules, the District Education Officer who made the *ad hoc* appointments was not the competent authority to make appointments on regular basis; (ii) Rule 9 of 1955 Rules or Rule 11 of 1998 Rules provide determination of seniority by the length of continuous service on any post and the *ad hoc* appointment was not a service rendered on a post under the Rules; and (iii) the decisions relied upon by the High Court were totally distinguishable and none of such cited decisions could be read as laying down a proposition of law that a person who is appointed purely on *ad hoc* basis for a fixed period by an authority other than the one who is competent to make regular appointment... and when such appointment is not made by specified recruiting agency is entitled to have *ad hoc* service counted for the purpose of fixation of seniority.

(15) A brief reference to the above-cited case-law should leave no room to doubt that:-

- (a) Where the *ad hoc* appointment was made by an authority not authorized to make such appointment under the Rules, such *ad hoc* service cannot be counted for fixation of the seniority;
- (b) Even if the *ad hoc* appointment is made by the competent authority but if such appointment has not been made on the recommendations of the recruiting agency prescribed under the

Rules, the benefit of *ad hoc* service cannot be granted towards seniority;

- (c) Save where the Statutory Rules expressly grants the benefit of *ad hoc* service towards seniority after appointment on regular basis, the seniority has to be fixed as per the provisions of the Rules;
- (d) Where *ad hoc* appointee has been subsequently selected for regular appointment by the Public Service Commission/Staff Selection Commission/Board, such appointee cannot seek benefit of *ad hoc* service towards seniority except in category (c) above and in such a case his seniority has to be fixed as per his placement in the merit list. In other words, he cannot march over the candidates who are higher in merit merely on the strength of previous *ad hoc* service;
- (e) Where *ad hoc* services are regularized under a Government policy, the conditions contained in such notification shall apply in full force. State of Haryana has regularized services of *ad hoc* employees through various policy-decisions notified from time to time and each such policy specify the date when the *ad hoc* appointee is brought on regular establishment. The service rendered by such *ad hoc* appointee before regularization therefore cannot count for seniority though it may be countable for other incidental service benefits like pension etc.

- (16) We are also constrained to observe that no writ petition claiming benefit of *ad hoc* service towards seniority can be entertained and is liable to be dismissed outrightly if all those employees whose seniority is

likely to be affected are not impleaded as party respondents. There is not one but several such orders cited before us where none of the affected person was a party respondent. The Hon'ble Supreme Court in **Vijay Kumar Kaul & Ors. vs. Union of India & Ors. (2012) 7 SCC 610** has emphatically reiterated the settled position of law that the claim for re-determination of seniority cannot be entertained when it is likely to jeopardize the interest of those who have not been impleaded parties to the proceedings.

(17) For the reasons afore-stated, the instant appeal must fail and is dismissed.

(Surya Kant)
Judge

14.09.2016
vishal shonkar

(Sudip Ahluwalia)
Judge