

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No.2278 of 2016 (O&M)

Date of Decision: November 22, 2016

Indian Drugs & Pharmaceuticals Ltd. and anotherAppellants
versus
Shri Deepak Thukral and anotherRespondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDIP AHLUWALIA.**

Present: Mr.Subhash Ahuja, Advocate, for the appellants.

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1. Whether Reporters of Local papers 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?

Surya Kant, J. (Oral)

The issue that arose for consideration before the learned Single Judge was whether the service rendered by the respondent on *ad hoc* basis followed by regular appointment with one day's break, was required to be taken into account while determining the amount of compensation under the VRS Scheme?

[2] The respondent was appointed as Accounts Clerk-cum-typist in the appellant-organization on 28.05.1975 (P-1). Except that the tenure of appointment was restricted to six months, all other terms and conditions of appointment were akin to a regular appointment. The appellant-organization continued to extend the appointment of respondent. One of such extended term expired on 28.05.1975. He was then asked to request in writing for further extension for which he submitted an application dated 29.05.1975 (P-7). On that very day, he was again appointed on *ad hoc* basis for six months vide order Annexure P-8. The said appointment was to expire in

November, 1975. However, even before expiry of that appointment, the respondent was selected and offered appointment on regular basis vide appointment letter dated 15.07.1975 (P-6).

[3] The appellant-organization floated a VRS Scheme in the year 2002 under which the respondent opted for voluntary retirement. He was relieved on 30.09.2004. While settling the claim of respondent under the VRS Scheme, only the regular service rendered w.e.f. 15.07.1975 to 30.09.2004 was taken into account. The previous *adhoc* service w.e.f. 28.05.1973 till 14.07.1975 was not taken into account while determining such claims, for which the respondent approached this Court.

[4] The only plea taken by the appellant-organization was that there was a break of one day on 29.05.1975, hence it not being a case of continuous service, the respondent was not entitled to the benefit of previous service towards VRS Scheme.

[5] Learned Single Judge vide order under appeal held that one day's break was notional and is liable to be ignored.

[6] We have heard learned counsel for the appellant at a considerable length and gone through the record.

[7] It is vehemently contended that there are thousands of such like employees working in the Organization and if this order is allowed to sustain, it will cause sever financial implications in the organization. The plea of delay and laches, estoppel and acquiescence are also raised against the respondent.

[8] In our considered view, there is no merit in either of the contentions. The documents on record reveal that the appellant-organization continued to extend *adhoc* appointment of the respondent for repeated terms

until he was selected and appointed on regular basis. One day's break, if any, caused in *ad hoc* service was a result of sort of unfair practice prevailing in the appellant-organization for which the respondent cannot be penalized.

[9] The VRS Scheme nowhere suggests that one day's break, not attributable to the employee, would deprive him from the resultant benefits of continuous service. The relevant clause of the VRS Scheme to this effect reads as follows:-

“... XV. VRS will be applicable to the permanent employees, badli workers, work charged establishment and temporary workers but not to the casual workers. It is clarified that such workers, if made permanent without any break in service before a regular employee from the routs of badli workers, work charged established and temporary workers shall be entitled to claim the service period for ex-gratia calculation as in the case of calculation of gratuity....”

[10] The above reproduced provision of VRS Scheme clearly provides that the temporary service, if made permanent without any break in service, is also required to be taken into account for the calculation of gratuity or other ex-gratia benefits. The claim of the respondent squarely falls within the afore-said clause as he was appointed on permanent basis without any break while he was working on *ad hoc* basis.

[11] No plea of estoppel or acquiescence can be entertained against the respondent when he is entitled to the benefit under the Scheme and in accordance with law. Similarly, in the case of retiral benefits, the plea of delay and laches has to be rejected, especially when learned Single Judge has awarded only simple interest @9% per annum.

[12] No case to interfere with the order under appeal is made out.

[13] Dismissed.

[SURYA KANT]
JUDGE

November 22, 2016
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[SUDIP AHLUWALIA]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No