

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

105+207

**CWP-19618-2013 (O&M)
Date of decision:09.05.2017**

Hans Raj

....Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Praveen Gupta, Advocate for the petitioners.

Mr. R.K.Doon, AAG, Haryana.

P.B. Bajanthri, J. (Oral)

CM-6985-CWP-2017

This is an application for placing on record Annexures P5 to P7 and for granting exemption from filing certified as well as permission for placing on record true typed/photostat copies. Heard. In view of the reasons mentioned in the application and affidavit, same is allowed.

Main case.

Petitioners have sought for direction to the respondents to extend the benefit of ad hoc service rendered during the intervening period from 1984-1985 to 1988 for the purpose of seniority and other service benefits.

2. Petitioners were appointed as Junior Engineers on ad hoc basis. Thereafter, their services were regularized in the year 1988. Learned

counsel for the petitioners vehemently contended that petitioners' initial appointment itself is required to be treated as regular for the reasons that the petitioners were subjected to regular recruitment process by inviting applications through employment exchange etc. Only while issuing order of appointment they have shown that the petitioners appointment was ad hoc. In support of his contention learned counsel for the petitioner relied on the following decisions:-

- (i) 1990(2) SCC 715 titled as ***Direct Recruit Class II Engineering Officers' Association versus State of Maharashtra and others.***
- (ii) 1993(3) SCC 371 titled as ***State of W.B. and others versus Aghore Nath Dey and others.***
- (iii) 2008(4) SCT 427 titled as ***Hanumant Singh and others versus State of Haryana and others.***
- (iv) Unreported decision in LPA No. 886 of 2011 decided on 13.10.2011 titled as ***State of Haryana and others versus Surindra Kumar Mishra and others.***

3. It was submitted that in all the above decisions principle laid down by Supreme Court and this court that ad hoc appointment if it is in accordance with the rules and if such persons are appointed against sanctioned post after regularization of their services they are entitled to count ad hoc service for the purpose of service benefits as if their appointment is regular. Merely using the term of ad hoc in the order of appointment does not take away the service benefits of the petitioners. Therefore, the petitioners are entitled for counting ad hoc service rendered between 1984-1985 to 1988 for the purpose of seniority and other benefits.

It was further contended that Rule 11 of the Punjab Public Works Department (Buildings and Roads Branch) Sectional Officers (Engineering) Service Class III Rules, 1964 (for short “Rules, 1964”) even though it do not provide for counting of ad hoc service but still it is to be read that ad hoc service is required to be counted for the purpose of seniority. Hence, petitioners are entitled for right to count the service rendered on ad hoc post held by them.

4. Heard learned counsel for the parties.

5. Question for consideration in the present petition is whether the ad hoc service rendered by the petitioners in the cadre of Junior Engineer during the period from 1984-1985 to 1988 (till date of regularization) could be counted for seniority in the cadre of Junior Engineer or not? Undisputedly, the petitioners were appointed on ad hoc basis to the post of Junior Engineer. Even the order of appointment reveals that petitioners' appointment was on ad hoc. Therefore, the relevant provision for the purpose of determining seniority of an employee is required to be examined. Relevant provision is Rule 11 of the Rules, 1964 which reads as under:

“11. Seniority- (1) Except as provided in sub-rule (2) the seniority of the members of the Service appointed after the commencement of these rules shall be *determined by the dates of their continuous appointment in the service irrespective of their date of joining:*

Provided that where the period of probation of an official has been extended, the order of appointment shall be deemed to have been issued on a

date determined by adding to the original date the extended period of probation.

Provided that in case an official does not join his appointment within six months of the date of order of appointment, his seniority shall be determined by the Chief Engineer on an ad hoc basis after taking into consideration all the circumstances of the case.

(2) In the case of an official appointed by transfer, while normally he would be placed junior to the official recruited by direct appointment or by promotion before his transfer, the Chief Engineer may, in the interest of the public service and taking into consideration the circumstances of the case, fix his seniority on an adhoc basis;

Provided that the seniority thus fixed shall, in no case, be more favourable than the seniority determined after allowing him credit for the period of service rendered by him in a previous appointment or on a post the duties of which, in the opinion of the Chief Engineer are of equivalent or greater responsibility. The decision of the Chief Engineer on this point shall be final;

Provided further that the provision of first proviso to sub-rule (1) shall apply to such an official if his period of probation is extended.”

6. Perusal of Rule 11 nowhere it says that ad hoc service is required to be counted for the purpose of seniority. Therefore, contention of the petitioner that Rule 11 is required to be read that ad hoc service is required to be taken into consideration for the purpose of determining seniority having regard to the fact that the petitioners' selection and appointment is in

terms of the regular recruitment of rules except to the extent that their appointment is on ad hoc basis. The said contention is not tenable for the reasons that initial notification for filling up of the post of Junior Engineer is on ad hoc basis. Therefore, the petitioners are not entitled for counting ad hoc service for the purpose of seniority. If the initial notification for selection and appointment is for regular appointment then the petitioners are entitled seniority under Rule 11. Nature of ad hoc appointment cannot be converted into regular appointment for the reasons that there would be violation of Articles 14 and 16 of the Constitution that similarly situated persons who are eligible would be denied participation in the process of selection. Since the nature of appointment is on ad hoc basis therefore, eligible candidates who may be similarly situated persons who are working elsewhere on ad hoc basis would not be given benefit of regular appointment. Therefore, any benefit given to ad hoc employee would be in violation of Articles 14 and 16 of the Constitution. Insofar as reliance on the decisions of the Supreme Court as well as this court and its perusal it is evident that none of the decision relates to interpretation of Rule 11 of the Rules, 1964. Therefore, for the purpose of extending any ad hoc service towards seniority relevant provision is Rule 11 of the Rules, 1964 which are made under Article 309 of the Constitution, the same cannot be ignored unless and until Rule 11 is challenged to the extent in not counting ad hoc service for the purpose of determining seniority. Therefore, the cited decisions are distinguishable for the reasons that Rule 11 of the Rules, 1964 has not been interpreted so as to extend the benefit of ad hoc service

towards seniority.

7. Court cannot lay down any other seniority criteria when it is occupied by field of law. No question of seniority arises till a person is appointed substantively to a cadre post under the rules. In the present case petitioner was appointed substantively to the cadre of Junior Engineer only in the year 1988 by regularization mode of appointment. Therefore, service rendered during the period from 1985 to 1988 is not substantive appointment. There is a differentiation of initial ad hoc appointment and subsequent regularization with prospective date. Without considering the claims of eligible persons and without indicating that initial ad hoc appointment followed by regularization and extending service benefits of seniority would be arbitrary. To equate such an appointee with a 'regular' appointee would be to treat two unequals as equal, which would be clear violation of Article 14 of the Constitution.

8. Supreme Court in the case of ***Nair Service Society versus Dr. T. Beermasthan*** reported in (2009)5 SCC 545 in para 48 held as under:-

48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block."

9. Supreme Court in the aforesaid decision held that while deciding a case straightaway any decision cannot be taken into consideration without looking into the relevant statutory rules. Here statutory Rule 11 of the Rules, 1964 do not provide for counting of ad hoc services and Rule 11 governs fixation of seniority of the employees like petitioner in the case cited decisions (supra) are distinguishable. Having regard to the absence of provisions for ad hoc service to be counted for determining seniority. Thus, petitioner has not made out a case for counting of ad hoc service towards fixation of seniority in the cadre of Junior Engineer, since Rule 11 of 1964 Rules do not provide.

10. Accordingly, CWP stands dismissed.

09.05.2017

pooja saini

(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No