

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

Date of decision: 07.08.2018

CWP No.9857 of 2009

Buta Singh & others ...Petitioners

Vs.

State of Haryana & others ...Respondents

CWP No.5615 of 2016

Jang Bahadur & others ...Petitioners

Vs.

State of Haryana & others ...Respondents

CWP No.8341 of 2016

Harish Kumar & others ...Petitioners

Vs.

State of Haryana & others ...Respondents

CWP No.8690 of 2016

Om Parkash & others ...Petitioners

Vs.

State of Haryana & others ...Respondents

CWP No.9633 of 2016

Ram Niwas & others ...Petitioners

Vs.

State of Haryana & others ...Respondents

CWP No.9857 of 2009 &
other connected cases

CWP No.16126 of 2017

Girdhari Lal & others

...Petitioners

Vs.

State of Haryana & others

...Respondents

CWP No.12000 of 2018

Satyawan Sharma & others

...Petitioners

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Alka Chatrath, Advocate,
for the petitioners in CWP Nos.9857 of 2009, 8341 of 2016 &
9633 of 2016.

Mr. Anil Kumar Sharma and Mr. Lalit Rishi, Advocates,
for the petitioners in CWP No.16126 of 2017 &
CWP No.12000 of 2018.

Mr. Jasbir Mor, Advocate,
for the petitioner in CWP No.5615 of 2016.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

This order will dispose of the abovementioned writ petitions, as common questions of law and facts are involved in them, which can conveniently be decided by a common order.

The mainstay of the petitioners to claim seniority from the date of contractual appointment in 1997 limited to a period of 89 days on a fixed consolidated salary of ₹5000/- per month are the decisions of the Division Bench of this Court in Hanumant Singh & others Vs. State of Haryana & others, 2008 (4) SCT 427 [CWP No.7862 of 2006 decided on 04.07.2008];

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Vijay Singh & others Vs. State of Haryana & others [CWP No.2409 of 2008 decided on 18.12.2008] and Surender Kumar Sharma & others Vs. State of Haryana & others [CWP No.20664 of 2008 decided on 18.12.2008]. The three cases were decided in the year 2008.

Against the decision of the Division Bench in *Vijay Singh's* case, the State of Haryana approached the Supreme Court by way of special leave to appeal which was converted to Civil Appeal No.5947 of 2012 [State of Haryana & others Vs. Vijay Singh & others, (2012) 8 SCC 633]. The Supreme Court applied the previous law especially citing, amongst a host of previous rulings in State of Haryana Vs. Haryana Veterinary & AHTS Association, (2000) 8 SCC 4 and State of West Bengal Vs. Aghore Nath Dey, (1993) 3 SCC 371 both explaining and harmonizing directions (A) & (B) in Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra & others, (1990) 2 SCC 715. The Supreme Court in *Vijay Singh* case have categorically held that ad hoc service pure and simple will not count towards seniority in a case involving the Punjab Educational Service, Class III, School Cadre Rules, 1955, as replaced by Haryana State Education School Cadre (Group C) Service Rules, 1998. The special reference to Rule 12 therein, which is the governing rule of seniority in the case of the present petitioners, the Supreme Court held while dealing with the similarly situated persons of the same cadre of teachers that they were appointed as Masters in different subjects on purely ad hoc basis for a fixed period by an authority other than the one who is competent to make regular appointment to the service and that too without following the procedure prescribed under the 1955 Rules.

In the present set of cases, the names of the petitioners were sponsored by the employment exchanges and a Departmental Selection Committee was constituted to make the appointments by way of interview. These appointments were made after an advertisement was issued in a newspaper (Jansatta) on 19.08.1997. The applications were invited for appointment to the posts of Lecturers in 10 different subjects on 89 days contract basis. The advertisement was issued by the Director, Secondary Education, Haryana. That selection and appointment process does not meet the standards of Article 16(1) of the Constitution of India of offering equal opportunity to all eligible candidates. When applications were invited for appointments on 89 days contract basis, the best talent may not have come forward to make a career in Government service and, therefore, it is not enough to say it was sufficient compliance of the equal opportunity clause in Article 16 (1) that the names of the petitioners were sponsored by the employment exchange(s). One does not even know, whether the names of the petitioners were sponsored seriatim in the order of entries in the register of the respective employment exchanges or was the queue jumped.

In Excise Superintendent, Malkapatnam, Krishna District, A.P vs. K.B.. Visweshwara Rao & Others, (1996) 6 SCC 216, the Supreme Court has held that in the matter of public appointments it is crucial to publish public advertisements in leading newspapers having wide circulation, apart from calling names from the employment exchange(s) as also display on official notice boards, announcement on radio, television and employment news bulletins to which may be added the electronic media and publication in official websites for information to one and all who might wish to apply. The employment exchange is only one source of recruitment through the

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (Section 4 (1). Hence, the appointments of the petitioners while serving on ad hoc basis would not qualify for seniority.

During the course of hearing, Ms. Alka Chatrath has produced an order of the Supreme Court in State of Haryana & others Vs. Rajender Kumar & others [Civil Appeal No.321 of 2015 decided on 10.05.2018], whereby the Supreme Court dismissed several appeals finding no case for interference made out. The order cannot be read as affirmance of the judgment of this Court. Besides, in *Vijay Singh's* case, the Supreme Court has pointedly dealt with *Hanumant Singh's* case and disapproved its ratio.

On the other hand, Mr. Rathee for the State has brought to the notice of this Court a decision of the Single Judge in CWP No.5478 of 2013 titled 'Rajesh & another Vs. State of Haryana & another' decided on 06.10.2015. It was a case in which Rajesh etc. had impugned the seniority list determined by the respondent department on the basis of orders passed in *Surender Kumar Sharma* and *Vijay Singh* cases. The learned Single Judge has noticed that the special leave petition in *Surender Kumar's* case was dismissed by the Supreme Court on 19.11.2010 on the ground of delay alone, but the question of law was kept open to be decided in another case. Nonetheless, in the subsequent judgment delivered in Vijay Singh's case, the Supreme Court observed as follows:

“30. None of the aforesaid judgments can be read as laying down a proposition of law that a person who is appointed on purely ad hoc basis for a fixed period by an authority other than the one who is competent to make regular appointment to the service and such appointment is not made by the specified recruiting agency is entitled to have his ad hoc service counted for the purpose of fixation of seniority.

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."

It is pointed out by Mr. Lalit Rishi appearing for the petitioner(s) in CWP No.16126 of 2017 & CWP No.12000 of 2018 that a review application bearing R.A.No.1203 of 2011 was filed by the State of Haryana in which an order was passed by the Supreme Court on 12.07.2011 that the Civil appeals have been dismissed both on the grounds of delay and on merits.

In *Rajesh's* case, while setting aside the impugned seniority list, a direction was issued to the State of Haryana to re-frame the seniority of the petitioners as per law determined by the Supreme Court in *Vijay Singh's* case.

It may also be pointed out that in *Hanumant Singh's* case before the High Court the posts considered were of Diesel Pump Operators and the nature of the appointments is not clear from the judgment. It appears that the Bench assumed that the appointments were by following due procedure and, therefore, granted relief of clubbing ad hoc service with regular service. Right of contractual employees is far inferior to ad hoc employees. In the present case, the petitioners were admittedly contractual employees. Their services were regularized subsequently on 01.10.2003 and they were put on probation for two years. Their seniority can run on successful completion of probation from the date when their services were regularized. They can

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make no claim for seniority from 1997 till they were regularized i.e. till 01.10.2003.

Though appointment letters were issued by the Director, Secondary Education, Haryana in CWP No.9633 of 2016, as pointed out by Ms. Alka Chatrath, but it matters little who issued the appointment letters, when they were not issued by the State Government consequent upon a regular selection process compliant with the principles of equal opportunity in Article 16(1) of the Constitution. Such appointments will be hit by the principles indicated in Secretary, State of Karnataka & others Vs. Umadevi & others, (2006) 4 SCC 1 [CB].

As an upshot of the above discussion, I find no merit in these petitions and would dismiss the same. There will be no order as to costs.

07.08.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No