

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.20952 of 2015

Date of Decision:-18.07.2018

Parveen Yadav

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Amit Rao, Advocate, for
Mr.Anurag Goyal, Advocate, for the petitioner.

Mr.Kiran Pal Singh, AAG, Haryana.

RITU BAHRI, J. (ORAL)

Petitioner is seeking quashing of the impugned rejection order dated 10.05.2013 (P-9) rejecting the claim of the petitioner counting the ad hoc service for the purpose of seniority and ACP scale on flimsy ground.

The brief facts of the case are that in November, 1990, an advertisement was issued for selection and appointment of Teachers, Masters and Lecturers in various subjects by the Directorate inviting applications from eligible candidates, wherein in total selection of 5070 candidates was made and they were given appointments. The unsuccessful candidates challenged the selection on several grounds by filing a writ petition i.e. CWP No.16167 of 1991 in this Court and got the selection quashed. The State Government then filed a SLP against the above decision of the Hon'ble High Court in the Hon'ble Apex Court and the Hon'ble Apex Court vide order dated 08.10.1992 considered the selection and appointment of 5070 candidates on regular basis and further directed that the candidates

committees and merit list shall be prepared and they shall be given appointment as per their merit qua the posts which are available within next one year from the date of preparation of the merit list. A direction was given that a merit list of the candidates shall be prepared as a result of the interview category wise. The criteria for viva voce test will be the same as adopted in the earlier selection. All the existing vacancies in the cadre of JBT Teachers, Master Secondary Schools, Lecturers Secondary School, C&V Teachers and Social Study Teachers should be filled by the State Government within one month of the preparation of the merit list. The merit list shall remain alive and operative for a period of one year after the date of its preparation and all the vacancies in the above cadres which may become available during the said period of one year shall be filled only out of the said merit list.

In pursuance of the directions given by the Hon'ble Supreme Court, the Department constituted committees at the District Level and after taking interviews of the candidates as per their subject and category, merit lists were prepared and they were given appointment vis-a-vis the vacancies available during one year from the date of preparation of the merit list. After the expiry of one year and merit list, the department sent the requisition to the Haryana Staff Selection Commission in the month of March, April, 1994 for new selection. But the candidates who were not appointed, filed different writ petitions challenging the requisitions sent to the Haryana Staff Section Commission/Board for filling up the vacancies by saying that these vacancies were available with the department before the expiry of merit list and they shall be given appointment qua them as per the directions given by

Pursuant to the directions given by Hon'ble Supreme Court of India vide order dated 19.09.1996 of this Court, the merit list was prepared and published in Dainik Tribune and the vacancies, which are available within one year as per the category, be also provided in the publication. In pursuance to this, on 01.07.1997 (Annexure P-2), a list was provided in the news paper wherein the petitioner was shown at No.261 by saying that he had already been given appointment. A copy of the true extract of new items has been annexed herewith as Annexure P-2.

In the case of the petitioner, he was given appointment on ad hoc basis vide order dated 10.12.1993 (Annexure P-3) as Math Master and he was regularized after completion of 2 years of service vide order dated 26.11.1998 (Annexure P-4). The case of the petitioner is that as per order Annexure P-4, he was regularizing w.e.f. 31.01.1996 and his initial date of appointment order 10.12.1993. The petitioner made a representation dated 28.01.2013 (Annexure P-8) to respondent No.1 against the order of rejection, submitting therein different pleas alongwith procedure given in the 1955 Rules as well as the F.D. letter dated 17.12.2012 (Annexure P-12) and merit lists prepared by the department and published in the leading news paper (Annexure P-2) along with the letter of officiating appointment dated 26.11.1998 (Annexure P-4), but all in vain. The department did not even respond the same. The copy of the representation dated 13.06.2013 (Annexure P-10) against the order of rejection dated 10.05.2013 (Annexure P-9) has been annexed as Annexure P-10 and this backdrop present petition has been filed.

Learned counsel for the petitioner has argued that the initial

appointment of the petitioner on ad hoc basis and pursuant to the direction

given by the Hon'ble Supreme Court vide order dated 08.10.1992 (Annexure P-1) whereby, a direction has been give to the State/Department to constitute selection committees at the level of Directorate and District, so as to interview the candidates again, who were not selected and to prepare the merit list. After giving directions, the Department considered the selection and appointment of 5070 candidates on regular basis and further directed that the candidates who could not be selected, shall be interviewed by departmental selection committees and merit list shall be prepared and they shall be given appointment as per their merit qua the the post which are available within next one year from the date for preparation of the merit list. Thereafter, petitioner was appointed on ad hoc basis vide appointment letter dated 10.12.1993 (Annexure P-3). Learned counsel for the petitioner has referred to the list published in the Dainik Tribune on 01.07.1997 (Annexure P-2) whereby name of the petitioner was numbered at serial No.261 with marks 43.5 and it is further reflected that he has already been appointed. This was the merit list of Math master and appointment was made with respect to the advertisement vacancies available (Master Category) made from 08.10.1992 to 05.03.1994 and thereafter, his services was regularized vide order dated 26.11.1998 (Annexure P-4). Since the petitioner was regularized vide order dated 26.11.1998 (Annexure P-4) and keeping in view the merit list Annexure P-2, the services of the petitioner on ad hoc basis, cannot be rejected the benefit of ACP.

The stand taken by the respondents is that at the time of regularizing the services of the petitioner vide Annexure P-4 dated 26.11.1998 w.e.f. 01.02.1996 and as such, the service of the petitioner

He has referred to the judgment of this Court in the case of **Hanumant Singh and others vs. State of Haryana and others 2008(4) SCT 427** whereby, ad hoc/work charged service followed by regular service shall not be counted for the purposes of grant of higher pay scale/benefit of Assured Career Progression Scheme on completion of 8/18 or 10/20 years of service. The said SLPs were disposed of vide order dated 19.09.2000. In the case of **R.K.Singla Vs. State of Haryana passed in CWP No.15034 of 1993**, the writ petition was allowed granting the benefit of adhoc service, rendered by the employees for calculating total length of adhoc service, rendered by the employees for calculating total length of service for the purpose of grant of benefit of High Standard Scales. The State of Haryana preferred Special Leave Petition was allowed by the Apex Court in **Civil Appeal No.13423 of 1996 titled as State of Haryana vs. Haryana Veterinary and AHTS Association and another vide order dated 19.09.2000**. The Full Bench of this Court set aside the judgment and it was held that only regular service, rendered by the employees, shall be taken into consideration for calculating the service for grant of benefit under the instructions issued by the Government of Haryana. It has further argued that vide order dated 26.11.1998 (Annexure P-4) petitioner has accepted the date of regularization w.e.f. 01.02.1996 and after the gap of 17 years, there is no justification seeking modification of the abovesaid date. A further reference has been made to the judgment of Hon'ble Supreme Court in the case of **K.R.Mudgal Vs. R.P.Singh 1986(4) SCC 531**, whereby, 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 some

agitate the issue of seniority beyond this period, he has to explain the delay

and laches in approaching the adjudicatory forum by furnishing satisfactory explanation.

The petitioner has finally argued that it is evident from the ad hoc appointment letter dated 10.12.1993 (Annexure P-3) wherein the petitioner has been treated to belong to general category and as such he was appointed against reserve category vacant posts due to non-availability of candidates of reserved category. The merit list published in the daily "Dainik Tribune" dated 01.07.1997 (Annexure P-2) wherein the petitioner has been shown at serial number 261 mentioning there in appointment given.

After hearing counsel for the parties, this writ petitioner deserves to be allowed:

In the present case, merit was published as per Dainik Tribune dated 01.07.1997 (Annexure P-2) wherein the petitioner has been shown at serial number 261 with 43.5 marks and he was shown in general category. A direction has been given by this Court in the order passed in CWP No.6248 of 1994 whereby, 64 writ petitions were disposed of by giving direction that in pursuance to the Supreme Court of India, the merit list which is prepared, be published in Dainik Tribune and the vacancies, which are available within one year as per the category, be also provided in the publication. In pursuance to this, on 01.07.1997 (Annexure P-2), a list was provided in the news paper wherein petitioner shown at No.261 by saying that he has already been given appointment. A further reference has been made by learned counsel for the appellant to the judgment of Hon'ble Supreme Court in the case of **State of Haryana Vs. Vijay Singh** 2012 (8) SCC 633 wherein, number of judgments have been relied upon by the

Class II Engineer Officers' Association Vs. State of Maharashtra and others (supra) and the judgments of **State of West Bengal Vs. Aghore Nath (1993) 3 SCC 371**, **M.K.Shanmugan Vs. UOI (2000) 4 SCC 476**, **Rudra Kumar Sain and others Vs. Union of India and others (2000) 8 SCC 25**, **Dr.Chandra Prakash Vs. State of U.P and S.Sumyan and others Vs. Limi Niri and Others (2010) 6 SCC 791** and argued that once the ad hoc appointments of the respondents were regularized, there could be no justification to exclude their past service for the purpose of fixation of seniority.

A further reference has been made to the judgment of this Court in the bunch of cases in **Kawal Singh and others Vs. State of Punjab and others passed in CWP No.18673 of 2012 (Annexure P-11)** wherein, grievance of the petitioner is that the services rendered by them on ad hoc basis w.e.f. The date of appoint be considered for the purpose of grant of seniority and other service benefits such as proficiency step up etc. This writ petition has been allowed by this Court by observing that in any eventuality, the appointments since 1994/1995 were on ad hoc basis, the benefit of this service cannot be denied to the petitioner as it would result in the petitioners being prejudiced time and again on account of the fault of the respondents only and particularly when the appointments in 1994/95 were in accordance with accepts mode of public employment. It is settled principal of law that a person who gain employment in terms of accepted mode of public appointment cannot be deprived of the benefits of service rendered by him on an ad hoc basis for the purpose of seniority and other related service benefits. The petitioner had been in service since 1994/1995 following by regular appointment. The offer of appointment in the year 1994/1995 was

preceded by an advertisement soliciting the services of desirous candidates. Thus, the case of the petitioners would be thus squarely covered by the ratio of various judgment of the Hon'ble Supreme Court which have held that a person getting employment by following a valid procedure cannot be denied the benefits of such service tendered by him on ad hoc basis for the purpose of service benefits such as seniority etc.

In the present case also petitioner is appointed on ad hoc basis vide order dated 10.12.1993 (Annexure P-3) as Math Master and he was regularized after completion of 2 years of service vide order dated 26.11.1998 (Annexure P-4). Therefore, order dated 10.05.2013 (Annexure P-9) is set aside and direction is being given to the respondent/department to count the ad hoc service of the petitioner for the benefit of seniority and ACP with all consequential benefits in terms of the directions given by the Hon'ble Apex Court vide Annexure P-1.

The judgment of Supreme Court in the case of **State of Haryana and others Vs. Vijay Singh and others passed in Civil Appeal No.5947 of 2012** cannot be applicable in the facts of the present case as in that case, the respondents had appointed on adhoc basis without following the procedure prescribed under the 1955 Rules and hence, these services cannot be counted for their seniority fixed on the basis of total length of service. In the present case, reference can be made to the judgment passed by this Court in **Kawal Singh and others Vs. State of Punjab and others passed in CWP No.18673 of 2012 (Annexure P-11)**. The present case is squarely covered by the ratio of this judgment as the petitioner was initially appointed as master vide order dated 10.12.1993 (Annexure P-3) after

petitioner were regularized w.e.f. 31.01.1996 (Annexure P-4). As such, the petitioner shall be held entitled to similar benefits for the purpose of reckoning seniority and other related benefits in terms of ACP etc.

The present writ petition is allowed accordingly.

(RITU BAHRI)
JUDGE

18.07.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No