

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25444 of 2018

Date of Decision: 04.10.2018

Mahabir Parsad Bansal and others

... Petitioners

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sameer Scahdeva, Advocate,
for the petitioners.

RAJIV NARAIN RAINA, J.

1. The petitioners are retired Associate Professors/Principals in various Government Colleges run by the State of Haryana as per averments in the writ petition. They superannuated from service holding the current duty charge of the posts. It follows, that they were not appointed/promoted on substantive basis at any time before retirement. All of them served on ad hoc basis for periods mentioned in the chart in para.2 of the petition before their services were regularized on different dates and years ranging from 1986 to 1990 in the lower cadre of Lecturers. They admit that their initial appointments on ad hoc basis were through the Employment Exchanges. Some of them were on current duty charge.

2. In this petition filed in the year 2018 they claim that their period of ad hoc service should be counted towards seniority. In order to show the nature of the initial appointments and regularization as Lecturer (College Cadre) the petitioners have placed on record the appointment letter issued to one Lalit Kumar Jain (Annexure P-1) and Memo dated October 03,

1988 issued to one Sh. Jagpal, S/o Jogi Ram and Lalit Kumar Jain as Annexure P-2. The documents reveal that Lalit Kumar Jain was appointed purely on ad hoc basis for a period of six months and both were appointed on provisional basis as Lecturer in HES-II (Group-B) (College Cadre) on the recommendations of the Haryana Public Service Commission by the Government vide Memo dated October 03, 1988. Neither Jagpal nor Lalit Kumar Jain are among the 13 petitioners and, therefore, nothing can be said with regard to the cases of the petitioners with any certitude. Without addressing bare minimum facts the petitioners have jumped to Court in a claim for parity based on single bench decision in CWP No.8604 of 2007, *Dr. Surindra Kumar Mishra and others v. State of Haryana and another*, decided on September 09, 2010 and the order passed in appeal (LPA No.886 of 2011) titled *State of Haryana and others v. Dr. Surindra Kumar Mishra and others* decided on October 13, 2011 of which case I was a member and author of judgment in appeal. Learned counsel for the petitioners insists that his case is covered by these decisions against which SLP No.6327 of 2012 was carried to the Supreme Court by the State of Haryana. It is averred in the petition that on May 10, 2018 the Supreme Court has dismissed the bunch of SLPs filed by the State of Haryana. Though the judgment has not been put on the website but the petitioner No.1 says he was personally present at the hearing in the Supreme Court on May 10, 2018 when the SLP was ordered to be dismissed.

3. In view of the above, counsel says the respondents are bound to extend the benefit of ad hoc service rendered by the petitioners towards seniority by granting the consequential benefits to maintain parity and

uniformity with the above litigation coming to a close.

4. He relies on judgment in CWP No.4382 of 2002, *Satbir Singh and others v. State of Haryana* to conclude that when Court has granted benefit to one set of employees it should be given to all persons similarly situated. The petitioners have been approaching respondent-authorities by way of representations and participating in personal meetings on various dates but I find no material particulars have been pleaded in the petition and even the copies of the representations have not been annexed with the petition. They plead that since the Supreme Court was seized of the matter, the request of the petitioners remained a dead letter.

5. Lastly, the petitioners served a legal notice dated May 18, 2018 (P-5) on the respondents claiming parity. It is, however, not pleaded in the petition as to whether they were initially selected by a Department Selection Committee comprising DPI Colleges, a subject expert and the Deputy Director (Colleges) Haryana by way of interview. It is also not pleaded whether their services on the date of appointment were governed by the Punjab Subordinate Educational Service Rules, 1937 ("1937 Rules") which was repealed and replaced by the Haryana Education (College Cadre) Group-B Service Rules, 1986 which provides for determination of seniority on the basis of continuous length of service rendered on regular basis in the cadre i.e. after they become members of the Service. None of all this relevant material has been put in the petition. No record has been placed on file and such bald assertions as made in the petition cannot be taken seriously into consideration for lack of material particulars in support.

6. In *State of Haryana and others v. Dr. Surindra Kumar Mishra*

and others, the judgment relied on, the operating reason which led to counting of ad hoc service towards seniority was that on the date of ad hoc appointment the services of the respondents therein were governed by the 1937 Rules which provided appointment to be made by duly constituted Selection Committees. This was pre-partition law inherited by Haryana on reorganization of States. Those petitioners during service were placed in senior scale and selection grade. By granting them these two benefits, the counting of their ad hoc service, the department had treated them as regular employees recruited as Lecturers between 1976 to 1988 after which their services were regularized through the Haryana Public Service Commission. A look at Annexure P-2 issued to Jagpal and Jain only shows that they were appointed on provisional basis as Lecturers in HES-II on the recommendations of the Commission. Appointment on provisional basis is not the same thing as regularization of service. The ratio in *Mishra* case is that the 1937 Rules permitted appointments by a Departmental Selection Committee and, therefore, that period could not be excluded for purposes of seniority or on coming into force of the new Rules in 1986. This is not the case in the present one. This is one primary reason and distinguishing feature which guides me to non-interference in this matter.

7. The second reason which appears equally cogent and impels me to decline the petition is the delay and laches factor in belatedly approaching Court in a case of re-visiting seniority long settled. Reference can be had to the judgments in P.S. Sadasivaswamy vs. The State of Tamil Nadu, AIR 1974 SC 2271, B.S.Bajwa Vs. State of Punjab & others, (1998)

2 SCC 523 that in matters of seniority the agitation should be 6 months to 1

year. Still further, the statement of law in the second exception carved out in State of U.P. & others vs. Arvind Kumar Srivastava & others, (2015) 1 SCC 347 (paragraph 23) runs against the petitioners when the claim is for similar relief, even assuming arguendo that the judgment in *Mishra* case applies.

The Supreme Court summed up the position as follows:

“23) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

8.

For what is said before, I would dismiss the petition. The prayer

of the petitioners for a direction to the respondents to dispose of the legal notice on merits is declined when no right or corresponding duty is shown to exist for issuance of a writ of certiorari or mandamus.

04.10.2018
manju

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No