

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

**CWP-17832-2005(O&M)
Date of decision-06.03.2019**

Som Lal and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Arora, Advocate
for the petitioners.

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab

JITENDRA CHAUHAN, J.

This writ petition under Article 226 of the Constitution of India has been filed for the issuance of a writ, in the nature of certiorari/mandamus directing the respondents to grant the petitioners benefits of workcharge service for the purpose of proficiency step up.

Learned counsel for the petitioners submits that the petitioners joined the respondent-Department as drivers on different dates on work charge basis and subsequently, their services were regularized. He refers to instructions dated 01.12.1988 (Annexure P-1) to contend that on the recommendations of the Third Pay Commission, it was decided by the State of Punjab that besides the regular annual increments, one additional increment on each occasion after completion of 8 years and 18 years of service in the form of proficiency step up was to be granted to all Punjab Government employees. Thereafter, vide letter dated 01.09.1989 (Annexure

P-2), a clarification was issued by the government that the service rendered on ad hoc basis will not to be counted for the purpose of grant of proficiency step-up. Said instructions dated 01.09.1989 were further clarified by letter dated 20.09.1994 (Annexure P-3) to the effect that the letter dated 01.09.1989 and 26.03.1990 would have prospective effect. Thus, learned counsel submits that the denial of benefit for the period of service rendered by the petitioners, who joined the services prior to 1988 on work-charge basis is illegal and arbitrary.

On the other hand, learned State counsel has vehemently argued that the relief claimed by the petitioners is not admissible to them as there are no rules whereby, the work-charge services rendered by an employee is to be counted for grant of proficiency step-up. He cites 'State of Haryana Vs. Haryana Veterinary and AHTS Association, 2000(4) S.C.T. 664'; 'Punjab State Electricity Board and others Vs. Jagjiwan Ram and others, 2009(5) SLR 499'; and 'State of Haryana and others Vs. Sita Ram and others, 2013(16) SCC 677.'

Heard.

In Jagjiwan Ram's case (supra), it has been noticed by Hon'ble the apex Court as under:-

“11. What to say of work charged employees even those appointed on ad hoc basis cannot claim parity with regular employees in the matter of pay fixation, grant of higher scales of pay, promotion etc In State of Haryana vs. Haryana Veterinary & AHTS Association and another (supra), a three-Judge Bench considered the question whether service of an employee appointed on adhoc basis can be equated with that of regular employee for the purpose of grant of selection grade in terms of the policy contained in circulars dated 2nd June, 1989 and 16th May, 1990

issued by the Government of Haryana and answered the same in negative. The facts of that case were that one Rakesh Kumar Singla who joined service as Assistant Engineer on adhoc basis on 4.1.1980 was appointed on regular basis with effect from 29.8.1982 after selection by the Public Service Commission. He represented to the government for grant of selection grade on completion of 12 years service commencing from 4.1.1980. As the government did not accede to his request, Rakesh Kumar Singla filed writ petition in the High Court. On a reference made by the Division Bench, the matter was placed before a bench of three-Judges. By majority judgment, the larger bench held that the service rendered by an employee on the basis of adhoc appointment must be clubbed with his regular service for the purpose of grant of selection grade in terms of the policy framed by the State Government. This Court reversed the judgment of the High Court and held:-

"Coming to the circular dated 2-6- 1989, issued by the Financial Commissioner and Secretary to the Government of Haryana, Finance Department, it appears that the aforesaid circular had been issued for removal of anomalies in the pay scale of Doctors, Deputy Superintendents and Engineers, and so far as Engineers are concerned, which are in Class I and Class II, it was unequivocally indicated that the revised pay scale of Rs.3000 to Rs.4500 can be given after completion of 5 years of regular service and Rs.4100 to Rs.5300 after completion of 12 years of regular service. The said Financial Commissioner had issued yet another circular dated 16-5- 1990, in view of certain demands made by officers of different departments. The aforesaid circular was issued after reconsideration by the Government modifying to some extent the earlier circular of 2-6-1989, and even in this circular it was categorically indicated that so far as Engineers are concerned, they would get Rs.3000 to 4500 after 5 years of regular and satisfactory service and selection grade in the scale of pay of Rs.4100 to

Rs.5300, which is limited to the extent of 20% of the cadre post should be given after 12 years of regular and satisfactory service. The aforesaid two circulars are unambiguous and unequivocally indicate that a government servant would be entitled to the higher scale indicated therein only on completion of 5 years or 12 years of regular service and further the number of persons to be entitled to get the selection grade is limited to 20% of the cadre post. This being the position, we fail to understand how services rendered by Rakesh Kumar from 1980 to 1982, which was purely on ad hoc basis, and was not in accordance with the statutory rules can be taken into account for computation of the period of 12 years indicated in the circular. The majority judgment of the High Court committed serious error by equating expression "regular service" with "continuous service". In our considered opinion under the terms and conditions of the circulars dated 2-6- 1989 and 16-5- 1990, the respondent Rakesh Kumar would be entitled for being considered to have the selection grade on completion of 12 years from 29-1-1982 on which date he was duly appointed against a temporary post of Assistant Engineer on being selected by the Public Service Commission and not from any earlier point of time. The conclusion of the majority judgment in favour of Rakesh Kumar, therefore, cannot be sustained." The Court then referred to the provisions contained in the Haryana Service of Engineers, Class-II, Public Works Department (Irrigation Branch) Rules, 1970 and held:- "A combined reading of the aforesaid provisions of the Recruitment Rules puts the controversy beyond any doubt and the only conclusion which could be drawn from the aforesaid Rules is that the services rendered either on an ad hoc basis or as a stopgap arrangement, as in the case in hand from 1980 to 1982 cannot be held to be regular service for getting the benefits of the revised scale of pay or of the selection grade under the government memorandum dated 2-6-1989 and

16-5-1990, and therefore, the majority judgment of the High Court must be held to be contrary to the aforesaid provisions of the Recruitment Rules, consequently cannot be sustained. The initial letter of appointment dated 6-12-1979 pursuant to which respondent Rakesh Kumar joined as an Assistant Engineer on an ad hoc basis in 1980 was also placed before us. The said appointment letter unequivocally indicates that the offer of appointment as Assistant Engineer was on ad hoc basis and clauses 1 to 4 of the said letter further provides that the appointment will be on an ad hoc basis for a period of 6 months from the date of joining and the salary was a fixed salary of Rs.400 p.m. in the scale of Rs.400 to Rs.1100 and the services were liable to be terminated without any notice and at any time without assigning any reason and that the appointment will not enable the appointee any seniority or any other benefit under the Service Rules for the time being in force and will not count towards increment in the time scale. In view of the aforesaid stipulations in the offer of appointment itself we really fail to understand as to how the aforesaid period of service rendered on ad hoc basis can be held to be service on regular basis. The conclusion of the High Court is contrary to the very terms and conditions stipulated in the offer of appointment and, therefore, the same cannot be sustained. The regular letter of appointment dated 29-1-1982 in favour of Rakesh Kumar was also produced before us and that letter indicates that the respondent Rakesh Kumar along with others had applied to the Secretary, Haryana Public Service Commission for being appointed as an Assistant Engineer and the Service Commission after selecting the number of persons prepared a list and appointment letters were issued by the Government from the said list on the basis of the merit position of different candidates. Thus the appointment of respondent Rakesh Kumar was a fresh appointment in accordance with the statutory rules after the Public Service Commission

adjudged their suitability and the regular service of the respondent Rakesh Kumar must be counted from the date he joined the post pursuant to the offer of appointment dated 29-1-1982 and the prior service rendered by him on ad hoc basis cannot be held to be regular service nor can it be tagged on to the later service for earning the benefit under the government circular dated 2-6-1989 as well as the clarificatory circular dated 16-5- 1990. The conclusion of the majority judgment of the High Court, therefore, is wholly erroneous and cannot be sustained."

12. *In State of Punjab and others v. Ishar Singh and others [(2002) 10 SCC 674] and State of Punjab and others v. Gurdeep Kumar Uppal and others [(2003) 11 SCC 732], the two-Judge Benches referred to the judgment in State of Haryana v. Haryana Veterinary & AHTS Association (supra) and held that adhoc service rendered by the respondents cannot be clubbed with their regular service for the purpose of grant of revised pay scales, senior/selection grade, proficiency step-up and for fixation of seniority.*

13. *A reading of the scheme framed by the Board makes it clear that the benefit of time bound promotional scales was to be given to the employees only on their completing 9/16 years regular service. Likewise, the benefit of promotional increments could be given only on completion of 23 years regular service. The use of the term 'regular service' in various paragraphs of the scheme shows that service rendered by an employee after regular appointment could only be counted for computation of 9/16/23 years service and the service of a temporary, adhoc or work charged employee cannot be counted for extending the benefit of time bound promotional scales or promotional increments. If the Board intended that total service rendered by the employees irrespective of their mode of recruitment and status should be counted for the purpose of grant of time bound promotional scales or promotional increments, then instead of using the expression '9/16 years regular service' or '23 years regular service', the concerned authority would have used the expression*

'9/16 years service' or '23 years service'. However, the fact of the matter is that the scheme in its plainest term embodies the requirement of 9/16 years regular service or 23 years regular service as a condition for grant of time bound promotional scales or promotional increments as the case may be. For the reasons mentioned above, we hold that the respondents were not entitled to the benefit of time bound promotional scales / promotional increments on a date prior to completion of 9/16/23 years regular service and the High Court committed serious error by directing the appellants to give them benefit of the scheme by counting their work charged service."

Similar view was taken by Hon'ble the Supreme Court in **Sita**

Ram's (case), by holding thus:-

"1. Whether the work charge service of the respondents can be treated as regular service for the purpose of grant of benefit under the Haryana Civil Services (Assured Career Progression) Rules, 1998 (for short, 'the 1998 Rules') is the question which arises for determination in these appeals filed against the orders passed by the Division Benches of the Punjab and Haryana High Court. 2. to 10.

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11. In our opinion, the reasons recorded by the Division Bench of the High Court for granting relief to the respondents are legally untenable and the impugned orders are liable to be set aside because the same are based on erroneous interpretation of the expression "regular satisfactory service" used in Rule 5(1) and (2) of the 1998 Rules. The note appearing below Rule 5(2) makes it clear that the expression "regular satisfactory service" means continuous service counting towards seniority under Haryana Government, including continuous service in Punjab Government, before reorganization commencing from the date on which the Government servant joins service after being recruited through the prescribed procedure or rules, etc., for regular recruitment in the particular cadre. It is, thus, evident that the rule making authority has laid emphasis on regular recruitment in accordance

with the prescribed procedure or rules as a condition for treating the particular service as regular service. This is in total contrast to work charge service which is always in work charge establishment and is not preceded by regular selection made in accordance with any set of rules framed under proviso to Article 309 of the Constitution or executive instructions. It is also not incumbent upon the competent authority to advertise the availability of work/post in the work charge establishment or sent requisition to the employment exchange as per the requirement of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. No only this, the conditions of appointment of work charge employees are altogether different from those who are regularly recruited in accordance with the rules framed under proviso to Article 309 or executive instructions issued by the State under Article 162 of the Constitution and whose service is treated as regular service. 12. to 17.

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18. On the basis of the above discussion, we hold that the Division Benches of the High Court committed an error by directing the appellants to treat work charge service of the respondents as part of regular service for the purpose of Rule 5(1) and (2) of the 1998 Rules.”

Thus, in view of the above dictum of law laid down by Hon'ble the Supreme Court, the relief claimed by the petitioners in the instant writ petition is not admissible inasmuch as the period of work-charge service rendered by the employee is not to be counted for grant of proficiency step-up. The question is answered accordingly.

Consequently, the writ petition fails and is hereby dismissed.

06.03.2019

ps-I

Whether speaking/reasoned :
Whether Reportable :

(JITENDRA CHAUHAN)

JUDGE

Yes No
Yes No