

(Heard through Video Conferencing)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-19128 of 2012 (O&M)
DATE OF DECISION :08.02.2021

Dr. Charanpreet Singh & Ors. **...Petitioners**
Versus

State of Punjab & Ors. **...Respondents**

With **CWP-8432 of 2009 (O&M)**

Dr. Pawan Kumar & Ors. **...Petitioners**
Versus

State of Punjab & Anr. **...Respondents**

With **CWP-19767 of 2011 (O&M)**

Kulbir Singh **...Petitioner**
Versus

State of Punjab & Anr. **...Respondents**

With **CWP-25580 of 2018 (O&M)**

Rashmi & Ors. **...Petitioners**
Versus

State of Punjab & Anr. **...Respondents**

With **CWP-9069 of 2020 (O&M)**

Manju Middha **...Petitioner**
Versus

State of Punjab & Anr. **...Respondents**

And

CWP-10957 of 2020 (O&M)

Paramdeep Kaur & Ors.

...Petitioners

Versus

State of Punjab & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

**Argued by :Mr. K.L.Arora, Advocate,
Mr. Sameer Sachdeva, Advocate
Mr. H.S.Sirohi, Advocate
for the petitioner(s).**

**Ms. Anu Chatrath, Sr. Advocate/Addl.A.G., Punjab with
Mr.Aditya Sharda, AAG, Punjab,
for Respondent No.1/State of Punjab.**

**Dr. Anmol Rattan Singh Sidhu, Senior Advocate with
Mr. Shiv Kumar Sharma, Advocate
For respondents No.8 to 15.**

**Mr. Arjun Sheoran, Advocate and
Ms. Amrita Garg, Advocate,
for respondents No.7 to 11 in CWP No.19128/2012 and
for respondents No.3 to 7 in CWP No.9069/2020**

**Mr. Sartej Singh Narula, Advocate with
Ms. Sumiti Arora, Advocate, for respondent No.16.**

ARUN MONGA, J.

1. Facts being somewhat similar, involving common question of law, instant single order being passed in CWP No. 19128 of 2012 shall dispose of above titled bunch of petitions.
2. Petitioners, serving as Lecturers, seek seniority benefit of temporary/ adhoc service, rendered by them, prior to their regularization. Their joining dates in service vary from 27.07.1979 to 03.12.1986. Petitioners state that their selection was/is governed by The Punjab Educational Services (College Cadre) (Class-II) Rules, 1976 (for brevity, 1976 Rules).

3. Vide a letter dated 18.03.1980, the State Government permitted appointments of lecturers on adhoc basis, subject to fulfillment of following conditions:-

- “(i) Such lecturer should have put in minimum of six months service;*
- (ii) He should have been selected through a properly constituted Section Committee;*
- (iii) The Lecturer should possess all necessary qualifications;*
- (iv) The incumbent should be within prescribed age limit;*
- (v) His work and conduct during the period should have been satisfactory;*
- (vi) The Lecturer should satisfy all other conditions applicable to fresh entrant regarding his antecedents, one living spouse etc.”*

4. Common stand of petitioners is that their appointments were made through Employment Exchange, after following the due procedure by a duly constituted Selection Committee. Selection Committee consisted of Joint Secretary (Education), DPI (Colleges), a Subject Expert and a representative of Scheduled Castes/Tribes Welfare Department. Candidates applied as per advertisement at the relevant time. They were interviewed by the Selection Committee. Permanent/ regular and sanctioned posts were though available and yet, successful candidates/petitioners were given temporary/adhoc appointments.

5. Petitioners plead that they are thus directly recruited through Employment Exchange. At the relevant time, they possessed requisite qualifications for regular appointments and were found meritorious. The petitioners claim that they were fully eligible and fulfilled the laid down criteria for regular appointments. They were permitted to continue in service without any break. Vide notification dated 04/05.10.1995(Annexure P-6) a decision was later taken to regularize the services of the *adhoc* lecturers, by taking the posts out of the ambit of

Punjab Public Service Commission. For the purpose of regularization, a Verification Committee was constituted and assigned the task of verifying the particulars of *adhoc* Lecturers. Accordingly, on the basis of recommendations of Verification Committee, *adhoc* Lecturers were regularized, followed by their confirmation in the regular cadre.

6. Qua grant of Senior Scale/ Selection Grade, UGC issued a circular dated 25.12.1998, conveying that service rendered on *adhoc* basis is to be counted towards grant of Senior Scale and Selection Grade.

Provided, the following conditions, *inter alia*, are fulfilled:-

- “(a) The *adhoc* service is more than one year of duration;
- (b) The incumbent was appointed on the recommendations of the duly constituted Selection Committee; and
- (c) The incumbent was selected to the permanent post in continuation to the *adhoc* service without any break.”

7. Petitioners assert that the above circular was adopted by the State Government vide letter dated 05.12.2006. Consequently, benefit of counting of *adhoc* service has already been accorded to them for the purpose of grant of Senior Scale/ Selection Grade. However, service rendered on temporary/*adhoc* basis has not been counted towards seniority.

8. As per tentative seniority list issued by the Department dated 24.06.2009, as it stood on 30.06.2008, the private respondents, though recruited after the petitioners, are shown senior to them as service rendered on temporary/*adhoc* basis by the petitioners has not been taken into account. Hence the writ petitions.

9. Before adumbrating further, herein below is petition wise succinct narrative :-

9.1. CWP-8432 of 2009

Petitioners were appointed as adhoc Lecturers between 1979 to 1986 and regularized in 1995, followed by confirmation in the year 1996. They are seeking benefit of adhoc service rendered by them towards seniority.

9.2. CWP No. 19767 of 2011

Petitioner rendered adhoc service from 19.08.1981 to 27.01.1988. During interregnum, he was also selected in the recruitment process carried out by the “Punjab Public Service Commission (PPSC for short). He was given regular appointment vide letter dated 09.11.1987. Pursuant thereto, he joined as Lecturer on 28.01.1988. Grievance; service rendered by him on temporary basis from 19.08.1981 to 27.01.1988 has not been taken into consideration towards seniority.

9.3. CWP-25580 of 2018

Petitioners were appointed as adhoc Lecturers between 1979 to 1986 and regularized in year 1995, later confirmed in the year 1996. Claim; counting of adhoc service towards seniority.

9.4. CWP No. 9069 of 2020

Here too, petitioner seeks benefit of her adhoc service, rendered from 04.08.1986 till 10.09.1993, towards seniority. She relies on an earlier judgment rendered by me, in her own case vide CWP No. 14099 of 2019 (*Manju Midha Vs. State of Punjab & Anr.*, decided on 22.11.2019). The petitioner, *inter alia*, also prays for considering her name for promotion to the post of Principal. Despite judgment/ order dated 22.11.2019, the department has circulated tentative seniority list dated 15.05.2020, wherein the name of the petitioner is not mentioned. Basis thereof, the department is going to hold DPC meeting for promoting juniors on the post of Principals, ignoring petitioner’s claim.

9.5. CWP No. 10957 of 2020

In this case, petitioners initially instituted CWP No. 18557 of 2018, *inter alia*, with a prayer to count their adhoc/ temporary service for the purpose of seniority. The said petition was disposed of vide order dated 29.10.2019 with directions to pass a speaking order. Consequently, impugned order dated 12.02.2020 (Annexure P-15) has been passed by the official respondents, rejecting the claim of the petitioners.

10. COMMON STAND OF THE OFFICIAL RESPONDENTS

Separate returns have though been filed, but more or less similar stand has been taken. Since these writ petitions were filed between years 2009 to 2020, the events and developments, that took place during the interregnum, have been elaborated in the respective replies to the writ petitions. Claim for counting the adhoc service towards seniority has been strongly contested, *inter alia*, on the ground that petitioners were since appointed purely on adhoc basis, de hors recruitment Rules and, therefore, service rendered by them on adhoc basis cannot be taken into consideration. Appointment of the petitioners is not governed by 1976 Rules, *ibid* as the same were made on temporary basis through employment exchange.

10.1. Government's earlier instructions dated 29.03.1957 (Annexure R-1/4) envisage the same position and prohibit counting of adhoc service rendered by a Government employee towards seniority. Claim of the petitioners for counting adhoc service towards seniority cannot be equated with grant of senior scale/ selection grade after counting the adhoc service, as envisaged in letter dated 03.06.2013, which was issued merely to clarify letter dated 05.12.2006.

10.2. Petitioners have concealed the factum of observations contained in order dated 03.11.2009, passed by this Court in CWP No. 8432 of 2009 (Annexure R-1/1), wherein the claim of seniority made by similarly situated Lecturers, on the basis of adhoc service rendered by them was rejected by this Court.

10.3 The claim of the petitioners raised in and after 2008, being highly belated, is hit by delay and latches. Their services were regularized vide order dated 05.10.1995, with clear stipulation that they shall be given seniority below the persons already appointed on regular basis through PPSC.

10.4. Tentative seniority list of the Lecturers appointed after 01.05.1990 has been prepared and objections have been invited. The same will be finalized after adopting due procedure. It is stated that separate seniority list of the Lecturers appointed before 01.05.1990 has already been finalized by the Competent Authority.

11. STAND OF PRIVATE RESPONDENTS

Respondents No.7 to 11 are the Lecturers appointed in the years 1987 to 1989 on regular basis against permanent posts, on the recommendations of PPSC, by following prescribed selection procedure. They claim that appointments of petitioners were not made in accordance with 1976 Rules. Their services were later on regularized by the Department in 1995, merely on sympathetic consideration of their claim. Even after regularization of their services, the petitioners had to undergo the probation period of one year which clearly constituted a disconnect/break from their earlier adhoc service. They have been rightly placed

below the private respondents. The petitioners cannot, therefore, seek precedence over them in the order of seniority.

12. In the replication it is reiterated that petitioner's appointments were made in accordance with Recruitment Rules, 1976. Hence, they cannot be legally and validly denied benefit of counting past adhoc service towards seniority.

13. Having heard arguments of respective learned counsels and after perusal of record, I shall now proceed to discuss rival contentions, express my views and record the outcome thereof.

14. After rendering service for periods ranging between 9 to 16 years, services of petitioners were regularized on 05.10.1995, by taking out their posts from the purview of PPSC. They successfully completed the probation period. They were then finally confirmed by the Department. They were accorded all the service benefits of past adhoc service, as admissible to a regular employee, except seniority. Tentative seniority list issued in June, 2009 was objected by the petitioners, since they were placed below private respondents, appointed later in time through PPSC.

15. Learned counsel for the petitioners would argue that the appointments of the petitioners were made strictly under 1976 Rules. The same govern their service conditions as well. Reliance, *inter alia*, is on Rules 2(b), 5, 9, 10 and 12 of 1976 Rules, which read thus:-

“Rule 2(b) Direct Recruitment means an appointment made otherwise than by promotion.

Rule 5 Appointing Authority- All appointments to the Service shall be made by the Government.

Rule 9-Qualifications- No person shall be appointed to the service, by direct recruitment unless he possesses the educational qualifications, professional training and other qualifications specified in Appendix B for various posts.

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Rule 10- Method of Recruitment- *All posts in the Service shall be filled by direct recruitment.*

Rule 12-Seniority of members of Service-*The seniority inter se of the members of the service holding the same class of post or post in the same or identical scales of pay shall be determined by the length of continuous service on such posts which shall be counted from the date of appointment as specified in the appointment order or if no such date is specified in the said order, from the date of the order:*

Provided that the order of merit determined by the Commission or other recruiting authority shall not be disturbed in fixing the seniority, and persons appointed as a result of an earlier selection shall be senior to those appointed as a result of subsequent selection:

Provided further that in the case of members recruited through the Commission or any other recruiting authority for the posts of lecturers in different subjects in various groups on the same date, first of all the candidates who have been ranked at No.1 by the recommending authority in various subjects shall be grouped together and the older member shall be senior to a younger member. Similarly, the candidates ranking at Nos. 2,3,4 and so on, shall be taken from the different groups to form one single group and an elder member shall be senior to a younger member. In case, two or more candidates have the same date of birth in the same group, the candidates who join first shall be senior to others.

16. Learned counsel for petitioners would also contend that, once the appointments are by proper procedure and, petitioners have served the Department for decades together, without any break until their services were regularized, now at this juncture, respondents cannot, therefore take the plea that the adhoc appointments were irregular and no proper procedure was followed and resultantly, for seniority, petitioners are not entitled to any benefit of their adhoc service period. The selections of petitioners was made by a Selection Committee duly constituted by the State Government. It is as good and valid as those of private respondents, who were selected through PPSC. The private respondents were selected later than petitioners and cannot be given precedence over the petitioners, who were concededly appointed prior in time.

17. Per petitioners stand, reliance placed by private respondents on The Punjab Public Service Commission (Limitation of Functions) Rules, 1955, is totally misconceived, as it was not necessary to even consult PPSC on the suitability of candidates at the time of initial appointments to services or posts.

Relevant extract of Rules 2 and 3 thereof reads as under:-

“Rule 2(i) Commission means the Punjab Public Service Commission.

(ii) ‘Initial appointment’ means an appointment in the first instance to a service or post which does not involve the promotion or transfer of anyone already in service of the Punjab Government.

Rule 3- It shall not be necessary to consult the Commission on the suitability of candidates for:-

(b) Initial appointments to services or posts enumerated in the Schedule ‘A’ hereto annexed.”

Relevant part of Schedule ‘A’ is as under:-

<i>Sr.No.63</i>	<i>7 Posts of Lecturers in Government Colleges</i>
<i>Sr.66</i>	<i>1 Post of Lecturer(Physics) in Department of Education</i>
<i>Sr.No.90</i>	<i>244 Posts of Lecturers(College Cadre) in the Department of Education.</i>

18. Learned Senior Counsel for the State argued on lines of stand taken in the replies filed to the respective writ petitions. She strenuously convessed that the petitioners were appointed purely on adhoc basis as a temporary measure, dehors recruitment rules and their services were regularized only on 05.10.1995. Therefore, their service rendered on adhoc basis cannot be taken into consideration while computing their seniority.

19. It is also claimed that some of the petitioners were not even eligible for the post of Lecturer, when the private respondents had been selected for appointment on regular basis through PPSC.

20. Likewise, learned Senior counsel for the private respondents justified and supported the precedence accorded to them over the petitioners in the tentative seniority list. He argued that the plea of continued service by the petitioners is totally misplaced, as after regularization of their services, the petitioners had to undergo the probation period of one year, constituting disconnect with and discontinuation from their earlier adhoc service. The private respondents were appointed as Lecturers in various disciplines in the year 1987 to 1989 against regular and permanent posts, on the recommendations of the PPSC after undergoing due selection procedure. The petitioners, whose appointments were not made in accordance with 1976 Rules, cannot thus claim precedence over private respondents, in order of seniority and they have been rightly placed below PPSC recruits.

21. Learned Counsel for the petitioners, amongst other citations, strongly relied upon **Dr. Surindra Kumar Mishra & Ors. Vs. State of Haryana & Anr.**¹, **Rudra Kumar Sain Vs. Union of India**² as well as Constitution Bench of Supreme Court in **The Director Recruit Class-II Engineering Officers' Association Vs. State of Maharashtra**³ and Division Bench judgment of this Court in **Sports Authority of India & Anr. Vs. Adarsh Mehta & Anr.**⁴

21.1. They would argue that the action of the Department in not considering their service rendered initially on temporary/ adhoc basis is inconsistent with the view taken by the Constitution Bench of Apex Court in ***The Direct Recruit Class-II Engineering Officers' Association***

¹ 2011(1) SCT(P&H) 428

² 2000(4) RSJ(SC)1

³ AIR 1990(SC) 1607

⁴ 2004(4) SCT-DB-122

Vs. State of Maharashtra followed by judgment in *Rudra Kumar Sain Vs. Union of India* and Division Bench Judgment of this Court in *Sports Authority of India & Anr. Vs. Adarsh Mehta & Anr.*

22. On the other hand learned counsel for official respondents have relied, inter alia, on the same case law as cited by the learned counsel for petitioner. Debate is on respective interpretations of the said judgments.

22.1 Additionally, the claim of the petitioners has also been resisted by learned senior counsel for the official respondents relying on Apex court in *Ajeesudeen Vs. Union of India & Ors.*⁵ and by the Division Bench of this Court in *State of Punjab Vs. Kewal Singh*⁶. She would confess that it has categorically been held therein that, if appointment is made purely on adhoc basis, without following the prescribed procedure under the Rules for regular appointment, such period of service as adhoc appointee cannot be counted.

22.2 Learned Senior counsel for the official respondents also placed reliance on *State of Haryana Vs. Haryana Veterinary & AHTS Association & Anr.*⁷, *Direct Recruit Class-II Engineering Officers' Association Vs. State of Maharashtra*⁸, *Keshav Chandra Joshi & Ors. Vs. Union of India & Ors.*⁹, *State of West Bengal Vs. Aghore Nath Dey*¹⁰, Full Bench Judgment of this Court in *Chambel Singh Vs. State of Haryana & Anr.*¹¹ and Division Bench judgments of this Court rendered

⁵ Civil Appeal No. 22049 of 2005 decided on 12.02.2008

⁶ LPA No. 589 of 2015 decided on 27.10.2016

⁷ 2000(8) SCC 4

⁸ AIR 1990 SC 1607

⁹ AIR 1991 SC 284

¹⁰ 1993(3) SCC 371

¹¹ 1995(1) RSJ 382

in *Malook Singh & Ors. Vs. State of Punjab & Ors.*¹² and *Harpal Singh & Ors. Vs. State of Haryana*¹³.

23. Adverting further, firstly let us have a quick look at relevant provisions of Constitution of India i.e. parts of Articles 315(1) and 320(1) of the Constitution of India, which are as under :

315(1). Public Service Commission for the Union and for the State-.

Subject to the provisions of this Article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

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320(1). Functions of Public Service Commission-.

It shall be the duty of the Union and the State Public Service Commission to conduct examinations for appointment to the services of the Union and the services of the State respectively.

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Provided that the President as respects the all India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

24. Notwithstanding the Constitutional mandate, Punjab Government vide an order dated 04/05.10.1995, Annexure P/6, took 244 posts of lecturers, out of the purview of Public Service Commission. Relevant paras 1-7 of Punjab Government order dated 04/05.10.1995 and its endorsement dated 05.10.1995 (Annexure P/6) are as under :

ORDER

Adhoc lecturers were appointment in Govt. Colleges during the years 1979-87. They filed different writ petitions in the Punjab and Haryana High Court/Hon'ble Supreme Court for regularization of their services. The Hon'ble Supreme Court did not allow Civil Writ Petition No. 4075-78/87 and many other writs but directed that for regularization of their services, they could be allowed one chance to appear before the Punjab Public Service Commission with some relaxations and Govt. to take appropriate decision for those petitioners who are not selected by the Public Service Commission.

¹² LPA No. 471 of 2011 decided on 15.03.2011

¹³ LPA No. 1743 of 2016 decided on 14.09.2016

2. *That considering sympathetically the request made by the Union of these adhoc lecturers that their services be regularized instead of their appearing before the Public Service Commission, Govt. has decided to regularize the services of these adhoc lecturers after taking these posts out of the purview of Punjab Public Service Commission.*
3. *That in view of this decision to regularize the services of these lecturers appointed on adhoc basis, the Govt. set up a Verification Committee vide its Memo No. 13/29/89-1Edu.1/9163-66 dated 24.12.1993. This Committee, after verifying the qualifications and record of these lecturers, gave its recommendations to the Govt. on 29.3.1994. In view of the recommendations of the Verification Committee and considering the whole issue, the Governor of Punjab is pleased to give approval to regularize the services of the following adhoc lecturers with immediate effect.*
4. *They shall be on probation for a period of one year which can be extended. They shall not be considered for confirmation till they successfully clear their probation.*
5. *Seniority of these lecturers will be determined after completing successfully under Punjab Civil Services (College Cadre Class-II) Rules, 1976. But clarified that these adhoc lecturers after regularization will be placed below all in the existing seniority list and they will have no right to have seniority above the lecturers recommended by Punjab Public Service Commission.*
6. *Those lecturers, whose medical examination or character verification is pending and those who did not submit certificate of Punjabi of Matriculation level or other required documents, are regularized on the condition of their required action within a period of six months. For this, the concerned College Principal and Director, Education Department (Colleges), Punjab will be responsible to assure this.*
7. *These orders will take effect from the date of issue.*

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Endorsement dated 05.10.1995 (Annexure P-6) is as under:-

No. 13/29/89-1Edu.1/21970 dated 05.10.1995.

Copy to Secretary, Punjab Public Service Commission, Patiala in reference to his letter No. P&G.29/93/AJ/4605 dated 3.4.1993.

2. *244 posts of lecturers working under the Dept. of Education of Govt. Colleges are taken out of the purview of Public Service Commission vide notification No. G.S.R.5/Cons/Art/320/Amendment (68) dated 3.1.1994. This is published in Punjab Gazette on 14.1.1994.*

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Endorsement of P/6 shows that these posts were taken out of the purview of PPSC pursuant to a notification dated 03.01.1994. Obviously, till then, these were within the purview of Public Service Commission.

25. Perusal of aforesaid order Annexure P/6 as well as its endorsement, would reveal as below :

- (a) Petitioners were appointed on ad-hoc basis, otherwise than through the Public Service Commission;
- (b) Petitioners' claim for regularization of services was examined and rejected on judicial side right upto the Supreme Court;
- (c) The court had only directed that for regularization of their services, petitioners could be allowed one chance to appear before the Punjab Public Service Commission, *albeit* with some relaxations. Govt. was to take appropriate decision for those petitioners who were not selected by the Public Service Commission;
- (d) 244 posts of college lecturers were withdrawn prospectively from the purview of the Punjab Public Service Commission vide aforesaid order dated 04/05.10.1995, in terms of Gazette notification dated 3.1.1994;
- (e) Conversely, till then, the posts of college lecturers were within the purview of PPSC. PPSC, thus was the prescribed agency for selection of candidates for regular appointment as college lecturers;
- (f) Petitioners were appointed on ad-hoc basis, during the period 1979 to 1993, when the posts were well within the purview of PPSC. Only after the petitioners' adhoc appointments, these posts were taken out of the purview of the Commission.

26. As mandated by Article 320(1) of the Constitution of India, regular appointments of college lecturers could be made only in consultation with / selection through the said Commission. Petitioners were appointed and/or allowed to continue in service on ad-hoc basis

during the period 1979 to 1988. At that time, these posts were within the purview of the PPSC . The fact remains that their appointments were made without consulting and otherwise than through the PPSC. It is thus clear that the initial appointments/continuance of the petitioners were not according to rules but were made in deviation to the Rules.

27. Petitioners, no doubt, fortuitously continued in service by dint of interim directions issued by Apex Court. It was eventually on sympathetic consideration of their claim, that their services were regularized, with a clear cut rider, that their seniority will be determined in accordance with the provisions of 1976 Rules. It was made clear that upon regularization, these adhoc Lecturers will be kept at the tail in the seniority list and they will not entitled to claim seniority over and above the Lecturers recommended by PPSC. The petitioners having once acquiesced thereto, per my opinion, have no legal right to claim seniority over persons recruited on regular basis through PPSC prior to 05.10.1995. The petitioners have been rightly placed below the private respondents, who were selected through PPSC.

28. The petitioners, consciously accepted to be kept at the tail in the seniority list. They are now estopped from claiming the seniority by their own act and conduct. Rule of estoppel shall apply.

29. Furthermore, Clause 12 of 1976 Rules, deals with the issue of determination of seniority inter se members of service, holding the same class of posts. It stipulates that “seniority of persons appointed on purely provisional basis shall be determined as and when they are regularly appointed keeping in view the dates of such regular appointment.”(emphasis supplied) Accordingly, seniority of the

petitioners has to be determined from the date of their regular appointments. No benefit can be sought by them which is directly against the provisions of governing Rules of 1976.

30. In the premise, I am unable to accept the contention of the learned counsel for the petitioners that at the time of adhoc appointments during the years from 1979 to 1988, these posts were already out of the purview of the Punjab Public Service Commission. Undisputedly, the only mode of appointment to the posts of college lecturers was/is by direct recruitment.

31. As regards the various judgments cited by respective counsels in support of their rival contentions, for ready reference, the relevant portions thereof are extracted and discussed (wherever found necessary), as below:-

31.1 In *State of Haryana & Ors. Vs. Vijay Singh & Ors.*¹⁴, reference has also been made to the case of *Aghore Nath Dey & Ors*, *ibid*. In Vijay Singh's case, the Apex Court held as under:-

“30. None of the aforesaid judgments can be read as laying down a proposition of law that a person who is appointed on purely adhoc 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 adhoc 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 adhoc 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 re-fixation of the respondents' seniority by counting the adhoc service cannot be approved.”

31.2 In **Harpal Singh & Ors. Vs. State of Haryana & Ors.**

Division Bench of this Court held as under:-

“While reversing the decision of this Court in Vijay Singh’s case (supra), the Hon’ble Supreme Court considered series of decisions relied upon by ad hoc appointees including the Constitution Bench judgment in Direct Recruit Class-II case (supra) and has authoritatively ruled that under the 1955 Rules or under the Haryana State Education School Cadre (Group C) Service Rules, 1998, the benefit of ad hoc service towards seniority is impermissible. It held that (i) under the 1955 as well as 1998 Service Rules, the District Education Officer who made the ad hoc appointments was not the competent authority to make appointments on regular basis; (ii) Rule 9 of 1955 Rules or Rule 11 of 1998 Rules provide determination of seniority by the length of continuous service on any post and the ad hoc appointment was not a service rendered on a post under the Rules; and (iii) the decisions relied upon by the High Court were totally distinguishable and none of such cited decisions could be read as laying down a proposition of law that a person who is appointed purely on ad hoc basis for a fixed period by an authority other than the one who is competent to make regular appointment... and when such appointment is not made by specified recruiting agency is entitled to have ad hoc service counted for the purpose of fixation of seniority.

(15) A brief reference to the above-cited case-law should leave no room to doubt that:-

(a) Where the ad hoc appointment was made by an authority not authorized to make such appointment under the Rules, such ad hoc service cannot be counted for fixation of the seniority;

(b) Even if the ad hoc appointment is made by the competent authority but if such appointment has not been made on the recommendations of the recruiting agency prescribed under the Rules, the benefit of ad hoc service cannot be granted towards seniority;

(c) Save where the Statutory Rules expressly grants the benefit of ad hoc service towards seniority after appointment on regular basis, the seniority has to be fixed as per the provisions of the Rules;

(d) Where ad hoc appointee has been subsequently selected for regular appointment by the Public Service Commission/Staff Selection Commission/Board, such appointee cannot seek benefit of ad hoc service towards seniority except in category (c) above and in such a case his seniority has to be fixed as per his placement in the merit list. In other words, he cannot march over the candidates who are higher in merit merely on the strength of previous ad hoc service;

(e) Where ad hoc services are regularized under a Government policy, the conditions contained in such notification shall apply in full force. State of Haryana has regularized services of ad hoc employees through various policy-decisions notified from time to time and each such policy specify the date when the ad hoc appointee is brought on regular establishment. The service rendered by such ad hoc appointee before regularization therefore cannot count for seniority though it may be countable for other incidental service benefits like pension etc.”

31.3 ***Veterinary & AHTS Association:-***

The Apex Court ruled as under:-

“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 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 2nd June, 1989 and 16th May, 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.”

31.4. ***Chambel Singh’s case:-***

Division Bench of this Court, after detailed discussion and while placing reliance on catena of judgments rendered by the Apex Court and this Court, held that:-

“In view of what has been discussed above, we are of the view that ad hoc service per se cannot be counted to determine appointee's seniority in the cadre.”

31.5 **Direct Recruit Clas II Engineering Officers’ Association & Others v. State of Maharashtra & Others (Apex Court Constitution Bench):-**

The relevant rules in this case provided for recruitment to the cadre from two sources- (1)by direct recruitment and (2) by promotion. A number of persons were appointed by promotion to officiate as Deputy Engineers on continuous basis. These appointment were made after following the procedure applicable to regular promotion including consultation with the Public Service Commission. Controversy was over counting of their officiating service for seniority vis-a-vis the direct recruits to the cadre of Deputy Engineers. In that context, it was held as under:

“44. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

Xxx xxx ”

Controversy before the Constitution Bench of Supreme Court was thus about counting of ad-hoc service before regularization for determining seniority inter se the direct recruits and promotees. The promotees had been promoted/appointed as per Rules. It was in that particular context, Supreme Court held under (B) that if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

To my mind, the facts of the instant case attract the applicability of the corollary of sub para (A) of para 44 of the Constitution Bench judgment. Since the initial appointments of the petitioners during the period 1979 to 1993 by direct recruitment were only on ad hoc basis and were not made according to rules and had been made merely as a stop-gap arrangement. The period of their ad-hoc service before regularization, cannot, therefore, be taken into account for considering the claim of seniority vis-a-vis the private respondents.

31.6 ***State of West Bengal Vs. Aghore Nath Dey:-***

While dealing with conclusions (A) and (B) drawn by the Constitution Bench in aforesaid Maharashtra Engineer's case, the Apex Court held as under :

“ 5. Conclusions (A) and (B) of the Constitution Bench in the Maharashtra Engineer's case have to be read harmoniously and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially, appointed 'according to the rules'. The corollary set out in conclusion (A) then is that 'Where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority. 6. Conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, if the initial appointment is not made by following the procedure laid down by the rules and the later expression 'till the regularisation of his service in accordance with the rules'. Conclusion (B) must be so read as to reconcile with conclusion (A).”

Thus, it has been held that these two conclusions have to be read harmoniously, and conclusion (B) can not cover cases which are expressly excluded by conclusion (A). (emphasis supplied)

In the present case, the petitioners and private respondents all were appointed by direct recruitment but the appointments of the petitioners were made otherwise than through PPSC and their initial appointments were in deviation of and not as per the then applicable rules.

31.7 **Rudra Kumar Sain Vs. Union of India:-**

Seniority dispute in this case was between direct recruit and promotee to the cadre of Delhi Higher Judicial Service. The

promotee possessed the requisite qualifications for being appointed to the post. He was appointed with the approval and consultation of the appropriate authority and continued in the post for a fairly long period. It was held that the exclusion of such appointee to have the continuous length of service for seniority was erroneous. The judgment, *ibid*, is not applicable to the case of petitioner. The same is distinguishable qua the facts in hand. Herein, the petitioners were appointed on ad-hoc basis, during the period when the posts were within the purview of PPSC. Their appointments were made otherwise than through Commission, by deviating from the Rules. In view of this peculiarity and applying corollary of sub para (A) of para 44 of the Constitution Bench judgment in *The Direct Recruit Class II Engineering Officers' Association as later elaborated in State of West Bengal Vs. Aghore Nath Dey*, benefit was accorded. The petitioners' reliance on *Rudra Kumar Sain* judgment is therefore out of context and seems misplaced. The other judgments relied upon by learned counsel for petitioners also do not advance their case, in view of the binding force of law laid down by Constitutional Bench of Apex Court in *Direct Recruit Class I Engineering Officers' Association and others vs. State of Maharashtra and ors.*

32. Reverting again to applicability of relevant Rules herein, Rule 12 of Punjab Civil Services (College Cadre Class-II) Rules, 1976, which deals with the issue of determination of seniority inter se members of service holding the same class of post and provides that “the seniority inter se of persons appointed to post in each cadre of a service shall be determined by the length of continuous service on such post in that cadre

of service. It has also been stipulated that “seniority of persons appointed on purely provisional basis shall be determined as and when they are regularly appointed keeping in view the dates of such regular appointment.”

33. At the cost of being repetitive, I may hasten to add that it is a peculiar case in hand, where as a special gesture, in order to mitigate the hardship of the petitioners, the Government sympathetically considered the request of the petitioners/ adhoc lecturers for regularizing their services without being required to appear before the Public Service Commission. For this purpose, the Government decided to take the posts out of the purview of Punjab Public Service Commission so as to merely regularize the services of the long serving adhoc lecturers. In the relevant order Annexure P/6, it was clearly and categorically written that the petitioners shall be on probation for a period of one year which could be extended. They were not be considered for confirmation till they successfully clear their probation. Their seniority was to be determined after completing (probation) successfully under Punjab Civil Services (College Cadre Class-II) Rules, 1976. These adhoc lecturers after regularization were/ are be placed below all in the existing seniority list. They were not to have any right of higher seniority above the lecturers recommended by PPSC.

34. The petitioners took full benefit of the aforesaid order (Annexure P/6) of regularization. They also acquiesced and accepted the aforesaid other conditions accompanying regularization of their services. They blissfully availed/ enjoyed its benefits including continuance and regularization of services. Resultantly, now they are

estopped by their act and conduct and also on the ground of equity from challenging the conditions, however, unpalatable though, but they were integral part of the same very order. Petitioners, having eaten the cake, cannot have it too. I find support for my this view from *Harpal Singh & Ors v. State of Haryana & Ors* supra, wherein a Division Bench of this Court, inter alia, held that where ad hoc services are regularized under a Government policy, the conditions contained in such notification shall apply with full force.

35. The petitions also suffer from the vice of extraordinary delay and laches. Order dated 04/05.10.1995 (Annexure P/6) categorically stipulated that seniority of the petitioners will be determined after completing (probation) successfully under Punjab Civil Services (College Cadre Class-II) Rules, 1976, also clarifying that these adhoc lecturers after regularization will be placed below all in the existing seniority list and they will have no right to have seniority above the lecturers recommended by Punjab Public Service Commission. The petitioners very well knew ever since the passing of this order dated 04/05.10.1995, that they would be placed below all in the existing seniority list and they will have no right to seniority above the lecturers recommended by PPSC. Concededly, there were no pleasant surprises for them, as exactly the same position is reflected in the tentative seniority Annexure P/11. Formal issuance of the said seniority list was nothing, but a ministerial act incorporating the factual position already determined and indicated in the order dated 04/05.10.1995 Annexure P/6, long before the formal issuance of seniority list dated 24.06.2019.

The seniority as determined in the order dated 04/05.10.1995

(Annexure P/6) has now been belatedly challenged through the present petitions. The earliest of them being CWP-8432 of 2009. Such extraordinary delay and latches also weigh heavily against the petitioners.

36. Re: relief claimed in CWP-9069 of 2020 by Manju Middha same was also claimed by her in CWP No. 14099 of 2019. The said earlier petition was decided on merits vide my judgment dated 22.11.2019. My earlier judgment in Manju Midha case was primarily based on the understanding, apart from being bound by the principles of stare decisis and judicial propriety, that the petitioner's case therein was covered by a Division Bench judgment dated 18.12.2008 rendered by this Court in CWP No. 2409 of 2008 titled Vijay Singh & Ors. Vs. State of Haryana & Ors. As it turned out to my knowledge later, the aforesaid Division Bench judgment relied by me had already been reversed by Supreme Court in State of Haryana Vs. Vijay Singh 2012(8) SCC 633. However, this was not brought to the notice of the Court and escaped attention at the time of passing my earlier judgment dated 22.11.2019, which is, therefore, clearly *per incuriam*.

37. Moreover, operation of Manju Middha judgment was stayed by a Division Bench of this Court vide order dated 20.07.2020 passed in an intra court appeal bearing LPA No. 446/2020 (O&M) titled State of Punjab and another v. Manju Midha. In view of this factual position, there is merit in the contention of the learned counsel for the respondents that the instant fresh petition - CWP-9069 of 2020 filed by petitioner Manju Midha for the same relief is not maintainable.

38. As a result, bunch of these petitions are all dismissed.

39. Pending applications, if any also stand disposed of.

08.02.2021
Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No