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

CWP-13503-1998 (O&M)

Date of decision: May 30, 2022

Kewal Krishan and others

.....Petitioners

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Naresh Kumar, Advocate for
Mr. K.S. Dadwal, Advocate for the petitioners.

Mr. R.D. Sharma, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petitioners are seeking, issuance of a writ in the nature of Mandamus directing the respondents to grant the benefit of Gazetted Holidays, Saturdays, Sundays/ Over-time, liveries, etc. to the petitioners from the dates of their initial appointment and further count the entire services for pensionary benefits as well as grant of I and II Proficiency Step-ups on the completion of 8/18 years service from the dates of their initial appointment.

2. It appears that claim of the petitioners is not admissible in view of the following stand taken in Para-6 & 9-ii) of the reply filed by respondents No.1 to 3, which is reproduced herein for ready reference:-

“6. That Para No.6 of the Civil Writ Petition is wrong and denied. No representation of any workmen has been received in this Division. The work charged service of the employees does not fall under the Punjab Civil Services Rules and the benefits of Gazetted Holidays Saturdays, Sundays, Overtime, Liveries etc. are not admissible to the work charged employees. The Pay of the work charged employees is charged against the estimate of a particular work and in that case no such benefits are provided to the work charged employees. The petitioners are not entitled to count work charged period towards qualifying service for claiming the benefits.

xx xx xx xx
 9. xx xx

ii) *That the para is wrong and denied. The Haryana State has filed the SLP against the judgement passed by the Hon'ble High Court which is relied upon by the petitioners for their claim and the Hon'ble Apex Court has stayed the operation of the judgement appealed against. The petitioners are not entitled to count the work charged period towards qualifying service for claiming benefits."*

3. Learned State counsel has canvassed arguments on similar lines as the stand taken in the aforesaid written statement.

4. I am in agreement with the stand taken by the respondents. Neither any replication has been filed to the afore-noted stand of the respondents nor any additional affidavit of any kind to controvert the same.

5. I have already rendered my opinion in a similar matter bearing CWP-17309-2001 owing to a decision rendered by Supreme Court in **State of Haryana and others vs. Sita Ram and others** in Civil Appeal Nos.5411-5430 of 2009, in which following has been held by the Supreme Court:-

"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 send requisition to the employment exchange as per the requirement of the Employment

Exchanges (Compulsory Notification of Vacancies) Act, 1959. Not 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. The distinction between work charge establishment and regular establishment was aptly highlighted in Kunji Raman's case in the following words:

“A work-charged establishment as pointed out by this Court in Jaswant Singh v. Union of India (1979) 4 SCC 440 broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the works. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. Thus a work-charged establishment is materially and qualitatively different from a regular establishment.

A work-charged establishment thus differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a "work" and availability of funds for executing it. So far as employees engaged in work-charged establishments are concerned, not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged in the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government.”
(emphasis added)

*13. In **Punjab State Electricity Board v. Jagjiwan Ram** (supra), this Court considered whether work charge service is synonymous with regular service and whether two services can be clubbed for grant of time bound promotional scale/increment etc., referred to the judgments in **Jaswant Singh v. Union of India (1979) 4 SCC 440**, Kunji Raman's case and observed:*

“Generally speaking, a work-charged establishment is an establishment of which the expenses are chargeable to works. The pay and allowances of the employees who are engaged on a work-charged establishment are usually shown under a specified sub-head of the estimated cost of works. The work-charged employees are engaged for execution of a specified work or project and their engagement comes to an end on completion of the work or project. The source and mode of engagement/recruitment of work-charged employees, their pay and conditions of employment are altogether different from the persons appointed in the regular establishment against sanctioned posts after following the procedure prescribed under the relevant Act or rules and their duties and responsibilities are also substantially different than those of regular employees.

The work-charged employees can claim protection under the Industrial Disputes Act or the rights flowing from any particular statute but they cannot be treated on a par with the employees of regular establishment. They can neither claim regularisation of service as of right nor can they claim pay scales and other financial benefits on a par with regular employees. If the service of a work-charged employee is regularised under any statute or a scheme framed by the employer, then he becomes member of regular establishment from the date of regularisation. His service in the work-charged establishment cannot be clubbed with service in a regular establishment unless a specific provision to that effect is made either in the relevant statute or the scheme of regularisation. In other words, if the statute or scheme under which service of work-charged employee is regularised does not provide for counting of past service, the work-charged employee cannot claim benefit of such service for the purpose of fixation of seniority in the regular cadre, promotion to the higher posts, fixation of pay in the higher scales, grant of increments, etc.” (emphasis added)”

6. Furthermore, learned State counsel also relies on an Apex Court judgment dated 19.09.2000 passed in Civil Appeal No.13423-1996 titled “**State of Haryana vs. Haryana Veterinary and A.H.T.S. Association**” reported in **2000 AIR (Supreme Court) 3020**. Relevant part thereof is reproduced hereinbelow:-

“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 alongwith 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 joins 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 2nd June, 1989 as well as the Clarificatory Circular dated 16th May, 1990. The conclusion of the majority judgment of the High Court, therefore, is wholly erroneous and cannot be sustained.”

7. In view of the aforesaid, no grounds are made out to interfere.
8. Dismissed.

(ARUN MONGA)
JUDGE

May 30, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No