

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

1. Civil Writ Petition No.4429 of 2020(O&M)
Date of Decision: May 23 , 2022.

Virendra Singh Malhan and others PETITIONER(s)

Versus

State of Haryana and others RESPONDENT (s)

2. Civil Writ Petition No.13254 of 2020(O&M)

Parduman Singh and others PETITIONER(s)

Versus

State of Haryana and others RESPONDENT (s)

3. Civil Writ Petition No.8891 of 2020(O&M)

Dr. Nirmal Singh and others PETITIONER(s)

Versus

State of Haryana and another RESPONDENT (s)

4. Civil Writ Petition No.14925 of 2019(O&M)

Subhash Chander Dudeja PETITIONER(s)

Versus

State of Haryana and another RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sameer Sachdeva, Advocate
for the petitioners in CWP Nos.4429 and 8891 of 2020.
Mr. Aman Chaudhary, Advocate
for the petitioners in CWP No.13254 of 2020.
Mr. Dalbir Singh, Advocate
for the petitioner in CWP No.14925 of 2019.

Ms. Shruti Jain, DAG, Haryana.

Mr. Suresh Kumar Kaushik, Advocate
for respondents No.6 to 8 in CWP No.4429 of 2020.

Mr. R.K.Malik, Senior Advocate with
Mr. Varun Veer Chauhan, Advocate
for respondents No.9 to 11 in CWP No.4429 of 2020.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This order shall dispose of CWP Nos.4429, 13254, 8891 of 2020 and 14925 of 2019. Petitioners in all these writ petitions seek benefit of adhoc service rendered by them towards seniority with all consequential/monetary benefits. Petitioners also seek refixation of their seniority and revision of seniority list accordingly. Reliance is placed by the petitioners on decision of a coordinate Bench in **Dr. Surindra Kumar Mishra and others v. State of Haryana and another, 2011(1) SCT 428**, which was affirmed by the Division Bench of this Court in LPA No.886 of 2011 vide decision dated 13.10.2011. Civil Appeal Nos.4420-4424 of 2016 as well as review and curative petitions filed by the State challenging the said decisions have been dismissed by the Hon'ble Supreme Court.

Facts in each of the abovementioned writ petitions as are relevant for adjudication of the controversy are briefly narrated as hereunder:-

CWP No.4429 of 2020, Virendra Singh Malhan and others v. State of Haryana and others was initially filed by ten (10) petitioners while pleading that all the said petitioners were appointed as Lecturers in Government Colleges in the State of Haryana by way of selection qua duly sanctioned posts.

Petitioners, it is stated, were initially appointed on adhoc basis through proper and due process of selection after issuance of public notice and advertisement as per applicable statutory service rules. All the ten (10) petitioners except petitioners No.7 and 9 are stated to have joined on adhoc basis between the years 1980 and December, 1986. Petitioners No.7 and 9 were appointed on 25.01.1994 and 27.12.1993, respectively. Services of all the ten (10) petitioners were regularized w.e.f. 31.12.1990 except petitioners No.4, 7, 9 and 10 whose services were regularized in the years 1986, 2000, 1997 and 1989, respectively. Petitioners thus claimed that their adhoc service should be counted towards seniority alongwith all other consequential benefits on the basis of judgment of this Court in **Dr. Surindra Kumar Mishra (supra)**, which had attained finality. Respondents, keeping in view the judicial pronouncements, filed reply wherein benefit of adhoc service to petitioners No.1 to 6, 8 and 10 was conceded.

CWP No.4429 of 2020 was accordingly disposed of qua petitioners No.1 to 6, 8 and 10 vide order dated 22.09.2020 with a direction to the respondents that the said petitioners be granted the benefit in the same terms as in **Dr. Surindra Kumar Mishra (supra)** in view of the stand taken by the State. Therefore, CWP No.4429 of 2020 survives qua claim of petitioners No.7 and 9. Petitioners No.11 to 14 were later impleaded vide various applications filed in the writ petition.

Claim of petitioners No.7, 9 and 11 to 14 is resisted by the State. It is pleaded that benefit of adhoc service towards seniority was allowed only to those petitioners, who were appointed on adhoc basis prior to 1986 with their services governed under the Punjab Educational Services Rules, 1934 (for short, '1934 Rules) and the Punjab Subordinate Educational Service Rules, 1937 (for

short, '1937 Rules'). In respect to those petitioners appointed after coming into force of the Haryana Education (College Cadre) Group B Service Rules, 1986 (for short, '1986 Rules'), it is pleaded that appointment under the 1986 Rules is to be made by the Government on recommendations of the Commission, which was not the requirement under the 1937 Rules. It is pleaded that the abovesaid petitioners were selected and appointed purely on adhoc basis on recommendations of Departmental Selection Committee as a stop gap arrangement. In respect to petitioners No.7, 12 and 13, it is stated that their services were regularized under the State Regularization Policy dated 18.06.2014 w.e.f. 31.01.1996 and petitioners No.9, 11 and 14 though initially appointed on adhoc basis, were subsequently recruited through direct recruitment vide orders dated 24.10.1997 and 31.03.2003 attached as Annexures A2 and A3 with the reply to the said writ petition. Said petitioners, it is stated, accepted regularization of their services w.e.f. 31.01.1996 in consonance with the terms and conditions of the regularization policy without any protest. Terms and conditions accepted by them at the time of regularization are stated to be binding upon them. It is further stated that regularization policy dated 18.06.2014 vide which services of petitioners No.7, 12 and 13 were regularized w.e.f. 31.01.1996 was challenged in a number of writ petitions, which were clubbed together with the lead case being CWP No.17206 of 2014 (**Yogesh Tyagi and another v. State of Haryana and others**). Said writ petition alongwith connected petitions were decided on 31.05.2018 and regularization policy dated 18.06.2014 was struck down. SLP (Civil) No.33265 of 2018 was filed challenging the said order. Notice was issued in the said matter with status quo directed to be maintained. It is thus pleaded that question of deciding

seniority of petitioners No.7, 12 and 13 in any case does not arise in this situation.

Insofar as petitioners No.9, 11 and 14 in CWP No.4429 of 2020 are concerned, it is reiterated that as the said petitioners, whose initial appointment was not as per the Rules and who were subsequently appointed through direct recruitment, cannot be treated at par with the adhoc employees who were appointed as Lecturers in consonance with the earlier prevalent Rules. All the petitioners, it is further submitted, had duly accepted their seniority and had not raised any objection thereto for so many years, therefore, the writ petitions deserve to be dismissed on the question of delay itself.

In CWP No.13254 of 2020, Parduman Singh and others v. State of Haryana and others, there are six (6) petitioners, who are stated to be appointed as Lecturers on adhoc basis in Government Colleges in the State of Haryana against duly sanctioned posts through proper process of selection after issuance of public notice, advertisement/requisitions through employment exchange and following due procedure of selection in the year 1993 as per the prevalent statutory Service Rules in the year 1993-1994. It is stated that services of all the petitioners were regularized w.e.f. 31.01.1996 vide order dated 02.07.2014. It is submitted that representation submitted by the petitioners for counting their adhoc service towards seniority was not decided by the respondents and they filed CWP No.2630 of 2020. Coordinate Bench of this Court vide order dated 31.01.2020 issued a direction to the respondents to consider the case of the petitioners keeping in view judgments dated 09.09.2010 and 13.10.2011 in **Dr. Surindra Kumar Mishra (supra)** and pass appropriate order(s) in accordance with law. Respondents vide impugned order dated

22.06.2020 rejected the claim of the petitioners primarily on the ground of delay and laches while observing that the representation was filed by the petitioners only when claim of other employees was settled upto the Hon'ble Supreme Court. It is further observed that once services of the adhoc employees were regularized under a policy, it constitutes a binding contract. Moreover, they have not challenged the regularization policy and are drawing all benefits with effect from the date of their regularization. Aggrieved therefrom, present writ petition was filed.

Herein too, State has taken the objection of delay and laches, besides, petitioners not being initially appointed in tune with the applicable rules and regulations with Regularization Policy dated 18.06.2014 itself being under cloud.

In CWP No.8891 of 2020, Dr. Nirmal Singh and others v. State of Haryana and another, all the ten petitioners plead that they were duly appointed as Lecturers on adhoc basis through proper process of selection after issuance of public notice, advertisement and following due procedure of selection as per applicable statutory service rules qua duly sanctioned vacant posts. It is stated that petitioners were appointed in the year 1993-1994. Services of all the petitioners were regularized w.e.f. 31.01.1996. It is further stated that in case adhoc service of the petitioners is counted, they are much senior to various other teachers who have been granted promotions in the State. Merely because benefit of adhoc service has not been afforded to them, petitioners are reflected at a much lower place in the seniority list. Petitioners herein also rely upon judgment of this Court in **Dr. Surindra Kumar Mishra (supra)** to substantiate their case while submitting that once the matter has been

adjudicated upon by the court, it is not necessary for each and every affected person to approach individually for the benefit in question and in fact, it is incumbent upon the State to ensure percolation of benefit to all the concerned employees. As per the short reply on behalf of respondents No.1 and 2 filed in this writ petition, claim of the petitioners is denied on the ground that benefit of the judgment in **Dr. Surindra Kumar Mishra (supra)** has been afforded only to those Lecturers appointed prior to coming into force of the 1986 Rules. Similar stand has been taken in the short reply as in the other connected cases.

In CWP No.14925 of 2019, Subhash Chander Dudeja v. State of Haryana and another, petitioner pleads that he was initially appointed as Lecturer in Physics on 16.02.1987 on adhoc basis through proper process of selection after issuance of public notice, advertisement and following due procedure of selection as per applicable statutory service rules qua a duly sanctioned vacant post. It is stated that petitioner's services were regularized w.e.f. 01.01.1991 vide order dated 05.02.1992 and he was accordingly appointed as officiating Lecturer in HES-II (Non-Gazetted) School Cadre. It is also stated that the petitioner was promoted to the post of Principal on 25.07.2007. Petitioner herein also seeks direction to the respondents to count his adhoc service towards seniority and grant of consequential benefits while relying upon judgment of this Court in **Dr. Surindra Kumar Mishra (supra)**. Though reply has not been filed, learned counsel for the State has taken a similar stand as in other connected matters to the effect that petitioner's appointment not being in consonance with the 1986 Rules, benefit, in question, cannot be afforded. Furthermore, petitioner accepted regularization of his services on 05.02.1992 w.e.f., 01.01.1991 and did not raise any objection thereto for a number of years,

which disentitles him for the relief as claimed.

It is relevant to note at this stage that **CWP No.8604 of 2007 (Dr. Surindra Kumar Mishra and others v. State of Haryana and another)** and other connected matters were filed by the Lecturers who were initially engaged on adhoc basis seeking benefit of adhoc service towards seniority and other consequential benefits. Petitioners therein were initially engaged on adhoc basis having been sponsored by the Employment Exchange and selected by a Committee of officers constituted for the purpose of carrying out the selection. Their services were subsequently regularized by the State. Said petitioners claimed seniority by claiming their adhoc service to be counted towards the total length of service rendered by them. Coordinate Bench in the case of **Dr. Surindra Kumar Mishra (supra)** held that initial appointment of petitioners therein was in accordance with the then applicable Rules (pre-1986 Rules) even though they were appointed on adhoc basis and that when their services were regularized, petitioners' cases were duly considered by the Haryana Public Service Commission. Reference was made to the 1986 Rules in the context that appointment under the said Rules is to be made on the recommendations of the Commission, which was not the requirement under the 1937 Rules. Relevant paras of decision dated 09.09.2010 in **Dr. Surindra Kumar Mishra (supra)** read as under:-

“I have considered respective contentions of learned counsel for parties. The moot question is whether initial appointment of the petitioners was in accordance with rules or it was a fortuitous appointment disentitling them the benefit of ad hoc service. It is admitted case of the parties that all the petitioners were appointed, though on ad hoc basis, but prior to coming into force of 1986 Rules. The posts of Lecturers in the Colleges are specified under

Appendix A and D, respectively. Their qualifications are prescribed in Appendix B. Under Rule 4 of the 1937 Rules, the Director Public Instructions, Punjab is appointing authority. Even though the names of the petitioners were sponsored by the Employment Exchange, however, their selection was made by a duly constituted Committee which fact is not disputed in the reply. Rule 6 provides two modes of recruitment i.e. by Direct recruit or by transfer. The petitioners have been appointed by direct recruitment. No quota is fixed for direct recruitment or otherwise. Rule 6 further empowers the appointing authority to re-determine the manner in which the vacancy is to be filled as and when it occurs. The competent authority filled up vacancies by direct recruitment. It is also mentioned in the writ petition that besides sponsorship by the Employment Exchanges, a public advertisement was also issued which fact is also not disputed in the reply filed by respondents. The appointment of the petitioners in this manner cannot be said to be contrary to rules or against the mandate of Articles 14 and 16 of the Constitution of India. Under 1986 Rules, the appointment is to be made on the recommendations of the Commission which was not the requirement under 1937 Rules. 1937 Rules deals with seniority which has to be fixed by the date of confirmation. It is pertinent to note that even when the petitioners were regularized, their cases were duly considered by the Haryana Public Service Commission as is evident from the regularization orders (Annexures P-2/1 and P-2/2. Even under Rule 11 of the 1986 Rules dealing with seniority, it is provided that the seniority shall be determined by the length of continuous service on any post in the service. There is no requirement of a regular service under this rule even. The petitioners were appointed against the sanctioned posts through a duly constituted selection Committee. They have been continuing on the posts borne on the cadre of service. Their appointment cannot be said to be fortuitous in nature, notwithstanding the fact that the same have been termed as “ad hoc”. As a matter of fact, ratio of the judgment of Hon'ble Supreme Court in the case of **(Dr.**

Gagan Inder Kaur & Ors. (supra) is applicable on all fours.

These petitions are accordingly allowed. Respondents are directed to count the ad hoc period of service rendered by the petitioners towards the seniority. The petitioners shall be entitled to all the consequential benefits.”

Decision in **Dr. Surindra Kumar Mishra (supra)** was upheld right upto the Hon'ble Supreme Court and has admittedly attained finality. The respondents accordingly afforded the benefit of decision in **Dr. Surindra Kumar Mishra (supra)** to all the appointees appointed prior to coming into force the 1986 Rules. It is in this view of the matter that CWP No.4429 of 2020 was disposed of by coordinate Bench qua petitioners No.1 to 6, 8 and 10 vide order dated 22.09.2020.

Insofar as the appointees subsequent to coming into force of the 1986 Rules, it is the specific stand of the State that such appointees are not entitled to the benefits of counting of adhoc service towards seniority for the reasons as detailed in foregoing paras. Perusal of the 1986 Rules clearly reveals that appointing authority thereunder is the Government whereas it is a matter of record that petitioners were appointed purely on adhoc basis by the Director on recommendations of the Departmental Selection Committee without there being any recommendation by the Public Service Commission. Therefore, they cannot be treated at par with the pre-1986 adhoc appointees, who were appointed while adhering to the prevalent applicable rules at that time.

Learned counsel for the petitioners have vehemently argued that this distinction created by the State between petitioners who were appointed prior to coming into force of the 1986 Rules and those appointed afterwards, is absolutely fallacious and in fact absurd inasmuch as there is nothing on record to

indicate that appointment of the petitioners is not in accordance with the applicable rules. It was urged that there was a hidden agenda in granting the benefit of adhoc service to pre-1986 appointees who have mostly retired now and thereby deprive the post-1986 appointees of the benefit to which they are entitled. Learned counsel submitted that it does not lie in the mouth of the State to dispute the legality of its own appointments. Furthermore, for grant of career advancement benefits for promotions from Lecturer to Lecturer Senior Scale/Lecturer Selection Grade/Associate Professor and Professor etc., adhoc service can be counted, therefore, it should be counted towards seniority as well. It is further submitted that consultation of HPSC is not necessary for the post of Lecturer. Furthermore, the respondent-State cannot take advantage of its own wrong and malpractice in this manner and they are bound to grant benefit of seniority of the adhoc service rendered by them with all consequential benefits in parity and uniformity with pre-1986 appointees in terms of the judgment of this Court in **Dr. Surindra Kumar Mishra (supra)**. It is thus prayed that all the writ petitions be allowed.

Learned counsel for the State while refuting the arguments advanced on behalf of the petitioners, reiterates the stand of the State as is noted in the foregoing paras. It is further submitted that delay and laches in itself is sufficient to dismiss all the present writ petitions. It is reiterated that appointment of petitioners not being in accordance with the 1986 Rules, they are in any case not entitled for their adhoc service to be counted towards seniority. It is thus prayed that these writ petitions be dismissed.

I have heard learned counsel for the parties at length and have gone through files with their able assistance.

At this stage, it is relevant to note that **Dr. Surindra Kumar Mishra's case (supra)** indeed dealt with the pre-1986 appointees. This is not denied by learned counsel for the petitioners. Perusal of said decision dated 09.09.2010 in **Dr. Surindra Kumar Mishra (supra)** reveals that appointment of the petitioners therein was held to be in accordance with the 1937 Rules. There is a specific reference that under the 1986 Rules, the appointment is to be made on the recommendations of the Commission whereas there was no such requirement under the 1937 Rules. At this stage, it is apposite to reproduce Rule 2(a), (c) and (d) of the 1986 Rules, which reads as under:-

- a. "Commission" means the Haryana Public Service Commission;
- b. xx xx xx xx
- c. "Director" means the Director of Higher Education, Haryana;
- d. "Government" means the Haryana Government in the Administrative Department;"

As per the 1986 Rules, appointing authority of College Lecturers is the government. Rule 6 of the 1986 Rules provide that "appointments to any post in the Service shall be made by the Government". Method of appointment is (i) by direct recruitment and (ii) by transfer or deputation from other departments. Rule 10 provides for probation of two years in case of direct recruitment and one year in case of appointments otherwise. Rule 11 provides that seniority inter-se the members shall be determined by the length of continuous services on any post in the service with a proviso that in case of members appointed by direct recruitment, the order of merit determined by the Commission or other recruiting authority shall not be disturbed in fixing the seniority.

It is apparent from the record that persons appointed as Lecturers on

ad hoc basis after 1986, were appointed by the Director on recommendations of Selection Committee and not by the Government as such on recommendations of the Haryana Public Service Commission, which otherwise is clearly the prescribed mode of appointment under the 1986 Rules. There is nothing on record to indicate that posts of direct recruitment against which the petitioners were appointed, were ever taken out of the purview of the Commission. Therefore, there is no merit in the argument raised on behalf of the petitioners in this respect. Reliance by learned counsel for the petitioners on the judgment of this Court in **Rakesh Kumar Singla v. State of Haryana and another, 1995 (4) SCT 285** is of no avail as the said decision stands overruled by the Hon'ble Supreme Court in **State of Haryana v. Haryana Veterinary and AHTS Association and another, 2000(4) SCT 664**. Ms. Shruti Jain, DAG, Haryana has rightly referred to the judgment of the Hon'ble Supreme Court in **State of Haryana and others v. Vijay Singh and others, (212) 8 SCC 633**.

At this stage, it is relevant to note that insofar as petitioners No.7, 12 and 13 in CWP No.4429 of 2020 are concerned, their services were regularized in terms of the State Regularization Policy 2014, which was set aside on 31.05.2014 by a Division Bench of this Court in CWP No.17206 of 2014. The matter is admittedly pending final adjudication before the Hon'ble Supreme Court in SLP (Civil) No.33265 of 2018. Regularization itself of the said petitioners is under a cloud at this point of time, though status quo has been ordered to be maintained by the Hon'ble Supreme Court in the said SLP (Civil) No.33265 of 2018. However, the same cannot be stretched to mean that the said petitioners have a vested right for the relief as claimed for.

Furthermore, a vital aspect to be considered in these cases is the

aspect of delay on the part of the petitioners in raising their claim for seniority apart from the question of the appointments not being in consonance with the 1986 Rules. It is a matter of record that services of all the petitioners were regularized w.e.f. 31.01.1996 under the State Regularization Policy dated 18.06.2014 (except petitioners No.9, 11 and 14 in CWP No.4429 of 2020, who were initially appointed on adhoc basis and subsequently appointed through direct recruitment vide orders dated 24.10.1997 and 31.03.2003 and petitioner in CWP No.14925 of 2019 whose services were regularized on 05.02.1992 w.e.f. 01.01.1991). Petitioners admittedly chose to sit on the sidelines and be silent spectators for a number of years and did not raise a murmur regarding their seniority in any manner till after the decision of **Dr. Surindra Kumar Mishra (supra)** and that too till it almost attained finality.

Division Bench of this Court in **LPA No.1743 of 2016** decided on 14.09.2016 (**Harpal Singh and others v. State of Haryana and others**) while considering various other judgments observed that benefit of adhoc service is not to be granted summarily. It is observed that there cannot be a proposition of law that a person who is appointed purely on adhoc basis for a fixed period by an authority other than the one who is competent to make regular appointment and not by a specified recruiting agency, is entitled to have adhoc service counted for the purpose of seniority. Following guidelines were culled out, which are reproduced as under:-

“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.”

It is further observed by the Division Bench that no writ petition claiming benefit of *ad hoc* service towards seniority can be entertained and is liable to be dismissed outrightly if all those employees whose seniority is likely to be affected are not impleaded as party respondents.

In the case of State of Haryana and others v. Rajni Bhalla, 2017(4) SCT 63 the necessity of impleading persons, who were adversely affected was again emphasized. It is reiterated that no benefit can be granted to fence-sitters. Reference can also be gainfully made to the judgment of Hon'ble

Supreme Court in Malook Singh and others v. State of Punjab and others, 2021 SCC Online SC 876, wherein the Hon'ble Supreme Court has also referred to its earlier judgment in Direct Recruits Class II Engineering Officers' Association v. State of Maharashtra, (1990) 2 SCC 715 wherein it is held that "once an incumbent is appointed to a post according to a rule, his seniority has to counted from the date of appointment and not according to date of his confirmation. The corollary to 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 considering the seniority".

Keeping in view the facts and circumstances as above, no ground for interference is made out in these writ petitions, especially on the ground of delay and laches.

No other argument has been raised.

Writ petitions are accordingly dismissed with no order as to cost.

Pending applications, if any, are disposed of accordingly.

May 23 , 2022.
'om'

(LISA GILL)
JUDGE

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