

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

**LPA No.267 of 2022(O&M)
Date of decision:21.04.2022**

Ram Kumar

... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. Sameer Sachdeva, Advocate, for the appellant.

ARUN PALLI, J.

This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 25.03.2021, rendered by the learned Single Judge, vide which the writ petition preferred by the appellant has since been dismissed.

The facts that are required to be noticed are limited.

The appellant was hired as Conductor on contractual basis by the respondent-department on 28.04.1993. The Transport Commissioner, Haryana – respondent No.1, vide its letter dated 28.07.1994, issued instructions to regularize the services of all those drivers and conductors who had completed two years service on contractual basis. But as despite that being so, the claim of the appellant was not considered, he along with others was impelled to approach this Court vide a Civil Writ Petition

No.16279 of 1996 (**Anil Kumar and others v. State of Haryana and others**), which was disposed of by the Division Bench on 31.01.1997, with a direction to the authorities to consider their claim. Resultantly, vide order dated 08.05.1997, services of the appellant were regularized w.e.f. 01.04.1997. However, the grievance of the appellant has been that as he had completed two years service, on contract basis, in April, 1995, in terms of the instructions dated 28.07.1994 (**ibid**), his services ought to have been regularized from the said date and not from 01.04.1997. Thus, the appellant filed a writ petition; praying for a direction to the authorities to count the ad hoc service (1993-1995) he had rendered for the purpose of seniority/pension, with a further prayer to regularize his service, in terms of the policy/instructions (**ibid**), on completion of two years. Which, as indicated earlier, was dismissed by the learned single Judge, primarily, on the ground of delay and laches.

We have heard the learned counsel for the appellant, who has merely reiterated the submissions that were advanced before the learned single Judge: the ad hoc service rendered by the appellant, from 1993 to 1995, ought to be counted for the purpose of seniority/pension. The reliance is placed in this regard upon a decision rendered by the Division Bench of this Court in **Hanumant Singh and others v. State of Haryana and others, 2008(4) SCT 427**. Further, in terms of instructions dated 28.07.1994 (**ibid**), service of the appellant ought to have been regularized from 1995, rather than w.e.f. 01.04.1997. In reference to a judgment and decree dated 22.05.2014 (P-5), learned counsel for the appellant asserts that a suit filed by the identically placed Conductors was decreed by the civil court. And a decree of mandatory injunction was issued directing the department to

regularize their services on completion of two years service from the date of their respective appointments. Hence, it is urged that the appellant too was entitled to the same relief. No other argument was advanced.

Ex facie, the appointment of the appellant was contractual in nature. Thus, the argument that his ad hoc service (from 1993 to 1995) be counted for determining his seniority and pension is apparently misconceived. Nothing was brought on record to show if the period of contractual employment, *per se*, could be counted towards seniority/pension. The service rules regarding recruitment to the post of drivers/conductors to ascertain the mode/method of appointment and determining seniority, were not placed on record either. In fact, it would be apposite to refer to the observations recorded by the learned single Judge in this regard:

“Learned counsel for the petitioner was also requested to draw the attention of the Court to the relevant Service Rules in support of his claim. He submits that the Service Rules are silent on the matter, however, he does not wish to produce the same.”

Again, as observed even by the learned single Judge, the decision in **Hanumant Singh’s** case (*supra*) is clearly distinguishable, for the instructions that were the subject matter of consideration in the said case related to service rendered on ad hoc basis. Further, the requirement to complete two years service, in terms of the instructions dated 28.7.1994 (extracted below), was not the only condition to claim or regularize the services of contractual employees, for it was also subject to availability of vacancy and their *inter se* seniority:

“...As per agreement the services of drivers/conductor who completes 2 years service on

contractual basis should be regularized against vacancy. You are therefore requested to regularize the services of all Search drivers/conductors who have completed two years of their service against the vacancies available under the prescribed norms of 1:4 persons per vehicle from the date of availability of vacancy and keeping in view of the seniority of the eligible persons.”

Accordingly, a reference, at this stage, even to the order dated 08.05.1997 (**ibid**), whereby the services of the appellant, along with others, were regularized, would be equally crucial:

Sr. No.	Name & Father’s Name	Date of completion of 2 years	Date on which regularized on availability of post	Cond. No. allotted
1.	Ilam Singh S/o Sh. Hari Singh	6.5.95	10.12.96	C-272
2.	Sultan Singh S/o Sh. Bhagat Ram	6.5.95	20.12.96	C-99
3.	Pritam Singh S/o Karta Ram	9.5.95	13.02.97	C-23
4.	Rampal S/o Mam Chand	9.5.95	1.4.97	C-70
5.	Surinder Singh S/o Puran Singh	9.5.95	1.4.97	C-362
6.	Jagdish S/o Sing Ram	9.5.95	1.4.97	C-109
7.	Raghbir S/o Ram Singh	9.5.95	1.4.97	C-45
8.	Ranjit Singh S/o Mangat Ram	9.5.95	1.4.97	C-341
9.	Rakesh Roshan S/o Rulia Ram	11.5.95	1.4.97	C-363
10.	Sinder Kumar S/o Puran Chand	12.5.95	1.4.97	C-364
11.	Ram Kumar S/o Pholla Ram	10.6.95	1.4.97	C-365

A bare analysis of the table, referred to above, reveals that services of all contractual employees, including the appellant, were not regularized merely on completion of two years of service but also on the availability of vacancies and as per their *inter se* seniority. We may hasten to

add here that this was never the case of the appellant that despite availability of vacancy prior to 01.04.1997, the department never considered his claim or while passing the order dated 08.05.1997 (P-4), services of a person junior to him were regularized prior in point of time.

Further, reliance placed upon an order and judgment dated 18.05.2009 (P-6), and a decree dated 22.05.2014, passed by the Civil Court, Kurukshetra, whereby the suit filed by certain Conductors was decreed, would not advance the case of the appellant either. For, we are in complete agreement with the conclusion recorded by the learned single Judge that the petition filed by the appellant suffered from gross, inordinate and unexplained delay of 24 years, in approaching this Court.

What we wish to emphasize, in particular, is that services of the appellant were regularized w.e.f. 01.04.1997. And, he was assigned a specific seniority position in the cadre. Whereafter, he continued to serve the department for nearly twenty five years, before attaining the age of superannuation in January, 2022. Needless to assert that during all these years, he availed all admissible benefits, promotions, and retired as Inspector. Thus, it rather appears that institution of the petition by the appellant was speculative and an attempt to resurrect a stale and dead claim. The Supreme Court, in New Delhi Municipal Council v. Pan Singh & Ors., 2007(9) SCC 278, observed:

“15. There is another aspect of the matter which cannot be lost sight of. Respondents herein filed a Writ Petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not

implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. See Govt. of W.B. v. Tarun K. Roy And Others [(2004) 1 SCC 347], Chairman, U.P. Jal Nigam & Anr. v. Jaswant Singh And Anr. [2006 (12) SCALE 347] and Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another v. K. Thangappan and Another [(2006) 4 SCC 322]”

Similarly, in Jagdish Lal & Ors. v. State of Haryana & Ors., (1997) 6 SCC 538, it was held by the Supreme Court:

*“That apart, as this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or 32 of the Constitution. It is not necessary to reiterate all catena of precedents in this behalf. Suffice it to state that the appellant kept sleeping over their rights for long and elected to wake up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios.....
Therefore, desperate attempts of the appellants to re-do the seniority had by them in various cadres/grades though in the*

same services according to 1974 Rules or 1980 Rule, are not amenable to judicial review at this belated stage....”

In the wake of the position as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned single Judge. The appeal being bereft of merit is, accordingly, dismissed.

(Ravi Shanker Jha)
Chief Justice

(Arun Palli)
Judge

21.04.2022
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO