

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 1486 of 2018 (O&M)
Date of Decision: 12.12.2022

Harish Kumar and others
.....Appellants

Vs.

State of Haryana and others
.....Respondents

2. LPA No. 1895-2018

Surender Kumar and others
...Appellants

vs.

State of Haryana and others
....Respondents

3. LPA No. 678 of 2019

Ajay Kumar and others
...Appellants

vs.

State of Haryana and others
....Respondents

4. LPA No. 715 of 2019 (O&M)

Karnail Singh and others
...Appellants

vs.

State of Haryana and others
....Respondents

5. LPA No. 716 of 2019 (O&M)

Niranjan Singh and others
...Appellants

vs.

State of Haryana and others
....Respondents

6. LPA No. 1786 of 2019 (O&M)

Amarjeet Singh and others

...Appellants

vs.

State of Haryana and others

....Respondents

7. LPA No. 95 of 2021 (O&M)

Ashok Kumar and others

...Appellants

vs.

State of Haryana and others

....Respondents

8. LPA No. 96 of 2021 (O&M)

Kulwant Singh and others

...Appellants

vs.

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Salil Sagar, Senior Advocate, with
Mr. Sankalp Sagar, Advocate, and
Mr. Sunil Kumar, Advocate,
for the appellants (in LPA Nos. 1486 and 1895 of 2018).

Mr. J.S. Chatrath, Advocate,
for the appellants (in LPA No. 678 of 2019).

Mr. Sanklap Sagar, Advocate,
for the appellants (in LPA No. 1895 of 2018).

Mr. Anil Kumar Sharma, Advocate,
for the appellants (in LPA Nos. 715 and 716 of 2019)
LPA Nos. 95 and 96 of 2021 and LPA No. 1786 of 2019).

Mr. Hitesh Pandit, Addl. A.G., Haryana.

LPA No. 1486 of 2018 (O&M) and other connected cases -3-

Mr. B.K. Bagri, Advocate,
for the applicant-respondents No. 4, 5, 7, 8, 9, 11, 12 and 13
(in CM-4838-LPA-2018 in LPA-1486-2018).
Mr. Rahul Verma, Advocate, for
Mr. Sant Kashyap, Advocate,
for respondent No. 3 (in LPA No. 1486 of 2018) and
for respondent No. 5 (in LPA No. 1895 of 2018).

HARPREET KAUR JEEWAN, J.

CM No.1623-LPA-2019 in LPA No. 678 of 2019;

Application for condonation of delay of 16 days in refiling the
appeal is allowed, in view of the averments made in the application, duly
supported by affidavit.

Delay for the said period stands condoned.

CM No. 4917-LPA-2018 in LPA No. 1895 of 2018;
CM No. 1624-LPA-2019 in LPA No. 678 of 2019;
CM No. 1725-LPA-2019 in LPA No. 715 of 2019;
CM No. 1727-LPA-2019 in LPA No. 716 of 2019;
CM No. 4014-LPA-2019 in LPA No. 1786 of 2019;
CM No. 222-LPA-2021 in LPA No. 95 of 2021 and
CM No. 224-LPA-2021 in LPA No. 96 of 2021

Applications for condonation of delay for the period ranging
from 67 days to 512 days are allowed, in view of the averments made in
the applications, duly supported by affidavits.

Delay for the said period stands condoned.

LPA Nos. 1486 and 1895-2018 (O&M);
LPA Nos. 678, 715, 716 and 1786 of 2019 (O&M) and
LPA Nos. 95 and 96 of 2021 (O&M)

The present order shall dispose of 8 appeals, i.e. LPA Nos.
1486 and 1895 of 2018 (O&M), LPA Nos. 678, 715, 716 and 1786 of 2019
(O&M) and LPA Nos. 95 and 96 of 2021 (O&M). LPA Nos. 1895 and
1486 of 2018 and LPA No. 1786 of 2019, arising out of the impugned
order dated 07.08.2018, passed by the learned Single in CWP No. 9857 of

LPA No. 1486 of 2018 (O&M) and other connected cases -4-

2009 and other connected matters and LPA Nos. 678, 715 and 716 of 2019 and LPA Nos. 95 and 96 of 2021 are arising out of the impugned order dated 17.09.2018, passed by the learned Single Judge in CWP No. 6305 of 2009 and other connected cases.

2.

(a) The facts as set up by the appellants in CWP No. 9857 of 2009 and other connected writ petitions are that the petitioners were selected for the posts of lecturers in the Department of Education in the State of Haryana for contractual appointment on 89 days basis on a fixed consolidated salary and they were issued appointment letters. The State of Haryana framed policy dated 01.10.2003 regularizing the service of the *ad hoc* contractual employees who have served for 03 years as on 30.09.2003 and in pursuance to the regularization policy, the Director School Education, Haryana, passed orders regularizing the service of the appellants w.e.f. 01.10.2003. The appellants submitted various representations that the period of contract service rendered by them should be counted towards the seniority as the recruitment had been made through proper process of selection and was not a backdoor entry. However, the gradation list indicate that they have been granted seniority w.e.f. the date of regularization as on 01.10.2003 instead of actual date of recruitment of the appellants.

(b) Whereas the facts set up by the petitioners in CWP No. 6305 of 2009 and other connected cases are that the petitioners were selected for the posts of lecturers on *ad hoc* basis from the employment exchange, while some of them were by public advertisements and selection of some of

the petitioners were made through localized selection Committees at the department level. Their services were subsequently regularized under various regularization policies issued by the State Government from time to time. They sought counting of their *ad hoc* service towards different service entitlements such as Additional increment, High Standard Pay Scale, ACP Pay Scale and Seniority as the main focus to claim these cascading reliefs sought by them.

3.

(a) The learned Single Judge while dismissing the writ petitions CWP No. 9857 of 2009 and connected matters, vide order dated 07.08.2018 observed that the selection and appointment process does not meet the standard of Article 16 (1) of the Constitution of India of offering equal opportunity to all eligible candidates since the applications were invited for appointment on 89 days contract basis. The best talent may not have come forward to make a career in Government service on contract basis for 89 days. It was also observed that though the appointment letters were issued by the Director, Secondary Education, Haryana, in a Civil Writ Petition No. 9633 of 2016 but it matters little who issued the appointment letters, when they were not issued by the State Government consequent upon a regular selection process compliant with the principles of equal opportunity in Article 16(1) of the Constitution and such appointments will be hit by the principles indicated by the Apex Court in Secretary, State of Karnataka & others Vs. Umadevi & others, (2006) 4 SCC 1 [CB]. The learned Single Judge also placed reliance upon another judgment of the Supreme Court in State of Haryana and others vs. Vijay

Singh and others (2012) 8 SCC 633, wherein it was observed that *ad hoc* service pure and simple will not count towards seniority in a case involving the Punjab Educational Service, Class III, School Cadre Rules, 1955, as replaced by Haryana State Education School Cadre (Group 'C') Service Rules, 1998.

(b) While deciding the Civil Writ Petition No. 6305 of 2009 and connected cases vide order dated 17.09.2018, the learned Single Judge considered the claim made by the petitioners regarding Additional increment, High Standard Pay Scale, ACP Pay Scale and Seniority.

While dealing with the question of grant of Additional Increments, the learned Single Bench considered the Government of Haryana circular 14.05.1991, regarding grant of one additional increment on completion of 10th and another on the 20th year of service in the time scale as applicable from 01.01.1986 to all Group 'C and D' employees; and modified Government's instructions dated 07.08.1992 regarding grant of additional increment on completion of 8/18 years of regular service instead of 10/20 years of service were considered. While considering the claim regarding Higher Standard Pay Scale, the learned Single Bench considered the State Government's Scheme notification dated 08.02.1994 w.e.f. January 1994 for grant of higher standard scale after completion of 10/20 years of regular service. While considering the claim of the petitioners for ACP pay scale, learned Single Bench considered the State of Haryana notification dated 07.01.1998 regarding Haryana Civil Services (Assured Career Progression), Rules 1998.

While discussing series of judgments on the point as to “whether work charged/ad hoc service rendered by an employee can be clubbed with his regular service for the purpose of grant of various service benefits can be considered or not?” the learned Single Bench came to the following conclusion:-

“43. For what has been discussed above, it is held that:-

(i) The petitioners are not entitled to count their period of ad hoc/work-charged/temporary service towards seniority in the cadre before the date they were regularized and became members of service for the first time in terms of the relevant policies of State Government.

(ii) The petitioners are not entitled to benefit of Additional Increments for the period of their ad hoc/work-charged service on completion of 8/18 years of service as well as 10/20 years, since such period does not qualify as regular satisfactory service as per modified scheme dated August 7, 1992.

(iii) Similarly, the petitioners are not entitled to the benefit of financial upgradations of Higher Standard Scale or to the Assured Career Progression Scales for the period of their ad hoc/work charge/temporary service etc. Only regular service rendered satisfactorily counts for claiming rights to these monetary benefits strictly as per the provisions of these schemes.

44. As a result, the petitions are dismissed. Reliefs claimed by the petitioners in these cases are declined save for period of ad hoc engagement to be counted towards

qualifying service for pension and other pensionary benefits.”

(c) Also the learned Single Judge while dismissing the writ petitions vide order dated 17.09.2018 observed that the petitions have been filed almost 2 decades after the petitioners became members of their respective services, hence, the petitions are bad on account of delay and laches. The learned Single Judge placed reliance upon the judgment of the Supreme Court in **Shiba Shankar Mohapatra vs. State of Orissa** (2010) 12 SCC 471, wherein it was observed that the law on the subject of delay and laches in service matters relating to seniority has been culled out and reviewed.

4. We have heard the learned counsel for the parties and perused the record.

5. The learned counsel for the appellants submitted that the learned Single Judge has failed to consider that though the original appointments were for 89 days but a proper selection process was followed; Criteria for appointment was fixed and even in some cases the eligible candidates were considered on the basis of recommendations made by the Departmental Selection Committee as such, the reliance placed by the learned Single Judge in **Vijay Singhs'** case (*supra*), is misplaced. In **Polu Ram and another vs. State of Haryana and another** (1999) 8 SLR 30, the appellants were contractually appointed till regular appointments were not made and it was held by the High Court that the initial contract appointment of the appellant was in accordance with Article 14 and Article 16 of the Constitution of India. The said judgment was never appealed and the same has attained finality. The ratio of the said decision is applicable to

the facts of the present case.

6. The learned counsel for the respondents submitted that well reasoned orders have been passed by the learned Single Judge, hence, requires no interference.

7. We have considered the submissions made by learned counsel for the parties.

(a) The initial appointment letter dated 19.08.1997 (Annexure A-1), in LPA No. 1486 of 2018 clearly indicate that it was only a contractual appointment only for 89 days. It is not disputed that initially applications were invited for appointment only for a short period and in such circumstances, the learned Single Judge has rightly held that the best talent may not have come forward to make a career in Government service for such a small period. Apart from this, we have also observed that no written examination was held. Candidates were only interviewed. Hence, such selections lack objectivity as such, learned Single Judge has rightly held that the selection and appointment process whereby the appellants were initially appointed on contractual basis for 89 days does not make the standard of Article 16 (1) of the Constitution of India of the equal opportunity to all eligible candidates.

(b) Even in the CWP No. 6305 of 2009 and connected cases (LPA No. 678 of 2019 and connected cases), the appointment were initially made by calling the names from the employment exchange or through public advertisements and some of the selections were made through localized selection Committees at Department level. The learned Single Bench has rightly observed in paragraph No. 33, while determining the

issue of seniority that the services of the employees who were working on *ad hoc* or in any other temporary capacity, were regularised under respective regularization policies issued by the State Government from time to time. The learned Single Bench has also considered the regularization policy dated 01.01.1980 which was having a specific stipulation regarding determination of seniority which provides that the *inter se* seniority of the *ad hoc* employees (which were regularised under the said policy) may vis-a-vis the employees appointed on regular basis be determined with effect from the date of regularization policy, i.e. 01.01.1980. The policy dated 28.12.1991 was also considered wherein there was a specific provisions “If the date of appointment of direct recruit and the date of regularization of ad hoc employees is the same, the direct recruit shall be senior.” The services of the petitioners were regularised in pursuance to the said policies. The petitioners have accepted their regularization in terms of the said policies. They have never challenged the said policies. The said policies itself provide the date from which the seniority of the regularised employees is to be considered. The petitioners remained silent for a long period, thereafter. Now it does not lie in the mouth of the petitioners to say that they are to be granted seniority contrary to the terms of the conditions of the policies under which their services were regularised.

(c) Similarly, the learned Single Bench has observed in para No. 36 while dealing with CWP No. 2800 of 2007 and other connected writ petitions that the petitioners were working in Excise and Taxation Department, Haryana, and they were initially engaged on *ad hoc* basis

through employment exchange and their services were subsequently regularised under the various regularization policies issued by the State Government from time to time. The petitioners sought parity with the private respondents and the claim of the petitioners has been rightly rejected on the ground that no details have been furnished whether those persons were appointed on regular basis or were given benefit of *ad hoc* service towards seniority.

(d) In CWP No. 19502 of 2009, the claim made on the ground of parity with an employee who obtained a civil decree has also been rightly disallowed holding that obtaining a civil decree by one employee could not become law.

(e) The learned Single Judge has also rightly placed reliance upon Vijay Singhs' case (*supra*). In that case, the District Level Committee had considered the candidature of the candidates who were sponsored by the employment exchange and they were appointed purely on *ad hoc* basis during the year 1994 to 1996 by the District Education Officers, Haryana. Their services were regularized w.e.f. 01.10.2003 in furtherance of the policy decision taken by the State Government. The said employees challenged the provisional gradation list by filing a writ petition on the ground that the same was discriminatory and prayed that the seniority be fixed by taking into consideration the total length of service including their *ad hoc* service. The said writ petition was decided by a coordinate Bench of this Court that the seniority of the respondents should be fixed by taking into consideration their *ad hoc* service.

However, against the said order, the State of Haryana went in an appeal, wherein it was held by the Hon'ble Supreme Court that the conclusion recorded by the High Court that the initial appointments were regular, therefore, *ad hoc* service was liable to be counted for the purpose of fixation of seniority is legally unsustainable. The observations reads as under:-

“20. A reading of order dated 16.10.1995 issued by District Education Officer, Panipat makes it crystal clear that even though respondent No.1 – Vijay Singh was appointed as Science Master on the recommendations of the District Level Committee, his appointment was purely ad hoc with a tenure of six months or till the availability of a candidate for regular appointment, whichever was earlier. The other respondents were appointed in the same manner with similar stipulation. The reason why the respondents were appointed on purely ad-hoc basis is not far to seek. The concerned District Education Officers did send requisitions to the Employment Exchanges and appointments were made on the recommendations of the District Level Committee but all this was not in consonance with the mandate of the 1955 Rules and Notifications dated 28.1.1970 and 29.6.1973. At the cost of repetition, we deem it proper to mention that in terms of Rule 3 of the 1955 Rules, only the Director was competent to make appointments on the posts to which those rules were applicable with the exception that Divisional Inspector/Inspector of School or the Principals of Government Colleges could make temporary or officiating appointments on certain posts for a maximum period of three months. After the Board

was constituted vide Notification dated 28.1.1970, the Director could make appointment only on the recommendation of the Board unless the State Government was to issue notification under proviso to Clause 6 of Notification dated 29.6.1973. In terms of Rule 8 of the 1955 Rules, every person appointed by direct recruitment was required to be placed on probation for a period of one year. The respondents were neither appointed by the Director on the recommendations of the Board nor they were placed on probation. As a matter of fact, they were appointed on purely ad hoc basis without following the procedure prescribed for regular appointment. Therefore, the mere fact that the ad hoc appointments of the respondents were preceded by sending requisitions to the Employment Exchanges and recommendations by the District Selection Committee cannot lead to an inference that they were appointed on regular basis.

21. It was neither the pleaded case of the respondents nor any document was produced before the High Court to show that the State Government had amended the 1955 Rules and empowered the District Education Officer to make appointment on the posts of Masters, Physical Training Instructor and Hindi Teacher or the requirement of consultation with the Board was dispensed with by issuing notification under proviso to Clause 6 of Notification dated 29.6.1973. Unfortunately, the High Court overlooked the fact that the respondents were neither appointed by the competent authority on the recommendations made by the Board nor they were placed on probation. Therefore, the conclusion recorded by the High Court that the respondents' initial appointments were regular

and, therefore, ad hoc service was liable to be counted for the purpose of fixation of seniority is legally unsustainable.”

(Emphasis applied by this Court)

8. The Hon'ble Supreme Court of India in **Malook Singh and others** vs. **State of Punjab and others** 2021 (4) S.C.T.305, has again held that service rendered by *ad hoc* employees prior to their regularization cannot be counted for the purpose of seniority.

9. In **State of Haryana and others** vs. **Polu Ram and another** (2010) 15 SCC 452, the appeal against the decision relied upon by learned counsel for the appellants by the Division Bench of this Court in **Polu Ram and another** vs. **State of Haryana and others** vs. **Polu Ram and another** (1999) 8 SLR 30 has been allowed. Hence, the reliance on the said decision has been misplaced by learned counsel for the appellants.

10. In view of the aforesaid reasons, we are of the considered opinion that no interference is called for in the view taken by the learned Single Judge while rejecting the claim of the appellants that period of service rendered by the petitioners on *ad hoc* basis is be counted for the purpose of counting the seniority, and all consequential benefits like increments, ACP Pay scale etc. except for purpose of pension.

11. Consequently, all the present appeals stand dismissed.

Pending miscellaneous application (s), if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE
December 12, 2022
nitin

(HARPREET KAUR JEEWAN)
JUDGE