

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

**Reserved on: 08.05.2023
Decided on : 17.05.2023**

1. COCP-1031-2019 (O&M)

Dr. Madan Lal

... Petitioner

Vs.

Anil Kumar and anr.

... Respondents

2. COCP-1444-2019 (O&M)

Dr. Sawaranjit Singh Sidhu and ors.

... Petitioners

Vs.

Anil Kumar and anr.

... Respondents

3. COCP-807-2019 (O&M)

Lalit Kumar Jain and others

... Petitioners

Vs.

Anil Kumar and anr.

... Respondents

4. COCP-2674-2019 (O&M)

Subhash Chander Garg and ors.

... Petitioners

Vs.

Ankur Gupta and anr.

... Respondents

5. COCP-2862-2020 (O&M)

Rajender Kumar Ahooja

... Petitioner

Vs.

Ankur Gupta and anr.

... Respondents

6. COCP-395-2021 (O&M)

Virender Singh Malhan

... Petitioner

Vs.

Ankur Gupta and anr.

... Respondents

7. COCP-474-2021 (O&M)

Vandna Verma

... Petitioner

Vs.

Anand Mohan Sharan and anr.

.. Respondents

8. COCP-507-2021 (O&M)

Nirmal Sharma and ors.

... Petitioners

Vs.

Anand Mohan Sharan and anr.

... Respondents

9. COCP-2431-2022 (O&M)

Punam Kashyap

... Petitioner

Vs.

Vijayendra Kumar, IAS and anr.

... Respondents

10. COCP-4262-2019 (O&M)

Nirmal Sharma and others

... Petitioners

Vs.

Ankur Gupta and anr.

... Respondents

11. COCP-594-2021 (O&M)

Kanta Malik

... Petitioner

Vs.

Anand Mohan Sharan and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. K.L. Arora, Advocate
for the petitioner(s) (in COCP-1031 & 1444-2019).

Mr. Sameer Sachdeva, Advocate
for the petitioner(s) (in COCP-807-2019, COCP-2862-2020,
COCP-395, 474 & 507-2021 and COCP-2431-2022).

Ms. Priyanka Vij, Advocate
for the petitioner(s) (in COCP-2674-2019).

Mr. Pawan Kumar Longia, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

The petitioners are alleging violation of the order dated 09.09.2010 passed in CWP-8604-2007 and other connected cases, vide which following directions were issued: -

“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 dis-entitling 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.

Copy of this order be placed on record of each concerned file.”

Brief facts of the case are that the petitioners were appointed as Lecturers in different subjects against sanctioned posts by duly constituted selection committee. Services of the petitioners were regularized from 1986 to 1990 and they were confirmed in the service. It is stated that the petitioners were given senior scale and selection grade as well as other benefits by counting adhoc service. It is further stated that the petitioners had filed aforesaid writ petitions for counting the adhoc service towards seniority and for grant of consequential benefits as per judgment of the Hon'ble Supreme

Court.

The common arguments on behalf of the petitioners is that despite the fact that while allowing the writ petitions, a direction was issued to the respondents to count adhoc service of the petitioners towards seniority and to grant all consequential benefits. It is further submitted that if the adhoc service is counted towards seniority, the petitioners will be entitled to be considered and appointed on the posts of Principals by way of promotion. It is also submitted that since the directions were not complied with, present contempt petitions have been filed.

Reply by way of affidavit of Financial Commissioner & Principal Secretary to Govt. of Haryana, Higher Education Department, Chandigarh is on record, in which it is stated that State of Haryana filed LPA-886-2011 and even SLP (C) No.29272 of 2009 titled as Haryana State and others Vs. V.K. Aggarwal involving similar questions of law was also pending before the Hon'ble Supreme Court along with some connected matters. In the additional affidavit, it is stated that aforesaid LPA filed by the State along with other LPAs were dismissed on 13.10.2011 along with connected cases, however, the matter before the Hon'ble Supreme Court is still pending.

In fresh status report by way of affidavit of Director, Higher Education, Haryana, Panchkula, it is stated that SLP filed by the State was also dismissed on 10.05.2018, however, a review application was filed, which was also dismissed on 21.11.2019. It is further stated that delay occurred on account of filing of multiple civil writ petitions by different similarly situated

persons, which were disposed of in terms of **Dr. S.K. Mishra's** case. It is also stated that there are **two** sets of employees. **First** set is of the Lecturers, whose claim was allowed by this Court vide order dated 09.09.2010 and upheld upto the Hon'ble Supreme Court and the **second** set of Lecturers had approached this Court, after dismissal of SLP filed by the Department in the year 2018. It is submitted that the Lecturers appointed prior to 1986 on adhoc basis had filed writ petitions in the year 2018, which were disposed of in terms of judgment of in **Dr. S.K. Mishra's** case and their claim has been decided by the Department by passing the speaking orders in all these cases. It is thus submitted that COCP-2764-2019, COCP-4262-2019 & COCP-4222-2019 have become infructuous, as speaking orders have already been passed. With regard compliance of the order dated 09.09.2010, it is stated that fresh seniority list was prepared by the Department, which is uploaded on website of the Department on 18.03.2020, after considering the objections by all the stakeholders. The details with regard to all the writ petitioners are given in the affidavit and it is stated that a list with regard to deemed promotion of eligible Lecturers (College Cadre) as per seniority list dated 26.11.2020 was published.

Later on, a public notice dated 31.03.2021 was given, in which several objections were received and about 94 persons have either retired or resigned or obtained VRS or have died and therefore, no data was provided. Regarding the petitioners, who have filed the contempt petitions, an office order dated 26.11.2020 is passed, in which following conditions are laid down:-

2023:PHHC:070728

“1. The senior employee will be entitled to the benefits of deemed promotion with effect from the date on which his junior employee got promoted subject to the condition that he was otherwise eligible and fit for promotion on such date. Such retired senior employee shall be entitled to notional benefits only.

2. The aforementioned deemed promotion of the retired employee will be effective from the date mentioned against their respective names. In case anyone of them finds any discrepancy in this date, he/she shall submit a representation to the Directorate of Higher Education alongwith relevant facts, duly supported by documentary evidence within 15 days of the issuance of orders of deemed promotion, for further necessary action in the matter at the end of the Department.

3. The officer concerned must have been in Government service at the time when his/her junior in seniority was promoted.

4. The fixation of pay of the aforementioned retired employees shall be effected only if he/she is found eligible for the same upon verification of facts from his/her service book and all relevant official record of the employee. The retired employee who are being given deemed promotion shall be entitled to notional benefit only after his/her deemed promotion & he/she shall not be entitled for any arrears on the ground of these deemed promotion.”

In view of the compliance affidavit filed by the respondents,

refixing the seniority, giving the promotion from due date as well as pay fixation, no willful disobedience is made out.

Accordingly, all these petitions are rendered as infructuous.

A photocopy of this order be placed on files of connected cases.

[ARVIND SINGH SANGWAN]
JUDGE

17.05.2023
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No