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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16959-1996 (O&M)
Date of Decision:08.08.2023

MADAN MOHAN AND OTHERS

.....Petitioners

V/s.

**STATE OF PUNJAB THROUGH SECRETARY TO GOVT. PWD B&R
DEPARTMENT, PUNJAB AND OTHERS**

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: None for the parties.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioners by way of this Writ Petition assail the order dated 20.09.1996 (Annexure P-7) whereby benefit of *ad hoc* service towards seniority was granted to respondents Nos.4 to 25.

2. The grievance of the petitioners is that they were appointed as regular employees in the PWD (B&R) Department through the Service Selection Board. On 29.01.1973, the State of Punjab has decided to regularize the service of all *ad hoc* / temporary employees working in the State of Punjab with a condition that they have put in minimum of one year of service as on 01.01.1973, and further the service rendered on *ad hoc* basis shall not be taken into account for the purpose of seniority.

3. The respondent-State, however, vide order dated 05.01.1996, counted the *ad hoc* service rendered by respondents No.4 to 25 towards seniority and placed the petitioners below them. Representation dated 08.01.1996 (Annexure P-5) was submitted by the petitioners which was not accepted and therefore, they have preferred this present Writ Petition

challenging the order dated 24.01.1996 whereby seniority list has been drawn giving benefit of service rendered on *ad hoc* basis to respondents No.4 to 25. They have also challenged the order dated 20.09.1996 (Annexure P-7) whereby their representation was rejected.

4. It is submitted that in the year 1975, the seniority list was drawn and the petitioners were shown seniors to respondents No.4 to 25. The said seniority list was revised from time to time, and vide the impugned order, respondents No.4 to 25 claiming benefit of their *ad hoc* service/temporary service have been placed above the petitioners.

5. It is submitted that the *ad hoc* employees, who have been later on regularized w.e.f. 01.01.1973, cannot march over the regularly selected persons.

6. The petitioners have quoted Rule 10 of “The Punjab Department of Public Works (Building and Roads Branch) Circle Office (Class III Ministerial) Service Rules, 1988” (hereinafter referred to as “The Rules of 1988”) to submit that the *inter se* seniority of the members of the service in different cadres shall be determined by the length of their continuous service on a post in that cadre of the service.

7. As per the note appended to Rule 10, the seniority of members of service appointed on purely provisional basis shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment.

8. It would be, therefore, apposite to quote Rule 10 of the Rules of 1988 which is as under:-

“10. SENIORITY OF MEMBERS OF SERVICE.

The inter se seniority of the members of the service, in each cadre, shall be determined by the length of their continuous service on a post in that cadre of their service;

Provided that in the case of members of service recruited by the direct appointment, who join within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four months from the date of order of appointment, the order of merit determined by the Board shall not be disturbed;

Provided further that in Case a candidate is permitted to join the service after the expiry of the said period of four months, in consultation with the Board his seniority shall be determined from the date he joins service;

Provided further that in case any candidate of the next selection has joined the service before the candidate referred to in the preceding proviso joins, the candidate so referred shall be placed below all the candidates of the next selection who joins within the time specified in the first proviso;

Provided further that in the case of the members of the service appointed on the same date, their seniority shall be determined as follows:-

- a. member recruited by direct appointment shall be senior to a member recruited otherwise;*
- b. member appointed by promotion shall be senior to a member appointed by transfer;*
- c. in the case of members appointed by promotion or transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and*
- d. in the Case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same then by their length of continuous service and if the length of such service is also the*

same, and older members shall be senior to a younger member.

Note. - Seniority of members of the service appointed on purely provisional basis shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment."

9. The respondents have filed their reply and submitted that the order(s), assailed in this Writ Petition, is reasoned, legal and speaking one and in terms of the full bench judgment of this Court passed in **Chambel Singh Vs. State of Haryana** ; 1995 (1) RSJ 382 wherein it has been held that *if the initial appointments are made after following due procedure laid down in the Rules when the appointees continues on the post till regularization, then such period has to be counted for the purpose of seniority, increments, promotions and other consequential benefits.*

10. It is submitted that the names of the respondents No.4 to 25 were called from the Employment Exchange and accordingly, they were appointed. Thus, their *ad hoc* service requires to be counted in terms of the said full bench Judgment.

11. So far as the State is concerned, it has been stated that respondents No.4 to 25 had earlier filed Writ Petition bearing No. **CWP-5462-1994** titled as **Vijay Kumar and Others** Vs. **State of Punjab and others** for counting their *ad hoc* service period towards seniority and the concerned respondents have been appointed by the competent authority i.e. Superintending Engineer. The said Writ Petition was disposed of directing the respondents to consider their case for counting *ad hoc* service towards seniority in view of the full bench judgment of this Court.

12. I have considered the contentions of the petitioners raised in this Writ Petition as well as the reply of the respondents.

13. In the judgment passed by this Court in Chambel Singh (Supra) it is held as under:-

“16. In the light of what has been noticed above, submissions of Sh. Gurnam Singh, counsel for the petitioner, are totally unacceptable. Merely because there has been no break in service cannot be construed as a factor entitling such an incumbent to tag the period spent by him as an ad hoc employee. Mr. Ran-deep Surjewala's proposition, in fact, has been duly answered in the above cited judgments in Direct Recruit Class II Engineering Officers' Association and others case (Supra) as well as in Aghore Nath Dey's case (Supra) and need not be dilated upon any further. Division Bench in Des Raj v. The State of Haryana and Ors. (CWP No. 8603 of 1991) is in the nature of an executionary order or the direction given by J.G. Gupta, J. in the judgment in C.W.P. No. 4468 of 1986 decided on February 11, 1988. Since J.V. Gupta, J. directed the authorities to consider the petitioner's earlier period of service as an ad hoc employee to count for his eligibility for promotion, Division Bench without examining the matter as to whether ad hoc service is to be counted to determine his seniority in the light of the judicial pronouncements or the rules governing the service, namely, the Haryana Food and Supplies Department Sub Offices (Group C) Service Rules, 1982, chose to follow the directions given by the Single Bench. Both these judgments appear to have proceeded on the wrong premises and have ignored the decisions of the apex Court. Both these judgments do not lay down the correct law and consequently are overruled.

17. Division Bench in Sohan Lal's case (Supra) after examining Rule 11 of the Haryana Food and Supplies Department Sub Offices (Group C) Service Rules, 1982, and in the light of the decision of the apex Court in Professor S.K. Sharma's case (Supra) and in Masood Akhtar Khan's case (Supra) came to the conclusion that the service rendered on ad hoc basis is not to be counted for seniority. However, the Bench left the question open whether ad hoc service will count for leave, increment and pension, this view is in conformity with the decision of the apex Court noticed above and is thus approved.

18. *In view of what has been discussed above, we are of the view that ad hoc service per se cannot be counted to determine appointee's seniority in the cadre.*

19 *Civil Writ Petition be now placed before the Division Bench for disposal in accordance with the answer rendered to the question posed.”*

14. The question arises as to whether the appointment made by the respondents No.4 to 25 was made after following the due procedure of law laid down in the Rules. Admittedly, so far as the petitioners are concerned, their appointments were made after following the Rules, while the respondents No.4 to 25 were subsequently regularized.

15. With respect to the question as to whether the regularly appointed persons can be placed below the erstwhile *ad hoc* service employees and subsequently regularized employees, the Supreme Court in the case of **State of Haryana and Others** Vs. ***Piara Singh and Others***; 1992(4) SCC 118 has held as under:-

“50. The proper course would be that each States prepares a scheme, if one is not already in vogue, for regularization of such employees consistent with its reservation policy and if a scheme is already framed, the same way be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularized he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.”

16. In view of the above settled law, the persons who are appointed and regularized subsequently cannot march over the regularly selected persons. The said order of seniority placing respondents No.4 to 25 over and above the petitioners is held to be bad. Accordingly, the present Writ Petition

stands allowed. The respondents are directed to revise the seniority list with all consequential benefits.

17. Pending application(s), if any, stand disposed of accordingly.

August 8, 2023

Ess Kay

**[SANJEEV PRAKASH SHARMA]
JUDGE**

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>