

**CWP-10349-2020 (O&M)
& connected cases**

-1-

2023:PHHC:165013

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

214 (03cases)

**(1) CWP-10349-2020 (O&M)
Date of Decision :-21.12.2023**

Pardeep Kumar Gupta and others

..Petitioners

Versus

State of Haryana and others

...Respondents

(2) CWP-23497-2021

Rajesh Kumar and others

..Petitioners

Versus

State of Haryana and others

...Respondents

(3) CWP-34859-2019

Rajinder Kumar

..Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Neeraj Goel, Advocate and
Mr. Priyavrat Parashar, Advocate for the petitioners.

Mr. Harish Nain, AAG, Haryana.

Mr. Sube Singh Kaushik, Advocate for respondents No.4 to 6
in CWP-10349-2020 and for respondents No.8,9,16,17,19 to 21
24, 28 and 30 in CWP-23497-2021.

1. By this common order, above mentioned three writ petitions are being disposed of as all the writ petitions involve the same question of law arising out of similar facts.

2. In the present bunch of petitions, the petitioners are claiming benefit of seniority by taking into account the adhoc services, which they have rendered prior to the regularization of their services. The reliance is being placed upon the judgment of the Coordinate Bench of this Court in CWP-8604-2007 titled as Surinder Kumar Mishra and others vs. State of Haryana and another decided on 09.09.2010 to claim the relief.

3. Certain facts need to be noticed for the correct appreciation of the issue in hand.

4. As per the averments which have come on record by way of pleadings in these petitions, the petitioners were appointed as Pharmacist on adhoc basis on various dates starting from October, 1986 onwards till August, 1989. It may be noticed that appointment order of the petitioners appointing them on adhoc basis is not on record, but it is a conceded position that appointments were made as stop gap arrangement on temporary basis, which is also clear from the fact that the posts of Pharmacist were advertised by the State of Haryana vide advertisement No.3 of 1988 dated 07.07.1988 which also included the posts on which the petitioners were working.

5. In respect of the advertisement No.03 of 1988 dated 07.07.1988 selection process was completed by the Subordinate Staff Selection Board, which is the competent authority to make selection qua the posts of

made by the Subordinate Staff Selection Board, Haryana to the respondent-department. The first list of the selected candidates was made available to the department on 28.06.1990, second list of the selected candidates was forwarded by the Subordinate Staff Selection Board, Haryana on 25.09.1990 and the 3rd list of the selected candidates forwarded on 26.11.1990 and the last list of the recommended candidates was sent by the Subordinate Staff Selection Board, Haryana on 07.12.1990.

6. That before all selected candidates could be appointed, the employees like the petitioners, who were working on adhoc basis on the posts which were sought to be filled up by regularly selected candidates, filed a writ petition seeking regularization of their services and this Court while entertaining the said plea directed the department to maintain status quo qua the services of the temporary/adhoc employees, who were working on the post of Pharmacist.

7. Keeping in view the interim order granted by this Court with regard to the claim of the similarly situated employees like the petitioners herein, who were working on temporary/adhoc basis as Pharmacist, recommendations made by the Subordinate Staff Selection Board, Haryana for regular appointment as Pharmacist could not be implemented qua all the selected candidates.

8. Keeping in view the fact that despite being recommended for regular appointment the candidates were not being appointed on regular basis on the ground that temporary/adhoc employees had got interim order in their favour so as to continue in service, the selected candidates approached this Court by way of filing CWP-9949-1991 seeking direction to state for

Staff Selection Board, Haryana keeping in view the advertisement No.3 of 1988. While considering the plea of the selected candidates, who were awaiting appointment, this Court vide order dated 19.11.1991 directed that regular selected candidates should be appointed in order of merit as recommended by the Subordinate Staff Selection Board, Haryana against the vacancies which had been advertised and the interim orders passed in favour of the adhoc employees were vacated.

9. The said order dated 19.11.1991 of this Court was challenged before the Hon'ble Supreme Court of India and ultimately vide order dated 03.09.1992, the issue pending before Hon'ble Supreme Court of India was decided. As per the order passed by the Hon'ble Supreme Court of India, a direction was given to the State that all the candidates, who have been recommended for regular appointment by the Subordinate Staff Selection Board, Haryana should be appointed by 31.12.1992. The said appointment should be made against the existing vacancies or the vacancies which occurred up to 31.12.1992 and for accommodating the regular selected candidates, if the adhoc appointees are to be displaced, the same be done on the basis of 'last come first go' basis and the seniority of the recommended candidates shall be determined as per the merit assigned to them by the Subordinate Staff Selection Board, Haryana.

10. Keeping in view the direction given by the Hon'ble Supreme Court of India vide order dated 03.09.1992, the candidates who were yet to be given appointment despite their recommendations by the Subordinate Staff Selection Board, Haryana, were given regular appointment as Pharmacist in terms of the order dated 03.09.1992 and their seniority was

11. It may be noticed that certain selected candidates, who were recommended by the Subordinate Staff Selection Board, Haryana in pursuance to advertisement No.3 of 1988 were given appointment at a later date than others, but they were given retrospective date of appointment i.e. from the date the other direct recruits of the same selection were given appointment and this was done keeping in view the order dated 03.09.1992 passed by Hon'ble Supreme Court of India as per which seniority of the selected candidates was to be reckoned on the basis of the merit obtained by them.

12. It is relevant to notice here that as the 1st list of selected candidates were given appointment on 28.06.1990 therefore, all the selected candidates of the same selection were granted the said date of appointment in pursuance of their selection against posts advertised through advertisement No.03 of 1988 in order to settle their inter se seniority as per the order dated 03.09.1992 of the Hon'ble Supreme Court.

13. In the meantime, the respondent-State also issued a notification dated 28.02.1991 for regularization of service of Class-III employees, who were working on adhoc basis and has completed 02 years of service as on 31.12.1990 and were in service on the said date. As per the conditions of the said regularization policy the employees who were to be regularized, their regular appointment was to be determined w.e.f. 31.12.1990 and seniority was to be determined from the said date i.e. 31.12.1990.

14. Keeping in view the notification dated 28.02.1991, services of the petitioners, who were working on adhoc basis and were appointed as stop gap arrangement were regularized w.e.f. 31.12.1990. After being

benefit of seniority over and above the regular selected incumbents on the ground that, adhoc services rendered by the petitioners should be treated as valid service for counting seniority and further that the regular selected candidates, selected in pursuance to advertisement No.3 of 1988 who were actually appointed after the initial date of appointment of petitioners on adhoc basis be declared junior to them.

15. As the said benefit was not extended to them by the respondent-State, they filed CWP No.30989-2019 titled as Pardeep Kumar and others vs. State of Haryana and others seeking seniority from the date of initial appointment on adhoc basis. While filing the said writ petition, the claim was based upon the judgment of this Court in CWP-8604-2007 titled as Dr. Surindra Kumar Mishra and others vs. State of Haryana and another decided on 09.09.2010.

16. This Court vide order dated 24.10.2019 directed the respondents to decide the claim of the petitioners with regard to the grant of benefit of seniority to them from the date of their initial appointment by passing appropriate speaking order.

17. In pursuance to the direction given by this Court, order dated 07.02.2020 was passed by respondent-State, by which the claim of the petitioners for the grant of benefit of seniority from the date of their initial appointment on adhoc basis has been declined, which orders are under challenged in the present petitions.

18. Learned counsel for the petitioners argues that once the petitioners have continued in service from the date of their initial appointment till their services were regularized, the petitioners are entitled

keeping in view the judgment of this Court in Surindra Kumar Mishra (supra). Learned counsel for the petitioners further argues that once the facts and circumstances of the present petitions is similar to that of Surindra Kumar Mishra (supra) where the benefit of seniority has already been given from the date of initial appointment to the similarly situated employees, who were initially appointed on adhoc basis and their services were subsequently regularized, the said benefit of adhoc service needs to be extended in favour of the petitioners as well while framing seniority in the cadre of pharmacist.

19. Learned counsel for the respondent-State objects to the said prayer of the petitioners and submits that initial appointment of the petitioners was only a stop gap arrangement without following due procedure as envisaged under the rules governing the service for appointment on regular basis and further once, the posts against which the petitioners were working had been advertised and filled up on regular basis, the grant of benefit of adhoc service would mean that petitioners will rank senior to regular selected candidates whose names were recommended by the Subordinate Staff Selection Board, Haryana, much before the date when the regularization policy was notified on 28.02.1991 and therefore, grant of prayer as raised in these petitions is not permissible.

20. Learned counsel for the respondent-State further submits that services of the petitioners were regularized under the notification dated 28.02.1991 and in the said notification, it was duly mentioned that seniority will only be given from 30.12.1990, hence, when the petitioners have been extended the benefit of regularization of service under the notification dated 28.02.1991, the other terms and conditions of the said notification will also

be granted benefit of seniority from a date prior to 31.12.1990, hence the claim of the petitioners is contrary to the instructions/policy under which the services of the petitioners were regularized and cannot be allowed.

21. Learned counsel for the private respondents submits that petitioners have not impleaded all the candidates, who were appointed in pursuance to the advertisement No.3 of 1988 and petitioners failed to get themselves selected on regular basis either on account of not being successful in selection process or because of not competing for the post in question hence, now they cannot raise claim for seniority over and above the regular selected candidates, who were recruited by following due process of law.

22. Learned counsel for the private respondents further submits that once the initial appointment of the petitioners was only a stop gap arrangement, each regular selected candidate who is given date of regular appointment before the petitioners has a better claim for seniority as compared to the petitioners, hence the petitioners cannot be given the benefit of the seniority for the period for which they have worked on adhoc basis/temporary basis so as to declare them senior to the private respondents. Learned counsel for the private respondents also submitted that even otherwise, once all the candidates who are likely to be affected by the outcome of the present petitions are not party to the present petition, the prayer of the petitioners for the grant of seniority is not maintainable and the same is liable to be rejected. It has been further submitted by the learned counsel for the private respondents that more than 200 candidates were recommended for appointment in pursuance to advertisement No.03 of 1988

petitioners and therefore, it was necessary to implead all of them by the petitioners for the adjudication of the present petition.

23. I have heard learned counsel for the parties and have gone through the record with their able assistance.

24. The question of law, which arises for determination in the present petitions is whether keeping in view the facts and circumstances of the present case, adhoc/temporary basis/stop gap arrangement services rendered by the petitioners can be counted for the grant of seniority. Further question of law is whether the petitioners are entitled for any benefit as per the judgment of a Coordinate Bench of this Court in Surindra Kumar Mishra (supra).

25. The first argument which has been raised by the learned counsel for the petitioners is that once the petitioners were appointed on adhoc basis which assignment continued till the regularization of their services, the petitioners are entitled for the grant of benefit of seniority by counting the service rendered by them from the date of their initial appointment on adhoc basis by taking into account their adhoc service as well.

26. Learned counsel for the petitioners contended that keeping in view the judgment of Hon'ble Supreme Court of India in Direct Recruit Class-II Engineering Officers' Association vs. State of Maharashtra, AIR 1990 SC, 1607, once even if, the initial appointment is not made by following due procedure as envisaged under the rules governing the service but appointees continued on the said post uninterruptedly till regularization of his/her services in accordance with law, period of officiating service is to be counted towards seniority.

circumstances of the present case coupled with the settled principle of law where the judgment in *Direct Recruit Class-II Engineering Officer's Association (supra)* has been considered and interpreted by Hon'ble Supreme Court of India.

28. From the facts, it is clear that posts on which the petitioners were appointed on adhoc/temporary/stop gap arrangement basis were advertised in July 1988. Some of the petitioners were working at the time of issuance of advertisement and some of them were appointed on adhoc/temporary/stop gap arrangement basis after the advertisement.

29. Learned counsel for the petitioners has not been able to dispute the fact that posts on which the petitioners were working were advertised to be filled through Subordinate Staff Selection Board, Haryana. It is also conceded position that after recommendations were made by the Subordinate Staff Selection Board, Haryana in pursuance to advertisement No.3 of 1988, the individuals similarly situated to the petitioners had approached this Court for allowing them to continue in service wherein they got interim order due to which regularly selected candidates could not be given appointment. It was only after this Court passed an order in CWP-9499-1991 and the interim order in favour of the candidates who were working as Pharmacist as stop gap arrangement was vacated which order was thereafter upheld by the Hon'ble Supreme Court, that all the regularly selected candidates were finally appointed. That being the factual position, the posts against which the petitioners were initially appointed on adhoc/temporary/stop gap arrangement basis were filled up by the regular selected candidates who were recommended by the Subordinate Staff Selection Board, Haryana after

30. The prayer of the petitioners is that their claim for the grant of seniority qua the adhoc/temporary service is covered keeping in view the judgment in ***Direct Recruit Class-II Engineering Officer's Association (supra)***. Para-44 of the said judgment is being relied upon by the learned counsel for the petitioners to claim the relief. The relevant paragraph 44 is as under:-

44. *To sum up, we hold that:*

(A) *Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.*

The corollary of 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 for considering the seniority.

(B) *If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted."*

31. That it is relevant to notice here that paragraph-44 in ***Direct Recruit Class-II Engineering Officer's Association (supra)*** has already been interpreted subsequently by the Hon'ble Supreme Court of India while passing order in **State of West Bengal and others vs. Aghore Nath Dey, 1993 SCC 371**. Hon'ble Supreme Court of India while interpreting conclusion (A) and conclusion (B) as stated in Para-44 of the judgment in ***Direct Recruit Class-II Engineering Officer's Association (supra)*** has held that conclusion (B) of Para-44 in ***Direct Recruit Class-II Engineering Officer's Association (supra)*** will only cover the cases which are not covered by conclusion (A) of Para-44 in ***Direct Recruit Class-II Engineering Officer's Association (supra)***. The relevant paras of the

“We shall now deal with conclusions (A) and (B) of the constitution bench in the Maharashtra Engineers' case, quoted above.

There can be no doubt that these two conclusions have to be read harmoniously, and conclusion (B) can not cover cases which are expressly excluded by conclusion (A). We may, therefore, first refer to conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed, according to rules'. The corollary set out in conclusion (A), then 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 posts cannot be taken into account for considering the seniority. Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stop-gap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority. This being the obvious inference from conclusion (A), the question is whether the present case can also fall within conclusion (B) which deals with cases in which period of officiating service will be counted for seniority. We have no doubt that conclusion (B) cannot include, within its ambit, those cases which are expressly covered by the corollary in conclusion (A), since the two conclusions cannot be read in conflict with each other.

The question therefore, is of the category which would be covered by conclusion (B) excluding therefrom the cases covered by the corollary in conclusion (A). In our opinion the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the later expression 'till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to re-council with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency

& connected cases

in the procedural requirements under the rules at the time of his initial appointment, and the appointment not-being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stop-gap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."

32. When the judgment in **Aghore Nath Dey (supra)** is applied in the case of the petitioners, it will be seen that the claim of the petitioners is covered by corollary to Conclusion (A) of Para-44 in ***Direct Recruit Class-II Engineering Officer's Association (supra)*** as initial appointment of the petitioners was not in accordance with the rules/procedure envisaged under law hence, claim being raised by the petitioners under Conclusion-B cannot be accepted. It is a conceded position of fact that the post of Pharmacist was to be filled up through the Subordinate Staff Selection Board, Haryana which process was not followed while making selection of the petitioners hence, the claim of the petitioners is covered by corollary to Conclusion(A) of para-44 of the ***Direct Recruit Class-II Engineering Officer's Association (supra)*** and Conclusion-B cannot be made applicable upon the petitioners so as to grant them the benefit of counting time spent on adhoc/temporary/stop gap arrangement service for the purpose of grant of benefit of seniority.

33. Not only this, question for the grant of benefit of seniority for the temporary/adhoc/stop gap arrangement service has been settled by the Hon'ble Supreme Court of India once again in **Civil Appeal No.6026-6028-**

2021 titled as Malook Singh and others vs. State of Punjab and others

appointment is on adhoc/temporary/stop gap arrangement basis so that the posts are filled up in accordance with rules as envisaged under law, service rendered on adhoc/temporary cannot be counted for the purpose of seniority even if, the said adhoc service stands regularized. The reason given by the Hon'ble Supreme Court in not accepting prayer for the grant of benefit of seniority for the adhoc/temporary service is that where the rules/procedure envisaged for making recruitment has not been followed and the recommendations have not been made through proper selecting agency envisaged under law, benefit of seniority cannot be given. Relevant paragraph of the judgment in Malook Singh (supra) are as under:-

“18. As a matter of first principle, the view which has been adopted in the impugned judgment of the Division Bench of the High Court cannot be faulted. The policy for regularization issued on 3 May 1977 is clear in regard to the date of regularization, the principle for reckoning seniority and the basis on which seniority should be reckoned inter se between persons belonging to the group of ad hoc employees who were regularized. The policy clearly specifies that regularization would be granted to persons who had fulfilled a minimum of one year service as on 31 March 1977. As regards seniority, clause 5(a) specifies that the seniority, upon regularization would date back to 1 April 1977 vis a vis candidates appointed on a regular basis after selection through the prescribed procedure. As between ad hoc employees who were regularized, inter se seniority would however be based on the length of service so that a person possessing longer service would rank senior to a junior in terms of the length of service.

19. The judgment of the Single Judge in Malook Singh's case essentially dealt with two facets. The first was that persons who were recruited after following the regular procedure for selection after the date of regularization of ad hoc employees on 1 April 1977 could not rank senior to those who had been regularized prior to their date of appointment. The second aspect on which the Single Judge held in favour of the petitioners in CWP No 2780 of 1980 was that once regularization takes place, the length of ad hoc service must count for the determination of seniority. It is important to note here that the second facet of the judgment of the Single Judge was specifically kept open in the Letters Patent Appeal by the Division Bench. Therefore, clearly the judgment in Malook Singh's case did not conclude the issue of whether ad hoc service would count for the purpose of determining seniority.

Direct Recruits (supra), a Constitution Bench of this Court has observed:

"13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in *Patwardhan case* [(1977) 3 SCC 399: 1977 SCC (L&S) 391: (1977) 3 SCR 775] was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary.....

.....

47. To sum up, we hold that

(A) Once an incumbent is appointed to a post according to a rule, his seniority has to be 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."

(emphasis supplied)

The decision in *Direct Recruits (supra)* stands for the principle that ad hoc service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgement dated 6 December 1991 on *Direct Recruits (supra)* to hold that the ad hoc service should be counted for conferring the benefit of seniority in the present case is clearly misplaced. This principle laid down in *Direct Recruits (supra)*

subsequently followed by this Court in *Keshav Chandra Joshi v. Union of India*, 1992 Supp (1) SCC 272. Recently a two judge Bench of this Court in *Rashi Mani Mishra*

& connected cases

v. State of Uttar Pradesh, 2021 SCC Online SCC 509, of which one of us (Justice DY Chandrachud) was a part, observed that the services rendered by ad hoc employees prior to their regularization cannot be counted for the purpose of seniority while interpreting the Uttar Pradesh Regularization of Ad Hoc Appointment Rules. This Court noted that under the applicable Rules, "substantive appointment" does not include ad hoc appointment and thus seniority which has to be counted from "substantive appointment" would not include ad hoc service. This Court also clarified that the judgement in Direct Recruits (supra) cannot be relied upon to confer the benefit of seniority based on ad hoc service since it clearly states that ad hoc appointments made as stop gap arrangements do not render the ad hoc service eligible for determining seniority. This Court speaking through Justice MR Shah made the following observations:

"36. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time; initial appointment orders in the year 1985 and the subsequent order of regularization in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularization as per the 1979 Rules shall not be counted for the purpose of seniority, vis-a-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent re-determination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularization in the year 1989 is to be restored.

37. Now so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the case before this Court, the appointments were made to a post according to rule but as ad hoc and subsequently they were confirmed and to that this Court observed and held that where appointments made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. In the

present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularized after following

due procedure as required under the 1979 Rules and after their names were recommended by the Selection Committee constituted under the 1979 Rules. As observed hereinabove, the appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the "substantive appointments". Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules." The notification dated 3 May 1977 stated that the ad hoc appointments were made in administrative interest in anticipation of regular appointments and on account of delay that takes place in making regular appointment through the concerned agencies. In this regard, the vacancies were notified to the Employment Exchange or advertisements were issued, as the case maybe, by appointing authorities. The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board. However, subsequently a policy decision was made to regularize the ad hoc appointees since their ouster after a considerable period of service would have entailed hardship. Thus, the initial appointment was supposed to be a stop gap arrangement, besides being not in accordance with the rules, and the ad hoc service cannot be counted for the purpose of seniority".

34. A bare perusal of the above reproduction would show that settled principle of law relating to the grant of benefit of seniority for the adhoc/temporary service has been discussed before recording the opinion that where the posts are to be filled by the Public Service Commission or Subordinate Service Selection Board but the said procedure has not been followed, initial recruitment cannot be termed to be in accordance with law so as to grant benefit of seniority for the said period.

35. In the present case, it is clear that the post of Pharmacist, which is in question, was to be filled up through Subordinate Staff Selection Board, as was done while making regular selection qua advertisement No.03 of 1988 dated 07.07.1988, which procedure was not followed while recruiting

the petitioners was not in accordance with law, the claim of the petitioners for the grant of benefit of seniority by taking into account the adhoc service rendered by them cannot be granted.

36. Further, the said question of law also came up for consideration before this Court in **LPA No.1743-2016 titled as Harpal Singh & Others vs. State of Haryana and others decided on 14.09.2016.** In the said case, the Hon'ble Division Bench of this Court after considering the law in ***Direct Recruit Class-II Engineering Officer's Association (supra)*** has held that where an adhoc appointment was made by the authority, who was not authorized to make such appointment under the rules, such adhoc service cannot be counted for fixation of seniority. The Division Bench further held that even if the adhoc appointment has been made by the competent authority but such appointment has not been made on the recommendations of the recruitment agency prescribed under the rules, the benefit of adhoc service cannot be granted towards seniority. The Division bench has further held that even if, the person, who has worked on adhoc basis subsequently gets selected for regular appointment by the Service Commission/ Subordinate Staff Selection Board still the benefit of adhoc service cannot be given. Relevant paragraphs of the judgment is 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

& connected cases

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.

37. A bare perusal of the above would show that the claim of the petitioners is squarely covered against them as per the law interpreted in the said para by the Hon'ble Division Bench of this Court. Hence, the claim of the petitioners for the grant of benefit of adhoc service/temporary service/stop gap arrangement cannot be accepted. Learned counsel for the petitioners has not been able to differentiate the judgment in **Harpal Singh (supra)** so as to claim the benefit of seniority for adhoc service keeping in view the facts and circumstances of their cases.

38. Even otherwise, the service of the petitioners were regularized under the instructions dated 28.02.1991, wherein certain terms and conditions were envisaged for regularization of the services of the adhoc employees. It is a conceded position that as per the terms and conditions envisaged in instructions dated 28.02.1991, the services of the adhoc employees were to be only regularized w.e.f 31.12.1991.

39. Learned counsel for the petitioners has not been able to dispute the said fact but submits that similar plea has already been considered by the Coordinate Bench of this Court in Surindra Kumar Mishra (supra) and hence

while passing in Surindra Kumar Mishra (*supra*) the same cannot be declined. The said argument has to be appreciated in view of the subsequent judgments on the same issue.

40. The Division Bench of this Court in *Harpal Singh (supra)* considered the said issue and has held that the conditions mentioned in the regularization policy are to be given effect in entirety, as the services of the employees concerned have been regularized under the said policy. The relevant para 15 (E) of the judgment in *Harpal Singh (supra)* is reproduced as under:

“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.”

41. In the present case, condition No.2 of the policy dated 28.02.1991 under which the services of the petitioners were regularized is reproduced as under:

2. ‘The seniority of the ad hoc Class-III employees so regularized viz-a-viz the Class-III employees appointed on regular basis shall be determined with effect from 31st December, 1990. The inter-se-seniority of such ad hoc Class-III employees shall be determined in accordance with the date of their joining the post of ad hoc basis. If the date of joining the post(s) on ad hoc basis by such ad hoc employees was the same, then an older employees shall rank senior to an employee younger in age. If the date of appointment of the direct recruit and the date of regularization of as hoc employees is the same, the direct recruit shall be senior.’

42. A bare perusal of the above reproduced para will show that keeping in view the judgment of the Hon’ble Division Bench of this Court where it has been held that when the notification through which adhoc

employees are regularized, specifies a date from which they are to be

brought in regular establishment, the services rendered by such employees before regularization cannot be counted towards seniority.

43. Further, the judgment of the Hon'ble Division Bench of this Court in Harpal Singh (supra) has been upheld by the Hon'ble Supreme Court of India while passing order in Malook Singh (supra). Relevant para of the said judgment wherein the Hon'ble Supreme Court in Malook Singh(supra) has upheld the same is reproduced as under:-

“18. As a matter of first principle, the view which has been adopted in the impugned judgment of the Division Bench of the High Court cannot be faulted. The policy for regularization issued on 3 May 1977 is clear in regard to the date of regularization, the principle for reckoning seniority and the basis on which seniority should be reckoned inter se between persons belonging to the group of ad hoc employees who were regularized. The policy clearly specifies that regularization would be granted to persons who had fulfilled a minimum of one year service as on 31 March 1977. As regards seniority, clause 5(a) specifies that the seniority, upon regularization would date back to 1 April 1977 vis a vis candidates appointed on a regular basis after selection through the prescribed procedure. As between ad hoc employees who were regularized, inter se seniority would however be based on the length of service so that a person possessing longer service would rank senior to a junior in terms of the length of service.”

44. Once the Hon'ble Supreme Court of India has already held that the policy for regularization has to be given effect along with its terms and conditions, the same terms and conditions cannot be omitted while fixing seniority, therefore, the claim of the petitioners for grant of benefit of seniority by taking into account their adhoc service which stands in contradiction to the terms and conditions of the notification/policy dated 28.02.1991 under which they were regularized cannot be accepted and no benefit of the decision of the Coordinate Bench in the case of Surindra Kumar Mishra (supra) can be extended to the petitioners in view of the settled principles of law which has come into operation after the judgment in

45. Not only this, similar petitions claiming the relief of seniority qua the adhoc/temporary service has already been dismissed by the Coordinate Bench of this Court while passing order in **CWP-19128-2012 titled as Dr. Charanpreet Singh and others vs. State of Punjab and others decided on 08.02.2021.** It may be noticed that Dr. Surindra Kumar Mishra (supra), being relied by the petitioners has been considered by the Coordinate Bench but keeping in view the law settled by the Hon'ble Supreme Court of India, the benefit of ad hoc service/temporary service qua the grant of seniority has been declined. Coordinate Bench of this Court while dismissing the said writ petitions has held that where as per Rules the Commission was required to make recommendations for appointment and selection was to be made on the basis of the recommendations of the Selection Committee, when the initial appointment was made dehors the service Rules, then for the purpose of grant of seniority, the claim of the petitioners will be covered under corollary to Conclusion-A of the para-44 of the judgment in ***Direct Recruit Class-II Engineering Officer's Association (supra)*** and the petitioners will not be entitled for seniority by counting the adhoc service rendered by them.

46. Learned counsel for the petitioners has not been able to dispute the fact that the initial appointment of the petitioners was not through the Haryana Subordinate Staff Selection Board and also that the judgment of the Hon'ble Supreme Court of India in **Aghore Nath Dey (supra), Malook Singh (supra)** as well as the judgment of the Division Bench in **Harpal Singh (supra)** and that of Coordinate Bench in Charanpreet Singh (supra), squarely covers the issue in question against them.

granted seniority is that all the selected candidates, who were selected in the regular selection, which was made in pursuance to the advertisement No.3 of 1988 dated 07.07.1988 are not party to the present petition.

48. It is a settled principle of law that all the candidates, who are likely to be affected by the outcome of the petition, are to be made party before any prayer for the grant of seniority can be accepted. Though, certain private respondents have been impleaded as party, but it is on record that in the regular selection process in question, total 227 candidates were appointed and in case prayer of the petitioners for the grant of seniority by counting adhoc/temporary/stop gap arrangement period is accepted, they will gain seniority over all those 227 directly recruited candidates. The judgment in Harpal Singh (supra) takes care of the said factual aspect also and has held that where the affected persons are not party, the plea for the grant of benefit of seniority towards adhoc/temporary service cannot even be entertained. Relevant paragraph of the judgment is as under:-

*“16. We are also constrained to observe that no writ petition claiming benefit of ad hoc service towards seniority can be entertained and is liable to be dismissed out-rightly if all those employees whose seniority is likely to be affected are not impleaded as party respondents. There is not one but several such orders cited before us where none of the affected person was a party respondent. The Hon'ble Supreme Court in **Vijay Kumar Kaul & Ors. v. Union of India & Ors. (2012) 7 SCC 610** has emphatically reiterated the settled position of law that the claim for re-determination of seniority cannot be entertained when it is likely to jeopardize the interest of those who have not been impleaded parties to the proceedings.”*

49. Once, in the present case, it is a conceded position that the selected persons who were directly recruited by way of direct recruitment, who will be affected by the outcome of the present petition are not party to the present petitions, the present petitions cannot be even entertained for

by counting adhoc/temporary/stop gap arrangement service.

50. Learned counsel for the petitioners has not been able to rebut the said factual aspect that all the regular selected candidates who joined in pursuance to advertisement No.3 of 1988 are not party to the present petitions hence, on this score itself, the claim of the petitioners for the grant of benefit of seniority by counting adhoc/temporary/stop gap arrangement service fails and is accordingly declined.

51. Further, it needs to be noticed that even as per the order passed by the Hon'ble Supreme Court of India dated 03.09.1992 when read in the entirety shows that regularly selected candidates, who were to be appointed in pursuance to advertisement No.3 of 1998 have been kept at a higher pedestal as compared to the adhoc employees, who are working. Hon'ble Supreme Court of India had given direction to the State that in case the directly recruited Pharmacist are to be given appointment by displacing the adhoc employees, the same be done. Now the petitioners are seeking seniority over and above those very candidates, who have been given preference by the Hon'ble Supreme Court of India qua appointment. Once, the directly recruited candidates, who have been appointed in pursuance to advertisement No.3 of 1998 have been placed above the adhoc employees in regard to the appointment, the said direction cannot be flaunted by giving those very adhoc employees seniority from their initial date of appointment so as to treat those directly recruited candidates at a lower pedestal than the petitioners hence, even on this account, keeping in view the order passed by the Hon'ble Supreme Court of India in SLP No.8137, 8239 & 7505-1992 as well as SLP No.1834-1991 and other connected SLPs, which were disposed

the regularly selected candidates, who were recruited through Subordinate Staff Selection Board, Haryana and that too especially, when those selected candidates are not party before this Court.

52. No other argument has been raised.

53. Keeping in view the facts and circumstances recorded hereinbefore, no ground for interference is made out by this Court and the writ petitions are accordingly dismissed.

54. Civil Miscellaneous application pending if any, is also disposed of.

55. Copy of this order be placed on the files of connected cases.

December 21, 2023
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

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