

In the High Court for the States of Punjab and Haryana at Chandigarh

CWP-25913-2015 (O&M)

Date of Decision:- 3.10.2023

Ranjit Singh and others

... Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Shekhar Kumar, Advocate for the petitioners.

Mr. Aman Dhir, DAG, Punjab.

* * * * *

GURVINDER SINGH GILL, J.

1. The petitioners, who are employees of Department of Irrigation, Punjab, seek issuance of a writ in the nature of mandamus directing respondents to count the service rendered by them on work-charge basis, prior to their regularization, for the purpose of determination of total length of service required for granting increments of proficiency step-up upon completion of 8 and 18 years of service.
2. The petitioners had joined the Department of Irrigation between the years 1979 to 1988 on work-charge basis. Subsequently, during the years 1989 to 2008, their services were regularized in accordance with prevalent policies/instructions issued by the State of Punjab. The petitioners, however, claim that the period of service rendered by them prior to their regularization,

which would be around 10 years approximately, be also counted in their length of service for the purpose of granting increments of proficiency step-up upon completion of 8 and 18 years of service.

3. The learned counsel, while pressing upon the case of the petitioners to the effect that service rendered on work-charge basis is to be considered for the purpose of extending benefits of additional increments towards proficiency step-up placed reliance upon the following judgments :-

- (i) Judgment dated 6.1.1997 passed by this Court in CWP 18429 of 1996 – Banta Ram Pump Operator vs. State of Punjab. (Annexure P-3)
- (ii) Judgment dated 13.9.2000 passed by this Court in CWP No. 5738 of 1999 - Kesar Singh versus State of Punjab. (Annexure P-5)
- (iii) Order dated 1.2.2002 passed by Hon’ble Supreme Court in Special Leave to Appeal (Civil) No. 6498/2001 – State of Punjab Versus Kesar Singh Chowkidar. (Annexure P-6)
- (iv) Judgment dated 13.11.2003 passed by this Court in CWP 219 of 2003 – Puran Singh and others vs. State of Punjab. (Annexure P-7)
- (v) Order dated 31.10.2000 passed by Hon’ble Supreme Court in Civil Appeal Nos.5740-5741/1997 – State of Haryana & Ors. Versus Ravinder Kumar & others. (Annexure P-4)
- (vi) 2015(2) SLR 610 – State of Haryana and others versus Inderjit and other.(Pb. & Hr.)

4. On the other hand, the learned State counsel opposed the petition on the ground that the rules and policies applicable do not permit that the service rendered on work-charge basis by an employee prior to regularization is to be treated for all kinds of benefits and that it is only under certain circumstances that the same may be treated as qualifying service for pensionary benefits only. It has been submitted that instructions dated 1.12.1988 (Annexure P-1) read with clarificatory letter dated 1.9.1989 (Annexure P-2) clearly prescribe

that service rendered on *ad-hoc* basis is not to be reckoned for the purpose of granting increments towards proficiency step-up/ACP.

5. It has further been submitted that in case *ad-hoc*/work-charge service rendered prior to regularisation is permitted to be counted, it would have very wide ramifications inasmuch as persons who may have been directly appointed on regular basis prior to regularisation of employees initially appointed on *ad-hoc* basis, would end up drawing lesser pay whereas the petitioners who came to be regularized much later will be getting higher pay on the basis of *ad-hoc* service. The learned State counsel, in order to hammer forth his aforesaid submission places reliance upon the following four judgments:-

- (i) AIR 2001 Supreme Court 2691, State of Punjab versus Gurdeep Kumar Uppal.
- (ii) 2009(5) SLR 499 – Punjab State Electricity Board and others Vs. Jagjiwan Ram and others (Supreme Court)
- (iii) 2010 (12) SCC 400 – Surendra Nath Pandey & others Vs. Uttar Pradesh Cooperative Bank Limited & another
- (iv) 2013(16) SCC 677 – State of Haryana and others Vs. Sita Ram and others
- (v) 2008(5) SLR 684 – The Punjab State Tubewell Corporation Workers Union versus The State of Punjab and others.
- (vi) 2015(25)SCT 712 – Amarjit Singh Saini vs. State of Punjab(Pb. & Hr)
- (vii) Order dated 8.4.2011 passed by Hon'ble Supreme Court in Civil Appeal No. 3160 of 2011 – State of Punjab and others versus Jasmer Singh and others (Annexure R-2)

6. This Court has considered rival submissions addressed before this Court.

7. The short and precise question involved in the instant case is as to whether the service rendered on work-charge basis prior to regularization of the

petitioner is to be reckoned for the purpose of granting increments of proficiency step-up after 8 and 18 years of service or not. The instructions in this regard were initially issued by Government of Punjab on 1.12.1988 (Annexure P-1), the relevant extract of which is reproduced herein-under :-

“Subject: Implementation of the recommendations of the Third Punjab Pay Commission – Proficiency Step-up (PROP).

I am directed to address you on the subject cited above and to say that, on careful consideration of the recommendations of the Third Punjab Pay Commission regarding proficiency step-up (PROP), the President of India is pleased to decide as follows :-

- (1) Subject to suitability, besides the regular annual increment, one additional increment on each occasion on completion of 8 years' and 18 years' service on or after 'the appointed day' [as defined in Punjab Civil Services (Revised Pay)] Rules, 1988, published in Punjab Government Gazette (Extra.) on 13th September, 1988 against a post, in the form of proficiency step-up(s), shall be granted to all the Punjab Government employees except the Members of the Punjab Government employees except the Members of the Punjab Civil Services (Executive Branch), Deputy Superintendents of Police and Members of the Punjab Fresh Service Class II.

(2) to (6) xxx xxx xxx

- (7) For reckoning the period of 8 and 18 years, the entire service in the time scale, senior scale and selection grade (of mere placement and not involving fixation of pay at higher level) etc., wherever available in a cadre, shall be counted. If an employee joins a scale at a stage higher than the minimum as a result of promotion or otherwise, his proficiency step-up(s) would stand postponed by a number of years equal to the number of increments already covered by him from the minimum of the scale at the time of initial fixation of pay in the scale. That the step-up is related to the number of years of service in a particular scale and if an employee's pay is fixed by process of promotion at the sixth stage of a scale, he will be entitled to earn a step-up in that scale only after 8 years. If an employee serves in a scale of pay for more than 18 years and is not promoted to a higher scale on account of lack of promotional opportunities or non-availability of a vacancy in the promotional scale, he would be granted two step-up(s) in his emoluments.”

8. The aforesaid instructions were subsequently clarified by a circular dated 1.9.1989, the relevant extract from which reads as under :-

“Sub: Clarification in respect of grant of proficiency step-up(s).

Sir,

In continuation of Punjab Government Instructions issued vide circular letter No.7/14/88-5 PPI/2269/18527, dated 1st December, 1988 and subsequent letter No. 7/14/88-5PPI/14688 dated 9th August, 1989 regarding the grant of proficiency step-up(s), I am directed to say that various departments/offices have raised certain points for clarification in respect of grant of proficiency step-up, the procedure for which was laid down in the letter dated 1.12.88, the matter has been considered in detail in consultation with the Department of Finance and the following clarifications are given on the various points :-

Points			Clarification				
1 to 5	xxx	xxx	xxx	1 to 5	xxx	xxx	xxx
6.	An employee was appointed on adhoc basis wherein he had put in 3 years of service. Subsequently, he was appointed on regular basis. For the grant of Proficiency whether the period 8/18 years is to be taken from the date of his appointment on adhoc basis or from the date he joined on regular basis as appointed by the Subordinate Services Selection Board/ Departmental Selection Committee Punjab/Punjab Public Service Commission			6.	The period of eight or eighteen years is to be <u>reckoned from the date of appointment on regular basis.</u> Service rendered on <u>adhoc basis is not to be counted</u> for the purpose of grant of proficiency step-up(s).		
7 to 9	xxx	xxx	xxx	7 to 9.	xxx	xxx	xxx

9. A perusal of the circular dated 1.12.1988 read with clarificatory letter dated 1.9.1989 (Annexure P-2) makes it amply clear that it is only the service rendered on regular basis which was to be reckoned for the purpose of length of service for granting proficiency step up and that *ad-hoc* service was not to be counted.
10. The learned counsel for the petitioner vehemently argued that service rendered on *ad-hoc* basis cannot be equated at par with work-charge service and that clarification (Annexure P-2) would be applicable to *ad-hoc* employees only and would not be applicable to the case of the petitioners who form a different class being employees working on work-charge basis.

11. It has further been submitted that the aforesaid clarification dated 1.9.1989 (Annexure P-2) has been duly considered in judgment dated 13.9.2000 passed by a Division Bench of this Court in CWP No. 5738 of 1999 - Kesar Singh versus State of Punjab (Annexure P-5) and despite the said clarification, the service rendered on work-charged basis has been counted towards grant of proficiency step-up and that even SLP filed by State of Punjab against said judgment was dismissed in *limini* on 1.2.2002 (Annexure P-6).
12. Since the controversy in the present case stands crystalised to the issue as to whether the service rendered on work-charge basis prior to regularization by an employee is to be reckoned for the purpose of granting increments of proficiency step-up after 8 and 18 years of service or not, it is apposite to discuss the judgments cited by both the learned counsel to find out as to what are the principles of law settled therein and also as to whether the policy/instructions dated 1.12.1988 (Annexure P-1), as clarified vide letter dated 1.9.1989 (Annexure P-2), have been followed or have been held inapplicable or *ultra-vires*.
13. The first judgment pressed into service by the petitioners's counsel is a Division Bench judgment of this Court in CWP 18429 of 1996 – Banta Ram Pump Operator vs. State of Punjab (Annexure P-3). A perusal of same would show that while rendering said judgment, the Court mainly relied upon a decision of Full Bench in Kesar Chand vs. State of Punjab and others, AIR 1988 P&H 265 (Full Bench), wherein it was held that service rendered on work-charge basis prior to regularization is to be reckoned as qualifying service for the purpose of pension. Although Banta Ram's case arose from State of Punjab but the instructions dated 1.12.1988 (Annexure P-1) were not

referred to at all. It may here be also mentioned that even the Full Bench decision in Kesar Chand's case (supra), which has been referred to in Banta Ram's case, had not dealt with matter with regard to counting work-charge service towards proficiency step-up.

14. The second judgment relied upon by learned counsel for the petitioners is judgment dated 13.9.2000 rendered in CWP 5738 of 1999 – Kesar Singh versus State of Punjab) (Annexure P-5) whereby the Division Bench while relying upon Banta Ram's case (supra), allowed the LPA directing the State of Punjab to grant proficiency step-up while taking into account the service rendered on work-charge basis prior to regularization. In the said case, the Bench did refer to policy dated 1.12.1998 (Annexure P-1) and also to letter 1.9.1989 (Annexure P-2) but there is no discussion with regard to same.
15. The third judgement pressed into service is infact an order dated 1.2.2002 (Annexure P-6) passed by Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 6498/2001 – State of Punjab Versus Kesar Singh Chowkidar, whereby an appeal filed by State challanging judgment dated 13.9.2000 rendered in CWP 5738 of 1999 – Kesar Singh versus State of Punjab (Annexure P-5), has been dismissed in *limini* without any adjudication on merits.
16. In the fourth judgment cited by petitioners's counsel i.e in Puran Singh's case (supra) (Annexure P-7), neither there is any reference to the policy decision dated 1.12.1988 (Annexure P-1) nor to clarificatory letter dated 1.9.1989 (Annexure P-2) and nor the legal issue as regards counting of *ad-hoc*/work-charge service has been considered or adjudicated, and the petition had been

decided in view of decision dated 13.9.2000 rendered in CWP 5738 of 1999 – Kesar Singh versus State of Punjab.

17. Coming to the fifth judgment i.e. Ravinder Kumar's case (supra) (Annexure P-4), a perusal of said judgment dated 31.10.2000 passed by Hon'ble Supreme Court would indicate that the said case pertained to State of Haryana and is a short judgment based on the fact that the State counsel has conceded that the service rendered by the employees on work-charge basis is to count for the purpose of increments as well as for qualifying pension. The legal proposition as to whether work charge service is to be treated at par with regular service for proficiency step-up was neither agitated nor adjudicated upon by Hon'ble Supreme Court in Ravinder Kumar's case (supra).
18. As regards the sixth judgment cited by petitioners's counsel i.e a judgment rendered by this Court in Inderjit's case (supra), a perusal of the same would show that a Division Bench of this Court distinguished the judgment rendered by Hon'ble Supreme Court in State of Haryana and others Vs. Sita Ram and others 2013(16) SCC 677, on the ground that the issue in Sita Ram's case pertained to grant of ACP scales under Haryana Civil Service (Assured Career Progression) Rules, 1998 whereas in Inderjit's case (supra), the petitioners were claiming the benefits on the strength of office memorandum dated 15.3.2002 issued by Department of Finance, Government of Haryana. In Inderjit's case (supra), no such broad principle was laid that in each and every case, service rendered on work-charge basis has to be counted for grant of additional increments on completion of 8/18 years of service. As a matter of fact, the relief as granted in Inderjit's case was granted in view of the office memorandum dated 15.3.2002 issued by the Department of Finance, State of Haryana.

19. Now coming to the judgments relied upon by State, the learned State counsel has first referred to judgment of Hon'ble Apex Court in State of Punjab versus Gurdeep Kumar Uppal AIR 2001 Supreme Court 2691, wherein it held as under :-

“4. The main question that arises for consideration in these appeals is whether the period of ad hoc services rendered by the respondents is to be included for calculating the period of 8 or 18 years of service for giving higher scale of pay under the proficiency step up scheme. This question was considered by a three Judges Bench of this Court in the State of Haryana v. Haryana Veterinary and AHTS Association and another, 2000(4) SCT 664 (SC) : JT 2000(1) SC 561, wherein this Court took the view that for calculating 8/18 years service required for giving higher scale of pay and for determination of seniority only regular service rendered by the employee is to be counted and not ad hoc service.

5. xxx xxx xxx

6. We do not feel it necessary to delve further into merits of the case in view of the decision of this Court in State of Haryana v. Haryana Veterinary and AHTS Association and another (supra). We are satisfied that the ratio in that case applies to the cases in hand. The resultant position that emerges is that the judgment/orders passed by the High Court holding that ad hoc service is to be included in calculating the period of service for giving the higher scale of pay are unsustainable and has to be vacated. Accordingly, the appeals are allowed and the judgments/orders of the High Court under challenge are set aside.”

20. The learned State counsel also pressed into service judgment of Hon'ble Supreme Court rendered in Jaggiwan Ram's case (supra), wherein it has been noticed by Hon'ble Apex Court as under:-

“11. What to say of work charged employees even those appointed on ad hoc basis cannot claim parity with regular employees in the matter of pay fixation, grant of higher scales of pay, promotion etc In State of Haryana vs. Haryana Veterinary & AHTS Association and another (supra), a three-Judge Bench considered the question whether service of an employee appointed on adhoc basis can be equated with that of regular employee for the purpose of grant of selection grade in terms of the policy contained in circulars dated 2nd June, 1989 and 16th May, 1990 issued by the Government of Haryana and answered the same in negative.

12. xxx xxx xxx

13. A reading of the scheme framed by the Board makes it clear that the benefit of time bound promotional scales was to be given to the employees only on their completing 9/16 years regular service. Likewise, the benefit of promotional increments could be given only on completion of 23 years regular service. The use of the term 'regular service' in various paragraphs of the scheme shows that service rendered by an employee after regular appointment could only be counted for computation of 9/16/23 years service and the service of a temporary, adhoc or work charged employee cannot be counted for extending the benefit of time bound promotional scales or promotional increments. If the Board intended that total service rendered by the employees irrespective of their mode of recruitment and status should be counted for the purpose of grant of time bound promotional scales or promotional increments, then instead of using the expression '9/16 years regular service' or '23 years regular service', the concerned authority would have used the expression '9/16 years service' or '23 years service'. However, the fact of the matter is that the scheme in its plainest term embodies the requirement of 9/16 years regular service or 23 years regular service as a condition for grant of time bound promotional scales or promotional increments as the case may be. For the reasons mentioned above, we hold that the respondents were not entitled to the benefit of time bound promotional scales / promotional increments on a date prior to completion of 9/16/23 years regular service and the High Court committed serious error by directing the appellants to give them benefit of the scheme by counting their work charged service.”

(emphasis supplied)

21. Similar view was expressed, subsequently, by the Hon'ble Apex Court in Surendra Nath Pandey & others Vs. Uttar Pradesh Cooperative Bank Limited & another 2010 (12) SCC 400. Relevant portion of the judgment reads as under:-

“9. We are of the view that the real issue is whether persons employed on stop gap or ad hoc basis were entitled to the benefit of pay scales with increments during the period of service on daily or stop-gap or ad hoc basis. Unless the appellants are able to establish that either under the contract, or applicable rules, or settled principles of service jurisprudence, they are entitled to the benefit of pay scale with increments during the period of their stop-gap/ad-hoc service, it cannot be said the appellants have the right to claim the benefit of pay scales with increments.

10. Admittedly, the appellants do not claim the said relief on the basis of any rules or contract. This Court in a series of decisions (See for example, State of Haryana vs. Jasmer Singh and State of Haryana vs. Tilak Raj), has held that the daily wage or ad hoc employees were not entitled to the benefit of regular pay scales with increments, by claiming parity with regular employees. Therefore, it is clear that the appellants did not have a right to claim the said relief.”
22. The learned State counsel has next drawn the attention of this Court to the view taken by Hon'ble the Supreme Court in Sita Ram's case (supra), while holding as under :-

“1. Whether the work charge service of the respondents can be treated as regular service for the purpose of grant of benefit under the Haryana Civil Services (Assured Career Progression) Rules, 1998 (for short, 'the 1998 Rules') is the question which arises for determination in these appeals filed against the orders passed by the Division Benches of the Punjab and Haryana High Court.

2. to 10. xxx xxx xxx

11. In our opinion, the reasons recorded by the Division Bench of the High Court for granting relief to the respondents are legally untenable and the impugned orders are liable to be set aside because the same are based on erroneous interpretation of the expression “regular satisfactory service” used in Rule 5(1) and (2) of the 1998 Rules. The note appearing below Rule 5(2) makes it clear that the expression “regular satisfactory service” means continuous service counting towards seniority under Haryana Government, including continuous service in Punjab Government, before reorganization commencing from the date on which the Government servant joins service after being recruited through the prescribed procedure or rules, etc., for regular recruitment in the particular cadre. It is, thus, evident that the rule making authority has laid emphasis on regular recruitment in accordance with the prescribed procedure or rules as a condition for treating the particular service as regular service. This is in total contrast to work charge service which is always in work charge establishment and is not preceded by regular selection made in accordance with any set of rules framed under proviso to Article 309 of the Constitution or executive instructions. It is also not incumbent upon the competent authority to advertise the availability of work/post in the work charge establishment or sent requisition to the employment exchange as per the requirement of the Employment Exchanges (Compulsary Notification of Vacancies) Act, 1959.

No only this, the conditions of appointment of work charge employees are altogether different from those who are regularly recruited in accordance with the rules framed under proviso to Article 309 or executive instructions issued by the State under Article 162 of the Constitution and whose service is treated as regular service.

12. to 17. xxx xxx xxx

18. On the basis of the above discussion, we hold that the Division Benches of the High Court committed an error by directing the appellants to treat work charge service of the respondents as part of regular service for the purpose of Rule 5(1) and (2) of the 1998 Rules.”

(emphasis supplied)

23. A Division Bench of this Court in 2008(5) SLR 684 – The Punjab State Tubewell Corporation Workers Union versus The State of Punjab and others. while dealing with concept of service rendered on work-charge basis, held as under :-

“10. In Kesar Chand (Supra), Full Bench of this Court was not concerned about issue of seniority but was only concerned about the issue of counting ad hoc service for pension. The said judgment is, thus, distinguishable.

11. Circulars dated 1.9.1989 and 29.10.1991 clearly provide for counting only regular service for the purpose of proficiency step up.

12. No distinction has been shown to us in ad hoc service or work charge service for the purpose of counting the same as regular service. Neither ad hoc nor work charge is a regular service in cadre. Learned counsel for the contesting respondents points out that view taken in Haryana Veterinary (supra) has also been followed in *State of Punjab and others v. Gurdeep Kumar Uppal and others*, AIR 2001 Supreme Court 2691: [2001(3) SLR 256 (SC)]. and *State of Punjab v. Ishar Singh*, AIR 2002 Supreme Court 2422 : [2002(2) SLR 289 (SC)]. Concept of work charge service has also been considered by the Hon'ble Supreme Court in *State of Maharashtra v. Purushottam and others*, AIR 1996 Supreme Court 2228 : [1996(4) SLR 558 (SC)]. wherein, after referring to earlier judgment of the Hon'ble Supreme Court in *Jaswant Singh and others v. Union of India and others*, AIR 1980 Supreme Court 115 : [1979(2) SLR 375 (SC)]., it has been held that work charge establishment is an establishment of which expenses including wages

and allowances of the staff are chargeable to work. Employees are temporary employees for execution of specified work. Their services come to an end on completion of the work and their services cannot be taken into account for seniority and regular establishment. In *State of Punjab and others, v. Jit Singh*, AIR 1997 Supreme Court 29 : [1996(4) SLR 727 (SC)], it was observed that work charge employee was not a Government servant. In *State of Manipur v. Thingujam Brojen Meetei*, AIR 1996 Supreme Court 2124 : [1996(4) SLR 13 (SC)], it was held that 'die in harness' scheme could not be applied to work charge employee. In *State of Gujarat and another v. Karshanbhai K. Rabari and others*, 2006 (6) SCC 21 : [2006(5) SLR 280 (SC)], it was held that work charge employees could not be treated at par with regular employees.

13. **In view of above reasons, we are of the view that work charge service could not be counted as regular service for the purpose of proficiency step up.**

14. Accordingly, the petition is dismissed.”

(emphasis supplied)

24. A single Bench of this Court, while deciding a bunch of cases, the lead case being CWP No. 7021 of 2012 – Amarjit Singh Saini and others versus State of Punjab and others, 2015(25) SCT 712 in its decision dated 14.10.2015, while relying upon the ratio of judgment rendered in Jaggiwan Ram's case(supra) and Surinder Nath Pandey vs. Uttar Pradesh Co-operative Bank Ltd. (2010(12 SCC 400), dismissed the writ petitions wherein also the petitioners were claiming grant of proficiency step-up by counting the service rendered by them prior to regularization on the basis of instructions dated 1.12.1988.

25. Hon'ble Supreme Court in its judgment dated 8.4.2011 rendered in State of Punjab and others versus Jasmer Singh and others, has specifically dealt with instructions dated 1.12.1988 and held that service rendered on work-charge basis is not to be counted for the purpose of proficiency step-up. The relevant extract from the said judgment is reproduced herein-under :-

“These appeals are directed against orders dated 3.5.2005, 31.5.2005 and 13.9.2005 passed by the Division Benches of the Punjab and Haryana High Court recognizing the entitlement of the respondents to get proficiency step up on completion of 8 and 18 years of service by counting their work charge service.

The claim of the respondents for grant of proficiency step up was founded on the policy contained in circular letter No. 7/14/88-5PP(1) 2269/18527 dated 1.12.1988 issued by the Government of Punjab, Department of Personnel and Administration Reforms.....

xxx xxx xxxx

A perusal of the order impugned in the appeal arising out of SLP (C) No. 18417 of 2005 shows that the Division Bench of the High Court granted relief to the respondents on the basis of the statement made by the learned counsel appearing for the State and its functionaries without examining their entitlement to get proficiency step up on completion of 8 and 18 years of service. In the appeal arising out of SLP (C) No. 2692 of 2006, the Division Bench of the High Court disposed of the writ petition of the respondents in terms of order dated 15.11.2002 passed in CWP No. 17315 of 2001 Jarnail Singh and others v. State of Punjab and others. In the appeal arising out of SLP (C) No. 2603 of 2006 the Division Bench of the High Court dismissed the appeal filed against order dated 3.12.2004 passed by the learned Single Judge, who, in turn, relied upon the orders passed in other writ petitions whereby a co-ordinate Bench had directed that work charge service of the employee be counted for the purpose of grant of proficiency step up.

We have heard learned counsel for the appellants and carefully perused the record.

At the outset we may mention that CA No.1174 of 2003 State of Punjab and others v. Mahesh Mittal and others involving the challenge to an order similar to the one impugned in these appeals

was allowed by this Court by relying upon the judgment of State of Haryana v. Haryana veterinary and AHTS Association.

Even otherwise, High Court we are convinced that the High Court committed serious error by directing the appellants to count work charge service of the respondents for the purpose of grant of proficiency step up. The plain language of Para 7 of the policy decision contained in circular letter dated 1.12.1988 shows that the service in the time scale, senior scale and selection grade only can be counted for the purpose of computation of period of 8 and 18 years service. This, necessarily, implies that work charge cannot be counted for the purpose of grant proficiency step up. In the result, the appeals are allowed.....”

(emphasis supplied)

26. Upon analysing the judgments relied upon by the petitioners, this Court finds that the said judgments cannot be said to be a binding precedent qua the facts of the present case. Ravinder Singh's case, as noted above, was decided on the basis of a concession having been made by the State counsel. Ravinder Singh's case arose from a matter pertaining to Haryana wherein the State counsel made a concession and conceded that the service on work-charge basis is to be counted. In Kesar Singh's case, although the policy dated 1.12.1988 and clarificatory letter dated 1.9.1989 had been referred to but the LPA came to be allowed while noticing that another Division Bench of this Court in Banta Ram Pump Operator's case had granted similar relief. In Banta Ram's case, however, there had been no adjudication on the specific issue of counting of service rendered on work-charge basis towards increments/proficiency step-up but has relied upon the Full Bench judgment rendered in Kesar Chand's case, which, as a matter of fact, pertained to reckoning of service rendered on work-charge basis prior to regularization towards qualifying service.

27. The petitioners can't even draw any benefit from cited Inderjit's case as a perusal judgment in Inderjit's case would show that the same pertained to State of Haryana wherein a judgment of Hon'ble Supreme Court in Sita Ram's case has been distinguished on the ground that the rules interpreted in Sita Ram's case were different from the instructions applicable to the petitioner in Inderjit's case inasmuch as in Inderjit's case there was a memorandum dated 15.3.2002 issued by the Department of Finance, State of Haryana providing for counting of service rendered on work-charge basis towards grant of increments. In none of the judgments relied upon by the learned counsel for the petitioner, the legal question as regards counting of *ad-hoc*/work-charge service towards proficiency step-up has been thrashed.
28. On the other hand, the judgments pressed into service by learned State counsel have dealt with the concept of work-charge service and and it has been held that service rendered on work-charge basis can't be said to be at par with regular service for the purpose of grant of increments towards proficiency step-up, particularly when rules applicable do not provide for the same.
29. A perusal of extracts from Jasmer Singh's case (supra), as have been reproduced above, would show that Hon'ble Supreme Court noticed that a string of orders/judgments came to be passed by this Court while relying upon earlier orders which had been passed on the basis of statement extending concession without the issue of entitlement having been adjudicated.
30. Hon'ble Apex Court, in Jasmer Singh's case (supra), while examining the policy dated 1.12.1988 (Annexure P-1) issued by the State of Punjab, held in

unambiguous terms that the service rendered on work-charge basis is not to count for the purpose of grant of proficiency step-up.

31. In any case, the State of Punjab itself in its clarificatory letter dated 1.9.1989 had in unambiguous terms clarified that the service rendered on work-charge basis is not to count for grant of proficiency step-up. The said relevant extract from the said letter dated 1.9.1989 is reproduced herein-under :-

“Sub: Clarification in respect of grant of proficiency step-up(s).

Sir,

In continuation of Punjab Government Instructions issued vide circular letter No.7/14/88-5 PPI/2269/18527, dated 1st December, 1988 and subsequent letter No. 7/14/88-5PPI/14688 dated 9th August, 1989 regarding the grant of proficiency step-up(s), I am directed to say that various departments/offices have raised certain points for clarification in respect of grant of proficiency step-up, the procedure for which was laid down in the letter dated 1.12.88, the matter has been considered in detail in consultation with the Department of Finance and the following clarifications are given on the various points :-

Points		Clarification	
6.	An employee was appointed on adhoc basis wherein he had put in 3 years of service. Subsequently, he was appointed on regular basis. For the grant of Proficiency whether the period 8/18 years is to be taken from the date of his appointment on adhoc basis or from the date he joined on regular basis as appointed by the Subordinate Services Selection Board/ Departmental Selection Committee Punjab/Punjab Public Service Commission	6.	The period of eight or eighteen years is to be <u>reckoned from the date of appointment on regular basis</u> Service rendered on <u>adhoc basis is not to be counted</u> for the purpose of grant of proficiency step-up(s).

32. The above consistent view of the Hon’ble Supreme Court does not leave any room for taking a different view and it stands well settled that service rendered on work-charge basis prior to regularization of an employee is not to be counted for the purpose of grant of benefits like increment of proficiency step-up upon completion of 8 and 18 years of service etc., unless the rules/policies of the State specifically permits for the same. There being no

such policy prevalent, the petitioners cannot stake their claim so as to seek benefit of proficiency step-up by counting his service rendered on work-charge basis. The judgment of Hon'ble Supreme Court in Jasmer Singh's case, wherein policy relied upon by the petitioner i.e. policy dated 1.12.1988 (Annexure P-1), has been interpreted, coupled with clarificatory letter dated 1.9.1989 (Annexure P-2), make it crystal clear that service rendered on *ad-hoc*/work-charge basis by the petitioners, prior to their regularisation cannot be counted towards grant of proficiency step-up increments.

33. Rather, this Court is of the opinion that granting such benefits would have wide ramifications and would lead to multiplicity of litigation inasmuch as the persons who may have been appointed directly shortly before the petitioners were made regular would be drawing a lesser salary whereas the petitioners on the strength of their service rendered on work-charge basis would be drawing a higher salary. The same would be an anomalous situation which should be avoided.
34. Finding no merit in the petition, the same is hereby dismissed.

3.10.2023

kamal

**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned : Yes
Whether Reportable : Yes