

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CWP-35222-2019
Reserved on: 24.01.2023
Date of decision: 02.02.2023

ARJUN SINGH AND ORS.

..Petitioners

Versus

STATE OF PUNJAB AND ORS.

..Respondents

2. CWP-7153-2019

HARJINDER KUMAR & ORS.

..Petitioners

Versus

STATE OF PUNJAB AND ORS.

..Respondents

3. CWP-17167-2022

BALRAJ SINGH & ORS.

..Petitioners

Versus

STATE OF PUNJAB AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Baljeet Singh Sidhu, Advocate
for the petitioners.

Mr. R.S. Pandher, DAG, Punjab.

ANIL KSHETARPAL, J(Oral)

1. Three connected writ petitions have come up for final disposal. The learned counsel representing the petitioner states that the issues which require adjudication are common and hence, these petitions can conveniently be disposed of by a common judgment. For brevity, the relevant facts are being noticed from CWP-35222-2019.

2. By filing this writ petition, the petitioners pray for the following substantive reliefs:-

“(i) issuance of writ in the nature of Certiorari for quashing the wholly illegal, arbitrary the impugned orders dated 13.06.2019, 19.06.2016, 26.06.2019, 27.06.2019 and 28.06.2019, Annexure P-17 (colly) vide which by the claim of the petitioners regarding to count the daily wages services rendered before their respective regularization towards Additional Increments, ACP's etc. has been declined by the respondents.”

3. The petitioners were initially enrolled as the daily wage employees. Their services were regularized between 2009-2011. Now, they are praying for counting the period rendered by them as daily wagers towards the additional increments under the Assured Career Progression Scheme (hereinafter referred to as the “ACPS”) etc. On notice, the respondent-State while contesting the case has submitted that for the purpose of benefit of ACPs, only the period after regularization is required to be counted in view of the amendment in Punjab Civil Service Rules, Volume I, Part I, Rule 4.8.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. The learned counsel representing the petitioners while referring to the judgment passed in *Hanumant Singh and others Vs. State of Haryana and others, 2008(4) SCT 427, State of Haryana Vs. Ravinder Kumar and others, Civil Appeal No.5740-5741 of 1997, decided on 31.10.2000, Banta Ram Pump Operator and others Vs. State of Punjab, CWP-18429-1996, decided on 06.02.1997, Kesar Singh Vs. State of Punjab, CWP-5738-1999, decided on 13.09.2000, Puran Singh and others Vs. State of Punjab and others, CWP-219-2003, decided on 13.11.2003*

and Principal Secretary, Irrigation Department, Punjab and another Vs.

President, Sh. Natha Singh Thein Dam Workers Union and another,

CWP-20422-2005, decided on 09.05.2006, submits that the petitioners are entitled to the relief prayed for and the impugned orders passed by the authorities are liable to be set aside due to arbitrariness.

6. On the other hand, the learned counsel representing the respondents while drawing the attention of the Court to amended Rule 4.8 of the Punjab Civil Services Rules, submits that only regular service is required to be counted for the benefit of fixation of pay under the ACPs as notified by the Government from time to time. He submits that in absence of any challenge to the aforesaid Rules, the petitioners have no substance in the case.

7. This Court has considered the submissions and analysed the arguments of the learned counsel representing the parties.

8. At the first instance, it is important to take note of the amendment in Rule 4.8 of Volume I, Part I of Punjab Civil Service Rules, which is extracted as under:-

“Assured Career Progression Scheme

4.8 of Punjab Civil Service Rules Volume-I Part I :-A Government employee is also entitled to the benefit of fixation of pay under the Assured Career Progression Schemes notified by Government from time to time subject to such terms and conditions as may be specified; provided that grant of benefit of such Scheme, shall also be subject to the following general terms and conditions:-

(a) A Government employees who forgoes promotion offered to him shall not be eligible for benefits under the A.C.P. Scheme;

Provided that if on the expiry of the period of two years specified in Rule 18 (2) of Punjab Civil Services (General and Common Conditions of Service) Rules,

1994, a Government employee does not get promotion due to non availability of post, his case shall be considered for the grant of benefit of ACP Scheme but the period during which he was debarred from promotion, shall not count for computing the period of service prescribed for grant of benefit of progression.

(b) The following periods of service shall not be reckoned for grant of benefits under an ACP Scheme:-

(i) ad-hoc service:

(ii) military service rendered prior to joining of civil service;

(iii) suspension period which has not been treated as duty;

(iv) extraordinary leave which is not counted towards the grant of increment;

(c) The period of notional promotion which is counted for the purpose of seniority and pay fixation shall be reckoned for the grant of benefits under an A.C.P. Scheme.

(d) The period of provisional promotion against promotion quota posts of Group 'A' and Group 'B' services pending approval of Punjab Public Service Commission, shall be reckoned for grant of the benefits under an A.C.P. Scheme.”

9. Moreover, for the grant of the proficiency step up, the Government has issued notification dated 01.09.1989, clarifying the earlier notification dated 01.12.1988. In para 6, it has been provided as under:-

“The period of eight or eighteen years is to be reckoned from the date of appointment on regular basis service rendered on ad-hoc basis does not count for the purpose of grant of Proficiency (Already Annexed as Annexure P-3).”

10. As far as the judgment in **Hanumant Singh and others (supra)**, it may be noticed that the Division Bench was examining the case of employees relating to the State of Haryana. After framing three questions for adjudication, the Division Bench held that ad-hoc/work charge service followed by the regular service can be counted for the purpose of grant of additional increments in the running scale on completion of 10/20 years or 8/18 years of service. The Court also held that such service is required to be

counted for determining the amount of pension and seniority. However, for the purpose of counting the service for grant of higher pay scale/benefit of ACPS on completion of 8/18 of years service, the question was answered against the employees. Moreover, that judgment as already noticed relates to the Rules/instructions prevalent in State of Haryana. Similarly, in **Ravinder Kumar's case (supra)**, the Supreme Court was examining the case in the context of employees of State of Haryana. In **Banta Ram's case (supra)**, the Division Bench was dealing with the question as to whether the period spent by the employees on work charge basis should be counted towards computing 8/18 years of services rendered. After relying upon a Full Bench judgment of the High Court in **Kesar Chand Vs. State of Haryana and others, 1950-88, Volume I, RSJ, 433**, the Court held that the service of the petitioners on work charge basis is required to be computed towards the total service of 8/18 years or 10/12 years for the purpose of giving them additional increments and a higher pay-scale. In **Kesar Singh's case (supra)**, the Division Bench was again examining the eligibility with regard to grant of proficiency step up. The writ petition was allowed. The Special Leave Petition before the Supreme Court was dismissed. In **Puran Singh's case (supra)**, the Division Bench relied upon **Kesar Singh's case (supra)**. In **Principal Secretary (supra)**, once again the judgment passed in **Kesar Singh's case (supra)** was relied upon. As is evident that **Kesar Singh's case (supra)** was decided on 13.09.2000, whereas, the amendment in Rule 4.8 was brought in June, 2015. Hence, the judgments passed before the amendment on the basis of then prevalent instructions, will not help the case of the petitioners. In view of the fact that the Service Rules clearly stipulate

that the regular service shall be counted for the purpose of assessing the suitability to grant ACP benefits, the petitioners are not entitled to count their daily wages service for the purpose of calculating the benefit of fixation of pay under the ACPS.

11. The next relief sought by the petitioners is for the payment of additional increments or in other words the proficiency step up. As per the instructions dated 29.10.1991, it was clarified that the benefit of the proficiency step up is not admissible to work charge employees on completion of 8/18 years of service. Moreover, vide instructions dated 21.06.2001, Annexure R-2 to the writ petition, it was clarified, that all the previous instructions which are in contravention to the law laid down by the Supreme Court in **Civil Appeal No.6251 of 1998, titled as “State of Punjab and others Vs. Gurdeep Kaur Uppal and others”, decided on 20.02.2001**, shall be deemed to have been withdrawn/modified. It was notified that the employees are not entitled for placement to next higher scale or the service rendered on ad-hoc basis against the post, which does not count for the purpose of seniority, shall not be taken into account for the purpose of calculating the period of calculating the period of 8/18 years of service or 8/16/24/32 years of service or 4/9/14 years of service.

12. The learned counsel representing the petitioner apart from relying upon the judgments as noticed above, has not drawn the attention of the Court to any Government circular or instructions providing for counting the period of the employee to have worked as a daily wager before the regularization towards the grant of additional increments.

13. It may be noted here that in **State of Punjab Vs. Gurdeep Kaur Uppal, AIR 2001 SC 2691**, the judgment of the High Court holding that the period spent on ad-hoc service is to be counted in calculating the period of service for giving higher scale of pay, was set aside. In that case, the Supreme Court was considering the cases of Doctors, who were praying for counting the period of ad-hoc service rendered by them to be included for calculating the period of 8/18 years of service for giving higher scale of pay under the proficiency step up scheme. The Supreme Court while relying upon a Three Judge Bench judgment of Supreme Court in **State of Haryana Vs. Haryana Veterinary and AHTS Association and another, 2000(4) SCT 664** formed the aforesaid opinion.

14. Keeping in view the aforesaid facts and discussion, finding no merits, the writ petitions are dismissed.

15. All the pending miscellaneous applications, if any, are also disposed of.

02nd February, 2023

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*