

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-17415-1998 (O&M)

Date of decision: 08.04.2024

Dr. Romesh Kumar

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: None for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

AMAN CHAUDHARY, J (Oral)

1. The prayer made in the present petition is for directing the respondents to refix the seniority of petitioner in the cadre of PCMS-Class-I, counting the service rendered by him on adhoc basis towards the total length of services from the initial date of his appointment.

2. Learned State Counsel submits that a reference was made in the petition to a similar case, **Dr. Ram Chander Bishnoi and Others vs. State of Punjab and another**, CWP-13034-1998, which during the pendency of the instant case, was decided on 20.12.2000, in favour of the petitioners therein but with observations as follows:

“We, however, make it clear that in case the special leave petition filed by the State of Punjab against the judgment of this Court in Dr. Gurdeep Kumar Uppal’s case (supra) succeeds and the judgment in that case is reversed, the respondents will be at liberty to withdraw the benefit from the petitioners. No Costs”

3. Hon’ble the Supreme Court allowed the SLP in **State of Punjab vs. Gurdeep Kumar Uppal**, (2003) 11 SCC 732, by reiterating the law laid down in **State of Haryana vs. Haryana Veterinary & Ahts Assn.**, (2000) 8 SCC 4, and

holding that the adhoc service is not to be included while calculating the period of service for giving the higher scale of pay, relevant paras whereof read thus:

“Undisputedly the respondents at the time of their appointment were governed by the Punjab Civil Medical Services Class II (Recruitment and Conditions of Service) Rules, 1943. In Clause (5) of Rule 7 of the said Rules, it is provided that the seniority of the members, in each branch shall be determined by the dates of their confirmation in service. Further, in the orders appointing the respondents on adhoc basis, it was specifically stated that they will be governed by the aforementioned Rules. It was further stated in paragraph III of the appointment letter that the appointees’ seniority will be determined only by merit in which he or she is placed by Punjab Public Service Commission. Thus it is clear that only regular service is to be counted towards seniority.

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 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.

However, we make it clear that if any of the respondents has drawn any amount on the basis of the higher scale of pay under the proficiency step-up scheme granted to him by including the period of his ad hoc service then the State Government shall not recover the amount already drawn by the employee though for fixation of the cadre seniority, the position as laid down in this order will govern. No costs.”

4. In view of the aforesaid, the present petition is hereby dismissed.

08.04.2024
ashok

(AMAN CHAUDHARY)
JUDGE

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