

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.169 of 1995 (O&M)
Date of Order:04.01.2024

Punjab State Electricity Board, Patiala and others

.Appellants

Versus

Hari Gopal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kabir Sarin, Advocate, for the appellants.

Mr. Sudeep Mahajan, Advocate and
Ms. Saachi Mahajan, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. In this regular second appeal, the correctness of the concurrent findings of fact arrived at by the courts below is assailed by the defendants (now Punjab State Power Corporation Limited). While issuing notice of motion, the recovery from the Board (appellant) was stayed.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. The respondent-Hari Gopal was employed as a lineman on adhoc basis on 31.01.1977. After passing of training course for lineman in the year 1979, his services were regularised on 24.01.1981. He was granted first time bound promotion after 9 years of regular service i.e. in the year 1990. On 31.03.1992, he filed a suit for declaration that the office order dated 16.10.1990, granting him first time bound promotion scale of Rs.1640-3200 with effect from 06.03.1990, is wrong and he is entitled to the aforesaid scale with effect from 01.02.1986.

4. Both the courts on appreciation of the evidence have found that the service rendered by the respondent on adhoc basis for a period of nearly 4 years is required to be taken into account while calculating the period of 9 years for first time bound promotion scale. The correctness of the findings arrived at by the courts below are challenged in this appeal.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

6. On the one hand, the learned counsel representing the appellants while relying upon the judgment passed by the Supreme Court in **State of Haryana vs. Haryana Veterinary and AHTS Association and another, (2000) 8 SCC 4**, contends that temporary/ad hoc service is not required to be counted for calculating the period of 9 years. He submits that a Full Bench of this court in **Rakesh Kumar Singla vs. State of Haryana and another, 1995 (3) PLR 411**, has been over ruled by the Supreme Court.

7. On the other hand, the learned counsel representing the respondent submits that the respondent has continued to serve on a regular basis without any break from the year 1977 and therefore, the aforesaid period is required to be counted,

8. This court has considered the submissions of the learned counsel representing the parties.

9. On a court question, the learned counsel representing the parties are ad-idem that as per the relevant circular providing for grant of first time bound promotion scale requires that the employee must have 9 years' regular service to his credit before he can be considered for the benefit and not temporary/ad hoc service. In **Haryana Veterinary and AHTS Association's case (supra)**, the Supreme Court after discussing the various circulars

issued by the State of Haryana, has held as under:-

“15. A combined reading of the aforesaid provisions of the Recruitment Rules puts the controversy beyond any doubt and the only conclusion which could be drawn from the aforesaid Rules is that the services rendered either on ad hoc basis or as a stopgap arrangement, as in the case in hand from 1980 to 1982 cannot be held to be regular service for getting the benefits of the revised scale of pay or of the selection grade under the Government Memorandum dated 2nd June, 1989 and 16th May, 1990, and therefore, the majority judgment of the High Court must be held to be contrary to the aforesaid provisions of the Recruitment Rules, consequently cannot be sustained. The initial letter of appointment dated 6.12.1979 pursuant: to which respondent Rakesh Kumar joined as an Assistant Engineer on ad hoc basis in 1980 was also placed before us. The said appointment letter unequivocally indicates that the offer of appointment as Assistant Engineer was on ad hoc basis and Clauses 1 to 4 of the said letter further provides that the appointment will be on ad hoc basis for a period of 6 months from the date of joining and the salary was a fixed salary of Rs. 400/- p.m. in the scale of Rs. 400 to Rs. 1100 and the services were liable to be terminated without any notice and at any time without assigning any reason and that the appointment will not enable the appointee any seniority or any other benefit under the Service Rules for the time being in force and will not count towards increment in the time scale. In view of the aforesaid stipulations in the offer of appointment itself we really fail to understand as to how the aforesaid period of service rendered on ad hoc basis can be held to be service on regular basis. The conclusion of the High Court is contrary to the very

terms and conditions stipulated in the offer of appointment and, therefore, the same cannot be sustained. The regular letter of appointment dated 29.1.1982 in favour of Rakesh Kumar was also produced before us and that letter indicates that the respondent Rakesh Kumar alongwith others had applied to the Secretary, Haryana Public Service Commission for being appointed as an Assistant Engineer and the Service Commission after selecting the number of persons prepared a list and appointment letters were issued by the Government from the said list on the basis of the merit position of different candidates. Thus the appointment of respondent Rakesh Kumar was a fresh appointment in accordance with the Statutory Rules after the Public Service Commission adjudged their suitability and the regular service of the respondent Rakesh Kumar must be counted from the date he joins the post pursuant to the offer of appointment dated 29.1.1982 and the prior service rendered by him on ad hoc basis cannot be held to be regular service nor can it be tagged on to the later service for earning the benefit under the Government Circular dated 2nd June, 1989 as well as the Clarificatory Circular dated 16th May, 1990. The conclusion of the majority judgment of the High Court, therefore, is wholly erroneous and cannot be sustained.

16. In view of our conclusions, as aforesaid, the majority judgment of the Punjab and Haryana High Court and the directions contained therein is set aside and it is held that 12 years period of respondent Rakesh Kumar could be counted from year 1982 for being eligible to get the Selection Grade under the Government Circular dated 2nd June, 1989 as well as clarificatory Circular dated 16th may, 1990. The Civil Appeal filed by the State of Haryana stands allowed.”

10. In fact, on a careful perusal of the judgments passed by the courts below, it is evident that the courts have relied upon the following two judgments:-

- (1) Ajit Kumar Jain vs. State of Punjab, 1992(1) SLR 255;
- (2) Rajinder Kumari vs. State of Punjab, 1988 (4) SLR 297.

11. Ultimately, the conclusion drawn by the Full Bench in Rakesh Kumar Singla's case (supra), has already been reversed by the Supreme Court.

12. Keeping in view the aforesaid facts and discussion, this court is left with no choice but to allow the appeal and set aside the judgments passed by the courts below. However, on account of reversal of the judgments of the courts below, no recovery proceedings against the respondent shall be initiated by the appellant Board/Corporation.

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

January 04, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO