

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(303)

RSA No. 1471 of 2001(O&M)
Date of Decision : 05.01.2024

Punjab State Electricity Board, Patiala and another

...Appellants

Versus

Sukhdev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Triptjeet Singh Sidhu, Advocate
for the appellants-defendants.

Mr. H.K. Brinda, Advocate for
Mr. Dharam Pal, Advocate for the respondent-plaintiff.

Harsimran Singh Sethi J. (Oral)

1. In the present appeal, the challenge is to the judgment and decree dated 25.01.2001 of the lower appellate court by which, the benefit of ad-hoc service rendered by the respondent-plaintiff towards the special step up of increments, which are given to an employee after rendering 9/16 years of service has been allowed.
2. Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.
3. The respondent-plaintiff was initially appointed as LDC on ad-hoc basis on 23.06.1976. He continued working as such and ultimately his services were regularized on 25.08.1982.

4. As per the rules governing the service, an employee is to be granted proficiency step up on completion of 9/16 years of service in case, the said employee continues stagnating in the feeder cadre despite eligibility for promotion to the higher rank due to non-availability of promotional avenue. The respondent-plaintiff claimed that period of 9/16 years should be counted from the initial date of appointment i.e. 23.06.1976 and not from the date of regular appointment i.e. 25.08.1982. As the said benefit was not being extended to the respondent-plaintiff, the respondent-plaintiff filed a civil suit in the year 1993.

5. The said civil suit was dismissed by the learned Additional Civil Judge (Sr. Divn.), Anandpur Sahib vide judgment dated 19.11.1998 keeping in view the evidence, which had come on record that the initial appointment of the petitioner on 23.06.1976 was on ad-hoc basis and his services were only regularized on 25.08.1982, the benefit of higher pay scale on completion of 9/16 years of service can only be granted by taking into account the service, which the petitioner had rendered on regular basis and the ad-hoc service cannot be counted for the said purpose.

6. Feeling aggrieved against the said decision, an appeal was preferred before the lower appellate court and the lower appellate court decided the said appeal on 25.01.2001. The lower appellate court held that once it is a conceded position that the respondent-plaintiff was appointed on 23.06.1976 on ad-hoc basis on which post, his services were regularized on 25.08.1982 vide Ex. D6 and the respondent-plaintiff

continued working on the said post without any interruption till regularization of his services, hence, earlier service rendered by the respondent-plaintiff on work-charge basis is to be treated at par with the regular appointment and the respondent-plaintiff is entitled for the grant of benefit of the said ad-hoc service while extending the higher pay scale on completion of 9/16 years of service as well by counting the ad-hoc service.

7. The present appeal has been filed challenging the judgment and decree of the lower appellate court dated 25.01.2001. It may be noticed that while admitting the appeal, the operation of the judgment of the lower appellate court was stayed.

8. In the present appeal, the ground which has been raised by the appellants-defendants-Corporation is that the ad-hoc service rendered by an employee cannot be treated for the grant of higher pay scale on completion of 9/16 years of service as only the regular service is to be taken into account for the said purpose. The reliance is being placed upon the judgment of the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Gurdeep Kumar Uppal and others***, JT 2001(5) SC 57.

9. Learned counsel appearing on behalf of the respondent-plaintiff submits that the respondent-plaintiff is also relying upon the judgment of the Co-ordinate Bench of this Court in ***Municipal Corporation, Faridabad Vs. Surender Kumar Arora***, 2000(2) RSJ 755.

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

11. The facts stated here-in-above qua the initial appointment on ad-hoc basis on 23.06.1976 is not disputed. Further, it is not a disputed fact that services of the respondent-plaintiff were regularized on 25.08.1982. Keeping in view the said fact, the claim of the respondent-plaintiff raised in the present appeal is to be adjudicated as to whether, the benefit of ad-hoc service is to be taken into account for the grant of higher pay scale upon rendering 9/16 years of service or not.

12. The question of law raised in this appeal has already been settled by the Hon'ble Supreme Court of India while passing order in Civil Appeal No. 13423 of 1996 titled as ***State of Haryana Vs. Haryana Veterinary and A.H.T.S. Association, decided on 19.09.2000.*** The Hon'ble Supreme Court of India has held that only the regular service is to be counted for the grant of ACP after rendering required number of years and the ad-hoc service cannot be taken into account for the grant of ACP benefit. The relevant portion of the said judgment is as under :-

“Rule 11 provides for continuation on probation for a period of 2 years and Rule 12 is the Rule for seniority. 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 stop-gap 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 Memoranda 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 provide 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 Services 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.”

13. Similarly, once again the Hon’ble Supreme Court while passing order in ***Gurdeep Kumar Uppal’s case (supra)***, held that only the regular service is to be counted for the purpose of the promotional increment and not the ad-hoc service rendered by an employee. Learned counsel for the respondent-plaintiff has not been able to dispute the said settled principle of law.

14. The relevant paragraphs 4, 5 and 6 of judgment in ***Gurdeep Kumar Uppals’s case (supra)*** are 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 Judge Bench of this Court in the ***State of Haryana v. Haryana Veterinary and AHTS Association and another, 2000(4) SCT 664 (SC) : JT****

2000(10) 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. Learned Counsel for the respondents strenuously contended that the respondents who are doctors serving under the State of Punjab are governed by a set of Rules and circulars different from those which were considered in the decided case and therefore the ratio in that case will not be applicable in these cases. We have carefully considered the said contention. We have also considered the circular letter No. 4.15-81 IPP/16047 dated 14th December, 1981. On a plain reading of the circular it is clear that the instructions contained therein were based on the decision of the Punjab and Haryana High Court taking the view that ad hoc service should be taken into account for the purpose. This circular in our view can no longer form the basis of the contention in view of the recent decision by this Court in **State of Haryana v. Haryana Veterinary and AHTS Association and another** (supra). 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 ad hoc 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.

*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 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/order passed by this 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.”*

15. Learned counsel for the respondent-plaintiff has not been able to cite any judgment so as to controvert the settled principle of law settled by the Hon’ble Supreme Court of India as noticed here-in-before.

16. The judgment, which has been relied upon by the learned counsel for the respondent-plaintiff of the Co-ordinate Bench of this Court in **Surender Kumar Arora’s case (supra)**, the same cannot be given preference over the judgment of the Hon’ble Supreme Court of India, which has been cited here-in-before.

17. Keeping in view the above-mentioned facts and circumstances, the judgment of the lower appellate court dated 25.01.2001 is contrary to the settled principle of law settled by the Hon’ble Supreme Court of India in **Haryana Verterinary and A.H.T.S. Association’s case (supra)** as well as **Gurdeep Kumar Uppal’s case (supra)** and cannot sustain in the eyes of law. The judgment and decree

dated 25.01.2001 of the lower appellate court is accordingly set-aside and judgment and decree dated 19.11.1998 of the trial court is revived and the suit filed by the respondent-plaintiff is dismissed.

18. The present regular second appeal is allowed in above terms.

Any civil miscellaneous application pending, if any, is disposed of.

January 05th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No