



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

101 CM-10171-C-2024 in/and
RSA-2995-2001
Date of Decision: October 15, 2024

Devinder SinghAppellant

Vs.

State of Haryana and othersRespondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Dharmender Singh Rawat, Advocate
for the applicant-appellant.

Mr. Harish Nain, AAG, Haryana.

SUDEEPTI SHARMA J. (ORAL)

CM-10171-C-2024

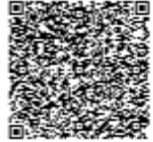
The instant application has been filed for placing on record Annexures
A-1 and A-2 as additional documents.

The application is *dismissed* as placing of any documents on record at
this stage, cannot be allowed.

RSA-2995-2001

1. The present appeal has been preferred against the impugned judgment
and decree dated 13.03.2001 passed by the learned Additional District Judge,
Gurgaon whereby the appeal filed by the respondents was allowed and judgment
and decree dated 24.4.1999 passed in favour of the appellant-plaintiff by Ld. Civil
Judge (Jr. Division), Ferozepur Jhirka was set aside.

2. Brief facts of the case as mentioned in the civil suit are that the
appellant/plaintiff was appointed as draftsman (Civil) Instructor by defendant No.



**CM-10171-C-2024 in/and
RSA-2995-2001**

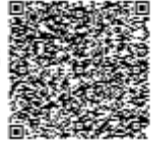
1 against a regular sanctioned post on adhoc basis in the pay scale of Rs. 1400-2600 plus other allowances in the defendant's Department. The appellant/plaintiff was posted in the office of defendant No.3 and he joined on the post on 7.3.1991 at Industrial Training Institute, Ferozepur Jhirka, where he continued at the post from 7.3.1991. The appellant/plaintiff was appointed through employment exchange. The Zila Sainik Board, Faridabad wrote a letter to the appellant/plaintiff on 16.11.1990 for attending of interview for the post against Ex-Servicemen vacancy announced by defendants and that the appellant/plaintiff was appointed to the post as per directions of the Secretary, Zila Sainik Board, Faridabad against the said reserved vacancy.

ii) It is further explained by plaintiff that during period of his stay in the service, his service record had been satisfactory and meritorious. There had been no complaint against plaintiff, that defendant No. 3 had issued one pay slip with an increment of Rs 1440/- on 17.9.92.

iii) Further submission of plaintiff is that he is a son of Ex-Serviceman and his appointment was made against the post reserved for Ex-Serviceman and according to Haryana Government letter No. 1853-4GSII-71/29728 dated 15.10.1971 on Adhoc basis.

iv) It is also submitted by plaintiff that the vacancy reserved for Ex-Serviceman should be filled in the following manner:

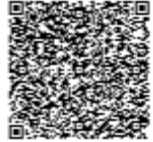
(i) By ex-serviceman recommended by the Haryana Public Service Commission/Subordinate Service Selection Board (such appointments will be made on a regular basis ;



(ii) Failing (i), by ex-serviceman who are already working on an Adhoc basis that is they will be allowed to continue on their existing posts;

v) The plaintiff submitted that as per above noted letter of Haryana Government, his service cannot be terminated, that he is well qualified and possesses all the requisite qualifications for the post in question. That the plaintiff had been working hard to the satisfaction of his superiors, that according to terms and conditions of appointment, plaintiff was appointment on 27.2.1991 by defendants till a regular candidate duly recommended by Sub-ordinate Services of Selection Board, Haryana joins whichever is earlier, no candidates for the same post have been recommended by the above noted Board and against the post on question which is still lying vacant, that the plaintiff was appointed against a regular sanctioned post, the plaintiff apprehends that his service may be terminated by defendants without any reasons and without any notice.

vi) It is also submitted that a similar matter came up before Hon'ble High Court in Civil Writ Petition No.13491 in a case titled as Sanjay Kumar Vs. State of Haryana and others wherein the Hon'ble High Court has directed the defendants not to terminate the service of that of plaintiff till regular candidate joins, that plaintiff requested the defendants not to terminate his service till a regular appointee joins on this post but defendants are adamant in doing so and they refused to adhere to his requests on 20.8.1992. The plaintiff requests that his service may be regularized and continued on the post and defendants be restrained from terminating his service till recommendees of Haryana Subordinate Service Selection Board joins on regular basis to the reserved vacancy.

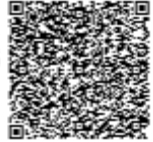


3. Upon notice, the defendants appeared and filed the written statement, wherein apart from taking preliminary objections of maintainability, locus standi, cause of action, estoppel and the suit being bad for want of a valid notice as required under Section 80CPC as well as principle of *resjudicata* have admitted that that the appellant/plaintiff was resident of Haryana and was appointed as Draftsman (Civil) Instructor by the defendant No.2, purely on adhoc basis as a stop-gap arrangement for a fixed period of nine months. He joined the department on 7.3.1991. It is alleged that appellant/plaintiff filed civil writ petition No.16775 of 1991 before this Court seeking directions therein to allow him to continue in service till the recommendee of Haryana Subordinate Service Selection Board joins on regular basis. The appellant/plaintiff remained in service but he could not be relieved on account of stay order granted in the said writ petition vide order dated 5.8.1992, the writ petition filed by the appellant/plaintiff was dismissed. It is submitted that Haryana Subordinate Service Selection Board recommended three candidates belonging to Ex-Servicemen category out of which two recommendees of the Board were appointed. It is alleged that work of the appellant/plaintiff was not satisfactory and the adverse remarks were recorded in the ACR, which were duly conveyed to him. Further that the appellant/plaintiff could not be releived from his duty because of the stay order issued in CWP-16775 of 1991. Rest of the averments made in the plaint were denied and prayer for dismissal of suit was made.

4. No replication was filed.

5. From the pleadings of the parties, following issues were framed:-

1) Whether the plaintiff was on a regular post of draftsman (civil) instructor in the pay scale of Rs. 1400-2600/- plus allowances and perks by the defendants,



through Zila Sainik Board as well as Employment Exchange as alleged? OPP

2) Whether the services of the plaintiff are required to be regularized as alleged? OPP

3) If issue No. 1 and 2 are proved whether the plaintiff is entitled for a decree of declaration as alleged and a decree for permanent injunction, not to terminate his services as alleged? OPP

4) Whether the suit is not maintainable? OPD

5) Whether the plaintiff has no locus standi to file the present suit? OPD

6) Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD

7) Whether the plaintiff has no cause of action and has concealed the material facts? OPD

8) Whether the suit is bad under Section 80 CPC for its non-compliance? OPD

9) Whether the suit is bad for the principles of res judicata? OPD

10) Relief

SUBMISSIONS OF COUNSEL FOR THE PARTIES

6. Learned counsel for the appellant contends that Ld. Additional District Judge dismissed the appeal on the ground that the writ petition filed by the appellant challenging the advertisement, whereby the post on which the appellant was working as Draftsman (Civil) Instructor, was advertised, was dismissed.

i) He further contends that the appellant/plaintiff joined as Draftsman (Civil) Instructor. He was appointed on 27.02.1991 and joined on 07.03.1991. Though his services were terminated on 16.12.1993 but vide the judgment and decree dated 24.04.1999, he was re-instated in service. The appeal against the judgment and decree dated 24.4.1999 filed by respondent-State of Haryana, was



allowed vide judgment and decree dated 13.03.2001. Thereafter, the present RSA was filed wherein judgment and decree dated 13.03.2001 was stayed. Thereafter, he was reinstated on 20.01.2002 and from 20.1.2002 till 31.12.2023 he was continuously working and retired from the same post.

ii) He further contends that Ld. First Appellate Court did not appreciate the factum of his tenure and allowed the appeal filed by the respondent only on the ground that the writ petition filed by the appellant was dismissed.

7. Per contra, learned State counsel contends that there is a gap in service of the appellant/plaintiff from 1993 to 2002, when he was reinstated in service. He further contends that it is only because of the stay orders operating in favour of the appellant/plaintiff that he continued in service from 06.11.1991 to 05.08.1992 when CWP No.16775 of 1991 filed by appellant/plaintiff was dismissed.

i) He further contends that the appellant/plaintiff filed civil suit for regularization against the sanctioned post whereby he was working on adhoc basis and at that point of time, there was no policy of the State of Haryana for regularization and the policy was framed on 01.06.1993.

ii) Learned State counsel further relied upon the judgment passed by Hon'ble the Supreme Court in ***State of Karnatka and others Vs. Umadevi and others, 2006(4) SCC 1***, the relevant paragraphs of the same as under:-

“41. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but



without the intervention of orders of courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

45. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.”

8. I have heard learned counsel for the parties and perused the whole record of the case.

9. Ld. Trial Court decreed the suit in favour of the appellant. Relevant portion of the same is reproduced as under:-

17. Coming to issue No. 1, the plea of plaintiff taken in para No. 1 of plaint to the effect that he was appointed draftsman (civil) instructor against a sanctioned post on adhoc basis in the pay scale of Rs 1400-2600 etc. has not been specifically



denied by defendants in their written statement, rather this fact has been admitted by the defendants. The plea of plaintiff that he was appointed on recommendations through Secretary Zila Sainik Board Faridabad and employment exchange as taken in para No. 2 of the plaint has been admitted by the defendants. The plea of plaintiff in para No. 1 of plaint that it was a regular sanctioned post on adhoc basis has not been specifically denied by the defendants. In these circumstances in view of admission of above facts by defendant issue No. 1 is decided in favour of plaintiff and against defendants.

18. Now we proceed to decide the question whether service of plaintiff were terminated by defendants legally or illegally. The admitted facts as have come on record are that plaintiff joined his service on 7.3.91 and he was removed from service on 16.12.93. Initially the plaintiff was appointed for nine months ie. from 27.2.91 to 26.11.91. It is also admitted case of parties that as of now the plaintiff has already completed his two years service at the post within the meaning of notification Ex. P5 dated 1.6.93.

19. With regard to adhoc appointments made by State Governments and accepting of terms and conditions on adhoc basis by the appointees, the Hon'ble S.C. has come down heavily upon the State Government deprecating the policy of adhocism in a case reported as Rattan Lal Vs. State of Haryana, AIR 1987 S.C.page 478. The important observations run as under:-

"These adhoc teachers are unnecessarily subject to an arbitrary "hiring and firing" policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an adhoc basis with miserable conditions of service. The Govt. appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the



educational institutions and the children studying there. The policy of "adhoicism" followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer."

20. *What comes out from above observations of Hon'ble S.C. is that the policy of adhoicism followed by State Government has been declared to be violative of Articles 14 and 16 of the Constitution of India. Further more the Hon'ble P & H High Court in a case titled as Smt. Rajbala Vs. State of Haryana etc., (D.B) reported as RSJ 1995 (4) page 329 at page 341, has held that any stipulation such as automatic termination of service, even though the post is not abolished and regularly selected persons are not available still have to be treated as wholly arbitrary and illegal. The important observations of Hon'ble High Court in para 24 of the judgment run as under:*

"In view of the principles laid down by the Supreme Court we are of the opinion that where an adhoc or temporary appointment is made after consideration of the candidature of all eligible persons in accordance with the equality clause, the action of the employer in limiting the appointment up to a particular date with a stipulation of automatic termination of service, even though the post is not abolished and a regularly selected persons are not available, will have to be treated as wholly arbitrary, irrational, unjust, oppressive and unconstitutional and the same is liable to be struck down being contrary to Articles 14 and 16 of the Constitution."

21. *Coming to the case of plaintiff it is admitted case of parties that when the plaintiff was removed from the service the post in question existed and rather which is still existing vacant. It is*



also admitted case of parties that no regularly selected person is available as of now. In these circumstances the case of plaintiff is squarely covered by the decision of Hon'ble High Court given in Miss Rajni Bala's case. Viewing of the case of present plaintiff in this context, it is held that termination of plaintiff by the defendants from the service in question was illegal.

22. Coming to the second question as to completion of two years service by the plaintiff and the effect of notification Ex. P5 dated 1.6.93 the facts as coming on record are that the plaintiff joined the service on 7.3.91, though his term of service was to expire on 26.11.91 but still he was not removed from service by the defendants as per conditions of appointment letter. Thereafter present suit was filed by plaintiff on 29.9.92 and an ad-interim injunction (not ex parte) against termination of service by plaintiff was issued on 12.10.92 and the said ad-interim injunction was vacated on 24.8.93. On expiry of terms of service i.e. on 26.11.91 and till 11.10.92 there was no stay order from the present court. In brief, the defendants will-fully and intentionally allowed the plaintiff to complete a continuous period of one year seven months and five days i.e. from 7.3.91 to 12.10.92 on their own, as they needed service of plaintiff during that period. No copy of any writ petition or order passed by Hon'ble High Court has been filed on behalf of defendants in order to show that the same plea of plaintiff on same grounds and in the same circumstances was considered by the Hon'ble High Court and was declined. Further more the ad- interim injunction was vacated from trial Court on 24.8.93 but still the defendants did not remove the plaintiff from his service and allowed him to remain in service as such till 16.12.93 on which date the services of plaintiff were terminated. In brief, ever after vacation of stay order by the trial court, the defendants needed services of plaintiff and they willfully allowed the plaintiff to



work on the post for a period of about 4 months after vacation of injunction order. If the period of service spent by plaintiff at the post during stay issued trial court is excluded still, except that period, the plaintiff has a service of one year 11 months five days to his credit.

23. Further more the trial court vacated the injunction order on the basis of observation made by Hon'ble High Court in Civil Writ Petition No. 16775 of 1991 but copy of said judgment was neither filed by defendants at the time when trial court considered the matter and vacated the stay nor has it been filed on behalf of defendants till today. The defendants were supposed to file a certified copy of order dated 5.8.92 passed by Hon'ble High Court in above noted writ petition in the absence of which present court is unable to see as to how and on what grounds the decision passed by Hon'ble High Court acts as res judicata. Whatever can be gathered from a part of order dated 5.8.92 passed by Hon'ble High Court in above noted civil writ petition as re-produced in para No.1 of written statement is that in that civil writ petition, plaintiff made a claim for continuance of service after expiry of adhoc period but at that time plaintiff did not complete his two years required term within the meaning of notification Ex.P5 dated 1.6.1993. Even thereafter the plaintiff had been in service of defendants. Hence, the order-dated 5.8.92 was passed by Hon'ble High Court in a different context and in different set of circumstances while present claim of plaintiff is based upon changed circumstances and in different context. Simply because the plaintiff applied for ad-interim relief of injunction when suit was filed and simply because the temporary injunction granted by the present court was later on vacated cannot act as estoppel against plaintiff to seek addition of period of service spent by him during stay period to his credit. When it has already been held by present Court that the order of termination dated 16.12.93 passed by



defendants is illegal, in that situation, as is always the case, observation made by a civil court in any interim order (in the present case order passed on 24.8.93 for vacation of ad-interim injunction) never effect merits of a case. Such observations have been specifically made by the present court in order- dated 24.8.93.

24. In view of my discussion of facts and law as made above, the plaintiff has been successful in discharging the burden qua issues No. 2 and 3. Hence, it is held that services of plaintiff, which were illegally terminated by defendants on 16.12.93, are required to be regularized by giving benefit of notification P5 dated 1.6.93. It is also held that the plaintiff is entitled to the decree for declaration and permanent injunction is requested. Hence, issue No.2 and 3 are decided in favour of plaintiff and against defendants.

10. Admittedly, the appellant was working on the same post from 1991 to 1993, when, his services were terminated. A perusal of the judgment shows that the Ld. trial Court decreed the suit in favour of the appellant. His services were terminated on 16.12.1993 but he was reinstated in service vide judgment and decree dated 24.4.1999 and thereafter, he continued in service against regular post till 31.12.2023.

11. The State of Haryana issued a policy on 01.06.1993 (Ex. P5). The same is reproduced as under:-

“No.GSR/31/Const./Art./309/93- In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India read with the proviso to clause 6 of Haryana Government, Central Adminstration Department (Central Services) notification No. 523-3GS-70, 2068 dated 28th January, 1970, the Governor of Haryana hereby specifies such class of posts as have been held for a minimum period of two years on the 31 March, 1993 by Class III employees on



ad hoc basis to be taken out of the purview of the Subordinate Services Selection Board, Haryana and their services shall be regularised if they fulfil the following conditions, namely:-

- (i) that the employees have completed two years service on the 31 March, 1993, and were in service on the 31st March, 1993;*
- (ii) employees shall be regularised against the posts vacancies of relevant categories. The employees of general category may be regularised in excess of their quota with the clear stipulation that in future recruitment is only the candidates from reserve categories will be appointed until the back log arising out of utilisation of reserve category vacancies by general category ad hoc employees ;*
- (iii) that the employees, should, have been recruited through the Employment Exchange or directly appointed by the appointing authority after obtaining the non-availability of candidates from the Employment Exchange;*
- (iv) the work and conduct of such employees shall be of over all good category, and no disciplinary proceedings are pending against them; and*
- (v) that the employees possessed the prescribed qualifications for the post at the time of their appointment on ad hoc basis,*

2. The seniority of the ad hoc, Class III-employees so regularised, viz-a-viz the Class III employees appointed on regular basis shall be determined with effect from 31st March, 1993. The inter se seniority of such ad hoc class III employees shall be determined in accordance with the date of their joining the post on ad hoc basis. If the date of joining the post on adhoc basis by such ad hoc employees was the same, then an older employee shall rank senior to an employee younger in age. If the date of appointment of the direct recruit and the date of regulaisation of ad hoc employees is the same, the direct recruit shall be senior.

B. S. OJHA,
Chief Secretary to Government,



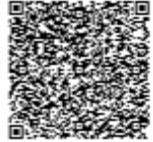
Haryana

12. A perusal of the above referred to policy dated 1.6.1993 shows that this is the policy regarding regularization of the adhoc employees, who held a post for minimum period of two years on 3.3.1993 and were in service on 31.3.1993 and the appellant fulfilled the criteria fixed in the above referred to policy.

13. The Ld. first Appellate Court allowed the appeal filed by the respondent/State. The relevant portion of the same is as under:-

9. The point for determination is whether the plaintiff / respondent is entitled to be regularized on his post on the basis of Haryana Government notification dated 1.6.1993 bearing No. GSR/31/Const/Art./309/937. Admitted facts are that the plaintiff/respondent was appointed as a Draftsman (Civil) Instructor on adhoc basis for a fixed period ending on 26.11.1991 vide appointment letter dated 27.2.1991 against the Ex-Serviceman quota being dependent of the Ex-serviceman. The claim of the plaintiff / respondent that he is entitled to continue even beyond 26.11.1991 till a regular candidate duly recommended by the Subordinate Service Selection Board, Haryana, joins and is also entitled to be regularized in view of the notification dated 1.6.1993 mentioned above is not sustainable in law.

10. After joining of the plaintiff / respondent on 7.3.1991 the S.S.S. Board, Haryana, advertised nine posts of Draftsman (Civil) Instructor vide advertisement No. 4/91 on 7.10.1991, out of which three posts were reserved for Ex-serviceman. The plaintiff/ respondent challenged the above advertisement in CWP No. 16775 of 1991 on 6.11.1991 even before the expiry of his tenure. The Division Bench of Hon'ble High Court of Punjab and Haryana after hearing the parties in the above writ petition passed the following orders: -



"After hearing the learned counsel for the parties. We find that this case is squarely covered by the ratio of the Full Bench decision of this Court in CWP No.8381 of 1991 (Sant. Ram Bhal Versus The State of Haryana and another) dated 4.12.1991 wherein the claim of the petitioner for continuance of appointment after the expiry of the original terms of adhoc appointment was rejected. Accordingly we dismiss this petition with petition with no orders as to costs."

11. The plaintiff/respondent then filed another Writ Petition No.1307 of 1992 along with other petitions seeking the direction of the court that the plaintiff be regularized from the date of his initial appointment in accordance with the directions issued by the Division Bench of Hon'ble High Court of Punjab and Haryana in CWP No.72 of 1988 Piara Singh's case and not to terminate their services without following the case and not to terminate their services without following the procedure laid down in chapter V-A of the Industrial Dispute Act. The above writ petition was also disposed of on 28.1.1992 with the following observations: -

"In view of the Full Bench decision of this Court in CWP No.8381 of 1991 decided on 4.12.1991 this writ petition is dismissed.

*Sd/-
(B.C.Verma)
Chief Justice.
Sd/-
Ashok Bhan, Judge."*

12. After that S.S.S.Board, Haryana advertised the posts of Draftsman (Civil) Instructor and recommended candidates on 21.1.1992 of various categories. The appointment letters were also issued on 25.2.1992 and at that time there was no vacancy for Ex Servicemen/dependent of Ex Servicemen. Ramesh Chander son of Moti Ram filed a CWP No.16167 of 1991 in the



Hon'ble Punjab and Haryana High Court directed as under on 7.2.1992: -

"As a consequence of the above observations and our findings, all these petitions are allowed and the entire process of selection, interviews conducted and the selections made, are hereby quashed."

13. The plaintiff respondent filed another CWP No.1620 of 1992 in the Hon'ble High Court of Punjab and Haryana decided on 7.5.1992 with the following observations:-

"The impugned selection of Draftsman (Civil) Instructors cannot be sustained in view of the rationale of the judgment of the Division Bench in Civil Writ Petition No. 16167 of 1991. The selections made, are accordingly, hereby quashed. This writ petition is thus accepted with Rs. 500/- as costs." The pas salt had

14. After passing through the above litigation the plaintiff/respondent then filed the present civil suit in the Court of Shri Dharampal, Sub Judge I Class, Ferozpur Jhirka (Gurgaon) on 22.9.1992 claiming the relief as referred above.

15. After going through the facts as enumerated above the picture is crystal clear that the Plaintiff / respondent was appointed for a period of nine months and he was to continue in service up to 26.11.1991, but the plaintiff / respondent with an apparent motive to continue in service beyond the above fixed period dragged the State of Haryana into litigation. The S.S.S.Board, Haryana, intended to select the candidates through the prescribed process but by dint of the writ petition filed by the plaintiff/ respondent bearing no. CWP-16775 OF 1991 could not do so and, thus, the plaintiff/ respondent continued in the service of the defendants / appellants till the decision of the above writ petition on 5.8.1992 whereby the writ filed by the plaintiff / respondent was dismissed. Again the plaintiff/respondent to fulfill his motive filed another writ



petition No. 1307 of 1992. The same was also dismissed on 28.1.1992. The plaintiff / respondent filed one more writ petition bearing No. 1620 of 1992 decided on 7.5.1992 by which the selections already made were quashed and the writ petition was accepted with costs of Rs 500/-. There was no bar on the defendants / appellants to call fresh interviews for selection of the candidates and to thwart the above efforts of the defendants / appellants the plaintiff/respondent filed the present civil suit in the court of the Sub Judge I class at Ferozepur Jhirka. The plaintiff/ respondent remained in the service upto 6.12.1993 by dint of the litigation mentioned above. As per the terms and conditions of his appointment he was not legally entitled to continue in service beyond 26.11.1991. Although at the time of issuance of notification dated 1.6.1993 mentioned above the plaintiff / respondent had already completed the service up to two years as required on 31.3.1993 but in view of the peculiar circumstances of this case the plaintiff / respondent has no equity in his favour and is not entitled to the benefit of above notification. If the act and conduct of the plaintiff / respondent is condoned it would give rise to a wrong practice of dragging the State into litigation and after gaining the time beyond two years to take the claim of regularization under the above notification. All the points taken by the plaintiff / respondent in the present suit had already been agitated by him in the writ petitions mentioned above but he failed to get any relief in any of his writ petitions mentioned above. He is, therefore, now estopped from re-agitating the same in the present suit.

16. However, in the course of arguments learned counsel for plaintiff / respondent has submitted that the adhoc appointment limiting the term of the appointment of six months is arbitrary, unreasonable and unconstitutional and after a person is appointed on adhoc basis his service cannot be terminated



except on the ground of unsatisfactory performance, abolition of posts or availability of regularly selected candidate. In support of his contention he has relied upon 1227 (1) R.S.J., PAGE 567, BALWAN Singh versus State of Haryana and 1995 (4) R.S.J., Page 329 Miss Rajni Bala Versus State of Haryana. With due respect to the above cited judgments I am of the view that the same is not applicable on the facts and circumstances of the instant case. The above plea has already been taken by the plaintiff/respondent in the writ petitions which he filed in the Hon'ble High Court praying for his continuance on the post on adhoc basis and also for regularisation. 17. Secondly, it is submitted that the plaintiff/respondent has served the department for more than two years. Therefore, in view of the judgment in Piara Singh and others Versus State of Haryana and others reported in 1989 (1) S.L.R., Page 396 the plaintiff / respondent deserves consideration for his regularisation in service. The above contention of the learned counsel for the plaintiff / respondent too has not found favour with me. The case of the plaintiff / respondent has peculiar circumstances. The effort of the department to recruit employees through the channel prescribed was thwarted by the plaintiff / respondent by dragging the department into litigation in which he remained unsuccessful through out.

18. Thirdly, it is submitted that the posts of Draftsman (Civil) Instructor (ESM Gen-2) are still vacant as the appellants/defendants have advertised for the same and on this account also the plaintiff respondent is entitled to continue in service on adhoc basis till his substituted by a regular candidate. The above contention of the learned counsel for the plaintiff/respondent has lost his case up to the Hon'ble High Court, therefore, he is not at all entitled either to be regularized or to continued on adhoc basis beyond the period limited by the terms and conditions of his appointment.



19. As a result of my discussion mentioned above I have come to a firm conclusion that the learned trial court while deciding issues no.1, 2, 3, 4, 5, 7 and 9 erred in not keeping in view the above aspects. The findings of the learned trial court on issues no.1, 2, 3, 4, 5, 7 and 9 are reversed and the same are decided against the plaintiff/respondent.

20. In view of my findings on the above issues the findings of the learned trial court on issues Nos. 6 and 8 are also reversed and decided against the plaintiff respondent.

21. Resultantly this appeal is accepted. The judgment and decree dated 24.4.1999 passed by Sh. Mewa Singh, Civil Judge (Junior Division), Ferozpur Jhirka (Gurgaon) are hereby set aside with costs through out. Decree sheet be prepared accordingly.

14. A perusal of the judgment passed by Ld. First Appellate Court shows that on one hand, ld. First Appellate Court has observed that at the time of issuance of notification dated 1.6.1993 mentioned above, the appellant had already completed services upto two years as required on 31.3.1993 but on the other hand has allowed the appeal filed by the respondent on the ground that because of the peculiar circumstances of the case of the appellant, there is no equity in his favour and therefore, he is not entitled to the benefit of the above notification. Thus, reasoning given by the Ld. First appellate Court is not acceptable to this Court.

15. The undisputed facts of the present case are that the appellant worked with the respondent from 7.3.1991 till 16.12.1993 when his services were terminated and he challenged the same, vide judgment and decree dated 24.4.1999, he was reinstated in service.

16. Further, the appeal filed by the respondent against the judgment and decree dated 24.4.1999 was allowed vide judgment and decree dated 13.3.2001.



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17. Further, the judgment and decree dated 13.3.2001 was challenged by filing the present RSA in which operation of the decree was stayed vide order dated 4.12.2001 by this Court. Thereafter, the appellant was reinstated on 20.1.2002.

18. Further the undisputed fact is that the appellant/plaintiff has served the respondent from 20.1.2002 till 31.12.2023 when he retired from the same post. Further, a perusal of the policy dated 1.6.1993 issued by the respondent shows that the appellant fulfilled the terms and conditions of the policy as well.

19. A perusal of the record further shows that posts were advertised but no regular employee was appointed at that post since the whole selection was quashed by this Court in CWP No.1620-1992 and even the cost was imposed.

20. Therefore, the respondent, after taking services of the appellant for more than 20 years against the sanctioned regular post, when the same post was never advertised after quashing of the whole selection process by this Court in CWP-1620-1992 till the date of retirement of the appellant i.e. 31.12.2023, cannot deny the regularization and the benefits accruing from the regularization to the appellant. Since the case of the appellant was also covered by the policy dated 1.6.1993, therefore, the appellant is held entitled to the benefit of regularization as well as the consequential benefits arising of the same.

21. So far as the judgment referred to by the learned State counsel, in case of ***State of Karnataka and others*** (supra) is concerned, this case pertains to the year 2006 and in this case as well Hon'ble the Supreme Court directed the Union of India, State Governments and their instrumentalists to take steps to regularize the services of irregularly appointed persons who completed 10 years or more on duly sanctioned posts as one time measure. Therefore, this judgment would not be



applicable in the case of the appellant since the appellant was appointed on adhoc basis against regular sanctioned post through employment exchange and it was not a back door entry. Further, the respondent issued a policy dated 1.6.1993 and the appellant fulfilled all the conditions of the said policy.

22. In view of the above, I find merit in the present appeal and the same is allowed. The judgment and decree dated 13.03.2001 passed by the Ld. Additional District Judge, Gurgaon is set aside and the judgment and decree passed by the Ld. Trial Court dated 24.4.1999, whereby the suit filed by the appellant-plaintiff was decreed, is upheld.

23. Decree sheet be drawn.

24. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

October 15, 2024
sonia arora

Whether speaking/reasoned:	Speaking
Whether reportable	Yes