



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

210

CWP-15580-2006 (O&M)

Decided on :06.05.2024

ASHWANI KUMAR AND ANR.

. .petitioner

Versus

STATE OF HARYANA AND ANR.

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. R. S. Longia, Advocate for the petitioners.

Ms. Vibha Tewari, AAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the order dated 28.04.2006 (Annexure P-14) as well as the consequent orders dated 20.06.2006 and 20.07.2006 (Annexure P-15 and P-15A), respectively by which, the grant of benefit of ACP to the petitioners has been changed from 01.09.1997 to 01.06.1999 on the ground that the petitioner had rendered ad-hoc service initially, which cannot be taken into account.

2. Certain facts needs to be mentioned for correct appreciation of the issue in hand.

3. On 22.07.1982, 13 posts of Statistical Assistant were advertised in the social welfare department, Haryana. In pursuance the said advertisement, the petitioner had applied for the post in question. The petitioners competed for the post in question and ultimately got selected. The petitioners were placed in merit list at serial Nos. 13 & 15 respectively. In the meantime, certain other posts of Statistical Assistant had become available which were also sought to be filled from the same selection process but as, against those posts, certain ad-hoc employees were already working,



the said adhoc employees filed a writ petition being CWP-2714-1986 claiming that only 13 posts of Statistical Assistant which were advertised should be filled up and not 31 posts which were sought to be filled from the same selection process.

4. While issuing on notice of motion in the said writ petition, the filling up of the posts beyond the numbers of posts advertised i.e. 13 was stayed by this Court .

5. As the ad-hoc employees who were continuing against the certain posts of statistical Assistant, which were sought to be filled up from the selection in which the petitioners had participated and were selected, the petitioners filed a writ petition being CWP-2093-1987 raising a grievance that even if certain posts of Statistical Assistant, which have become available, should be filled up from the candidate like the petitioners who have been regularly selected for appointment on the post in question rather than the ad-hoc employees. Keeping in view the said objection, the petitioners were selected and appointed as a statistical assistant on ad-hoc basis vide order dated 25.08.1987 (Annexure P-4).

6. Thereafter, the interim order by which, a restriction was put not to appoint the candidate beyond the number of posts advertised was vacated and the services of the petitioners were regularized.

7. Thereafter, the petitioners again approached this Court by filing of **CWP No. 3283 of 1988 titled as Ashwani Kumar Sharma and others v. State of Haryana and others'** claiming that the petitioners are entitled to be treated as regular employee from the initial date of appointment rather than treating certain period as a adhoc period which is causing prejudice to them.



8. In reply to the said writ petition being CWP No. 3283 of 1988, the State conceded the claim of the petitioners in the reply and ultimately, vide order dated 27.05.1988 (Annexure P-7), the said writ petition was disposed of having not pressed keeping in view the fact that the State has conceded the claim of treating the petitioners as regular employee from the date of their initial appointment.

9. Thereafter, in the seniority list for the post of Statistical Assistant which was issued by the respondents, the petitioners were declared regularly appointed from the date of their initial appointment and were granted the benefit of ACP by considering their initial date of appointment, which fact is clear from seniority list, copy of which has been appended as Annexure P-9.

10. Thereafter, on 03.12.2004, a letter was received by the petitioners that the audit department has raised an objection that benefit of ACP could not have been given to the petitioners by taking their initial appointment and the same was admissible only from the date of regularization hence, why the recovery of the excess amount paid on the account of grant of benefit of ACP from 01.09.1997 instead of 01.06.1999 should not be done from the petitioners.

11. The petitioners filed a detailed reply to the said letter stating that once, the appointment of the petitioners is being treated as a regular one from the initial date of their appointment and in the seniority list for the post of Statistical Assistant also, the initial date of appointment has been taken into account for deciding the seniority position hence, once the seniority has been given to the petitioners from the date of their initial appointment, the same has to be taken into account for the grant of benefit



of ACP as well hence, the grant of benefit of first ACP from 01.07.1997 is perfectly valid and legal.

12. Thereafter, by the impugned order dated 28.04.2006 (Annexure P-14), the date of grant of benefit of first ACP was changed from 01.07.1997 to 01.06.1999 and the direction was issued to recover the excess amount paid from the petitioners, which order has been challenged in the present petition.

13. While issuing notice of motion, the recovery of the excess amount paid to the petitioners was stayed.

14. Learned counsel for the respondents on the other hand submits that once, the audit department had raised an objection that the initial appointment of the petitioners was on ad-hoc basis and the same was subsequently regularized hence, the benefit of ACP can only be given of regular service and not for the ad-hoc service hence, the impugned order dated 28.04.2006 (Annexure P-14) is perfectly valid and legal and may kindly be sustained.

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

16. It may be noticed that the petitioners participated in the selection process for the post in question by which the regular posts were advertised. Though initially, 13 posts of the Statistical Assistant were advertised but in the meantime certain other posts also came into existence, which were also sought to be filled up from the same selection process. It is only that as ad-hoc employees were working against the posts in question, the petitioners could not be granted appointment keeping in view the interim order passed by this Court in CWP No. 2745-1986. It was



under these circumstances that there was an interim order against the available posts of Statistical Assistant, the petitioners were appointed on the post of Statistical Assistant on ad-hoc basis rather than on regular basis. The petitioners continued working as ad-hoc employees till their services were regularized and the petitioners approached this Court by filing CWP No. 3283 of 1988 so as to claim the benefit of regular appointment from their initial date of appointment which relief was conceded by respondents in their written statement due to which, the said writ petition was disposed of having been not pressed.

17. Once, the claim of regular appointment from the date of initial appointment of the petitioners was conceded by the respondents before this Court in CWP No. 3283 of 1988, the petitioners have rightly been granted the benefit of seniority and all other benefits such as ACP from the date of their initial appointment on the post of Statistical Assistant and their initial appointment cannot be treated as on ad-hoc basis so as to withdraw the benefit of ACP given keeping in view the objection of audit department.

18. The Audit department's objection was incorrect keeping in view the facts and circumstances of the present case, once, the petitioners participated in the regular selection process for the post in question and were selected and appointed against the post in question, which was available on the date of selection and the petitioners kept working without any interruption and respondents themselves conceded the claim that the said appointment of the petitioners on the post of Statistical Assistant will be treated regular from the initial date of appointment in CWP No. 3283 of 1988, merely on the ground of audit department's objection, the benefit of ACP granted to the petitioners from 01.09.1997 could not be changed from



01.06.1999.

19.. In the facts and circumstances of the present case, the services which the petitioners rendered initially though on adhoc basis but was under certain circumstances where there was an interim order not to appoint employees against the certain posts of Statistical Assistant which had become available coupled with the fact that selection of the petitioners has been treated as valid/regular from the day one keeping in view the reply filed in CWP No. 3283 of 1988, the impugned order dated 28.04.2006 (Annexure P-14) which does not discuss the said fact and has only relied upon the fact that the initial appointment of the petitioner was on ad-hoc service which was regularized by ignoring subsequent facts, cannot be sustained in the eyes of law and accordingly the impugned order dated 28.04.2006 (Annexure P-14) is set-aside.

20.. Keeping in view the facts and circumstances recorded herein above, the present petition is allowed and the impugned order dated 28.04.2006 (Annexure P-14) is hereby set-aside. The petitioners be treated as a regular employee from the date of their initial appointment for all intents and purposes.

21. Pending civil miscellaneous application, if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

06.05.2024

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No