

CWP-17178 of 2018 (O&M)

2024:PHHC:170845



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-17178 of 2018 (O&M)

Date of decision: 18.12.2024

Wazir Singh SDE (Retd)

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. S.S. Shekhawat, Advocate,
for the petitioner.

Mr. P.C. Goyal, Addl. A.G., Haryana.

NAMIT KUMAR, J.

CM-1106-CWP of 2023

1. This application has been filed by the applicant-petitioner for placing on record the copy of promotion order of the petitioner dated 27.11.1998 to the post of Sub Divisional Engineer as Annexure P-7.

2. For the reasons mentioned in the application, same is allowed. Copy of order dated 27.11.1998 is taken on record subject to all just exceptions.

CWP-17178 of 2018

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking quashing of order dated 22.05.2015 (Annexure P-4), passed by respondent No.2 whereby the claim of the petitioner for counting of the ad hoc service rendered



by him as Sub Divisional Engineer for the grant of time scale, seniority and other consequential benefits has been rejected. Further, a writ of mandamus has been sought to direct the respondents to decide afresh the claim of the petitioner and to count the ad hoc service rendered by him as Sub Divisional Engineer for the grant of time scale, seniority and other consequential benefits.

2. The brief facts, as have been pleaded in the petition, are that the petitioner joined the respondent-department as Junior Engineer in the year 1970 and thereafter vide order dated 27.11.1998, he was promoted as Sub Divisional Engineer on stop-gap arrangement for a period of six months, subject to the approval of the Haryana Public Service Commission. The said ad hoc promotion was treated as regular w.e.f. 01.01.2005 and thereafter the petitioner retired from service on attaining the age of superannuation on 30.11.2006 as SDE (Civil). After eight years of his retirement, petitioner submitted representations dated 13.11.2014, 18.01.2015 followed by legal notice dated 23.02.2015 and representation dated 07.11.2016, claiming counting of his ad hoc service from 01.12.1998 to 31.12.2004 for all benefits such as next scale after five years of service and other retirement benefits and seniority. The said claim was considered and rejected by the respondents, vide order dated 22.05.2015 (Annexure P-4), which has been impugned in the present petition.

3. Written statement on behalf of the respondents has been filed whereby claim of the petitioner has been opposed.



4. Learned counsel for the petitioner has argued that the ad hoc service rendered by the petitioner is liable to be counted for the purpose of grant of time scale and seniority in view of the law laid down by this Court in ***CWP No.8604 of 2007 – Dr. Surinder Kumar Mishra and others v. State of Haryana and others – decided on 09.09.2010***, which has been upheld in ***LPA No.886 of 2011 – State of Haryana and others v. Surinder Kumar Mishra and others – decided on 13.10.2011***.

5. Per contra, learned State counsel has argued that present petition is liable to be dismissed on the ground of delay and laches. He further submitted that even on merits also, the ad hoc service rendered by the petitioner cannot be counted for the purpose of grant of time scale and seniority.

6. I have heard learned counsel for the parties and perused the record.

7. The issues which arise in the present petition are as to whether the instant petition filed by the petitioner, after a considerable delay, is liable to be dismissed on account of delay and laches and whether the ad hoc service rendered by the petitioner from 01.12.1998 to 31.12.2004 can be counted for the grant of time scale and seniority.

8. The facts are not in dispute that the petitioner joined the service as Junior Engineer in the year 1970 and was promoted as Sub Divisional Engineer on stop-gap arrangement, vide order dated 27.11.1998, and the said ad hoc arrangement, was made regular w.e.f. 01.01.2005 and the petitioner retired from service on attaining the age



of superannuation on 30.11.2006 and submitted representation for the first time on 13.11.2014 i.e. after eight years of his retirement.

9. Admittedly, there is gross, inordinate and unexplained delay of twelve years in filing the present writ petition for redressal of his grievance.

10. The Hon'ble Supreme Court in ***“Yunus (Baboobhai) A Hamid Padvekar vs State of Maharashtra Through its Secretary and others”***, 2009(2) SCT 24, while referring to the issue of delay and laches, had held as follows:-

*“8. Delay or laches is one of the factors which is to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950 (in short the ‘Constitution’). In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in **Durga Prasad v. Chief Controller of Imports and Exports (AIR 1970 SC 769)**. Of course, the discretion has to be exercised judicially and reasonably.*

*9. What was stated in this regard by Sir Barnes Peacock in **Lindsay Petroleum Company v. Prosper Armstrong Hurde etc. (1874) 5 PC 221** at page 239 was approved by this Court in **Moon Mills Ltd. v. Industrial Courts (AIR 1967 SC 1450)** and **Maharashtra State Transport Corporation v. Balwant Regular Motor Service (AIR 1969 SC 329)**, Sir Barnes had stated:*



"Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

*10. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation with Article 32 of the Constitution. It is apparent that what has been stated as regards that Article would apply, a fortiori, to Article 226. It was observed in **R.N Bose v. Union of India (AIR 1970 SC 470)** that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.*

*11. It was stated in **State of M.P. v. Nandlal (AIR 1987 SC 251)** that the High Court in exercise of its discretion does not ordinarily assist the tardy and the*



indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its trail new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

12. In view of the aforesaid position we are not inclined to interfere in this appeal which is dismissed accordingly.”

11. Further the Hon’ble Supreme Court in ***State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others***, 2013(6) SLR 629, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be revived even if such a representation has been decided either by the authority or by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and laches on the part of a government servant may



deprive him of the benefit which had been given to others. Article 14 of the Constitution of India, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. An order promoting a junior should normally be challenged within a period of six months or at the most in a year of such promotion. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a person, who allows things to happen and then approach the court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused on account of delay and laches. Anyone who sleeps over his rights is bound to suffer. An employee who sleeps like Rip Van Winkle and got up from slumber at his own leisure, deserves to be denied the relief on account of delay and laches. Relevant paragraphs from the aforesaid judgment are extracted below:

“13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of



*the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In **C. Jacob v. Director of Geology and Mining and another, (2008) 10 SCC 115**, a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus:-*

“Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

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*17. In **Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others, (2011) 4 SCC 374**, a three-Judge Bench of the Hon’ble Supreme Court reiterated the principle stated in **Jagdish Lal v. State of Haryana, (1997) 6 SCC 538** and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.*

- 18. *In **State of T. N. vs. Seshachalam, (2007) 10 SCC***



137, the Hon'ble Supreme Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:-

“... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

19. XXXX XXXX XXXX XXXX

*20. In **New Delhi Municipal Council v. Pan Singh and others**, (2007) 9 SCC 278, the Hon'ble Supreme Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.*

12. In a recent judgment by the Division Bench of this Court in **“Ram Kumar vs State of Haryana and others”**, 2022 (3) SCT 346, while rejecting the claim of the petitioner for counting of his ad hoc service, for the purpose of seniority/pension and regularization in service on completion of 02 years as per policy, held that the petition filed by him suffered from gross, inordinate and unexplained delay in



approaching the High Court. In the said judgment, it has been held as under:-

*“10. What we wish to emphasize, in particular, is that services of the appellant were regularized w.e.f. 01.04.1997. And, he was assigned a specific seniority position in the cadre. Whereafter, he continued to serve the department for nearly twenty five years, before attaining the age of superannuation in January, 2022. Needless to assert that during all these years, he availed all admissible benefits, promotions, and retired as Inspector. Thus, it rather appears that institution of the petition by the appellant was speculative and an attempt to resurrect a stale and dead claim. The Supreme Court, in **New Delhi Municipal Council v. Pan Singh & Ors., 2007(9) SCC 278**, observed:*

“15. There is another aspect of the matter which cannot be lost sight of. Respondents herein filed a Writ Petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. See



Govt. of W.B. v. Tarun K. Roy And Others [(2004) 1 SCC 347], Chairman, U.P. Jal Nigam & Anr. v. Jaswant Singh And Anr. [2006 (12) SCALE 347] and Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another v. K. Thangappan and Another [(2006) 4 SCC 322]

11. Similarly, in ***Jagdish Lal & Ors. v. State of Haryana & Ors., (1997) 6 SCC 538***, it was held by the Supreme Court:

“That apart, as this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or 32 of the Constitution. It is not necessary to reiterate all catena of precedents in this behalf. Suffice it to state that the appellant kept sleeping over their rights for long and elected to wake up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios..... Therefore, desperate attempts of the appellants to re-do the seniority had by them in various cadres/grades though in the same services according to 1974 Rules or 1980 Rule, are not amenable to judicial review at this belated stage....”

12. In the wake of the position as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned single Judge. The appeal being bereft of merit is, accordingly, dismissed.”

13. The Co-ordinate Bench of this Court in ***“Prem Nath and others vs State of Punjab and others”***, 2018(2) SCT 687, while rejecting the claim of additional increments of acquisition of higher qualifications has held as under:-

“3. It is the case set up on behalf of the petitioners that they had all been appointed before 19.02.1979 and



*had even improved/acquired higher qualifications before 19.02.1979 and as such there would be no difference between the employees working with the Punjab Government, holding corresponding post and the employees like the petitioners who have worked for Punjab Privately Managed Recognised Aided Schools. It is also the assertion made by counsel representing the petitioners that their claim would be covered in terms of decision dated 02.07.2013 rendered by this Court in a bunch of writ petitions including **CWP No.8083 of 1989 titled as Radha Krishan Narang and others vs. State of Punjab and others.***

4. Having heard counsel for the petitioners at length, this Court is of the considered view that the claim of the petitioners would not require any consideration on merits and the writ petition deserves to be dismissed on the sole ground of delay and laches.

5. Placed on record and appended at Annexure P-1 are the particulars of the petitioners. The tabulation at Annexure P-1 would show that all the petitioners stand retired on various dates between the years 1995 to 2012. Out of 32 petitioners in all, 22 petitioners superannuated more than 10 years back.

6. There is no justification coming forth as regards the inordinate delay in having approached the Writ Court. There is also no explanation put forth by the petitioners as to why the claim raised in the instant petition was not agitated by the petitioners while they were in service. The entire thrust of the submissions advanced by counsel is that similarly situated employees had approached this Court and have been granted relief.

7. The issue regarding delay in invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India was considered by the Hon'ble



*Supreme Court in **Chairman, U.P. Jal Nigam and another v. Jaswant Singh and another (2006)11 SCC 464**. In such case, certain employees raised the issue that they were not liable to be retired at the age of 58 years but should be permitted to continue in service till they attain the age of 60 years. Such employees were still in service when the writ petitions were filed. The writ petitions were ultimately allowed. Placing reliance upon such judgment, some of the employees, who had already superannuated, filed writ petitions seeking the same benefit. Even such petitions were allowed by the High Court in terms of following the earlier judgment. The judgment of the High Court was challenged before the Apex Court and wherein while referring to earlier judgments in **Rup Diamonds v. Union of India, (1989)2 SCC 356**; **“Jagdish Lal v. State of Haryana, (1997)6 SCC 538** and **Government of West Bengal v. Tarun K. Roy, (2004)1 SCC 347**, it was opined that persons who approached the Court at a belated stage placing reliance upon the order passed in some other case earlier, can be denied the discretionary relief on the ground of delay and laches. The relevant observations made by the Supreme Court are contained in Paras 5, 6 and 16 of the judgment and are extracted here under:-*

*“5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this court in **Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300**. Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement*



and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?

6. The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

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16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those



persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others.”

[Emphasis supplied]

8. The issue of delay was also dealt with by this Court in ***Tarsem Pal vs. Punjab State Power Corporation Limited and others, 2013 (3) SLR 314***. In the case of *Tarsem Pal (supra)*, the petitioner was serving as a Clerk with the respondent-Corporation and had retired on 31.03.2005. Claim in the writ petition was to grant to him the benefit of proficiency set up in the pay scale on completion of 23 years of service from the due date as per policy of the Corporation. During the service career, he had not agitated the claim for increments. For the first time, such claim had been made on 28.02.2005 i.e. just one month prior to superannuation. While non-suiting the petitioner on account of delay and laches it was held as follows:-

“11. In the aforesaid judgments, it has been clearly laid down that discretionary relief in a writ jurisdiction is available to a party who is alive of his rights and enforces the same in court within reasonable time. The judgment in another case does not give a cause of action to file a writ petition at a belated stage seeking the same relief. Such petitions can be dismissed on account of delay and laches. As has already been noticed above in the present case as well, the petitioner joined service in the year 1965 and retired in the year 2005, but raised the issue regarding benefit of proficiency step up in the pay scale on completion of 23 years of service from the due date more than five years after his retirement referring to a judgment of this court and filed the petition claiming the same relief.



12. *The petitioner retired from service on 31.3.2005 and the claim pertaining to the benefit of proficiency step up, which may be admissible to the petitioner during his service career, was sought to be raised more than five years after his retirement, the claim made at such a late stage deserves to be dismissed on account of delay and laches only. The petitioner could raise a grievance about the pay scales admissible to him or the last pay drawn by him within a reasonable time after his retirement. He cannot be permitted to raise the same at any time on the plea that the same is recurring cause of action.*

13. *Considering the enunciation of law, as referred to above, in my opinion, the petitioner herein is not entitled to the relief prayed for and the petition deserves to be dismissed merely on account of delay and laches.”*

9. *At this stage, counsel appearing for the petitioners would make an attempt to overcome the obstacle of delay by placing reliance upon a Full Bench Judgment of this Court in **Saroj Kumar vs. State of Punjab, 1998(3) SCT 664**. Counsel would argue that as per dictum laid down in Saroj Kumar's case(supra), matters of pay fixation involve a recurring cause of action and as such, writ petitions for such claim cannot be dismissed on the ground of delay and laches and the Court at the most, may restrict the arrears upto 38 months from the date of filing of the petition and disallow the arrears for the period for which even a suit had become time barred.*

10. *The reliance placed by counsel upon the judgment in Saroj Kumar's case, is wholly misplaced. The observations and aspect of delay in Saroj Kumar's case, were in the light of the judgment of the Supreme Court in **M.R. Gupta vs. Union of India and others, 1995(4) RSJ***



502. In M.R. Gupta's case(supra), it had been categorically held that so long as an employee "is in service" a fresh cause of action arises every month when he is getting his monthly salary on the basis of a wrong calculation made contrary to rules. It was further held that the claim to be awarded the correct salary on the basis of a proper pay fixation "is a right which subsists during the entire tenure of service".

11. In the present case, however the petitioners choose not to agitate their claim while in service. It is much subsequent to their superannuation that they have woken up and seek to gain impetus from certain decisions that may have been rendered in the case of similarly situated employees.

*12. Considering the dictum of law as laid down in Chariman, U.P. Jal Nigam's case (supra), **the petitioners herein are not entitled to any relief as prayed for and the petition deserves to be dismissed on the sole ground of delay and laches.***

13. Ordered accordingly."

14. The Division Bench of this Court in "***H.S. Gill vs Union of India and others***", 2016(2) SCT 477, has held that an employee cannot claim the revised pay scale after retirement once he has been receiving the pay scale granted by the employer for the last 09 years. The relevant portion from the said judgment, reads as under:-

"14. The petitioner is also not entitled to any relief on account of principle of delay and laches. He has been receiving the pay in the pay scale of Rs.6500-10500 right from his transfer to CSIO, Chandigarh i.e. 2.7.2002. For the first time, he moved the representation on 29.8.2011, so, he kept mum for about 9 years. Thus, the claim of the petitioner is highly belated and stale."



15. The second issue as to whether ad hoc service is countable for the grant of time scale and seniority is not *res integra* as this Court in ***CWP No.28652 of 2019 – R.D. Sharma and others v. State of Haryana and others and connected cases decided on 17.12.2024*** has held as under: -

“8. The only issue in the present petition is as to whether the ad hoc service rendered by the petitioners can be counted for grant of ACP benefit.

9. Before proceeding further, it would be relevant to give reference to the ACP Scheme which has been promulgated by the State Government in exercise of powers conferred by the proviso to Article 309 of the Constitution of India by making the Rules known as “the Haryana Civil Services (Revised Pay) Rules, 1998” (for short ‘the Rules’). Rule 5 of the Rules deals with the eligibility for grant of ACP scales and provides that every Government servant, after a regular satisfactory service for a minimum period of 10 and 20 years, is eligible for grant of first and second ACP scale. Rule 5 of the Rules reads as under: -

“5. Eligibility for Grant of ACP Scales-

(1) Every Government servant who after a **regular satisfactorily service** for a minimum period of 10 years, if the minimum period is not otherwise prescribed to be different than 10 years either in these rules or by the Government for any class or categories of Government servant from time to time has not got any financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post

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as on 31.12.1995, on which he was recruited as a direct recruited fresh entrant:-

- a) either as a consequence of his functional promotion in the hierarchy, or*
- b) as a consequence of the revision of pay scale for the same post, or*
- c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995,*

shall for the purposes of drawal of pay, be eligible for placement into the first ACP scale with reference to him.

- (2) Every Government servant who after a **regular satisfactorily service** for a minimum period of 20 years, if the minimum period is not otherwise prescribed to be different than 20 years either in these rules or by the Government for any class or categories of Government servant from time to time has not got more than one financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995, on which he was recruited as a direct recruited fresh entrant:-*

- a) either as a consequence of his functional promotion in the hierarchy, or*
- b) as a consequence of the revision of pay scale for the same post, or*
- c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale*

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*prescribed for the post as on
31.12.1995*

*shall for the purposes of drawal of pay, be
eligible for placement into the second ACP
scale with reference to him.*

*Provided that grant of ACP scale shall also
be considered financial upgradation for the
purpose of this rule*

*Note: For the purpose of these rules, "**Regular
satisfactorily service**" would mean continuous
service counting towards seniority under
Haryana Government including continuous
service in Punjab Government before
reorganization commencing from the date on
which the Government servant joined his
service after being recruited through the
prescribed procedure or rules etc. for regular
recruitment in the cadre in which he is
working at the time of being considered his
eligibility for grant of ACP scales under these
rules and after further fulfilling all the
requirements prescribed for determining the
suitability of grant of ACP scales."*

*A careful reading of the provisions of Rule 5
shows that for grant of ACP scale a specified length of
regular satisfactory service is mandatory. The expression
given in the said Rule is the minimum requirement of
"regular satisfactory service" for the purpose of grant of
ACP scale.*

*10. The issue in hand is not res integra as it has
already been settled by the Hon'ble Supreme Court in the
case of **Haryana Veterinary and A.H.T.S. Association**
(supra) wherein a Full Bench judgment of this Court in
Rakesh Kumar Singla's case (majority view) has been*



*overruled by holding that only the regular service can be counted for the purpose of grant of selection grade. The said judgment has been followed by the Hon'ble Supreme Court in **Jaggiwan Ram's** case (supra), wherein after considering various judgments, it has been held as under:-*

“10. The ratio of the above mentioned judgments is that work charged employees constitute a distinct class and they cannot be equated with any other category or class of employees much less regular employees and further that the work charged employees are not entitled to the service benefits which are admissible to regular employees under the relevant rules or policy framed by the employer.

11. What to say of work charged employees even those appointed on ad hoc basis cannot claim parity with regular employees in the matter of pay fixation, grant of higher scales of pay, promotion etc. In State of Haryana v. Haryana Veterinary & AHTS Association and another (supra), a three-Judge Bench considered the question whether service of an employee appointed on adhoc basis can be equated with that of regular employee for the purpose of grant of selection grade in terms of the policy contained in circulars dated 2nd June, 1989 and 16th May, 1990 issued by the Government of Haryana and answered the same in negative. The facts of that case were that one Rakesh Kumar Singla who joined service as Assistant Engineer on adhoc basis on 4.1.1980 was appointed on regular basis with effect from 29.8.1982 after selection by the Public Service Commission. He represented to the Government for grant of selection grade on completion of 12 years service commencing from 4.1.1980. As the Government did not accede to his



request, Rakesh Kumar Singla filed writ petition in the High Court. On a reference made by the Division Bench, the matter was placed before a bench of three-Judges. By majority judgment, the larger bench held that the service rendered by an employee on the basis of adhoc appointment must be clubbed with his regular service for the purpose of grant of selection grade in terms of the policy framed by the State Government. This Court reversed the judgment of the High Court and held :

"Coming to the circular dated 2-6-1989, issued by the Financial Commissioner and Secretary to the Government of Haryana, Finance Department, it appears that the aforesaid circular had been issued for removal of anomalies in the pay scale of Doctors, Deputy Superintendents and Engineers, and so far as Engineers are concerned, which are in Class I and Class II, it was unequivocally indicated that the revised pay scale of Rs. 3000 to Rs. 4500 can be given after completion of 5 years of regular service and Rs. 4100 to Rs. 5300 after completion of 12 years of regular service. The said Financial Commissioner had issued yet another circular dated 16-5-1990, in view of certain demands made by officers of different departments. The aforesaid circular was issued after reconsideration by the Government modifying to some extent the earlier circular of 2-6-1989, and even in this circular it was categorically indicated that so far as Engineers are concerned, they would get Rs. 3000 to 4500 after 5 years of regular

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and satisfactory service and selection grade in the scale of pay of Rs. 4100 to Rs. 5300, which is limited to the extent of 20% of the cadre post should be given after 12 years of regular and satisfactory service.

The aforesaid two circulars are unambiguous and unequivocally indicate that a Government servant would be entitled to the higher scale indicated therein only on completion of 5 years or 12 years of regular service and further the number of persons to be entitled to get the selection grade is limited to 20% of the cadre post. This being the position, we fail to understand how services rendered by Rakesh Kumar from 1980 to 1982, which was purely on ad hoc basis, and was not in accordance with the statutory rules can be taken into account for computation of the period of 12 years indicated in the circular. The majority judgment of the High Court committed serious error by equating expression "regular service" with "continuous service". In our considered opinion under the terms and conditions of the circulars dated 2-6-1989 and 16-5-1990, the respondent Rakesh Kumar would be entitled for being considered to have the selection grade on completion of 12 years from 29-1-1982 on which date he was duly appointed against a temporary post of Assistant Engineer on being selected by the Public Service Commission and not from any earlier point of time. The conclusion of the majority judgment in favour of Rakesh Kumar, therefore, cannot be sustained."

The Court then referred to the provisions contained in the Haryana Service of Engineers, Class-II,



Public Works Department (Irrigation Branch)
Rules, 1970 and held :-

"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 an 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 2- 6- 1989 and 16-5-1990, 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 pursuance to which respondent Rakesh Kumar joined as an Assistant Engineer on an 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 an 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

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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 along with 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 joined 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 2-6-1989 as well as the clarificatory circular dated 16-5-1990. The conclusion of the majority judgment of the High Court, therefore, is wholly erroneous and cannot be sustained."

12. In *State of Punjab and others v. Ishar Singh and others*, 2002(1) SCT 72 : [(2002)10 SCC 674] and *State of Punjab and others v. Gurdeep Kumar Uppal and others* [(2003)11 SCC 732], the two-Judge Benches referred to the judgment in *State of Haryana v. Haryana Veterinary & AHTS Association* (supra) and held that adhoc service rendered by the respondents cannot be clubbed with their regular service for the purpose of grant of revised pay scales, senior/selection grade, proficiency step-up and for fixation of seniority.

13. A reading of the scheme framed by the Board makes it clear that the benefit of time bound promotional scales was to be given to the employees only on their completing 9/16 years regular service. Likewise, the benefit of promotional increments could be given only on completion of 23 years regular service. The use of the term 'regular service' in various paragraphs of the scheme shows that service rendered by an employee after regular appointment could only be counted for computation of 9/16/23 years service and the service of a temporary, adhoc or work charged employee cannot be counted for extending the benefit of time bound promotional scales or promotional increments. If the Board intended that total service rendered by the employees irrespective of their mode of recruitment and status should be counted for the



purpose of grant of time bound promotional scales or promotional increments, then instead of using the expression '9/16 years regular service' or '23 years regular service', the concerned authority would have used the expression '9/16 years service' or '23 years service'. However, the fact of the matter is that the scheme in its plainest term embodies the requirement of 9/16 years regular service or 23 years regular service as a condition for grant of time bound promotional scales or promotional increments as the case may be. For the reasons mentioned above, we hold that the respondents were not entitled to the benefit of time bound promotional scales/promotional increments on a date prior to completion of 9/16/23 years regular service and the High Court committed serious error by directing the appellants to give them benefit of the scheme by counting their work charged service.”

11. *To the same effect are the Division Bench judgments of this Court in the cases of **Amarjit Singh** and **Gurcharan Singh** (supra).*

12. *Learned Single Judge of this Court in **Parmod Kumar's** case (supra), after considering the upto date law on the subject, has held as under: -*

“43. For what has been discussed above, it is held that:-

(i) The petitioners are not entitled to count their period of ad hoc/work-charged/temporary service towards seniority in the cadre before the date they were regularized and became members of service for the first time in terms of the relevant policies of State Government.



(ii)The petitioners are not entitled to benefit of Additional Increments for the period of their ad hoc/work-charged service on completion of 8/18 years of service as well as 10/20 years, since such period does not qualify as regular satisfactory service as per modified scheme dated August 7, 1992.

(iii)Similarly, the petitioners are not entitled to the benefit of financial upgradations of Higher Standard Scale or to the Assured Career Progression Scales for the period of their ad hoc/work charge/temporary service etc. Only regular service rendered satisfactorily counts for claiming rights to these monetary benefits strictly as per the provisions of these schemes.”

16. In view of the judgments of the Hon’ble Supreme Court in ***State of Haryana v. Haryana Veterinary and A.H.T.S. Association, 2000(4) SCT 664; Punjab State Electricity Board and others v. Jagjiwan Ram and others, 2009(3) SCT 92;*** Division Bench judgments of this Court in ***Amarjit Singh and others v. State of Punjab and others, 2012(1) SCT 701; State of Punjab and others v. Gurcharan Singh and others, 2016(4) SCT 615*** and Single Bench judgment of this Court in ***Parmod Kumar and others v. State of Haryana and others, 2018(4) PLR 818,*** the claim of the petitioner for grant of time scale, seniority and other consequential benefits by counting the ad hoc service rendered by the petitioner is not maintainable. Therefore, reliance placed by the learned counsel for the



petitioner in the case of *Dr. Surinder Kumar Mishra* (supra) is totally misplaced.

17. In view of the above, present petition is dismissed on account of delay and laches and also on merits.

18. Pending application(s), if any, also stand(s) disposed of.

18.12.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No