

CM-14508-CWP-2024 in/and
CWP No. 6438-2012

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2024:PHHC:119305



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101)

CM-14508-CWP-2024 in/and
CWP No. 6438-2012
Date of Decision : 11.09.2024

Behari Lal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajeev Dev Sharma, Advocate for the petitioner.

Mr. Swapan Shorey, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

CM-14508-CWP-2024

Present application has been filed for fixing the main petition to an early actual date of hearing.

Learned counsel for the applicant submits that the writ petition is pending adjudication for the last 12 years, hence, as the applicant is seeking inclusion of certain period of service, the writ petition be taken up for hearing.

Notice of the application to counsel for the respondents.

On the asking of the Court, Mr. Swapan Shorey, Deputy Advocate General, Punjab, who is present in Court, accepts notice on behalf of the respondent-State and raises no objection for the grant of prayer as made in the present application.



Keeping in view the averments made in the application, the application is allowed and on the joint request of learned counsel for the parties, the main petition is taken up for hearing today.

CWP-6438-2012 (O&M)

1. In the present petition, the grievance being raised by the petitioner is that though he was appointed on the post of Clerk on ad-hoc basis on 23.09.1982 and his services were regularized on the said post on 30.09.1985 but the benefit of service rendered by him from 23.09.1982 till 30.09.1985 has not been given for counting the seniority as well as for the grant of various other benefits including the ACP.

2. Learned counsel for the petitioner submits that the benefit of the ad-hoc service rendered should have been extended to the petitioner once his services have been regularized by the State.

3. Learned counsel for the respondents, on the other hand, submits that initially the petitioner was appointed on a Class-IV post and thereafter, he competed for a Class-III post and was appointed on temporary basis as Clerk on 23.09.1982 and as his services were regularized on 30.09.1985, hence, all the benefits including the seniority has been given to the petitioner from the said date i.e. 30.09.1985 which is in-consonance with the settled principle of law.

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

5. As per the settled principle of law, the ad-hoc service rendered by an employee cannot be taken into account for the grant of benefit of seniority or for benefit of proficiency step up. Reliance can be placed on the



judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 6026-6028-2021 titled as ***Malook Singh and others Vs. State of Punjab and others***, decided on 28.09.2021 and Civil Appeal No. 13423 of 1996 titled as ***State of Haryana Vs. Haryana Veterinary and A.H.T.S. Association***, decided on 19.09.2000. The relevant paras of judgment in ***Malook Singh and others(supra)*** are as under :

“18. As a matter of first principle, the view which has been adopted in the impugned judgment of the Division Bench of the High Court cannot be faulted. The policy for regularization issued on 3 May 1977 is clear in regard to the date of regularization, the principle for reckoning seniority and the basis on which seniority should be reckoned inter se between persons belonging to the group of ad hoc employees who were regularized. The policy clearly specifies that regularization would be granted to persons who had fulfilled a minimum of one year service as on 31 March 1977. As regards seniority, clause 5(a) specifies that the seniority, upon regularization would date back to 1 April 1977 vis a vis candidates appointed on a regular basis after selection through the prescribed procedure. As between ad hoc employees who were regularized, inter se seniority would however be based on the length of service so that a person possessing longer service would rank senior to a junior in terms of the length of service.

19. The judgment of the Single Judge in Malook Singh's case essentially dealt with two facets. The first was that persons who were recruited after following the regular procedure for selection after the date of regularization of ad hoc employees on 1 April 1977 could not rank senior to those who had been regularized prior to their date of appointment. The second aspect on which the Single Judge held in favour of the petitioners in CWP No 2780 of 1980 was that once



regularization takes place, the length of ad hoc service must count for the determination of seniority. It is important to note here that the second facet of the judgment of the Single Judge was specifically kept open in the Letters Patent Appeal by the Division Bench. Therefore, clearly the judgment in Malook Singh's case did not conclude the issue of whether ad hoc service would count for the purpose of determining seniority.

20. The law on the issue of whether the period of ad hoc service can be counted for the purpose of determining seniority has been settled by this Court in multiple cases. In Direct Recruits (supra), a Constitution Bench of this Court has observed:

"13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan case [(1977) 3 SCC 399: 1977 SCC (L&S) 391: (1977) 3 SCR 775] was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such



appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary.....

.....

47. To sum up, we hold that

(A) Once an incumbent is appointed to a post according to a rule, his seniority has to counted from the date of appointment and not according to date of his confirmation. The corollary to the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account considering the seniority."

(emphasis supplied)

The decision in Direct Recruits (supra) stands for the principle that ad hoc service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgement dated 6 December 1991 on Direct Recruits (supra) to hold that the ad hoc service should be counted for conferring the benefit of seniority in the present case is



clearly misplaced. This principle laid down in Direct Recruits (supra) was subsequently followed by this Court in Keshav Chandra Joshi v. Union of India, 1992 Supp (1) SCC 272. Recently a two judge Bench of this Court in Rashi Mani Mishra v. State of Uttar Pradesh, 2021 SCC Online SCC 509, of which one of us (Justice DY Chandrachud) was a part, observed that the services rendered by ad hoc employees prior to their regularization cannot be counted for the purpose of seniority while interpreting the Uttar Pradesh Regularization of Ad Hoc Appointment Rules. This Court noted that under the applicable Rules, "substantive appointment" does not include ad hoc appointment and thus seniority which has to be counted from "substantive appointment" would not include ad hoc service. This Court also clarified that the judgement in Direct Recruits (supra) cannot be relied upon to confer the benefit of seniority based on ad hoc service since it clearly states that ad hoc appointments made as stop gap arrangements do not render the ad hoc service eligible for determining seniority. This Court speaking through Justice MR Shah made the following observations:

"36. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time; initial appointment orders in the year 1985 and the subsequent order of regularization in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularization as per the 1979 Rules shall not be counted for the purpose of seniority, vis-a-vis, the direct recruits who were appointed prior to 1989 and they are



not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent re-determination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularization in the year 1989 is to be restored.

37. Now so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the case before this Court, the appointments were made to a post according to rule but as ad hoc and subsequently they were confirmed and to that this Court observed and held that where appointments made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. In the present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularized after following due procedure as required under the 1979 Rules and after their names were recommended by the Selection Committee constituted under the 1979 Rules. As observed hereinabove, the



appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the "substantive appointments". Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules." The notification dated 3 May 1977 stated that the ad hoc appointments were made in administrative interest in anticipation of regular appointments and on account of delay that takes place in making regular appointment through the concerned agencies. In this regard, the vacancies were notified to the Employment Exchange or advertisements were issued, as the case maybe, by appointing authorities. The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board. However, subsequently a policy decision was made to regularize the ad hoc appointees since their ouster after a considerable period of service would have entailed hardship. Thus, the initial appointment was supposed to be a stop gap arrangement, besides being not in accordance with the rules, and the ad hoc service cannot be counted for the purpose of seniority".

6. The relevant paras of the judgment in ***Haryana Veterinary and A.H.T.S. Association (supra)*** are as under :-

“xxx xxx xxx



Rule 11 provides for continuation on probation for a period of 2 years and Rule 12 is the Rule for seniority. A combined reading of the aforesaid provisions of the Recruitment Rules puts the controversy beyond any doubt and the only conclusion which could be drawn from the aforesaid Rules is that the services rendered either on ad hoc basis or as a stopgap arrangement, as in the case in hand from 1980 to 1982 cannot be held to be regular service for getting the benefits of the revised scale of pay or of the selection grade under the Government Memorandum dated 2nd June, 1989 and 16th May, 1990, and therefore, the majority judgment of the High Court must be held to be contrary to the aforesaid provisions of the Recruitment Rules, consequently cannot be sustained. The initial letter of appointment dated 6.12.1979 pursuant: to which respondent Rakesh Kumar joined as an Assistant Engineer on ad hoc basis in 1980 was also placed before us. The said appointment letter unequivocally indicates that the offer of appointment as Assistant Engineer was on ad hoc basis and Clauses 1 to 4 of the said letter further provides that the appointment will be on ad hoc basis for a period of 6 months from the date of joining and the salary was a fixed salary of Rs. 400 p.m. in the scale of Rs. 400 to Rs. 1100 and the services were liable to be terminated without any notice and at any time without assigning any reason and that the appointment will not enable the appointee any seniority or any other benefit under the Service Rules for the time being in force and will not count towards increment in the time scale. In view of the aforesaid stipulations in the offer of appointment itself we really fail to understand as to how the aforesaid period of service rendered on ad hoc basis can be held to be service on regular basis. The conclusion of the High Court is contrary to the very terms and conditions stipulated in the offer of appointment and, therefore, the same cannot be sustained. The regular letter of appointment



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

Xxx xxx xxx”

7. Learned counsel for the petitioner has not been able to rebut the fact that as per the settled principle of law noticed here-in-before, the benefit of ad-hoc service can neither be counted towards seniority nor for any ACP.

8. At this stage, learned counsel for the petitioner submits that the petitioner has already retired and it is a possibility that petitioner has not been given the benefit of ad-hoc service towards the qualifying service also, which is admissible and hence, in case the said benefit has not been extended to the petitioner, the petitioner be given liberty to file appropriate representation



with the respondents to claim the said relief and the respondents be directed to decide the said representation in a time bound manner by passing an appropriate speaking order.

9. Learned counsel for the respondents submits that in case any representation raising the claim for counting ad-hoc service towards qualifying service is received from the petitioner, the same will be looked into and appropriate order will be passed within a period of eight weeks of the receipt of any such representation and in case, it is found feasible to grant the benefit as being claimed, the same will be granted to the petitioner, otherwise due reasons will be mentioned in the speaking order, which will be conveyed to the petitioner.

10. Learned counsel for the petitioner submits that in view of the statement of learned State counsel, the present petition may kindly be disposed of having been not pressed any further.

11. Ordered accordingly.

September 11, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No