



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

RSA-1638-2006 (O&M)

Date of decision: 05.12.2024

State of Punjab and others

....Petitioners

Versus

Varinder Pal Kukreja and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Nitesh Kumar, DAG, Punjab
for the appellants

None for the respondents.

HARPREET SINGH BRAR, J.

1. The appellants through instant second appeal are seeking setting aside of judgment and decree dated 31.01.2003 passed by learned Civil Judge, (Junior Division), Amritsar, whereby, the suit for declaration filed by the respondents was decreed in their favour as well as the judgment and decree dated 06.11.2004 passed by learned Additional District Judge (Adhoc), Amritsar, whereby, the first appeal of the present appellants was dismissed.

2. Succinctly, the facts as per the plaint are that the respondents filed a suit for declaration to the effect that the orders dated 13.05.1992 and 03.01.1994 passed by appellant-defendant no.2 whereby seniority of the respondents-plaintiffs were fixed from the date of regularization of their services and not from the date of their appointment, were illegal and void. The respondents were appointed on Adhoc basis and their service was later regularized, without any break. Thereafter, appellant-defendant no.2 fixed their



seniority from the date of their regularization of their service and not from the date of their appointment vide the aforementioned impugned orders. Despite several representations made to the appellants/department, no heed was paid to their case. Aggrieved, the respondents filed a suit for declaration as enunciated above.

3. Upon notice issued to the appellants-defendants in the civil suit filed by the respondent, they appeared before the Court and filed their written statement. Therein, preliminary objections were taken that the suit was not maintainable, no legal and valid notice was served upon the defendants, no cause of action arose qua the plaintiffs, and that the suit was time barred. On merits, it was contended that the orders passed by appellant-defendant no.2 were legal and in accordance with law and representations of the respondents-plaintiffs were considered and rejected. Remaining averments of the plaint were denied. In their replication, the respondents-plaintiffs controverted the submissions made in the written statement and reiterated those made in the plaint. Out of the pleadings of the parties, as many as six issues were framed by the learned trial Court including the issue of relief. Ultimately, the suit of the respondents was decreed in their favour and it was held that they were entitled to seniority of service from the date of their Adhoc appointment and were also entitled to consequential benefits accordingly.

4. Aggrieved by the decision of the learned trial Court, the appellants-defendants preferred an appeal before the learned Additional District Judge (Adhoc), Amritsar, however the same was also dismissed and the decision of the trial Court was upheld. Now, the appellants-defendants have approached this Court for a second bout.

5. Learned State counsel for the appellants vociferously contends that



the orders passed by appellant-defendant no.2, i.e., Commissioner (Excise and Taxation, Punjab, Patiala) which were later challenged in the present case, were passed in accordance with Excise Department Subordinate Office (Ministerial) Class III Service Rules, 1964. Further, as per instructions of the Government contained in the circular letter No. 1028-G-II-57/27804 dated 29.03.1957, temporary appointment without recommendation of the Board is just a make-shift arrangement and therefore, does not count for seniority.

6. In view of the judgments passed by the Hon'ble Supreme Court in ***Pankajakshi (Dead) through Legal Representatives and others Vs. Chandrika and others (2016) 6 SCC 157, Randhir Kaur Vs. Prithvi Pal Singh and others (2019) 17 SCC 71 and Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others, 2023 SCC Online SC 875*** questions of law are not required to be framed in second appeal before the Punjab and Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Act, however, since this Court vide order dated 29.03.2007 has already framed the substantial question of law as mentioned below, the same is being taken up for consideration herein: -

2. *Whether ad-hoc service is to be counted towards seniority or not?*

7. I have heard the learned State counsel for the appellants and perused the paper-book with his able assistance. It has gone undisputed in the present case that recruitment of the respondents-plaintiffs was done on ad-hoc basis and they were later regularized without any break in their service and even a Selection Board was formed for that purpose. It is also conceded that when the respondents-plaintiffs were taken into service, proper procedure was followed and requisition was sent to the Employment Exchange. It has also come on record that the appellant/department had earlier fixed seniority of



another employee who was appointed on ad-hoc basis, namely Ram Dass Mittal, from the date of his appointment and not from the date of regularization of service. It is bemusing that the same department chose to adopt different yardstick in the case of the present respondents. On further perusal of the case record, it is clear from the appointment orders of the respondents that they were appointed against vacant posts and after following due procedure. It cannot be said that they were appointed merely to meet some contingencies.

8. It is pertinent to note the observations made in the case of **Rudra Kumar Sain v. Union of India, 2000(8) SCC 25** by a Constitution Bench of the Hon'ble Supreme Court which are material to the present case. The same are as follows: -

“19. The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter-se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as 'ad hoc' or 'stop- gap'. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as 'fortuitous' in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a 'stop-gap' arrangement and appointment in the post as 'ad hoc' appointment. It



is not possible to lay down by strait-jacket formula nor give an exhaustive list of circumstances and situations in which such an appointment (ad hoc, fortuitous or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter-se seniority of officers in the cadre.

20. In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be 'fortuitous/ad hoc/stop-gap' are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.

21. In view of our conclusions, as aforesaid, we quash the seniority list both provisional and final, so far as, it relates to the appointees either by direct recruitment or by promotion in the Delhi Higher Judicial Service, prior to the amendment of the Recruitment Rules in the year 1987, and their inter-se seniority must be redetermined on the basis of continuous length of service in the Cadre, as indicated in Singla's case and explained by us in this judgment. Since the future of these officers to a great extent depends upon seniority and many of these officers may be on the verge of superannuation, the High Court would do well in finalising the seniority within a period of six weeks from the date of receipt of this judgment."

9. As a sequel to the above discussion, no reason is made out to interfere with the judgment and decree dated 31.01.2003 passed by learned Civil Judge, (Junior Division), Amritsar and the judgment and decree dated 06.11.2004 passed by learned Additional District Judge (Adhoc), Amritsar.



10. Resultantly, the instant second appeal is hereby dismissed.

(HARPREET SINGH BRAR)
JUDGE

05.12.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No