

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

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**CM No.10321 of 2019 in/and
CWP No.443 of 2014 (O & M)
Date of Decision : 25.4.2024**

Surender Choudhary and others

..... Petitioners

versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. K. L. Arora, Advocate, for the petitioners

Ms. Tanushree Gupta, DAG, Haryana

Mr. Gurnoor Singh Sethi, Advocate
for respondents no.12 & 13

TRIBHUVAN DAHIYA J. (ORAL):

With the consent of the parties, the petition is taken on Board
for final disposal.

CWP No.443 of 2014 (O & M)

The petition has been filed, *inter alia*, seeking a writ of
certiorari quashing the order dated 25.7.2013, Annexure P-7, rejecting the
petitioners' claim to count their *ad hoc* service for seniority; and a
direction to the respondents to count the same from the date of initial
appointment.

2. Briefly, the petition has been filed on the facts that around
1995, the Department was unable to appoint sufficient number of regular
teachers in Polytechnics and the students were suffering. To overcome
this situation, posts were advertised and names were invited from
Employment Exchange also for making *ad hoc* appointments of Group-B
Officers (Teaching and Non-Teaching) for Government Polytechnics/

Directorate of Technical Education Department. A selection committee under the Chairmanship of Commissioner and Secretary of the Department, with the Director, Additional Director, Principals of two Government Polytechnics and Subject Experts, was constituted for the purpose, vide order dated 6.8.1995, Annexure P-3. The eligible applicants, including the petitioners, were interviewed by the committee subject-wise, and selection was made as per merit prepared pursuant thereto. In this manner, the petitioners were selected and appointed as Lecturers on *ad hoc* basis in 1995; one of the appointment letters dated 13.9.1995, Annexure P-1, has been placed on record, which is to the effect that 'the appointment is purely as a stop gap arrangement for a period of six months or that the appointee will stand relieved as soon as recommendee of Haryana Public Service Commission (for short, 'the Commission') joins the post'. However, the petitioners continued working on *ad hoc* basis till the government issued a policy, dated 29.7.2011, Annexure P-4, to regularise such *ad hoc* /contract employees who continuously worked for not less than ten years as on 10.4.2006 and were still in service. Accordingly, the petitioners were regularized in service vide order dated 2.3.2012, Annexure P-5, and were borne on the cadre of Lecturers in the Department. Thereafter, they claimed seniority from the date of initial appointment on *ad hoc* basis, which was declined by the respondents vide impugned order dated 25.7.2013, leading to filing of the instant petition.

3. Learned counsel for the petitioners has contended that the petitioners were appointed after due advertisement and selection by a duly constituted selection committee in accordance with the Rules. Therefore,

the services rendered by them on *ad hoc* basis are required to be counted towards seniority. The appointment was by taking the posts out of Commission's ambit to meet the emergent situation, and cannot be termed a backdoor entry to deny the benefit of seniority. Besides, they continued in service without any break, and had been performing the duties as those of the regularly selected Lecturers. In support of the contentions, reliance has been placed upon a judgment rendered by this Court in CWP No.8604 of 2007 titled *Dr. Surindra Kumar Mishra and others v. State of Haryana and another*, 2011 (2) SLR 438, against which SLP was dismissed by the Supreme Court. Therefore, the petitioners are entitled to the benefit claimed.

4. Learned counsel for the State as well as the private respondents submit that the petition is not maintainable since all the affected parties have not been impleaded as respondents to the petition. Further, it is contended that as per law laid down by a Division Bench of this Court in LPA No.1743 of 2016 titled *Harpal Singh and others v. State of Haryana and others*, decided on 14.9.2016, the benefit of *ad hoc* service cannot be granted towards seniority in case the appointments have not been made on the recommendations of recruiting agency prescribed under the rules. And in the instant case, the petitioners, admittedly, were not appointed on the recommendations of recruiting agency/the Commission. Therefore, their *ad hoc* services cannot be counted towards seniority.

5. To counter the argument on maintainability of the petition, learned counsel for the petitioners has contended that the impleaded private respondents would defend the interests of all the affected Lecturers in representative capacity. Therefore, non-joining of all the

affected parties cannot be fatal to the case. In this regard he has placed reliance upon Supreme Court judgment in *Ajay Kumar Shukla and others v. Arvind Rai and others*, (2022) 12 SCC 579.

6. Heard.

7. Firstly, the issue of maintainability of the petition needs to be addressed. The petitioners were appointed as Lecturers on *ad hoc* basis in 1995. After working for about seventeen years, they were regularised in service, vide order dated 2.3.2012, on the conditions mentioned therein. During this period, undisputedly, many regular appointments on the post of Lecturer in the Department have been made. All such appointees have not been impleaded as respondents in the instant petition, though it has been filed to claim seniority from the date of initial/*ad hoc* appointment in 1995. If accepted, it will make the petitioners senior to the ones appointed thereafter, still only some of them have impleaded as respondents. The argument that the impleaded private respondents will defend all the affected in representative capacity, is misconceived. There is no averment as to who all are the affected parties/Lecturers who joined service between 1995 to 2.3.2012, nor has particulars of any of them been mentioned. Besides, there is no document on record to even *prima facie* establish that the private respondents have ever been authorised to represent all the affected parties, who remain unknown to date. Therefore, the assertion of the learned counsel that the private respondents will defend interests of all those appointed during the seventeen years period of petitioners' *ad hoc* service, is unfounded and baseless.

7.1. The judgment in *Ajay Kumar Shukla* case (*supra*) has no application to the instant case either, since the issue before the Court was,

whether the appointing authority committed an error in the manner of preparing the seniority list by placing the three select lists, forwarded by the Commission on different dates, as per the date of receiving the lists. In fact, only on account of oversight that the appointing authority failed to prepare a combined seniority list as per the rules with respect to selection of the appellants and the private respondents therein. In these circumstances, it was held that impleading of all the affected parties would not be fatal to the case since the petitioners therein did not even know who all would be affected. The facts in the instant case are entirely different as the petitioners are well aware of the employees/Lecturers who are senior to them having been appointed in service prior to their regularisation, and would be affected by outcome of the petition. Further, despite having been afforded an opportunity to implead all the affected parties during pendency of the petition, as apparent from the interim order dated 26.9.2016, the petitioners chose not to do so which rendered the petition unsustainable. As already observed, accepting the petition will make the petitioners senior to the Lecturers who have been working in the Department and are not impleaded as parties before the Court. Accordingly, no effective relief can be granted as that will be violative of the Principles of Natural Justice.

7.2. It is settled law that claim for re-determination of the seniority cannot be entertained in the absence of all the affected parties having been impleaded before the Court. In this regard a reference can be made to law laid down by the Supreme Court in *Vijay Kumar Kaul and others v. Union of India and others*, (2012) 7 SCC 610; relevant paragraphs of the judgment are as under:

36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.

8. On merits also, the petition is liable to be dismissed. The petitioners' claim of counting *ad hoc* service for seniority is primarily based upon information furnished under the Right to Information Act, 2005 (for short 'RTI Act') vide letter dated 27.1.2009, Annexure P-2, that they had been appointed after due advertisement in accordance with rules. However, the claim has been denied by the respondents stating that theirs was not a regular appointment, instead it was only for *ad hoc* purposes, by a selection committee constituted specifically for the purpose which would not entitle them to the benefit of seniority for the service so rendered. In this background, merely on the basis of information received under the RTI Act, contents whereof have been disputed in the written statement, the petitioners' appointment cannot be termed regular and in accordance with rules. To establish a fact before the court exercising extraordinary jurisdiction, the averments need to be substantiated by valid documents and provisions of rules. The information said to have been given by some Department official in response to an application under the RTI Act, which is not only unsubstantiated by any documentary evidence but also stands disputed by the respondents themselves in material particulars, cannot be believed, nor can the petitioners' case be decided on that basis. Sans the information, there is no material to establish that the

petitioners’ *ad hoc* appointment was after due advertisement as per the rules.

8.1. Further, the petitioners were regularised in service in terms of the Policy dated 29.7.2011, which clearly stipulated that ‘*the benefit of seniority shall be given to such employees from the date of their regularisation.*’ The order regularising their service, dated 2.3.2012, was passed in terms of the policy which too stipulated, ‘*Your seniority shall be fixed from the date of your regularization and you shall be placed below in the seniority to the employees last appointed on the regular basis before the date of regularization.*’ After being so regularised on the terms clearly laying down that seniority shall be given from the date of their regularisation, the petitioners have filed the instant petition seeking a direction to the contrary, viz., to count seniority from the date of initial appointment on *ad hoc* basis over and above the Lecturers appointed prior to their regularisation, that too without impugning either the policy or the conditions of their appointment. This also renders the petition unsustainable in law.

9. For the reasons recorded above, there is no merit in the petition and it stands dismissed.

10. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

25.4.2024
Ashwani

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