IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on 26.09.2024
Pronounced on:06.11.2024

106 CWP-6410-2017 (O & M)

PREM LATA ...PETITIONER

VERSUS

UT OF CHANDIGARH AND ORS ...RESPONDENTS

CWP-18247-2016 (O & M)

KUSUM ARORA ...PETITIONER

VERSUS

UNION OF INDIA AND ORS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Brajesh Mittal, Advocate for the petitioner.

Mr. Aman Pal, Advocate and
Mr. Japsehaj Singh, Advocate for respondents No.1 and 2 in CWP-6410-2017.

Mr. R.S. Longia, Advocate for respondents No.1 to 3. in CWP-18247-2016.

Mr. Suman Jain, Advocate for respondent-MC (appearing through VC).

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SUDEEPTI SHARMA, J.

CWP-6410-2017

1. The challenge in the present writ petition is to the order dated 25.11.2016 passed in Original Application No.060/00395/2016 by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short, 'The Tribunal').

2. The petitioner filed Original Application No.060/00395/2016 wherein she prayed for different reliefs but during the course of hearing, she restricted her claim qua relief 8 (v) only, which is reproduced as under:-

> *"8 (v) That respondents be directed to grant the admissible benefits of ACP, Fixed Medical Allowance, Leave Encashment, Local Travelling allowance, LTC etc. to the applicant to which her deceased husband late Sh. Ram Naresh was entitled to on account of his deemed regularization in service w.e.f. 04.10.2003 and disburse the same to her by revising her family pension and other pensionary benefits after the grant of said benefits and also grant consequential arrears thereof in terms of revision of family pension and other pensionary benefits along with interest @18% p.a. in the interest of justice."*

3. Brief facts as stated in the above referred OA are as under:-

> *"**3**. It is stated in the O.A. that after being declared medically fit, deceased husband of applicant Sh. Ram Naresh was converted as Chowkidar in work charge cadre vide order dated 04.12.1984 (Annexure A-3). In the*

year 1996 on the formation of Municipal Corporation Chandigarh, the office of Respondents No. 1 and 2 transferred number of persons to Municipal Corporation and consequently Sh. Ram Naresh deceased husband of applicant who was working as Work Charge Chowkidar was transferred to Municipal Corporation Chandigarh on deemed deputation basis and his name was at Serial No. 8 in the seniority list of work charge Chowkidars who were transferred to MC vide notification dated 21.05.1996, where he was posted in the office of SDE, MCPH Division No. 1, Chandigarh. The deceased husband of applicant continued working under the said SDE, MCPH Division No. 1 Chandigarh and unfortunately died in harness on 05.10.2003 while in service.

4. *It is further stated that inspite of rendering about 19½ years of service on daily wage and work charge basis in the Chandigarh Administration as well as in the Public Health Division No. 1, Municipal Corporation Chandigarh, deceased husband of the applicant was not regularized. Consequently, on his death w.e.f. 05.10.2003, no family pension/other retiral benefits were granted to the family of the deceased viz. applicant-his widow. As such, she filed O.A. No. 060/00245/2015 titled Prem Lata & Another Vs. U.T. Chandigarh*

Administration & Others before the Tribunal praying for consideration of her case for grant of family pension and other consequential retiral benefits and also for considering the case of her son for appointment on compassionate grounds. This O.A. No. 060/00245/2015 was decided by the Tribunal vide order dated 24.03.2015 (Annexure A-5) whereby the respondents were directed to consider and decide the representations of the applicant and legal notice and pass a speaking and reasoned order in the light of extant rules and regulations and earlier decisions of this Tribunal, within a period of two months. Since the respondents did not comply with the orders of the Tribunal dated 24.03.2015 (Annexure A-5), the applicant was constrained to file COCP No. 060/00146/2015 in O.A. No. 060/00245/2015 praying for meticulous implementation of the orders passed by the Tribunal. During the pendency of the contempt petition, the office of Respondent No. 4 issued an office order No. 162 dated 30.10.2015 (Annexure A-1) regularizing the services of deceased husband of the applicant on deemed basis w.e.f. 04.10.2003 i.e. one day before his death. However, in the said office order, the respondents failed to take into consideration the period of service of 1 year rendered by the deceased husband of the applicant on daily wage basis. The Tribunal granted further time to *the respondents to disburse the actual benefits of DCRG, family pension and other pensionary benefits to the applicant."*

4. The issue involved in the present OA with respect to the directions to the respondents to grant the admissible benefits of ACP, medical allowance, leave encashment, travel allowance, LTC, etc, to the petitioner to which her deceased-husband was entitled on account of his deemed regularisation in service w.e.f 04.10.2003 and for disbursing the same to her by revising her family pension and other pensionary benefits alongwith interest @ 18% per annum.

5. Learned Tribunal after hearing the parties and considering the whole record decided the OA and the relevant portion of the same is reproduced as under:-

*"**14.** I have given careful consideration to the arguments advanced by learned counsel, and perused the pleadings of the parties and the material on record.*

***15.** My findings regarding the claims of the applicant as per para 8(v) of the O.A. are as follows:*

*(i) **Leave Encashment***

This claim is time barred as it should have been made at the time when the husband of the applicant expired while in service and O.A. filed 13 years later cannot revive such a claim.

*(ii) **Fixed Medical Allowance & Local Travelling Allowance***

These benefits are allowed only to the regular employees of the UT Chandigarh Administration and work charged employees are not covered for this benefit. SYL case does not cover the work charged employees of Chandigarh Administration/M.C. Chandigarh.

(iii) ***LTC***

The work charged employees were not entitled to the benefit of LTC. Moreover, LTC is allowed by way of reimbursement of travel cost incurred by an employee for to and fro journey from his place of posting to the LTC destination. No claim on this account has even been submitted by husband of the applicant. Hence, it is not understood how LTC can be allowed.

(iv) ***ACP***

The claims under ACP are normally required to be adjudicated upon by a DB while this O.A. is being considered by the SB. However, the fact remains that the applicants services are only deemed regularized (w.e.f. 05.03.2003) after the judgment in Sampats case (supra) and in fact he had no regular service whatsoever prior to the date of regularization. Moreover, letter dated 22.07.2002 (Annexure A-13) referred to in the O.A. as well as letter dated 31.07.2002 (Annexure A- 14) related to staff who have put in work charged service followed by regular service and ACP benefit had to be given to such *regular employees provided their services were otherwise satisfactory. Clearly, these conditions are not applicable in the case of husband of the applicant and hence, it is clear that there is no basis for the claim of the arrears of the ACP either. Even the office order No. 132 dated 22.07.2014 issued by the Executive Engineer, MCPH Divn No. 1 Chandigarh in the case of Ravi Kumar that has been placed on record by learned counsel for the respondents to show that ACP benefits have been given to work charged employees is not relevant in the matter as Sh. Ravi Kumar was regularized in service w.e.f. 20.11.2011 and continues to be in service even now.*

***16**. The only claim of the applicant which can be considered is the counting of daily wage service from 15.02.1984 to 11.04.1985. Although, it has been stated in the short reply filed on behalf of Respondents No. 1 and 2 that this period has been counted for release of pensionary benefits but in the rejoinder it has been stated that no orders have been passed by the office of Respondents No. 1 and 2 revising the net length of service of the deceased husband of the applicant for grant of pension. In this view of the matter, the respondents are directed to review the position and if the period from 15.02.1984 to 11.04.1985 has not been* *counted for pension purposes, action be taken to rectify the position."*

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

6. Learned counsel of the petitioner contends that the Tribunal has decided the issue in respect of ACP scheme without appreciating the fact and law and in violation of Rule 154 (c) of Central Administrative Tribunal Rules of Practice, 1993 (for short, 'CAT Rules') "Subject wise classification of cases) pertaining to Division Bench cases in respect of ACP scheme whereas the impugned order is passed by the learned Single Bench of learned Tribunal. Therefore, the impugned order is not sustainable on this point alone and deserves to be set aside.

7. Per contra, learned counsel for the respondent contends that the impugned order has rightly been passed and is in accordance with law.

CWP-18247-2016

8. The challenge in the present petition is to the order dated 17.10.2014 in Original Application No.1568/CH/2013. The following relief was sought in aforesaid O.A :-

8 (i) (a) Impugned order dated 01.11.2013 (Annexure A-1) be quashed/set aside.

(ii) Respondent be directed to count the daily rate service as Data Entry Operator rendered by the applicant w.e.f. 11.06.1990 to 11.12.1994 i.e. 4½ years together with the service rendered after regularization for the purpose of grant of financial upgradations under ACP and MACP Scheme on completion of 12 and 24 years service and consequently the date of grant of first ACP be modified/reviewed to 11.06.2002 instead of 12.12.2006 and also direct respondent No.2 to grant all other connected benefits with financial upgradation, arrears thereof with interest @ 12% per annum within a time frame to be fixed by the Tribunal in the interest of justice.

9. Brief facts of the case in Original Application No.1568/CH/2013 are as under:-

> *"**2.** Brief facts of the matter are that the applicant was initially appointed as Data Entry Operator on daily wage basis vide order dated 01.08.1990 (Annexure A-7) @ Rs.60 per day for a period of three months w.e.f. 11.06.1990 in the office of respondent no.2 and this appointment was extended from time to time till May, 1994. Vide order dated 27.05.1994 (Annexure A-8), the applicant was appointed to the post of LDC in the pay scale of Rs.950-1500 purely on adhoc basis for a period of six months or till the post was filled on regular basis and thereafter the applicants services were regularized as LDC w.e.f. 12.12.1994, vide order dated 15.12.1994 (Annexure A-9). The applicant completed the probation period of two years in December, 1996 and was transferred to the office of respondent no.3 i.e. Registrar, Central Administrative Tribunal, Chandigarh Bench in June, 2002. The applicant was granted 1st financial upgradation in the pay scale of Rs.4000-6000 under ACP Scheme w.e.f. 12.12.2006 on completion of 12 years on*

regular service which was counted from the date of regularization w.e.f. 12.12.1994 in terms of DOPT OM dated 09.08.1999 and she was further promoted as UDC in January, 2013 and is continuing as such till date. While granting the 1st ACP to the applicant, the period of service rendered by the applicant on daily wage basis as Data Entry Operator w.e.f. 11.06.1990 to 11.12.1994 i.e. for 4 years was not taking into account by the respondents. Therefore, the petitioner filed OA before the learned Central Administrative Tribunal , Chandigarh Bench, Chandigarh."

10. Learned Tribunal after hearing the parties and considering the whole record decided the OA and the relevant portion of the same is reproduced as under:-

*"**9.** We have given our thoughtful consideration to the matter. In the present case, reliance has mainly been placed on the judgments of the C.A.T. Bombay Bench in OA No.193/2011 and other connected matters titled Karan Anant Purao & Ors. Vs. UOI & Anr., decided on 12.09.2011, and in WP (L) No.1202 of 2012 and other connected matters titled Union of India & Anr. Vs. Karan Anant Purao & Ors., decided on 24.07.2013 by the Honble High Court of Judicature at Bombay, since in that case service on daily wages rendered by the applicants was allowed to be taken into account for ACP benefit. However, the facts of that case are materially different*

from that of the applicant. In the cases relating to the Canteen Stores Department, the persons were appointed as LDCs on daily rated basis after being sponsored by the employment exchange. They were also subjected to examination/tests before they were formally regularized and the Department had sought the concurrence of the appropriate authority to seek exemption regarding the selection of the applicants through Staff Selection Commission. In the present case, the applicant has been appointed without sponsorship from the Employment Exchange. She worked as a Data Entry Operator and was later regularized without going through any selection process. Hence, her claim is clearly distinguishable from that of the applicants belonging to the Canteen Stores Department who were before the C.A.T. Bombay Bench. Moreover, in view of the rulings of the jurisdictional High Court in the matter directing that adhoc service is not to be counted for ACP benefits and recognizing that the applicant whose claim is for counting for daily wage service is on a much weaker footing, this OA is rejected. No costs."

<u>SUBMISSIONS OF THE COUNSEL FOR THE PARTIES</u>

11. Learned counsel for the petitioner contends that order dated 17.10.2014 passed in OA No.1568/CH/2013 is not sustainable in the eyes of law.

12. *Per contra,* learned counsel for the respondents contend that the impugned order has rightly been passed.

13. We have heard learned counsel for the parties and perused the whole record of this case.

14. In CWP-6410-2017, the petitioner has challenged the order dated 25.11.2016 passed in Original Application No.060/00395/2016 by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh on the ground that the learned Single Bench of learned Tribunal had no jurisdiction to decide the matter relating to ACP scheme which was to be decided by the Division Bench of the learned Tribunal, whereas, in CWP-18247-2016, the same issue is decided by the Division Bench of learned Tribunal, which is challenged before this Court.

15. Since the question involved in both the writ petitions is as to whether the service rendered by the petitioners on daily wages/work charge is to be counted for the purposes of grant of ACP, therefore, we shall decide both the writ petitions vide a common judgment.

16. The issue involved in the present writ petitions is dealt with by the Hon'ble Supreme Court in **<u>Punjab State Electricity Board and others versus Jagjiwan Ram and others</u>, 2009 (3) SCC 661.** The relevant portion of the same is reproduced hereunder:-

> *"**7.** We have considered the respective submissions. Generally speaking, a work charged establishment is an establishment of which the expenses are chargeable to works. The pay and allowances of the employees who are engaged on a work charged establishment are usually shown under a specified sub-head of the estimated cost of works. The work charged employees are engaged for execution of a specified*

work or project and their engagement comes to an end on completion of the work or project. The source and mode of engagement/recruitment of work charged employees, their pay and conditions of employment are altogether different from the persons appointed in the regular establishment against sanctioned posts after following the procedure prescribed under the relevant Act or rules and their duties and responsibilities are also substantially different than those of regular employees. The work charged employees can claim protection under the Industrial Disputes Act or the rights flowing from any particular statute but they cannot be treated at par with the employees of regular establishment. They can neither claim regularization of service as of right nor they can claim pay scales and other financial benefits at par with regular employees. If the service of a work charged employee is regularized under any statute or a scheme framed by the employer, then he becomes member of regular establishment from the date of regularization. His service in the work charged establishment cannot be clubbed with service in a regular establishment unless a specific provision to that effect is made either in the relevant statute or the scheme of regularization. In other words, if the statute or scheme under which service of work charged employee is regularized does not provide for counting of past service, the work charged employee cannot claim benefit of such service for the purpose of fixation of *seniority in the regular cadre, promotion to the higher posts, fixation of pay in the higher scales, grant of increments etc.*

8. In ***Jaswant Singh and others vs. Union of India and others [(1979) 4 SCC 440]****, this Court considered the issue relating to nature of work charged establishment, status of work charged employees and held that the employees appointed on work charged establishment are not entitled to service benefits available to regular employees.*

9. XXX XXX XXX XXX*”*

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 vs. 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.........................*

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.*

14. *The order passed by this Court in Ravinder Kumar's case is clearly distinguishable. In that case, counsel appearing for the State had conceded that period during which an employee had worked on work charged basis is counted for the purpose of grant of increment as well as for computation of qualifying service for pension. In view of his statement, the Court held that there is no reason why such service should not be counted for the purpose of giving additional increment on completion of 8/12 years service and higher scale on completion of 10/20 years service. The order does not contain any discussion on the* *issue whether the work charged service can be equated or clubbed with regular service for grant of service benefits admissible to regular employees. Therefore, the same cannot be treated as laying down any proposition of law which can be treated as precedent for other cases."*

17. Division Bench of this Court in **State of Punjab and others versus Surjit Kaur** **2011 (3) SCT 328** held as under:-

"A perusal of the aforesaid clarification would show that the period of 8 or 18 years is to be reckoned from the date of appointment on regular service and any service rendered on adhoc basis is not to be counted for the purposes of grant of proficiency step-up(s). Even otherwise, the view of Hon'ble the Supreme Court as laid down in the case of ***State of Haryana v. Haryana Veterinary and Ahts Association and another, 2000(4) S.C.T. 664: (2000) 8 SCC 4*** *is absolutely clear that it is only regular service which could be counted for the purpose of grant of ACP scale. However, the learned Single Judge has placed reliance on a judgement of Hon'ble the Supreme Court rendered in the case of* ***State of Haryana v. Deepak Sood, Civil Appeal No. 4446 of 2008 decided on 15.7.2008*** *to hold otherwise. A perusal of the judgement in Deepak Sood's case (supra) would show that in that case, there was no question of reckoning of adhoc service for the purposes of grant of ACP grade before the Court and the only question was whether past service rendered with the Municipal Council would count for*

grant of ACP grade when the employee has been appointed on transfer basis with the Government. Therefore, the aforesaid judgment has no application to the facts of the case in hand."

18. Division Bench of this Court in **Hanumant Singh and others versus State of Haryana and others, 2008 (4) SCT 427** framed the following questions and held as under:-

"***1.*** *Whether ad hoc service/work charged service, followed by regular service, can be counted for the purposes of grant of higher pay scale/benefit of Assured Career Progression on completion of 8/18 or 10/20 years of service?*

2. *Whether ad hoc service/work charged service, followed by regular service, can be counted for the purpose of grant of additional increment in the running scale on completion of 10/20 years or 8/18 years of service?*

3*. Whether ad hoc/work charged service, followed by regular service, is to be counted for the purpose of pension and seniority?*

XXXX XXXX XXXX

18*. The State Government has extended the benefit of work charged service followed by regular service for the purpose of grant of additional increment on completion of 8/18 years of service vide instructions dated 7.8.1992, keeping in view Ravinder Kumar's case (supra). However, the said benefit has been declined to the ad hoc service followed by regular service. The said distinction drawn by the Government is Imaginary and* *is not in consonance with the authority in Ravinder Kumar's case (supra). Ad hoc service, followed by regular service, is as good as work charged service, followed by regular service. So, the said distinction does not stand the test of legal scrutiny.*

19. *The pay scales mentioned in circulars dated 14.5.1991 and 7.8.1992 were given to class 'C' and 'D' employees on completion of service mentioned in those circulars. In authority reported in Ravinder Kumar's case (supra), the Hon'ble Apex Court has held that the employees are entitled to count ad hoc/work charged service for the purposes of grant of additional increment after completion of 10/20 years of service or 8/18 years of service. However, the Apex Court in Haryana Veterinary and AHTS Association and others' case (supra), has categorically held that the employees are not entitled to count ad hoc service for the purpose of grant of higher scale/ACP scale. So, we are of the considered opinion that keeping in view the above-said authority, ad hoc service/work charged service has to be counted for the purpose of grant of additional increment after completion of 10/20 years of service or 8/18 years of service as detailed in the circular mentioned above. It is further held that the said ad hoc service/work charged service followed by regular service is also to be counted for the purpose of seniority and pension.*

20*.* *So far as authority* ***State of Rajasthan and others v. Farooq Ahmed and another, 2005 (2) SCT 522: 2005(2)***

Recent Services Judgments 721 *is concerned, the same is distinguishable as in that authority itself, it has been mentioned that counting of ad hoc service depends upon the circular issued by the Government. The circulars issued by the State of Rajasthan are not same as that of circulars issued by the "State of Haryana". The relevant portion is given as under:*

> *"The Supreme Court in* ***State of Haryana v. Haryana Veterinary & AHTS Association and another, 2000(4) SCT 664: 2000(8) SCC 4****, held that service rendered on ad hoc basis will not be counted for grant of selection scale. A Division Bench, however, in* ***State of Rajasthan v. Uma Shanker Agarwal & Ors., (D.B Civil Special Appeal No. 1142/2002)*** *had distinguished the judgment of the Supreme Court and took the view that the period of ad hoc service rendered by an employee should be counted for the purpose of granting him selection scale. This view was taken on the ground that the Haryana Rules on the basis of which AHTS case was decided by the Supreme Court were different than the rules with which we are concerned. Two of us doubting the correctness of the view of the earlier Division Bench referred the matters to the Full Bench. This is how the matters have come up before us."*

So far as reliance of petitioners on ***Civil Writ Petition No. 8833 of 1999 titled Hanumant Singh and others v. State of Haryana and another*** *is concerned, that authority does not help the petitioners as in that case the writ petition was disposed of with the direction that the respondents shall decide the dispute of petitioners regarding seniority within four to six months.*

21. *The petitioners also cannot have any benefit of authority reported as* ***Union of India v. Madras Telephone SC & ST Social Welfare Association, 2006(4) SCT 504: 2007(1) Recent Services Judgments 111*** *as no benefit has been given to any of the petitioners under the order of the Court. In the said authority, it has been laid down that any benefit given to the employee under the order of the Court cannot be taken away on account of change of law subsequently.*

22*. Therefore, in view of the above discussion, question No. 1, referred to above, stands answered against the petitioners whereas question Nos. 2 and 3 stand answered in favour of the petitioners and against the respondents and it is held as under:-*

(a) ad hoc/work charged service followed by regular service shall not be counted for the purposes of grant of higher pay scale/benefit of Assured Career Progression Scheme on completion of 8/18 or 10/20 years of service.

(b) ad hoc/work charged service followed by regular service shall be counted for the purposes of grant of additional

increment in the running scale on completion of 10/20 or 8/18 years of service.

(c) ad hoc service followed by regular service shall be counted for the purposes of pension and seniority.

So, all these writ petitions stand disposed of with the above-said observations. The respondents are directed to fix the salary of the petitioners, after taking into account the above-said observations."

19. In view of the above, the services rendered by the petitioners on daily wage/work charged cannot be counted for the purposes of grant of ACP, therefore, the present writ petitions are dismissed.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

06.11.2024
A.Kaundal

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No