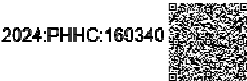


CWP-28652 of 2019



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-28652 of 2019
Reserved on: 05.12.2024
Pronounced on: 17.12.2024

R.D. Sharma and others
.....Petitioners
Versus

State of Haryana and others
.....Respondents

CWP-13324 of 2020

Rulia Ram
.....Petitioner
Versus

State of Haryana and others
.....Respondents

CWP-13687 of 2020

Yogesh Kumar Sharma and others
.....Petitioners
Versus

State of Haryana and others
.....Respondents

CWP-20190 of 2020

Ramesh Kumar and others
.....Petitioners
Versus

State of Haryana and others
.....Respondents

CWP-3108 of 2020 (O&M)

Ran Singh
.....Petitioner
Versus

State of Haryana and others
.....Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Argued by: -Mr. S.K. Malik, Advocate,
for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. I.S. Sidhu, Advocate,
for respondent No.4 in CWP No.28652 of 20219 and
CWP No.3108 of 2020.

Mr. Rupinder Singh Rana, Advocate,
for Ms. Swati Dayalan, Advocate,
for respondent No.4 in CWP No.13687 of 2020.

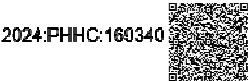
NAMIT KUMAR, J.

1. By this order, aforementioned five writ petitions are being disposed of, as common questions of law and facts are involved therein.

For the sake of brevity, facts are being taken from CWP No.28652 of 2019 – R.D. Sharma and others v. State of Haryana and others.

2. The petitioners have invoked the writ jurisdiction of this Court by filing the instant petition under Articles 226/227 of the Constitution of India seeking, quashing of the order dated 30.08.2019 (Annexure P-9) vide which the claim of the petitioners to count their *ad hoc* service for the purpose of grant of first and second ACP has been rejected on the ground that only regular satisfactory service can be counted for the said purpose. Further, a writ of *mandamus* has been sought for directing the respondents to promote the petitioners on regular basis with effect from the date they were promoted on *ad hoc* basis as Sub Divisional Engineers, with all consequential benefits.

3. Brief facts, as have been pleaded in the petition, are that the petitioners were appointed as Junior Engineers in the respondent-department on various dates in the year 1973/1974 and thereafter they



were further promoted to the post of Sub Divisional Engineers on *ad hoc* basis in the year 1990/1997 and on regular basis between the years 1995 to 2003 and while they were in service they were granted the benefit of first and second ACP and they all have retired from service on attaining the age of superannuation between the years 2007 to 2012.

The service particulars of the petitioners are as under: -

Sr. No.	Name S/Sh.	Date of joining as JE	Date of Adhoc promotion as SDE	Date of regular promotion as SDE	ACP granted	Date of retirement
1.	R.D.Sharma	01.02.1974	17.04.1990	24.02.1996	1st ACP granted on dated 01.03.2001 and 2nd ACP granted on 01.03.2007	30.09.2011
2.	M.R. Khurana	02.01.1974	17.04.1990	25.09.2003	1st ACP granted on 01.10.2008	31.12.2012
3.	Gulab Singh Boora	13.12.1973	06.08.1997	10.03.2001	1st ACP granted on 01.04.2006	31.05.2011
4.	Hans Raj Rawal	05.10.1973	17.04.1990	01.07.1995	1st ACP granted on 01.07.2010 and 2nd ACP granted on 01.07.2006	30.11.2011
5.	Virender Kumar Sharma	16.09.1974	17.04.1990	26.08.2003	1st ACP granted on 01.10.2008	31.05.2011
6.	R.S. Kundu	21.12.19973	06.04.1990	06.01.1995	1st ACP granted on dated 01.05.1995 and 2nd ACP on dated 01.05.2001	30.11.2007
7.	S.K.Vats	04.09.1973	17.04.1990	07.08.1995	1st ACP granted on dated 01.03.2001 and 2nd ACP granted on 01.03.2007	31.01.2012

It has further been averred that petitioner No.1-R.D. Sharma, petitioner No.6-R.S. Kundu and petitioner No.2-Mulkh Raj Khurana submitted representations dated 05.02.2003, 16.05.2004 and 25.08.2005, respectively for regularising their *ad hoc* promotion period for all benefits. However, no action was taken by the respondents on the said representations, therefore, petitioners served legal notice dated 25.03.2019 for regularising their *ad hoc* period and when no response



was received from the respondents, the petitioners approached this Court by way of filing CWP-18820 of 2019 – R.D. Sharma and others v. State of Haryana and others and CWP-19807 of 2019 – S.K. Vats and others v. State of Haryana and others and the said writ petitions were disposed of by this Court, vide orders dated 12.07.2019 and 22.07.2019, with the direction to consider and decide the legal notice(s). The said claims of the petitioners have been rejected by the respondents vide order dated 28.08.2019/30.08.2019 (Annexure P-9).

4. Separate replies on behalf of respondents No.1 to 3 and 4 have been filed wherein the claim of the petitioners has been opposed by stating that in terms of ACP Scheme dated 07.01.1998, only regular satisfactory service is countable for the grant of ACP benefit and the *ad hoc* service cannot be counted.

5. Learned counsel for the petitioners has submitted that the petitioners were fully eligible for promotion to the posts of Sub Divisional Engineers, however, they were given *ad hoc* promotion as Sub Divisional Engineer and thereafter they were promoted on regular basis and, therefore, *ad hoc* service rendered by the petitioners is liable to be counted for the purpose of grant of ACP benefit and their claim has wrongly been rejected by the respondents vide impugned order dated 28.08.2019/30.08.2019 (Annexure P-9).

6. *Per contra*, learned State counsel has opposed the claim made by the learned counsel for the petitioners by submitting that in terms of ACP Scheme dated 07.01.1998, only regular satisfactory service can be taken into consideration while considering the claim of



the petitioners for grant of ACP benefit and *ad hoc* service is not countable. He has placed reliance upon 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. Jagiwan 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*.

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

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 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 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 ***Jagjiwan 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 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 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: -

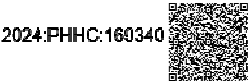
“43. For what has been discussed above, it is held that:-

(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.”

13. In view of the above, finding no merit, present petitions are hereby dismissed.



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

17.12.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No