

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

(274)

RSA-499-2015 (O&M)

Date of Decision : April 09, 2024

State of Punjab and others

.. Appellants

Versus

Jaspal Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rohit Ahuja, Deputy Advocate General, Punjab.

Mr. Puneet Kumar Bansal, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)**CM-1376-C-2015**

As prayed for, the application is allowed.

Delay of 141 days in filing the appeal is condoned.

RSA-499-2015

1. In the present appeal, the challenge is to the judgment and decree of the trial Court vide order dated 17.05.2013 by which, the respondent-plaintiff was held entitled for proficiency step up on completion of 8 years and 18 years of service and also interest on delayed release of 1st proficiency step up @ 9% per annum as well as the judgment and decree of the lower Appellate Court by which, the judgment and decree of the trial Court was upheld.

2. Learned counsel for the appellants argues that though the trial Court vide order dated 17.05.2013 never mentioned the date from which,

the period of 8 years and 18 years was to be considered while considering the claim of the respondent-plaintiff but, the lower Appellate Court vide order dated 19.05.2014 in paragraph 17 of the judgment, has mentioned that the service of 8 years and 18 years is to be counted from 06.02.1976 instead of 01.04.1977 when the services of the respondent-plaintiff were regularized.

3. Learned counsel for the appellants submits that as per the judgment of the Hon'ble Supreme Court of India in ***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 period of adhoc service cannot be taken into account for the grant of proficiency step up hence, the judgments and decrees of the Courts below so as to interpret that the respondent-plaintiff is entitled for the proficiency step up from the date of initial appointment is liable to be set aside.

4. Learned counsel for the appellants further submits that the direction given by the trial Court with regard to the grant of increment after 18 years is contrary to the facts on record.

5. Learned counsel for the appellants further submits that the proficiency step up upon completion of 18 years can only be granted in case the employee has not been granted promotion upto the date of completion of 18 years and in the present case, the employee had already been granted promotion prior to completion of 18 years if the service is taken up from the date of regularization i.e. 01.04.1997 hence, the direction given by the trial Court vide order dated 17.05.2013, which has been upheld by the lower Appellate Court, is liable to be set aside.

6. Learned counsel for the respondent-plaintiff submits that as the respondent-plaintiff was appointed on 06.02.1976 on the post of Clerk and

by taking 18 years from the said date, the respondent-plaintiff had completed 18 years prior to his promotion, which was effected in the year 1994 hence, direction given by the trial Court is perfectly valid and legal.

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

8. The question of law which arise in the present appeal is whether, the adhoc service rendered by an employee is to be taken into account while granting the proficiency step up or not.

9. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***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 adhoc service cannot be taken into account for the grant of proficiency step up. The relevant portion of the said judgment is as under:-

“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.”

10. A bare perusal of the above reproduction would show that the adhoc service cannot be taken into account for the grant of proficiency step up. That being so, the period of 18 years service is to be taken into account starting from 01.04.1977 i.e. when respondent-plaintiff was regularly appointed. The judgments and decrees of the Court below granting the benefit of adhoc service for the grant of proficiency step up is contrary to the settled principle of law.

11. Once the services of the respondent-plaintiff cannot be taken into account from the date of appointment i.e. 06.02.1976 for the grant of proficiency step up and the same has to be taken from the date of regular appointment, the respondent-plaintiff does not complete 18 years of service before his promotion to the next higher rank as Inspector Grade II, which was effected on 29.07.1994, if the period of 18 years is counted from 01.04.1977 as the same is only be completed on 31.03.1995. That being so, the direction given by the Courts below to grant the respondent-plaintiff the benefit of 2nd proficiency step up on completion of 8 years is without going through the actual facts on record coupled with the Rules governing the service.

12. Keeping in view the above, the grant of 1st proficiency step up from the relevant date, as directed by the trial Court, is upheld. Even the grant of arrears qua the delayed release of 1st proficiency step up as directed by the trial Court is upheld but the direction given by the trial Court to grant the respondent-plaintiff 2nd ACP on completion of 18 years of service by counting the period of service from 06.02.1976 instead of 01.04.1977 is set aside. The judgment and decree of the Courts below are accordingly modified. The suit filed by the respondent-plaintiff is partly allowed in above terms.

13. The present appeal is partly allowed in above terms.

April 09, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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