

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:058008

(209)

RSA-3041-2014 (O&M)
Date of Decision : April 29, 2024

State of Haryana through Collector, Gurgaon and others

.. Appellants

Versus

Ved Parkash

.. Respondent

(209-A)

CWP-20340-2013

Umed Singh and others

.. Petitioners

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:

Ms. Vibha Tewari, Assistant Advocate General, Haryana,
for the appellants in RSA-3041-2014 and
for the respondents in CWP-20340-2013.

Dr. S.K. Bhar, Advocate, for
Mr. Ashish Gupta, Advocate,
for the respondent in RSA-3041-2014 and
for the petitioners in CWP-20340-2013.

HARSIMRAN SINGH SETHI J. (ORAL)

1.

By this common order, one appeal i.e. RSA No.3041 of 2014 and one writ petition i.e. CWP No.20340 of 2013, the details of which have been given in the heading, are being disposed of as both the appeal as well as writ petition involve the same question of law on similar facts.

2.

Question which arise in these petition/appeal is whether, the adhoc service rendered by an employee prior to regularization of his/her

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service can be taken into account as a valid service for the grant of ACP or not. The claim of the respondent-plaintiff/petitioners is that the adhoc service rendered by them should be taken into account as a qualifying service for the grant of the benefit under the Assured Career Progression Scheme on completion of 8 years of service.

3. Learned counsel for the appellants/respondents submits that the said issue is no longer res-integra and 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 benefit of adhoc service cannot be granted for computing the benefits under the Assured Career Progression Scheme hence, the judgments of the Courts below in RSA No.3041 of 2014, which grants the said benefits, are contrary to the settled principle of law and are liable to be set aside.

4. Learned counsel for the State further submits that the writ petition i.e. CWP-20340-2013 is also liable to be dismissed in view of the judgment in ***Haryana Veterinary's case (supra)***.

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

6. It is a settled principle of law settled by the Hon'ble Supreme Court of India in ***Haryana Veterinary's case (supra)***, adhoc service which an employee has rendered prior to his/her regularization, cannot be taken into account as valid service for the grant of proficiency step up or the benefit under the Assured Career Progression Scheme. The relevant portion of the 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.”

7. Learned counsel for the petitioners/respondent-plaintiff has not been able to rebut the said judgment in ***Haryana Veterinary’s case (supra)*** in any manner so as to claim that the adhoc service is to be treated as valid service for computing the period as envisaged under the proficiency step up or the benefit under the Assured Career Progression Scheme.

8. Keeping in view settled principle of law noticed hereinbefore in ***Haryana Veterinary’s case (supra)***, the claim of the employees is misplaced and cannot be allowed hence, the judgments and decrees impugned in RSA No.3041 of 2014 are perverse to the settled principle of law as settled in ***Haryana Veterinary’s case (supra)*** and cannot be sustained and are accordingly set aside and the suit filed by the respondent-plaintiff is also dismissed. Accordingly, present appeal is allowed.

9. With regard to CWP-20340-2013, keeping in view the settled principle of law, the relief claimed cannot be allowed as the same is contrary to the settled principle of law settled in ***Haryana Veterinary’s case***

(supra) hence, the writ petition is also dismissed.

10. Any civil miscellaneous application pending if any, also stands disposed of.
11. A photocopy of this order be placed on the file of other connected case.

April 29, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No