



238 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-32351-2019 (O&M)
Date of Decision : 02-09-2024

VIJAY KUMAR ETC
.....Petitioner(s)
VERSUS

PUNJABI UNIVERSITY PATIALA AND ANOTHER
.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ranjivan Singh, Advocate with
Ms. Kanika Toor, Advocate and
Mr. Raisham Raaj Singh, Advocate
for the petitioners.

Mr. Abhishek Kaushik, Advocate with
Mr. Vipul Jindal, Advocate for the respondent.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance being raised by the petitioners is that the petitioners were entitled for seniority after regularisation of their service from the date they were initially appointed on daily wage basis, which benefit has not been given to them despite there being a specific clause in the order by which, the petitioners were appointed on *ad hoc* basis and thereafter on regular basis.

Learned counsel for the petitioners submit that the petitioners were initially appointed on daily wage basis starting from the year 2004 and 2005 and thereafter, when the posts of the Peons were advertised, the

petitioners competed for the same and ultimately got themselves selected by way of direct recruitment in the year 2013. The grievance being raised by the petitioner in the present petition is that the petitioner should be given seniority from the date of their initial appointment on *ad hoc* basis and not from the date of the regular appointment starting from December, 2013

The said prayer is being made the ground that when the services of the petitioners were brought from daily wage basis to *ad hoc* basis, it was mentioned that the seniority will be determined keeping in view the initial date of appointment in the University on daily wage basis.

The further assertion to support their claim for seniority from the initial date of appointment is that the pay which was drawing by working on *ad hoc* basis, upon their regular selection, the said pay was protected.

Upon notice of motion, the respondents have filed reply. In the reply, the respondents have stated that the petitioners were regularly appointed after a due advertisement in December, 2013, hence the seniority can only be granted from the said date and the *ad hoc*/daily wage service rendered by the petitioners prior to the said date cannot be taken into account for the grant of seniority.

Learned counsel for the respondent further submits that the Clause-3 of the appointment dated 29.04.2009, by which the petitioners were brought on *ad hoc* basis, is being misread by the petitioners to claim seniority from the date of the initial appointment, as the same was only for the purpose of any other benefit in case, the petitioners were found eligible for regularisation of their services.

It is a settled principle of law that the seniority is to be taken into account from the date of regular appointment. It is also a conceded

position that the petitioner competed for the post of Peon when the same was advertised and they were regularly selected and appointed only in December, 2013. The continuous length of the service of the petitioner can only be taken into account from the said date only.

I have learned counsel for the parties and have gone through the records of the present case with their able assistance.

As per the assertion of the petitioners when their services were converted from daily wages to *ad hoc* basis, the petitioners were given seniority from the initial date of joining, the said clause was only with regard to when the petitioners were brought on *ad hoc* basis and was with a purpose that in case in future, the petitioners become entitled for regularisation, the personnel working on *ad hoc* basis should know, who has a prior right of claiming regularisation as compared to the other *ad hoc* employees. The said clause cannot be brought in into the regular appointment especially when, while granting the regular appointment, no such clause existed in the appointment order that the *ad hoc* service or the daily wage service rendered by the petitioners will be taken into account for fixation of their seniority. Hence, the claim of the petitioners for the grant of seniority from the date of initial appointment on daily wages is incorrect and cannot be granted and is actually rejected.

Further, the assertion that the pay of the petitioners were protected, the same will also entitle seniority, cannot be accepted. The pay protection and grant of seniority are two different things. The seniority cannot be related to the benefit of protection of pay. Therefore, no ground is made out for the grant of benefit of *ad hoc*/daily wage service towards seniority.

Even otherwise, as per the judgment of this Court in CWP No.15891 of 1989 ***titled as “Surinder Singh Sekhon Vs. State of Punjab”*** decided on 19.10.1992, it has been held that seniority has to be determined from the date of the regular appointment and not when the *ad hoc* appointment was made, other subsequent selection is by way of direct recruitment, the relevant paragraphs are reiterated as under:-

“5. I have given my thoughtful consideration to the rival contentions of the parties and express my inability to accept either of the contentions raised on behalf of the petitioner. Admittedly, the petitioner was on ad hoc basis as a stop-gap arrangement in July, 1976 pending regular selection through the Commission and even though his initial appointment was for a period of six months or till a regularly selected person through the Commission was appointed, whichever was earlier, he continued working on ad hoc basis till he was selected afresh by the Commission and a regular appointment order issued in March, 1979. While the petitioner was still working on ad hoc basis, the Commission advertised two posts of Architects for making fresh selection and made it clear that the employees working with the State Government would not be entitled to any benefit of their previous service. The petitioner not only applied for one of these posts but also appeared for interview before the Commission and was selected. It was thereafter, that a regular appointment order on the recommendation of the Commission was issued in March, 1979. It is, thus, clear that it was not a case where the initial appointment of the petitioner was being approved or confirmed nor could it be said that the initial appointment which was made without consulting the Commission was being regularised. To all intents and purposes, it was a fresh selection and appointment. In my opinion, if a person is appointed temporarily or on ad hoc basis by way of stop gap arrangement

and his appointment is not in accordance with rules and subsequently the competent authority or the Commission approves or regularises or confirms the initial appointment then the date of regular appointment would relate back to the date of his initial appointment. Similarly, if a person is promoted temporarily, provisionally or on ad hoc basis pending approval or confirmation by the Commission or any other competent authority, and if such approval or confirmation is granted subsequently, it would also relate back to the date of initial promotion even though that was not in accordance with the rules. If, on the other hand, a person is appointed on temporary or ad hoc basis as a stop-gap arrangement pending final selection by the Commission or any other competent authority and such competent authority later chooses to make a fresh selection by advertising the post and selects the ad hoc appointee after considering the claims of others as well, the date of regular selection would not relate back to the date of initial appointment. In such a case the competent authority is not formally approving or regularising the initial appointment but making a fresh selection where others are also considered. As already stated earlier, in the case in hand, when the petitioner was selected afresh in March, 1979, it was not a mere formality or a process undertaken by the Commission only for formalising his initial ad hoc appointment, It was a fresh selection for the post had been advertised and when not only the petitioner but others were also considered. The date of regular selection in the case of the petitioner cannot, therefore, relate back to the date of his initial appointment.

*8. The view that I have taken finds support from the aforesaid judgments of the Supreme Court and also from the decision in **Masood Akhtar Khan v. State of Madhya Pradesh, JT 1990(3) S.C. 295**. In this case, the petitioners who were direct recruits were appointed in October, 1972 as Assistant Engineers in the Public Health Department temporarily for a*

*period of six months or till selection of the candidate by the Public Service Commission. Their temporary appointment continued till they were selected by the Commission and as a result whereof they were appointed to the posts in April 1977. Their contention that they should be given seniority from the date of their initial appointment on October 25, 1972 was repelled, primarily because the advertisement on the basis of which the initial temporary appointment was made had made it clear that the appointment would be for six months only and the final selection would be made by the Public Service Commission before which the candidates had to appear. This judgment was later approved/followed by their Lordships of the Supreme Court in **Keshev Chander Joshi. v. Union of India, AIR 1991 Supreme Court 284.***

9. I shall now deal with the other limb of the argument which should not detain us long. It was urged that even if the date of regular selection of the petitioner was not to relate back to the date of his initial appointment, he was at any rate, entitled to have his ad hoc service counted towards his seniority because his ad hoc appointment continued uninterruptedly till the date he was regularly selected. Strong reliance was placed on paragraph 13 and conclusion (B) in paragraph 44 of the judgment in Direct Recruits case (supra). A similar contention was raised before their Lordships of the Supreme Court in Keshav Chander Joshi's case (supra) and was not accepted. I am of the view that in the facts and circumstances of the present case, the case of the petitioner is directly covered by the corollary to conclusion (A) in paragraph 44 of the judgment in Direct Recruits case (supra) wherein it has been held that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. The argument of the

learned counsel for the petitioner has, therefore, no merit and must be rejected.

*10. There is yet another aspect of the matter. When the petitioner was appointed on ad hoc basis in July, 1976, it was clearly mentioned in his appointment letter that his appointment was on ad hoc basis for a period of six months or till such time a suitable candidate is appointed through the Commission. It was further stated that in the event of his regular appointment, at any time, on the recommendation of the Commission, the period of his ad hoc appointment would not count towards his seniority. The petitioner accepted these terms and joined the post. Thereafter, when the posts were advertised for regular appointment, the advertisement made it clear that the employees working under the State Government would not be entitled to any benefit of their previous service. The petitioner applied in pursuance of this advertisement and was selected. The letter of appointment issued to him made it clear that till the Punjab Service of Architects (Class-1) Rules are finalised, he would be governed by the Model Service Rules, 1973, Note-2 to Rule 10 whereof makes it absolutely clear that seniority of the petitioner is to be counted from the date of his regular appointment. In view of the fact that this rule governs his service, the inescapable conclusion is that the seniority of the petitioner has to be determined from the date of his regular appointment and not when he was initially appointed on ad hoc basis even though he continued uninterruptedly thereafter. Support for this view can be had from a Division Bench judgment of this Court in **Sohan Lal v. State of Haryana and others, 1992(4) S.L.R. 190: 1992(3) SCT 378.** Moreover, it has been held by their Lordships of the Supreme Court in the aforementioned judgments that when advertisements and orders of appointment indicate that the appointment.*

12. Lastly, it was argued that the petitioner had been discriminated inasmuch his seniority was determined from the

date of his regular appointment whereas in case of respondents 5 to 10 it was reckoned from the date of their initial temporary promotion. This argument is fallacious and has to be rejected. The case of the petitioner is altogether different from that of the respondents and in my opinion there is no discrimination. The respondents were promoted on temporary basis pending approval by the Commission which was subsequently received and it, therefore, had to relate back to the dates of their initial promotions/appointments. Petitioner, on the other hand, had been directly appointed afresh by the Commission in March, 1979 and his seniority had to be fixed from this date no matter that he had earlier worked for some time on ad hoc basis as well.”

Keeping in view the facts and circumstances of the present case coupled with the settled principle of law on the issue raised, the present petition stands dismissed.

Pending application, if any, also stands disposed of.

02-09-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO