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

(127)

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Date of Decision : October 04, 2024

Harminster Singh

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ravi Verma, Advocate, for the petitioner.

Mr. Swapan Shorey, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the order dated 09.06.2011 (Annexure P-5) by which, the benefit of adhoc service granted to the petitioner towards the seniority was withdrawn.

2. Learned counsel for the petitioner submits that once the petitioner was appointed with the respondents in the year 1988 and he continued to work on adhoc basis till 26.03.1997 and his services were regularized as Warder on 27.03.1997, the petitioner is entitled for seniority from the year 1988 and not from the year 1997.

3. Learned counsel for the petitioner further submits that initially, the said benefit was given to the petitioner but vide impugned order dated 09.06.2011 (Annexure P-5), the said benefit was withdrawn hence, the



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respondents are liable to be directed to grant the petitioner the benefit of adhoc service towards seniority along with all consequential benefits of further promotion till retirement.

4. Keeping in view the service of advance copy of petition, Mr. Swapan Shorey, learned Deputy Advocate General, Punjab, who is present in the Court, accepts notice on behalf of the respondents.

5. Learned counsel for the respondents submits that the benefit of adhoc service cannot be granted towards seniority keeping in view the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.6026-6028 of 2021 titled as Malook Singh and others vs. State of Punjab and others, decided on 28.09.2021***, wherein, it has been held that no benefit of adhoc service can be given towards seniority and the said service is only to be taken into account for purpose of computing the qualifying service for the grant of pensionary benefits and therefore, the withdrawal of benefit of adhoc service towards seniority vide impugned order is perfectly valid and legal. Learned counsel for the respondents further submits that the said submission be taken into consideration as no reply is needed as only question of law is to be decided in the present writ petition.

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

7. It is a settled principle of law that adhoc service rendered by an employee cannot be taken into account for the grant of seniority in the cadre. The seniority is to be given from the date of regular appointment only. Recently, the said question of law has already been settled by the Hon'ble Supreme Court of India in ***Malook Singh's case (supra)***. The

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relevant paragraph of the said judgment is as under:

“18. As a matter of first principle, the view which has been adopted in the impugned judgment of the Division Bench of the High Court cannot be faulted. The policy for regularization issued on 3 May 1977 is clear in regard to the date of regularization, the principle for reckoning seniority and the basis on which seniority should be reckoned inter se between persons belonging to the group of ad hoc employees who were regularized. The policy clearly specifies that regularization would be granted to persons who had fulfilled a minimum of one year service as on 31 March 1977. As regards seniority, clause 5(a) specifies that the seniority, upon regularization would date back to 1 April 1977 vis a vis candidates appointed on a regular basis after selection through the prescribed procedure. As between ad hoc employees who were regularized, inter se seniority would however be based on the length of service so that a person possessing longer service would rank senior to a junior in terms of the length of service.

19. The judgment of the Single Judge in Malook Singh's case essentially dealt with two facets. The first was that persons who were recruited after following the regular procedure for selection after the date of regularization of ad hoc employees on 1 April 1977 could not rank senior to those who had been regularized prior to their date of appointment. The second aspect on which the Single Judge held in favour of the petitioners in CWP No 2780 of 1980 was that once regularization takes place, the length of ad hoc service must count for the determination of seniority. It is important to note here that the second facet of the judgment of the Single Judge was specifically kept open in the Letters Patent Appeal by the Division Bench. Therefore, clearly the judgment in Malook Singh's case did not conclude the issue of whether ad hoc service would count for the purpose of determining seniority.

20. The law on the issue of whether the period of ad hoc

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service can be counted for the purpose of determining seniority has been settled by this Court in multiple cases. In Direct Recruits (supra), a Constitution Bench of this Court has observed:

"13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan case [(1977) 3 SCC 399: 1977 SCC (L&S) 391: (1977) 3 SCR 775] was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules

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applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary.....

47. To sum up, we hold that

(A) Once an incumbent is appointed to a post according to a rule, his seniority has to counted from the date of appointment and not according to date of his confirmation. The corollary to the above rule is 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 considering the seniority."

(emphasis supplied)

The decision in Direct Recruits (supra) stands for the principle that ad hoc service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgement dated 6 December 1991 on Direct Recruits (supra) to hold that the ad hoc service should be counted for conferring the benefit of seniority in the present case is clearly misplaced. This principle laid down in Direct Recruits (supra) was subsequently followed by this Court in Keshav Chandra Joshi v. Union of India, 1992 Supp (1) SCC 272. Recently a two judge Bench of this Court in Rashi Mani Mishra v. State of Uttar Pradesh, 2021 SCC Online SCC 509, of which one of us (Justice DY Chandrachud) was a part, observed that the services rendered by ad hoc employees prior to their regularization cannot be counted for the purpose of seniority while interpreting the Uttar Pradesh Regularization of Ad Hoc Appointment Rules. This Court noted that under the applicable Rules, "substantive appointment" does not include ad hoc appointment and thus seniority which has to be counted from "substantive appointment" would not include ad hoc service. This Court also clarified that the judgement in Direct Recruits (supra) cannot be relied upon to confer the benefit of seniority based on ad hoc service since it clearly states that ad

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hoc appointments made as stop gap arrangements do not render the ad hoc service eligible for determining seniority. This Court speaking through Justice MR Shah made the following observations:

"36. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time; initial appointment orders in the year 1985 and the subsequent order of regularization in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularization as per the 1979 Rules shall not be counted for the purpose of seniority, vis-a-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent re-determination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularization in the year 1989 is to be restored.

37. Now so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the case before this Court, the appointments were made to a post according to rule but as ad hoc and subsequently they were confirmed and to

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that this Court observed and held that where appointments made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. In the present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularized after following due procedure as required under the 1979 Rules and after their names wererecommended by the Selection Committee constituted under the 1979 Rules. As observed hereinabove, the appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the "substantive appointments". Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules." The notification dated 3 May 1977 stated that the ad hoc appointments were made in administrative interest in anticipation of regular appointments and on account of delay that takes place in making regular appointment through the concerned agencies. In this regard, the vacancies were notified to the Employment Exchange or advertisements were issued, as the case maybe, by appointing authorities. The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board. However, subsequently a policy decision was made to regularize the ad hoc appointees since their ouster after a considerable period of service would have entailed hardship. Thus, the initial appointment was supposed to be a stop gap arrangement, besides being not in accordance with the rules, and the ad hoc service cannot be counted for the purpose of seniority".

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8. Qua the argument of respondents regarding the appointment process of petitioner, nothing has come on record that the initial appointment of the petitioner on adhoc basis was through the proper agency and by following the actual process for appointment to the post of Warder. In the absence of any such process followed, the petitioner cannot be granted the seniority from the date of initial appointment.

9. Learned counsel for the respondents submits that for the appointment to the post of Warder, the post is to be advertised by the Subordinate Selection Board and it is only on the selection and recommendation of the said Board that the appointment can be made, which process was not followed while appointing the petitioner as Warder in July 1988, which fact has gone unrebutted at the hands of the petitioner, hence the employees, who were recruited without following due process i.e. appointment through the Subordinate Selection Board, cannot be given seniority for the adhoc service which they had rendered upto the date of regularization.

10. No ground is made out for any interference by this Court in the present case.

11. Dismissed.

October 04, 2024*harsha***(HARSIMRAN SINGH SETHI)****JUDGE**

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