

**CWP-18607-1997 (O&M)****1**

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

(111)**CWP-18607-1997 (O&M)****Date of Decision : January 14, 2025****Mali Ram****.. Petitioner****Versus****State of Punjab and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Pawan Kumar, Senior Advocate, with
Ms. Vidhushi Kumar, Advocate and
Ms. Seema Rani, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)**CM-28718-1997**

As prayed for, the application is allowed.

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1. In the present writ petition, the grievance being raised by the petitioner is that the adhoc service rendered by the petitioner has wrongly been denied to be taken into account as a valid service for the grant of seniority.

2. Learned senior counsel for the petitioner submits that once the petitioner was appointed as Clerk on temporary basis after leaving the Army, even though, the services of the petitioner were regularized in the year 1973 but his seniority should have been calculated from the initial date of appointment i.e. 1969 so as to grant the benefit of seniority to the

petitioner.



3. Learned counsel for the respondents, on the other hand, submits that the petitioner was appointed as Clerk on adhoc basis in the year 1969 and his services were only regularized by the competent authority in the year 1973 and the petitioner has already retired from service in the year 1998 and while computing the pensionary benefits, the adhoc service rendered by the petitioner has already been taken into account but the same could not have been taken into account for the grant of seniority hence, the claim raised in the present writ petition is liable to be rejected as the impugned order passed by the respondents declining the said benefit, is perfectly valid and legal.

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

5. The question which arises for adjudication before this Court is whether, keeping in view the direction given by the Coordinate Bench of this Court while passing order in RSA No.665 of 1996 dated 13.09.1996, the petitioner is entitled for any service benefits for the adhoc service rendered for the period from 1969 to 1972.

6. The only claim raised by the petitioner in the present petition is that the seniority is to be given from the date of initial appointment and not from the date of regularization of his services.

7. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Malook Singh and others vs. State of Punjab and others 2021 (4) SCT 305***, the benefit of adhoc service cannot be given towards seniority. The seniority benefit is admissible to a regular employee

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by excluding temporary service rendered. The 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

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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 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

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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 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

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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 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

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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 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

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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”.

8. In the present case, the claim of the petitioner is that the temporary service rendered by the petitioner in the cadre of Clerk starting from the year 1969 till his regularization in the year 1972 be taken into account for the grant of seniority. Keeping in view the settled principle of law mentioned hereinabove, the benefit of the temporary service rendered cannot be given to the petitioner in the cadre of Clerk for the grant of seniority.

9. Even otherwise, on being asked to point out as to whether any Clerk who was appointed after the year 1969, has been promoted to the next higher cadre in preference to the petitioner especially when the other employees over and above whom the petitioner is seeking seniority has already retired and the petitioner also retired 26 years ago, learned senior counsel for the petitioner has only cited that one Ram Sarup who was junior to the petitioner has been promoted to the higher post in preference to the petitioner.

10. It may be noticed that the petitioner is claiming seniority from the year 1969 in the cadre of Clerks whereas the said Ram Sarup was appointed in the year 1963 in the cadre of Clerk. Under any circumstances, the said Ram Sarup cannot be treated junior to the petitioner so as to grant him the said benefit.

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11. With regard to the grant of benefit of increment for temporary service, nothing has come on record that the Rules governing the service provide for the grant of benefit of increment for temporary service. The benefit of increment is only admissible for regular service to a regular employee.

12. Further, once the service rendered on temporary basis cannot be taken into account for any purpose, claiming the benefit of increment on the basis of said service will defeat the issue as the service for which the increment has been given, will be admissible towards the seniority as well hence, keeping in view the facts and circumstances of the present case that even if, the petitioner is granted the benefit of temporary service from the year 1969, still no employee who has been appointed after the year 1969 in the cadre of Clerk, has been granted further promotion, the issue of seniority has even otherwise rendered academic keeping in view the fact that the petitioner has already retired from service.

13. No ground is made out for any interference by this Court in the facts and circumstances of the present case.

14. Accordingly, the writ petition is dismissed.

January 14, 2025
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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