

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-752-2012 (O&M)
Reserved on 25.11.2024
Pronounced on 15.01.2025

State of Haryana & Ors.

... Appellants

VS.

Devi Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. BS Virk, Sr.DAG Haryana for the appellants

Mr. KL Arora, Advocate for the respondent

Sandeep Moudgil, J.

(1). Appellants – State of Haryana and others have preferred this Regular Second Appeal to challenge the judgment of the Additional District Judge, Sirsa, dated 11.08.2011, allowing the appeal of the respondent-plaintiff/appellant – Devi Lal thereby reversing the judgment of the Civil Judge (Junior Division) Sirsa, dated 31.1.2011 passed in the Civil Suit No.466C of 2007 titled “Devi Lal Vs. State of Haryana & others” seeking declaration and mandatory injunction, dismissing the suit, with a prayer to set aside the judgment of the Appellate Court.

Claim in suit:

(2). Respondent-plaintiff – Devi Lal filed civil suit before the court of Civil Judge (Junior Division) Sirsa (for short ‘trial Court) for declaration and mandatory injunction against the State of Haryana and others, including Secretary to Govt. of Haryana, Education Department, Haryana, to the effect that respondent-plaintiff was appointed as Lecturer in Hindi on Adhoc basis and he joined as such on 29.8.1979 and was not paid salary for the period

from 16.3.1980 to 31.7.1980; from 17.3.1981 to 2.8.1981 and from 16.3.1982 to 31.8.1982 on account of summer vacation etc. although was appointed through Haryana Public Service Commission and he joined as such on 31.8.1982 and in this way, he had continuous service at his credit as Lecturer since 29.8.1979. It was also averred that during service, the respondent-plaintiff and one Subhash Kamboj, Lecturer in Sanskrit at that time had instituted a suit against the appellant-defendants which was decreed on 12.5.1989 by the then Sub Judge Ist Class, Sirsa and the appeal (Civil Appeal No.181-CA of 1989/1990 on 4.7.1989) filed by the State against the said judgement was dismissed and the judgment of the court of Sub Judge Ist Class was upheld, vide judgment dated 27.7.1996, and Regular Second Appeal No.1100 of 1992 filed by the State titled "State of Haryana Vs. Devi Lal and others" was also dismissed by this Court. It is further stated that the respondent-plaintiff filed a suit for release of salary of the aforesaid broken period due to summer vacation as detailed above and for release of other benefits, however, the said suit was dismissed by the then Civil Judge (Junior Division) Sirsa, vide judgment and decree dated 27.7.1996 against which an Appeal was filed which was allowed by the District Judge, Sirsa, vide judgment dated 22.12.1998, by relying upon the observation of the Addl. District Judge, Sirsa, to the effect that the respondent-plaintiff would be deemed to have rendered his services for whole of the period.

(3). However, the learned District Judge had held that the department has withheld the other benefits which the respondent was entitled to receive in view of the order dated 2.1.1992 and further held that keeping in view the observation of the then Additional District Judge, Sirsa

(Sh.S.R.Bansal), the respondent is entitled to get the relief already granted to him by the said Court. It was also observed that in the execution proceedings filed by the respondent, vide order dated 17.8.2001, the State of Haryana had fixed the seniority of respondent-plaintiff at Sr.No.516-A i.e. below Smt.Anita Sharma, Lecturer in Chemistry and above the name of Sh.S.L.Jain, Lecturer in Physics and the same shall be subject to final outcome of SLP filed by the Department.

(4). It is stated that the respondent-plaintiff latter came to know that SLP No.14242 of 2001 was dismissed on 3.9.2001 by the Supreme Court and thus the order of fixing the seniority dated 17.8.2001 had achieved finality, however, vide order dated 26.6.2006, the appellant-defendant again refixed the seniority of the respondent-plaintiff from Sr.No.182 to 458A and in fact, in the new seniority list as on 1.1.2004, the name of the respondent-plaintiff, which was earlier placed at Sr.No.182 i.e. below the name of Anita Sharma and above the name of S.L.Jain, was placed above the name of one Des Raj Dhankar, Lecturer in English and below the name of Kartar Singh, Lecturer in Geography, in the terms of order dated 26.6.2006, with a stipulation that Sr.No.182 shall be treated as 'Blank' in the seniority list of 1.1.2004 contrary to Rule 11 of the Haryana Education (College Cadre) Group B Service Rules as well as law laid down by the Apex Court.

(5). It is against this order dated 26.6.2006 that the respondent-plaintiff filed civil suit seeking to refix the seniority at Sr.No.182, which has been kept blank along with pay and all the consequential benefits, including promotion and other alike benefits etc., after refixation of seniority of the respondent-plaintiff.

(6). The trial Court on the basis of pleadings of both the sides, framed the following issues to determine the controversy put-forth by the respondent-plaintiff in the suit:

1. Whether the respondent-plaintiff is entitled to get his name re-fixed at Sr.No.182 instead of 458-A in the seniority list of 1.1.2004 and to get all the service benefits including that of promotion, seniority and other financial benefits, as prayed for? OPP
2. Whether respondent-plaintiff is entitled to a decree for declaration to the effect that the order dated 26.6.2006 passed by appellant-defendants is illegal, against law and facts, without jurisdiction or authority and is liable to be set aside on the grounds mentioned in the plaint? OPP
3. Whether the respondent-plaintiff has no cause of action to file the instant suit? OPD
4. Whether suit of the respondent-plaintiff is bad for non-joining of necessary parties? OPD
5. Whether the suit of the respondent-plaintiff is false and frivolous? OPD
6. Whether the Civil Court has no jurisdiction to try and entertain the present suit? OPD
7. Relief.

(7). After framing the above issues, after hearing counsel for both the sides and examining their evidence adduced to establish their respective claims, the trial court dismissed the suit of the respondent-plaintiff, vide

judgment dated 31.01.2011, by observing that the adhoc service followed by regular service has to be counted for the purpose of pension and seniority and since the respondent-plaintiff was party to CWP No.8673 of 2003 (Ex.D2) wherein he has been held not entitled to counting of ad hoc service towards seniority and the order dated 17.08.2001 vide which re-determined seniority of the respondent-plaintiff was quashed by this Court which has since attained finality and only a change of law is not a ground to confer jurisdiction on the trial court to unsettle the decision passed by the higher Court. It was thus held that the order dated 25.04.2004 passed in CWP No.8673 of 2003 is binding in character and the claim sought in the suit was barred by the principle of *res judicata*.

(8). The respondent-plaintiff filed appeal against the judgment dated 31.01.2011 and Dr. Neelima Shangla, the then Additional District Judge, Sirsa vide her judgment dated 11.08.2011 set aside the allowed the appeal by observing as under:-

“11. Vide Ex.P4 the selection of appellant/respondent-plaintiff Devi Lal was done on the recommendation of the Selection Committee by the Director of Public Instruction Haryana, Chandigarh. Hence, as per law laid down by Hon’ble High Court of Punjab and Haryana in the Civil Writ Petition No.8604 of 2007 decided on 9.9.2010 titled Dr.Surender Kumar Mishra etc. Vs. State of Haryana etc. (supra) which was pronounced on 9.9.2010 by Hon’ble Justice Mr.Parmod Kohli as well as per law laid down by Hon’ble Supreme Court in case Dr.Gagan Inder Kaur and others Vs. Union Territory of Chandigarh (supra) decided on 17.10.1995 there is merit in appeal and this appeal is hereby accepted with cost through out to the effect that period of services rendered by respondent-plaintiff/appellant Devi Lal

shall be counted towards the seniority. The appellant/respondent-plaintiff is also entitled to all consequential benefits. The respondents/appellant-defendants are directed to fix the seniority of the appellant/respondent-plaintiff Devi Lal after counting adhoc period and shall give all the consequential benefits to the appellant/respondent-plaintiff within two months from today. Decree-sheet be prepared accordingly. Lower record be sent back with one copy of this judgment. File of appeal be consigned to the records.”

(9). Aggrieved by the said judgment of the First Appellate Court, the State of Haryana has filed the present Regular Second Appeal before this Court.

(10). Learned Counsel for the appellant-State submits that the lower Appellate Court has gravely erred in allowing the appeal of the respondent-plaintiff in view of the decision rendered by this Court in CWP No.8673 of 2003, in which the present respondent-plaintiff was also arrayed as Respondent No.4 as such the respondent-plaintiff cannot again claim for re-fixation of his seniority after finalization of the controversy of fixation of seniority in the above mentioned writ petition. Further, this Court had already held in its decision in above referred CWP that the *ad hoc* service rendered by the respondent-plaintiff cannot be counted for determining his seniority.

(11). It is further contended that the judgment of the lower Appellate Court suffers from infirmity as the Larger Bench of the Apex Court in the case titled “**Malook Singh and others Versus State of Punjab and others**” **reported as 2021(4) SCT 305** has held that *ad hoc* service rendered by an employee prior to regularization of his service will not be counted towards

seniority. Reliance has also been placed on **State of Haryana Vs. Haryana Veterinary and ATHS Associations (being Civil Appeal No.13423 of 1996) reported as 2000(5) SLR 223**, wherein the Supreme Court has held the appointment of respondent – Rakesh Kumar as fresh appointment in accordance with the statutory rules after the Punjab Service Commission adjudged their suitability and the regular service of the respondent Rakesh Kumar must be counted from the date he joined the post pursuant to the offer of appointment dated 29.01.1982 and the period of 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 Govt. Circular dated 2nd June, 1989 as well as the clarificatory circular dated 16th May, 1990. It is argued that the conclusion of the majority judgment of the High Court, therefore, is wholly erroneous and cannot be sustained.

(12). On the other hand, learned counsel for respondent-plaintiff/employee contends that the judgment of the Lower Appellate Court is a just and proper because the same has been passed after examining the facts and the evidence on record in a just perspective manner and in accordance with the controversy involved in the matter and as such, the State cannot keep the space (Sr. No.182) blank in the seniority list and simultaneously, his name cannot be shifted from serial No.182 to 458A as there is big gap in both serial numbers and otherwise is inconsistent with the record.

(13). He further averred that Rule 11 of the Rules *ibid* was very much there when seniority list was prepared on 01.01.2004 as such appellant-State cannot refix the seniority of the respondent-plaintiff on 26.06.2006 on the

pretext that earlier seniority dated 01.01.2004 is by the provisions of said Rules 11. It is further contended that the lower Appellate Court has formed its opinion in view of the judgement of this Court in **Dr.Surindra Kumar Mishra etc. Vs. State of Haryana etc. (CWP No.8604 of 2007)** decided on 09.09.2010 relying upon the judgment of Supreme Court in **Writ Petition (Civil) No.368 of 1987 (Dr.Gagan Inder Kaur and others Vs. Union Territory of Chandigarh and others)** decided on 17.10.1995 and also from a Division Bench judgment rendered in **CWP No.2409 of 2008 titled “Vijay Singh and others Vs. State of Haryana and others”** decided on 18.12.2008, was followed to the effect that an ad hoc period of service rendered shall be counted towards seniority, as such, there cannot be seen any perversity and ambiguity in the judgment passed by the learned lower Appellate Court and accordingly, the present regular second appeal is liable to be dismissed.

(14). Heard both the sides and case file also perused with their able assistance.

Analysis:

(15). The main issue involved in the present appeal is whether the ad-hoc service rendered by the respondent-plaintiff/respondent is liable to be counted in his later regular service. Both the parties have cited judgements in support of their respective pleas.

(16). A perusal of Rule 11 of the Haryana Education (College Cadre) Group B Service goes to show that it provides for the purpose of Seniority (1) The Seniority inter-se of the members of the service shall be determined by the length of continuous services on any post in the service; Provided that in case of members appointed by direct recruitment the order of merit

determined by the commission or other recruiting authority shall not be disturbed in fixing the seniority. However, the appellant-defendants have not at any stage refer to the seniority list determined by the Commission or other recruiting authority. As such, the appellant-defendants have no right to change the seniority time and again without any justifiable reason, which has not been disclosed in the written statement by the appellant-defendants.

(17). Respondent-plaintiff has, vide CM No.4535-C-2020, given a brief synopsis of the facts according to which on 02.09.1992, respondent-plaintiff – Devi Lal filed civil suit for salary of summer vacations, increments and other benefits, which was dismissed on 27.7.1996, and appeal was filed which was allowed on 22.12.1998 and judgement and decree of the trial court was set aside and respondent-plaintiff was held entitled to the salary, increments and other benefits. On 7.5.1999, respondent-plaintiff filed Execution application, wherein objections were filed by the State which were dismissed on 19.09.2000 and Execution application was allowed. State filed Civil Revision against the order dismissing the objections and allowing the Execution Application which was dismissed by this Court on 10.01.2001. Review Petition No.61 of 2001 filed by the State to review the order dated 10.01.2001 was also dismissed by this Court on 16.5.2001. SLP No.14242 of 2001 was preferred by the State against the order dated 16.5.2001 which was also dismissed by the Supreme Court vide order dated 03.09.2001 and in view thereof, the Seniority List dated 17.8.2001 fixing seniority of the respondent-plaintiff and others became final, wherein the name of the respondent-plaintiff was placed at Serial No.516-A as on 01.09.1997, as such, appellant-defendant/appellant – State has no right to again disturb the seniority list

dated 17.8.2001, which was the subject matter of dispute right from the trial court upto Supreme Court. Therefore, all the subsequent seniority lists are of no consequence once the seniority list dated 17.8.2001 attains finality and upheld by the Apex Court vide its decision dated 03.09.2001.

(18). As far as the question of counting of ad-hoc period for the purpose of seniority is concerned, this Court is of the considered opinion that the State by not filing Regular Second Appeal against the judgment and decree dated 22.12.1998 passed by the lower Appellate Court thereby holding the respondent-plaintiff entitled to the salary, increments and other benefits, has given up its right to challenge the order in Regular Second Appeal, has made itself bound by the said order and said order has also attained finality and has merged in the order passed by the lower Appellate Court in this case also. Therefore, the State cannot be allowed to agitate the order of the lower Appellate Court in the present proceedings once the order in separate proceedings between the same parties has become final and binding on the other party i.e. State of Haryana and other appellant-defendants herein because now they have no option left to come out of the said order of the lower Appellate Court, according to which the respondent-plaintiff has been held entitled to salary, increments and other consequential benefits etc.

(19). The lower Appellate Court has relied upon the judgment of this Court passed in a bunch matter in which CWP No.8604 of 2007 was the lead case whereby this Court while following the *ratio* of judgment of in **Dr.Gagan Inder Kaur & Ors** (supra) has allowed the writ petitions and directed the respondents to count the *ad hoc* period of service rendered by the

petitioners towards the seniority and the petitioners were held entitled to all the consequential benefits.

(20). Similar view has been taken by a Division Bench of this Court, in **Letters Patent Appeal No. 886 of 2011 titled “State of Haryana & ors. Vs. Surindra Kumar Mishra & Ors.”** decided on 13.10.2011 by dismissing the Letters Patent Appeal and upholding the order of the learned Single Judge directing the respondent – State of Haryana to count the ad hoc service rendered by the writ petitioners – respondents towards their seniority in the cadre of Lectures in Government Colleges in Haryana. The Division Bench showed its agreement with the findings of the learned Single Judge on the issues debated and decided observing that if the foundational fact of status of first entry into service is legal and valid which is commensurate with Article 14&16(1) of the Constitution, the consequences of seniority would automatically follow from the initial date. Hence, this Court does not find any illegality and infirmity in the impugned judgment of the appellate court.

Conclusion:

(21). In view of the above discussions, this Court finds no merit in the appeal and also does not find any perversity and illegality in the judgment/decreed of the lower Appellate Court dated 11.08.2011, which is accordingly upheld.

(22). Dismissed.

15.01.2025

v.vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No