



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

211

RSA-4148-2000 (O&M)

Date of decision: 09.02.2026

Superintending Engineer, H.S.E.B. & anotherAppellants

Versus

Sita Ram and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Prateek Mahajan, Advocate with
Mr. Kunal Soni, Advocate for the appellants.

Mr. R.S. Mamli, Advocate for respondent No.1.

NAMIT KUMAR, J. (ORAL)

1. The instant Regular Second Appeal has been directed against the judgments and decrees dated 10.09.1997 and 26.07.2000, passed by the learned Trial Court and the First Appellate Court respectively, whereby the claim of respondent No.1/plaintiff for promotion to the post of Lineman with effect from 18.05.1993 and treating him as senior to Jaswant Singh, Bhagat Ram, Dalip Singh, Ram Pal and Jiwan Lal, has been accepted with all consequential benefits.

2. Parties to the *lis* hereinafter shall be referred to by their original position before the learned Trial Court.

3. The brief facts of the case are that respondent No.1/plaintiff was initially appointed as Assistant Lineman, vide appointment letter dated 09.04.1973 (Ex.P1) and his services were regularised, vide order dated 15.05.1979 (Ex.D1). Jaswant Singh, Bhagat Ram, Dalip Singh, Ram Pal and Jiwan Lal were regularly appointed as Assistant Lineman on 17.07.1973 (Ex.P2 to P6). Jaswant

Singh, Bhagat Ram and Dalip Singh were promoted to the post of

Lineman, vide order dated 18.05.1993, whereas Ram Pal and Jiwan Lal were promoted as Lineman, vide order dated 12.10.1993. Respondent No.1/plaintiff filed a suit for mandatory injunction on 14.06.1993 claiming seniority over the aforesaid five persons and seeking promotion to the post of Lineman with effect from 18.05.1993 at par with those persons. The suit filed by respondent No.1/plaintiff was decreed by the learned Trial Court, vide judgment and decree dated 10.09.1997, mainly on the ground that the length of continuous service of respondent No.1/plaintiff was required to be reckoned from his initial date of appointment i.e. 09.04.1973. The First Appeal preferred by the appellants/defendants was dismissed by the learned First Appellate Court, vide its judgment dated 26.07.2000, thereby affirming the judgment and decree passed by the learned Trial Court.

4. Learned counsel for the appellant submits that neither respondent No.1/plaintiff ever challenged the seniority list nor the said five persons were impleaded as party respondents in the suit. It is further submitted that adhoc/temporary service is not countable towards seniority and that respondent No.1/plaintiff was rightly promoted as Lineman, vide order dated 26.06.1996. It is argued that respondent No.1/plaintiff has no right to claim promotion with effect from 18.05.1993 at par with the said five persons, as they were regularly appointed as Assistant Lineman on 17.07.1973 and were, therefore, senior to respondent No.1/plaintiff. In support of his contention, learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court in *Malook Singh and others v. State of Punjab and others : 2021(4) SCT 305* and *Rashi Mani Mishra and others v. State*

of Uttar Pradesh and others : 2021(3) SCT 518, wherein it was held that services rendered by adhoc employees prior to their regularisation cannot be counted for the purpose of seniority.

5. *Per contra*, learned counsel for respondent No.1/plaintiff has placed reliance upon the judgments in ***RSA No.52 of 2005 titled as 'Uttari Haryana Bijli Vitran Nigam Ltd., through its Managing Director, Shakti Bhawan, Sector 6, Panchkula & others v. Sohan Lal and others'***, decided on 24.01.2006 and ***RSA No.2127 of 1998 titled as 'Haryana State Electricity Board, through its Secretary/Chairman, Shakti Bhawan, Sector 6, Panchkula v. Dharamvir'***, decided on 12.01.2000.

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

7. Admittedly, respondent No.1/plaintiff was initially appointed on temporary basis on 09.04.1973 and his services were regularised on 15.05.1979. Jaswant Singh, Bhagat Ram, Dalip Singh, Ram Pal and Jiwan Lal were appointed on a regular basis on 17.07.1973 and were, therefore, senior to respondent No.1/plaintiff. Consequently, they were rightly promoted to the post of Lineman, vide orders dated 18.05.1993 and 12.10.1993. During the pendency of the suit, respondent No.1/plaintiff was also promoted to the post of Lineman on 26.06.1996 on the basis of his seniority and was further promoted to the post of Assistant Foreman on 29.06.2007. Respondent No.1/plaintiff neither challenged the seniority list nor assailed the promotion orders of the aforesaid five persons. The seniority list was not even placed on record before the learned Trial Court, and the said

persons were also not impleaded as party respondents.

8. The Hon'ble Supreme Court in **Malook Singh's (supra)** has held that the adhoc service is not countable towards seniority. The relevant portion from the said judgment reads as under:-

“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 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 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-à-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 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 were recommended 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.”

9. To the same effect is the judgment of the Hon'ble Supreme Court in ***Rashi Mani Mishra's case (supra)***.
10. So far as two judgments on which reliance has been placed upon by learned counsel for respondent No.1/plaintiff is concerned, the said orders were passed in the peculiar facts of those cases and do not lay down any binding precedent. Therefore, there is no substance in the said contention.
11. In view of the above discussion, the instant Regular Second Appeal is allowed. The judgments and decrees passed by the learned Trial Court and First Appellate Court are hereby set aside and the suit of respondent No.1/plaintiff stands dismissed, with no order as to costs.
12. Pending applications, if any, stand disposed of.

09.02.2026

Vinay

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(NAMIT KUMAR)

JUDGE