

A STATE OF PUNJAB AND ANR.

v.

ASHWANI KUMAR AND ORS.
(Civil Appeal No. 5892 of 2008)

SEPTEMBER 29, 2008

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[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

C *Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 – r.8 – Seniority – Determination of – Held: Only period of regular service rendered by the employee to be counted and not period of ad-hoc service.*

D Respondents serving as Clerks under the State of Punjab, were initially appointed on ad-hoc basis and later regularized. At the time of their appointment, Respondents were governed by the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994.

E The question which arose for consideration in the present appeal was as to whether the period of ad-hoc service rendered by the Respondents was to be counted for the purpose of seniority.

Allowing the appeal, the Court

F HELD:1. In Rule 8 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, it is provided that the seniority of the persons appointed on purely provisional basis or on ad-hoc basis shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment.

G Further, in the orders appointing the respondents on ad-hoc basis, it was specifically stated that they will be governed by the aforementioned Rules. It was further stated in paragraph III of the appointment letter that the appointees' seniority will be determined only by merit in which

he or she is placed by Punjab Public Service Commission. Thus it is clear that only regular service is to be counted towards seniority. The judgment/order passed by the High Court holding that ad-hoc service is to be included in calculating the period of service for giving the higher scale of pay is unsustainable and has to be vacated. [Paras 4, 5] [1139,A-C; 1139,D-E]

State of Haryana v. Haryana Veterinary & AHTS Association and Anr. (2000) 8 SCC 4 – relied on.

2. However, if any of the respondents has drawn any amount on the basis of the High Court's judgment granted to by including the period of his ad-hoc service then the State Government shall not recover the amount already drawn by the employee though for fixation of the cadre seniority the position as laid down in this order will govern. [Para 6] [1139,F]

Case Law Reference

(2000) 8 SCC 4

relied on

Para 4

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5892 E
of 2008

From the final Judgment and Order dated 20.4.2004 of the High Court of Punjab and Haryana at Chandigarh in CWP No. 12230 of 2003

K.K. Khurana, A.A.G., Arun K. Sinha for the Appellants.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court holding that the ad-hoc services of the respondents were to be counted for the purpose of seniority. Reliance was placed on certain other orders of the High Courts passed earlier. It is stated by learned counsel for the appellants that this Court had occasion

- A to deal with the appeals filed by the State questioning correctness of the judgments on which reliance has been placed by the High Court. Respondents were initially appointed during the period 1978 to 1987 as Clerks on ad-hoc basis and were regularized between the period from 1980 to 1990. Respondents
- B submitted representations claiming the benefit of their ad-hoc services relying on the judgment to which reference has been made by the High Court in the impugned judgment. Prayer was to the effect that the ad-hoc service was to be counted for all intents and purposes including seniority.
- C 3. The main question that arises for consideration in this appeal is whether the period of ad-hoc services rendered by the respondents is to be included for calculating the seniority. This question was considered by a three-Judge Bench of this Court in *State of Haryana v. Haryana Veterinary & AHTS Association and Anr.* (2000 (8) SCC 4) wherein this Court took the view that for calculating 8/18 years service required for giving higher scale of pay and for determination of seniority only regular service rendered by the employee is to be counted and not ad-hoc service.
- E 4. Learned counsel for the respondents strenuously contended that the respondents who are Clerks serving under the State of Punjab are governed by a set of Rules and circulars different from those which were considered in the decided case and, therefore, the ratio in that case will not be applicable in
- F these cases. We have carefully considered the said contention. We have also considered the Government Letter No.4/8/85-3PPI/4408 dated 13.3.1996 containing the policy instructions. On a plain reading of the letter, it is clear that the instructions contained therein were based on the decision of the Punjab
- G and Haryana High Court taking the view that ad-hoc service should be taken into account for the purpose. This letter in our view can no longer form the basis of the contention in view of the recent decision by this Court in *State of Haryana v. Haryana Veterinary & AHTS Association and Anr.* (supra). Undisputedly,
- H the respondents at the time of their appointment were governed

by the Punjab Civil Services (General and Common Conditions of service) Rules, 1994. In Rule 8 of the said Rules it is provided that the seniority of the persons appointed on purely provisional basis or on ad-hoc basis shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment. Further, in the orders appointing the respondents on ad-hoc basis, it was specifically stated that they will be governed by the aforementioned Rules. It was further stated in paragraph III of the appointment letter that the appointees' seniority will be determined only by merit in which he or she is placed by Punjab Public Service Commission. Thus it is clear that only regular service is to be counted towards seniority.

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5. We do not feel it necessary to delve further into merits of the case in view of the decision of this Court in *State of Haryana v. Haryana Veterinary & AHTS Association and Anr.* (supra). We are satisfied that the ratio in that case applies to the case in hand. The resultant position that emerges is that the judgment/order passed by the High Court holding that ad-hoc service is to be included in calculating the period of service for giving the higher scale of pay is unsustainable and has to be vacated. Accordingly, the appeal is allowed and the judgment/order of the High Court under challenge is set aside.

6. However, we make it clear that if any of the respondents has drawn any amount on the basis of the High Court's judgment granted to by including the period of his ad-hoc service then the State Government shall not recover the amount already drawn by the employee though for fixation of the cadre seniority the position as laid down in this order will govern. No costs.

B.B.B.

Appeal allowed.

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