
(2006) 08 P&H CK 0222
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15055 of 2003

Badal Singh and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 18-08-2006

Acts Referred:

Citation : (2006) 08 P&H CK 0222

Hon'ble Judges : M.M.S. Bedi, J; M.M. Kumar, J

Bench : Division Bench

Advocate : R.N. Sharma, for the Appellant; Harish Rathee, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The petitioners who have been working as Teachers in the Education Department of Haryana have approached this Court for quashing order dated May 28, 2003 (P-5) denying them the benefit of adhoc service for the purposes of counting 8/18 years of service for granting them one additional increment to break their stagnation. The order dated May 28, 2003 (P-5) has been issued in respect of one of the petitioners. Similar orders are stated to have been issued to all of them, withdrawing the benefit which was granted by reckoning adhoc service.

2. Brief facts of the case necessary for disposal of the instant petition are that the petitioners have been working on various posts of teachers. They were initially appointed on adhoc basis and their services were regularized w.e.f. specified dates. The following chart would show their date of appointment on adhoc basis and their date of regularization:

S. Name of the Teacher Date of Adhoc Date of No. appointment. regularization

1. Badal Singh	20.2.1973	1.1.1979	2. Charan Singh	8.8.1969	1.1.1979	3.
Samunder Singh	24.11.1984	30.9.1988	4. Narayan Dutt	14.7.1973	1.11.1978	
5. Satyawanti	9.9.1983	1.11.1986	6. Vidya Sagar	14.7.1973	1.1.1980	7.

Santosh Arora 20.2.1973 1.1.1980 8. Sukhdev Singh 28.2.1983 1.11.1986 9. Ram Kumar 14.11.1977 16.9.1982 10. Sultan Singh 2.1.1973 1.1.1979 11. Mahavir Singh 1.9.1973 1.1.1980 12. Mahabir Singh 21.12.1981 1.11.1986 13. Hukam Chand 1.1.1970 1.1.1980 14. Jagdish Chander 30.4.1974 1.1.1980 15. Mohinder Singh 8.12.1981 1.11.1986 16. Krishan Chander 1.9.1973 1.1.1980 17. Ramesh Kumar 30.8.1982 1.11.1986 18. Nirmala Ashri 23.2.1973 1.1.1979 19. Wanti Bai 17.1.1972 1.1.1979 20. Zile Singh 1.1.1972 1.1.1979 21. Nirmal Sharma 17.1.1972 1.1.1979 22. Rajender Singh 4.8.1981 1.11.1986 23. Bimal Kumari 19.8.1971 1.1.1980 24. Santosh Sharma 7.9.1972 1.1.1979

3. On May 14, 1991, the respondents State decided to grant one additional increment on completion of 10 years and another additional increment on completion of 20 years in time scale to all Group "C" and "D" employees. However, on August 7, 1992, the aforementioned scheme was modified which allowed additional increments to the employees of Group "C" and "D" on completion of 8/18 years of regular and satisfactory service (P-2). On account of a Full Bench judgment of this Court in the case of Rakesh Kumar Singla v. State of Haryana and Ors. 1995 (3) PLR 411, another set of instructions was issued on August 20, 1996 clarifying that adhoc service which was followed by a regular appointment was to be taken into consideration while reckoning the prescribed length of service of 8 and 18 years (P-3). The Full Bench judgment in Rakesh Kumar Singla's case (supra) was reversed by the Hon'ble Supreme Court in the case of State of Haryana Vs. Haryana Veternaty and A.H.T.S. Asson. and Another, . As a consequence, another letter was issued on March 15, 2002 (P-4) by concluding that the adhoc service was not to be counted towards regular service for the purpose of calculation of prescribed length of service for grant of additional increment for completion of 8/18 years of service under the Scheme. The relevant para of the instructions issued by the respondents reads as under:

i) The ad-hoc service is not to be counted towards regular service for the purpose of calculation of prescribed length of service for the grant of additional increments on completion of 8/18 years service under the scheme introduced vide Government letter dated 7.8.1992, the Scheme introduced vide Government for Engineers of PWD (three wings) and Doctors vide Government instructions dated 2.6.89 read with clarificatory instructions dated 16.5.90, and the higher standard scales under the scheme of Higher Standard Scales introduced for group "C" and "D" employees introduced vide letter dated 8.2.1994 but effective from 1.1.1994.

4. Accordingly, petitioner No. 24-Smt. Santosh Sharma and all other petitioners similar situated were issued show cause notices regarding fixation of their pay. The show cause notice had quoted the aforementioned para from the letter dated March 15, 2002 (P-4) and has called upon to show cause why the re-fixation in the cases of the petitioners be not ordered. The aforementioned petitioner duly filed the reply to the show cause notice. As the decision had already been taken by the respondents, the petitioners had approached this Court. It is appropriate

to mention that a clarificatory order dated April 23, 2002 was also issued by the respondents. The operative part of the order shows that no recovery of over payment involved after the period upto March 14, 2002 was to be made. The pay of all such employees was to be re-fixed notionally from the date of grant of benefit upto March 14, 2002 and actually from March 15, 2002. The aforementioned para 3 from the letter is reproduced hereunder for facility of reference:

3. The matter has been considered at length and it has been observed that the adhoc service was not to be counted for the purpose of grant of additional increment (s) and given benefit has been withdrawn vide instructions dated 15.3.2002, which are based on the judgments of Hon''ble Punjab and Haryana High Court and the Hon''ble Supreme Court of India. The Government has now decided that the granted benefit on account of adhoc service may be treated to have been withdrawn from the date it was earlier granted. However, no recovery of over payment involved after the period upto 14.3.2002, the day preceding the issuance of instructions dated 15.3.2002 is to be made. In other-words, pay of all such employees will be re-fixed notionally from the date of grant of benefit upto 14.3.2002 and actually from 15.3.2002. Legal course of action, warranted in a case, if any, may also be followed by the department in this regard.

5. The respondents have filed a detailed written statement by referring to various steps taken for breaking stagnation of pay scale and by ensuring that at least two steps be provided to hike the pay scale of Group "C" and "D" employees. Para 5 of the written statement under the preliminary submissions categorically states that the Government letter dated March 15, 2002 (P-4) was issued after the reversion of the judgment of the Full Bench of this Court in Rakesh Kumar Singla's case (supra) by the Hon''ble Supreme Court in the case of Haryana Veterinary and AHTS Association's case (supra) and thereafter even a clarificatory letter was issued on April 23, 2003 which has clarified that the benefit of adhoc service for the purposes of 8/18 years additional increment has been withdrawn and the excess amount paid to an employee by counting adhoc service was not to be recovered.

6. The precise issue raised before us is whether service rendered by an adhoc appointee on the basis of appointment made de hors the recruitment rules could be counted for earning the benefit of higher scale of pay under the Government instructions or they are to be granted the benefit on being regularly appointed, in accordance with the recruitment Rules. As is already noticed that the matter is no longer res integra and in the case of Haryana Veterinary and AHTS Association's case (supra) it has been held that the benefit of adhoc service cannot be granted for the purposes of 8/18 years to release additional increments. It has been clarified that only that part of service could be counted for the purposes of reckoning 8/18 years which would count for seniority. The aforementioned decision has been followed and applied in the case of State of Punjab and Others Vs. Gurdeep Kumar Uppal and Others, and in the case of

State of Punjab v. Ishar Singh (2002) 10 SCC 6784.

7. If the facts of the present case are examined in the light of the principles laid down by the Hon"ble Supreme Court in the aforementioned judgments, it becomes evident that petitioner No. 24 and all other petitioners are not entitled to count the period of their adhoc service for the purposes of earning increment at the stage of 8/18 years or 10/20 years. Smt. Santosh Sharma was appointed on adhoc basis on September 7, 1972 and her services were regularized w.e.f. January 1, 1979. It is obvious that her service could be counted only from the date of regularization for the purposes of earning additional increment at the stage of 8/18 years or 10/20 years as the case may be. Similar would be the position in respect of other petitioners.

8. The prayer of the petitioners that no recovery should be made would also not require any detailed consideration in view of the letter dated April 23, 2003 issued by the respondent Department. The aforementioned letter, in fact incorporates the principle laid down by the Hon"ble Supreme Court in Sahib Ram v. State of Haryana and Ors. (1995) 1 SCC 18, wherein it has been held that if upgraded pay scale is given due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee, then recovery of the payment already made would become irrecoverable.

9. In view of the above, the writ petition is dismissed.