
(2001) 07 P&H CK 0108

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 18659 of 1995

Dharam Singh Yadav

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Constitution of India, 1950 — Article 141, 226

Citation : (2001) 07 P&H CK 0108

Hon'ble Judges : J.S. Narang, J

Bench : Single Bench

Advocate : Mr. Rajneesh Dhanda, AAG, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Narang, J.—The petitioner was earlier appointed as Director Physical Education (DPE) and that tateron the said designation was changed to that of Lecturer, Physical Education on 27.10.1979. He had joined the service in a private College known as Shri Krishan College, Kanwali (Rewari) on temporary basis. This college was taken over by th Government with effect from 23.6.1992 and the staff deployed in the said college was allowed to be accepted as employees of the Government. It shall be appropriate to mention here that while in service of the private college, the services of the petitioner were confirmed vide order dated 28.4.1983 and that the effective confirmation was given with effect from 1.5.1981.

2. The Government of Haryana vide its letter dated 8.3.1989, Copy Annexure P-24 issued instructions on the revision of pay scales of Teachers, Librarians and Physical Education Personnel in Universities and Colleges. A provision was made for the release of selection scale of Rs. 3000-5000 on completion of 8 years of service on or after 1.1.1986. A further provision for the release of selection grade of Rs. 3000-7000 was also made on completion of 16 years of service. Consequently, the senior scale of Rs. 3000-5000 was released to the petitioner with effect from 1,5.1989 when he completed 8 years from the date of

regularisation of service, i.e., 1.5.1981.

3. The petitioner felt dissatisfied and made a representation that his previous service rendered in the College and or in the other College with effect from 31.8.1976 to 15.6.1979 and the subsequent extensions granted in service should also be counted and that re-sultantly, he shall be entitled to the said selection scale much prior to 1.5.1989. The petitioner made representation to the Government in this regard but the said representations have not been decided. Aggrieved of this inaction on the part of the Government, the present petition has been filed. Reliance has been placed upon a judgment rendered by a Full Bench of this Court in C. W.P. No. 15034 of 1993-Rakesh Kmmar Singh v. State of Haryana and others decided on 21.7.1995.

4. The stand of the Government is that the petitioner is not entitled to any benefit by way of counting the previous service in the private colleges which may be termed as temporary service or ad hoc service. It is also contended that since his services had been regularised by the private college with effect from 1.5.1981, as a sequel thereto, the necessary relief has been given by counting 8 years from the said date. It is informed orally by learned AAG, Haryana that now the benefit of 16 years service also has been granted to the petitioner in the year 1997 during the pendency of the petition. It has been further brought to the notice of this Court that the Full Bench decision of this Court has been reversed by the Supreme Court and that the minority view expressed by J.L. Gupta, J. has been upheld by the Apex Court. The judgment has been rendered by the Apex Court on 19.9.2000 in CA No. 13423 of 1996 alongwith other Civil Appeals- State of Haryana v. Haryana Veterinary and A.H.T.S. Asson. and another 2000 (4) RSJ 167. The apex Court has categorically observed that the benefit cannot be given over and above the provisions contained and the rules applicable to the service. The relevant portion of the judgment reads as under :

- "A combined reading of the aforesaid provisions of the Recruitment Rules puts the controversy beyond any doubt and the only conclusion which could be drawn from the aforesaid Rules is that the services rendered either on ad hoc basis or as a stop-gap arrangement, as in the case in hand from 1980 to 1982 cannot be held to be regular service forgetting the benefits of the revised scale of pay or of the selection grade under the Government Memorandum dated 2nd June, 1989 and 16th May, 1990, and therefore, the majority judgment of the High Court must be held to be contrary to the aforesaid provisions of the Recruitment Rules, consequently, cannot be sustained. The initial letter of appointment dated 6.12.1979, pursuant to which respondent Rakesh Kumar joined as an Assistant Engineer on ad hoc basis in 1980, was also placed before us. The said appointment letter unequivocally indicates that the offer of appointment as Assistant Engineer was on ad hoc basis and Clauses 1 to 4 of the said letter further provide that the appointment will be on ad hoc basis for a period of 6 months from the date of joining and the salary was a fixed salary of Rs. 400/- p.m. in the scale of Rs. 400/- to Rs. 1100/- and the services were liable to be

terminated without any notice and at any time without assigning any reason and that the appointment will not enable the appointee any seniority or any other benefit under the Service Rules for the time being in force and will not count towards increment in the time scale. In view of the aforesaid stipulations in the offer of appointment itself, we really fail to understand as to how the aforesaid period of service rendered on ad hoc basis can be held to be service on regular basis. The conclusion of the High Court is contrary to the very terms and conditions stipulated in the offer of appointment and, therefore, the same cannot be sustained. The regular letter of appointment, dated 29.1.1982 in favour of Rakesh Kumar was also produced before us and that letter indicates that the respondent, Rakesh Kumar, alongwith others had applied to the Secretary, Haryana Public Service Commission for being appointed as an Assistant Engineer and the Service Commission after selecting the number of persons prepared a list and appointment letters were issued by the Government from the said list on the basis of the merit position of different candidates. Thus the appointment of respondent Rakesh Kumar was a fresh appointment in accordance with the Statutory Rules after the Public Service Commission adjudged their suitability and the regular service of the respondent Rakesh Kumar must be counted from the date he joins the post pursuant to the offer of appointment dated 29.1.1982 and the prior 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 Government Circular dated 2nd June, 1989 as well as the Clarificatory Circular dated 16th May, 1990. The conclusion of the majority judgment of the High Court, therefore, is wholly erroneous and cannot be sustained.

7. In view of our conclusions, as aforesaid, the majority judgment of the Punjab and Haryana High Court and the directions contained therein, is set aside and it is held that 12 years period of respondent Rakesh Kumar could be counted from year 1982 for being eligible to get the Selection Grade under the Government Circular dated 2nd June, 1989 as well as Clarificatory Circular dated 16th May, 1990. The Civil Appeal, filed by the State of Haryana stands allowed.

8. Since the judgment of Rakesh Kumar has been followed in all other cases which are also the subject matter of appeal before this court in the tagged on matters, following the conclusions arrived at by us in Rakesh Kumar's case the impugned judgment and direction in all these matters are set aside and the appeals filed by the State of Haryana stand allowed."

5. During the course of arguments, I had directed vide order dated 19.7.2000 to ascertain as to whether the Government has given the benefit to the petitioner for the purpose of seniority by counting his service with effect from 26.10.1979 upto 30.4.1981. In pursuant to my order, an affidavit dated 17.11.2000 has been placed on record sworn by Shri B.R. Vashisht, Joint Director, Colleges office of Director of Higher Education, Haryana. It has been specifically averred in the affidavit that for the purpose of fixing seniority of the petitioner, the date taken into consideration is 1.5.1981 and not 27.10.1979 and that his seniority had

again been fixed with effect from 16.4.1991 as per the decision taken by the Government of Haryana.

6. In view of the law laid down by the Apex Court in re Haryana Veterinary and A.H.T.S. Asson's case (supra) (vide which Rakesh Kumar Singla's case also stand decided), ad hoc service or the Tike cannot be counted towards granting benefit of selection scale. This view has been further affirmed by the apex Court in re: State of Punjab and others v. Gurdeep Kumar Uppal & others 2001(2) AIJ that the dicta in the aforesaid case has been followed.

7. Thus in the case at hand, the petitioner is not entitled to any relief for counting his ad hoc service for the purpose of determining 8/16 years period. As per the learned AAG, Haryana, the relief to which the petitioner is entitled after 16 years has also been granted. Thus the petition is not maintainable and is dismissed without any order as to costs.

8. Petition dismissed.