

(2013) 12 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 566 of 1994 (O&M) and 9656 of 2003 (O&M)

Gir Raj Singh and Others

APPELLANT

Vs

State of Haryana and Another
 Ramesh Kumar Vs
State of Haryana and Others

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) 1 SCT 705

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The writ petitions are connected and they are taken for common disposal. The narration of facts is taken from C.W.P. No. 9656 of 2003. The writ petition is to quash the order dated 17.06.2003 under which the claim to additional increments granted to the petitioners w.e.f. 02.04.1979 and the grant of higher standard pay scales were sought to be withdrawn by the proceedings of the 3rd respondent-the District Education Officer. The impugned order came to be passed on a finding that the increments and the higher pay scales granted were under wrong interpretation of the relevant ACP rules and hence, they were quashed and recovery has been ordered. The challenge in the writ petition was on a contention that the Haryana Civil Services (Revised Scales of Pay) Rules, 1980 had been correctly applied and the competent authority had given the benefit of additional increments w.e.f. 02.04.1979 under Rule 7 of the 1980 Rules under which the pay of the employees at lower stage, that is, at Rs. 110/- was revised at Rs. 410/- under the Rules. The petitioners would bring the circumstance that the benefit given was sought to be withdrawn nearly 23 years of service on a specious ground that the respective petitioners were regularized only w.e.f. 01.01.1980 and the additional increments had been given when they were only ad hoc employees. The petitioners would refer to the parity of position obtaining through several decisions rendered by this Court for other employees where the twin consideration of entitlement to additional increments and higher

standard pay by counting the ad hoc service as per the instructions for grant of ACP scales had been favourably considered for other persons. The petitioners would rely on a Division Bench ruling of this Court in *Vijay Kumar and others v. State of Haryana and others* in C.W.P. No. 2409 of 2008, decided on 18.12.2008 to which, I was a member where the point raised was whether the period held under ad hoc appointments should be counted for reckoning seniority for promotion to the post of lecturers. The said judgment has been considered with reference to a judgment of this Court in (2008) ILR 2 245 (P & H.) , decided on 04.07.2008, reported in (2008) ILR 2 245 (P & H.) where the ad hoc service followed by regular service was taken to be relevant for the purpose of grant of additional increments, pension and seniority. I will not find that this judgment would conclude the issue, for, the point raised in that case was with reference to the relevance of ad hoc appointment for reckoning of seniority. If there was ever a reference to a decision of this Court in *Hanumant Singh (supra)*, it was in the context of the relevance of ad hoc service for grant of additional increments which would be applicable in this case if only rules provided for such consideration. The question of whether ad hoc service would be counted for additional increments cannot be stated to be a general proposition available in situations in all establishments. There are two strands of authorities of which is one holding that ad hoc service would be relevant for additional increments (*Ram Singh Vs. The Financial Commissioner and Secretary to Government of Haryana and Others*,); *Surender Singh v. State of Haryana* 1998 (1) S.C.T 53 : (1997) 5 SLR 697, and another holding otherwise (*Badal Singh and Others Vs. State of Haryana and Others*); *Baljeet Kaur Vs. State of Punjab and Others*, ; *Naresh Kumar v. Haryana State Cooperative Supply and Marketing Federation Ltd.*, (2002) 2 LLN 660. The dichotomy is only due to the variance in the respective rules governing the conditions of service. The most crucial issue would, therefore, be to examine the rules that provide for additional increments and the criteria to be applied therefore.

2. The petitioners cite before me the decision in *Shri Dher Sharma and others v. State of Haryana and others* in C.W.P. No. 1219 of 1995, decided on 23.07.2013 where this Court (Justice Mahesh Grover) had relied on *Hanumant Singh (supra)* and *State of Haryana v. Haryana Veterinary and AHTS Association* - 2000 (4) SCT 664 (SC) among other decisions to hold that the petitioners would be entitled to one additional increment. The prayer for grant of higher pay scales had been, however, negatived. In *Surender Singh and others v. The State of Haryana and others* in C.W.P. No. 7897 of 1995, decided on 02.09.2013, the judgment had been delivered by reference to *Hanumant Singh (supra)* and others providing for a similar relief. In *Vinod Kumar Vs. State of Haryana and Others*, , decided on 12.03.2013, this Court (Justice Tejinder Singh Dhindsa) held that the benefit of annual increment would be given also to persons, who had served in a post on 89 days basis, but without break prior to the date of regularization.

3. Against these decisions, the counsel for the State would refer me to the

decision in C.W.P. No. 15555 of 2003 - Sheela Devi and others v. State of Haryana and others and bunch of other cases (Justice G.S. Singhvi, as he then was), where the issue taken up for consideration was, "whether the services rendered by the petitioners pursuant to ad hoc appointment, could be counted as part of the total service for the purpose of grant of additional increments on completion of 8/18 years of service." This Court had considered the decision in Haryana Veterinary (supra) that considered the issue against reckoning of ad hoc service for the purpose of grant of selection grade. The Court applied the said principle also for grant of increments and dismissed it but held that no recovery shall, however, be made to persons, who have gained the benefit. I cannot find support for the petitioners that the Rules provided for grant of even additional increments by reckoning ad hoc service. The service contemplated under the Rules was regular service. Before closing, I might refer to a recent ruling on this subject: In Haryana Power Generation Corporation Limited and Others Vs. Harkesh Chand and Others, , the period of service as an apprentice cannot be added for counting of regular service for claiming ACP scales after 8/18 years of service. In yet another case, the Supreme Court held that regular service does not include ad hoc service for the purpose of ACP scales (Punjab State Electricity Board and Others Vs. Jagjiwan Ram and Others,).The preponderance of authorities cited for similarly situated persons had been that even if the additional grade in the scales of pay could not be given, additional increments provided would be justified. The specific point taken by this Court in Sheela Devi (supra) came to a categorical conclusion that even additional increments were not possible, but it protected the persons, who had secured such benefits.

4. In this case, I cannot find the petitioners' entitlement to any additional increments, but under the impugned orders, recoveries were sought to be made. The recoveries shall not be done after nearly 23 years of the initial increment given. The petitioners must have retired now and it will be grossly inequitable to make recoveries for alleged excess payment now. The writ petitions are allowed to the extent only of quashing any claim for recoveries of amounts alleged to have been paid in excess towards additional increments granted to the petitioners. If they have not been paid, they shall not be entitled to be paid. However, I find no reason to disagree from the fundamental reasoning adopted by the 3rd respondent that the ad hoc service under the specific rules would not count for either increments or higher standard pay scales. Both the writ petitions are ordered as above.