
(2009) 05 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11851 of 2006

Gulzar Singh Pannu and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 20-05-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Punjab Civil Service (General and Common Conditions of Services) Rules, 1994 — Rule 8

Citation : (2009) 2 ILR (P&H) 1001 : (2010) 1 SLR 463

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : R.K. Arora, for the Appellant; K.S. Dadwal, Addl. A.G., for the Respondent

Judgement

Permod Kohli, J.—This order will dispose of CWP Nos. 11851, 11876 of 2006 and 5782 of 2008 as common questions of law and facts are involved in these petitions. For the sake of brevity, facts are being taken from CWP No. 11851 of 2006.

2. The Petitioners were appointed as Agriculture Inspectors re-designated as Agriculture Development Officers in the year 1978-79 on the dates mentioned in Annexure P-2, whereas the private Respondents were appointed on the dates indicated in paragraph 19 of the writ petition. Some of the Petitioners were ordered to be regularized with effect from 1st January, 1985,—vide order dated 5th May, 1986 whereas the private Respondents were regularized on different dates in the years 1981-1985 as indicated in paragraph 19 of the writ petition. Vide the impugned orders (Annexure P-15) the private Respondents have been given the benefit of regularization retrospectively with effect from the date of their initial appointment,—vide orders Annexures P-7, P-9 and P-10. The Petitioners also represented to the Respondents for grant of benefits with effect from the date of their initial engagement. The Respondents did not consider the request of the Petitioners. The Petitioners filed CWP No. 16962 of 2004 in this

Court. Vide order dated 15th December, 2004, the said petition was disposed of by this Court with a direction to take decision on the legal notice of the Petitioner. The Respondents have consequently passed the impugned order dated 16th January, 2006 whereby the benefit of regularization with effect from the date of their initial appointment on ad hoc basis has been declined in terms of Rule 8 of the Punjab Civil Services (General Common Conditions) Service Rules, 1994 (hereinafter referred to as " 1994 Rules,).

3. As far as the private Respondents are concerned, it seems that they also initially made a representation and thereafter filed CWP No. 17357 of 1994. This petition was disposed of with a direction to decide the representation filed by the private Respondents. Consequent upon the aforesaid order, the private Respondents have been given the benefit of regularization from the date of their initial appointment on ad hoc basis,--vide orders (Annexures P-7, P-9 and P-10). Aggrieved of the order (Annexure P-15) denying the same treatment as given to the private Respondents, under similar circumstances, the Petitioners have filed these petitions seeking direction either to grant the similar benefit to the Petitioners on parity with the private Respondents or in the alternative to quash the orders. Annexures P-7, P-9 and P-10) whereby the private Respondents have been given the benefit of regularization from the date of their initial appointment on ad hoc basis.

4. Private Respondents were duly served and despite service, they did not appear and were proceeded ex parte,--vide order dated 8th May, 2007.

5. The State-Respondents have filed the reply. The sum and substance of the reply filed by the State is that in terms of Rule 8 of the 1994 Rules, service rendered on ad hoc basis is not to be counted for seniority It is contended by Mr. Dadwal learned Counsel appearing for the Respondents that the Petitioners are not entitled to the benefit of regularization with effect from the date of their initial appointment on ad hoc basis. In so far as the benefit conferred upon the private Respondents is concerned, it is stated by the State that the benefit of ad hoc service was given to the private Respondents pursuant to the order of this Court passed in CWP No. 17357 of 1994. It is further stated that Respondent No. 2 has sent the case to the Government,-- vide letter dated 13th January, 2006 to re-consider the case of the private Respondents in terms of Rule 8 of the 1994 Rules.

6. The thrust of the argument of Mr. Dadwal is that no benefit can be conferred on the Petitioners, in view of specific provision contained in Rule 8 of the 1994 Rules which reads as under:

8. Seniority of person 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 appointments.

7. From the bare reading of the aforesaid Rule, it becomes apparent that the seniority is to be granted from the date of substantive appointment, on regular

appointment and no seniority can be granted to the candidates who were appointed purely on ad hoc basis.

8. Mr. Arora, learned Counsel for the Petitioner has referred to and relied upon a Division Bench judgment of this Court in the case of Hanumant Singh and Ors. v. State of Haryana and Ors. 2008 (4) RSJ 756), wherein it has been held as under:

22. Therefore, in view of the above discussion, question No. 1, referred to above, stands answered against the Petitioners whereas question Nos. 2 and 3 stand answered in favour of the Petitioners and against the Respondents and it is held as under:

(a) Ad hoc/work charged service followed by regular service shall not be counted for the purposes of grant of higher pay scale/benefit of Assured Career Progression Scheme on completion of 8/18 or 10/20 years of service.

(b) Ad hoc/work charged service followed by regular service shall be counted for the purposes of grant of additional increment in the running scale on completion of 10/20 or 8/18 years of service.

(c) Ad hoc service followed by regular service shall be counted for the purposes of pension and seniority.

9. In another judgment dated 18th December, 2008 passed in CWP No. 2409 of 2008 (Vijay Singh and Ors. v. State of Haryana and Ors.), a Division Bench of this Court made following observations:

6. In the above circumstances, we have no hesitation to conclude that all the Petitioners shall be entitled to treat the ad hoc service rendered by them in the respective posts held by them in which they were subsequently regularized for the purpose of their seniority, which, in turn, shall be the basis of being considered for promotion to the post of lecturers. We uphold the claims of the Petitioners in all the three writ petitions and we direct the Respondents to draw up the seniority list on the basis of the date of entry in their ad hoc posts and a gradation list will be prepared for being considered for promotion on such a basis.

15. From the aforesaid judgments, it emerges that the ad hoc/ work charge service shall not be counted for purpose of grant of higher pay scale/benefit of the Assured progression Scheme for the purpose of completion of the requisite period of service for such benefit. However, the ad hoc service is to be counted for granting the additional increments in the running scale on completion of certain number of years as provided under Rules and the ad hoc service is also to be counted for the purpose of pension and seniority. The dispute in the present case is, however, altogether different. In the present case, the dispute is whether the Petitioners are entitled to the benefit of regularization from the date of their initial appointment as has been granted in case of the private Respondents and whether the said period is to be counted for seniority in the cadre of service. The answer to these questions is contained in the judgment of Hon'ble Supreme Court in the case of State of Punjab and Others Vs. Gurdeep Kumar Uppal and

Others, as under:

1. 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 cases in hand. The result and position that emerges is that the judgment/orders 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 are unsustainable and has to be allowed and the judgments/orders of the High Court under challenge are set aside.

11. Rule 8 referred to here-in-above and relied upon by the Respondents clearly provides for grant of seniority on the basis of regular appointment. The aforesaid Rule specifically excludes the ad hoc or appointment on purely temporary basis to be counted for the purpose of seniority. The Petitioners are claiming parity with private Respondents on the basis of the orders. (Annexures P-7, P-9 and P-10). From the aforesaid orders, it appears that private Respondents have been granted benefit of regularization from their initial appointment on ad hoc basis allegedly on the basis of court judgment. I have perused the judgment of this Court in CWP No. 2409 of 2008 (*Vijay Singh and Ors. v. State of Haryana and Ors.*), (supra), but in case of the Petitioners, the Respondents have taken a totally contrary stand. There is apparent discrimination is according similar treatment to the Petitioners. However, the impugned order (Annexure P-15) is legally justified and valid. Thus, the Petitioners are not entitled to parity alongwith other private Respondents. It appears that the benefit granted to the private Respondents is unwarranted, particularly, in the light of the provisions of Rule 8. It is settled position of law that Article 14 of the Constitution of India is a positive concept and no parity can be drawn on the basis of an unwarranted and illegal action. The Petitioners have sought an alternative relief of quashment of the orders (Annexures P-7, P-9 and P-10) whereby the benefit of regularization was granted to the private Respondents. In view of the above discussion, it is established that the benefit granted to the private Respondents,--vide orders (Annexures P-7, P-9 and P-10) is totally illegal. The orders (Annexures P-7, P-9 and P-10) are hereby quashed and consequently, the Respondents are directed to withdraw all benefits granted to the private Respondents on the basis of the aforesaid orders (Annexures P-7, P-9 and P-10), after complying with the principles of natural justice. Disposed of.

12. A copy of this order be placed on record on each concerned file.