
(2011) 10 P&H CK 0111

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5250 of 1990 (O and M)

Moola Ram, Steno-typist, O/o District Development and
Panchayat Officer, Bhiwani, District Bhiwani

APPELLANT

Vs

State of Haryana and another

RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Punjab Civil Services Rules — Rule 4.4

Citation : (2011) 10 P&H CK 0111

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J. (Oral)

1. The Petitioner, who was in ad hoc service as Stenotypist from 03.08.1974 on a pay scale of Rs. 110-225 were terminated on 20.11.1979 on the appointment of permanent steno typist. At that relevant time, he was in a pay scale of 400-660 and drawing a salary of Rs. 478 + Rs. 25 as a special pay. In a subsequent recruitment that came about, the Petitioner was appointed on 06.03.1980 and the issue was the initial pay that he was entitled to. He was put on a scale of Rs. 400-660 and started at Rs. 400, while the Petitioner claimed that he was entitled to be started on an initial pay of Rs. 478 + Rs. 25 as already obtained by him during his ad hoc service. The counsel would refer to Rule 4.4 of the Punjab Civil Services Rules as governing the situation. Rule 4.4(a) refers to a person, who holds lien on a permanent post and, therefore, irrelevant for us. Rule 4.4 (b) is what is relevant and, therefore, reproduced as follows:

4.4 The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay is regulated as follows:

(a).....

(b) If the conditions prescribed in Clause (a) are not fulfilled, he will draw as initial pay the minimum of the time scale:

Provided both in cases covered by Clause (a) and in cases, other than case of reemployment after resignation or removal or dismissal from the public service, covered by Clause (b), that if he either

(1) has previously held substantively or officiated in

(i) the same post, or

(ii) a permanent or temporary post on the same time scale,....

2. The Government had issued a circular on 11.06.1974 to all its departments making a clarification with reference to pay and grant of increments to ad hoc employees. The matter of relevance obtains through what is stated in paragraphs 2 and 3.

2. On regular absorption of such employee in a Government department, the pay is to be fixed in accordance with the provisions of rules in the Punjab Civil Service Rules, Vol. I, Part I as has already been clarified in the letter under reference. In cases where an ad hoc employee has resigned his post to take up regular appointment in some other department under the Haryana Government and the application was submitted through proper channel, such resignation would not entail forfeiture of past service within the meaning of 4.4 (b) of the Punjab C.S.R. Vol. I, Part I, and benefit of past service will be allowed for the purpose of fixation of pay and increments subject to the rules contained in Chapter IV of the C.S.R. Vol. I, Part I. This benefit will also be admissible to those ad hoc employees who submitted their applications direct for employment, while they were not in Government service.

3. This concession will not be admissible in cases where an employee appointed locally on ad hoc basis is appointed in an other department under the State Government on ad hoc basis and his appointment on ad hoc basis had not been regularised in either of department by the Public Service Commission/ Subordinate Service Selection Board as in such cases the appointment of a person is just as make shift arrangement.

3. The counsel for the Petitioner would contend that the reading of Rule 4.4.(b) would make it clear that when the Petitioner was subsequently appointed and made permanent in the same time scale, he shall be entitled to be paid the same initial pay which he was paid in the ad hoc post. The counsel would also urge that in terms of the clarification, if the ad hoc post had been regularized and he held a regular post than he shall be entitled to be paid the salary drawn in the ad hoc post before he was appointed to the substantive post. The Learned Counsel would also refer me to two decisions of this Court in Jai Pal Singh v. State of Haryana- 1994 (2) SCT 527, that dealt with right of a consideration of the benefit of ad hoc service towards fixation of pay despite break in service where the Court held that he would be entitled to such benefit. Yet another decision was

Dharampal Singh v. The State of Haryana and another in CWP No. 10161 of 1988, decided on 21.03.1989, where the Bench without any elaboration of facts stated cryptically that ad hoc service would be counted for the purpose of grant of increment.

4. I do not feel myself persuaded by the arguments of the counsel for the Petitioner, for, Rule 4.4(b) is simple in its expression of when the benefit of ad hoc service would be available for the increment and what the particular initial pay that an employee appointed to a substantive post will be fitted in. Rule 4.4(b) applies in cases other than cases of reemployment after resignation or removal or dismissal from public service. The break in service that has come about between 21.11.1979 to 06.03.1980 is on account of the fact that as permanent appointee had displaced him and there was no longer any post available. It was only in a fresh recruitment that had taken place on 6.3.1980 that the Petitioner obtained an employment in yet another department of the Government. In such a situation, Rule 4.4 (b) cannot apply at all since it must be taken that the Petitioner had secured a fresh appointment after his earlier order of removal. I cannot also find the decision of this Court in Jai Pal Singh's case referred to above as applicable, for, the learned Judge was providing for the benefit of ad hoc service not on an interpretation of Rule 4.4(b) but on account of the fact that the department had provided for the ad hoc service for the grant of initial pay in a regular post despite break in service to 3 other employees and the Court applied the principle of Article 14 to find the Petitioner in that case also to be entitled. The same way in Dharampal Singh's case referred to above, the bench stated that an ad hoc service would also be counted for the purpose of grant of increments and it is not possible to verify from the brief order whether there had been any break in service or how the ad hoc service had previously stood terminated for the Petitioner in that Civil Writ Petition No. 5250 of 1990 (O&M) -6 -case. The facts brought out through those decisions do not sync with the present set of facts that are brought through this writ petition.

5. The Petitioner cannot have any grievance about the initial pay that was fixed for him at the time when he was appointed and later regularized.

6. The writ petition ought to therefore fail and accordingly dismissed.