

(2002) 11 P&H CK 0117
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3214 of 2002

R.P. Chillar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-11-2002

Acts Referred:

Citation : (2003) 2 ILR (P&H) 87

Hon'ble Judges : Swatanter Kumar, J;S.S. Saron, J

Bench : Division Bench

Advocate : P.S. Patwalia, for the Appellant; Raghbir Chaudhary, D.A.G. and R.K. Malik, for the Respondent

Final Decision : Allowed

Judgement

S.S. Saron, J.—The controversy involved in the present writ petition is whether the service rendered by the Petitioners at D.A.V. College, Hassangarh, District Rohtak, which is an aided institute, can be taken into account for the grant of senior scale/selection grade after 8-16 years of service despite there being a gap of about one to two years of their absorption in other aided institutions after closure of D.A.V. College, Hassangarh.

2. The brief facts of the case are that Petitioner No. 1 passed M.A. in Hindi from Panjab University in the year 1972. He was appointed as Lecturer at D.A.V. College, Hassangarh,--vide order dated 2nd July, 1973 (Annexure P-2) in the scale of Rs. 300-600. He was to be on probation for one year from 25th July, 1973 to 24th July, 1974. Thereafter he was confirmed on 25th July, 1974,--vide order Annexure P-3. Petitioner No. 2 did M.A. in Sanskrit from Panjab University in the year 1973. He was appointed as Lecturer at D.A.V. College, Hassangarh,--vide order dated 12th August, 1974 (Annexure P-4) and was confirmed with effect from 20th August, 1985,--vide order dated 28th August, 1975 (Annexure P-5). Petitioner No. 3 did his M.A. in Political Science in the year 1970. Thereafter he did B. Ed. in the year 1971. He was appointed as Lecturer in Political Science at D.A.V. College, Hassangarh, on 16th July, 1972,--vide order Annexure P-6 and

was confirmed with effect from 16th July, 1973,--vide order dated 20th August, 1973 (Annexure P-7).

3. The Petitioners were working at D.A.V. College, Hassangarh and during the course of their employment due to unavoidable circumstances which were not within the control of the management of the college, the college was closed down with effect from 31st July, 1984. The staff of the college was absorbed in other privately managed colleges in accordance with the government instructions. Petitioner No. 1 was absorbed at Indira Gandhi National College, Ladwa,--vide order dated 16th October, 1986 (Annexure P-8) issued by the Director, Higher Education, Haryana. Similarly, Petitioners No. 2 and 3 were absorbed,--vide orders dated 16th October, 1986 (Annexure P-9) and 15th November, 1985 (Annexure P-10) at Hindu College, Sonapat and Chhotu Ram Kisan College, Jind, respectively. All the Petitioners were issued letters of appointment. Petitioner No. 1 was appointed as Lecturer,--vide order dated 9th December, 1986 (Annexure P-11) which was approved by Kurukshetra University,--vide letter dated 29th January, 1987 (Annexure P-12) with effect from 9th December, 1986.

4. Petitioner No. 2 was appointed as Lecturer in Sanskrit at Hindu College, Sonapat,--vide letter dated 28th October, 1986 (Annexure P-14) and Petitioner No. 3,--vide letter dated 16th November, 1985 (Annexure P-15) was appointed as Lecturer in Political Science at Chhotu Ram Kisan College, Jind.

5. D.A.V. College, Hassangarh, which was receiving grant-in-aid from the Respondent-State of Haryana, was closed down with effect from 31st July, 1984. The absorptions/adjustments of the Petitioners made in the other institutions was on the basis of instructions issued by the State of Haryana. The Petitioners claim that the service rendered by them at D.A.V. College, Hassangarh, is liable to be counted for the grant of senior scale/selection grade after 8-16 years service in accordance with the guidelines of the University Grants Commission (UGC) as circulated by the Government of India in the Ministry of Human Resources Development Department of Education,--vide their letter dated 27th July, 1988. The recommendations of the UGC have been adopted by the State of Haryana which is appended as Annexure P-17 to the writ petition. The Petitioners earlier filed Civil Writ Petition No. 14809 of 2001 which was disposed of by a Division Bench of this Court directing the Respondents-State to treat the said writ petition as representation which shall be disposed of by Respondent No. 2 i.e. Director, Higher Education, Haryana, within three months of the receipt of certified copy of the said order. Respondent No. 2, in compliance with the order dated 21st September, 2001 passed by this Court, passed the impugned order dated 23rd November, 2001 (Annexure P-24) wherein the claim of the Petitioners have been rejected. The Petitioners pray for quashing the said order.

6. Notice was issued to the Respondents who filed their written statement. The Deputy Director Colleges, Office of Higher Education Commissioner, Haryana, Respondent No. 2 on behalf of Respondents No. 1 to 3 stated that in compliance with order dated 21st September, 2001 passed by this Court, the claim for the

benefit of service rendered by the Petitioners in D.A.V. College, Hassangarh, on the basis of UGC guidelines and the judgment of this Court in the case of Hoi Ram v. State of Haryana C.W.P. No. 15970 of 1996 and the order dated 13th February, 2001 passed by the Hon''ble Supreme Court was considered. It is admitted that UGC guidelines have been accepted by the State Government,-- vide notification dated 8th December, 2000. It is, however, contended that UGC guidelines with regard to counting of previous service rendered in different institutions for the grant of senior scale/selection grade as adopted and notified by the State of Haryana provide that the previous service should be without any physical break to be counted for placement of lecturer in senior scale/ selection grade. It is contended that the Petitioners were not in service in any institution for the period as detailed below:

Serial . No. Name Period of break

1. R.P. Chillar 1-8-1984 to 8-12-1996

2. S.B. Ruhil 1-8-1984 to 28-10-1986

3. J.R. Tehlan 1-8-1984 to 5-9-1985

7. In view of this, it is contended that the benefit of past service could not be given under the UGC guidelines.

8. We have heard the learned Counsel for the parties at length and have given our thoughtful consideration to the matter.

9. Mr. P.S. Patwalia, learned Counsel appearing for the Petitioners, on the strength of observations made by this Court in the case of Dr. Romila Jain v. State of Haryana 1995 (3) RSJ 807 contends that the Government instructions do not provide continuous service to be there for the purpose of grant of senior scale/selection grade. Besides, it is contended that a Division Bench of this Court in Hoe Rain''s case (supra), which also related to a lecturer in Economics at D.A.V. College, Hassangarh, who was later appointed as lecturer at Vaish College, Bhiwani, was granted similar relief on the strength of judgment in Dr. Romila Jain''s (supra), Resultantly, the service rendered at D.A.V. College, Hassangarh, was to be reckoned for the purpose of counting the length of service for the grant of senior scale/selection grade.

10. Learned Counsel for the Respondents, however, contended that this Court in Dr. Romila Jain''s case upheld the applicability of UGC guidelines on the issue of counting previous service rendered in different institution and directed the State Government, who had not till then accepted the UGC guidelines, to grant the benefit to the Petitioner in the said case in case she was found eligible in the light of UGC guidelines. It is further contended that it is on the basis of the order passed in Dr. Romila Jain''s case that the case of Hoi Ram was decided by this Court. It was decided as the Respondents were unable to distinguish between the claim of Dr. Romila Jain and Hoi Ram. This had happened in Hoi Ram''s case as no written statement had been filed by the Respondents. In fact, Hoi Ram was

not eligible for the benefit of grant of counting of previous service even under UGC guidelines on the basis of the fact that his service was not continuous but was marred by physical break. This fact could not be pleaded and was not taken into consideration. However, the same was pleaded before the Hon"ble Supreme Court in SLP No. 13610 of 1997. The SLP was also dismissed on 13th January, 2000 on the ground that the point of continuity of service had not been pleaded before this Court and, therefore, could not be raised in the SLP. It is also contended that Hoi Ram was granted benefit of counting of past service in the light of the order passed by this Court although there was no policy of the State Government on the issue of counting of previous service.

11. In order to appreciate the respective contentions of the parties, para 11 of the Appendix-I to the letter dated 22nd July, 1988 of the UGC guidelines circulated,--vide letter dated 22nd July, 1988 is required to be seen which is reproduced as under:

11. Career Advancement

Every Lecturer will be placed in a Senior Scale of Rs. 3,000--5,000 if he/she has:

(a) completed 8 years of service after regular appointment with relaxation, as provided in para 12 above;

(b) Participated in two refresher courses/summer institutes, each of approximately 4 weeks duration or engaged in other appropriate continuing education programmes of comparable quality as may be specified by the U.G.C.

Explanation

All lecturers in the existing scale of Rs. 700-1,600, who have completed 8 years of service on 1st January, 1986 will be placed through a process of screening/selection, as indicated in para 20 below, in the scale of Rs. 3,000--5,000. The benefits of service provided in para 10 will be available for the initial placement also.

12. The above circular/recommendations were effective from 1st January, 1986. The recommendations of the UGC which were circulated by the Government of India,--vide letter dated 22nd July, 1987, were accepted by the Haryana Government. Accordingly, the instructions for revision of pay scales of teachers of Universities and Colleges were issued.

13. A perusal of the above instructions of the UGC prescribe for career advancement and placement of every lecturer in senior scale if he/she has completed 8 years service after a regular appointment with relaxation. Besides, these instructions were adopted by the State Government. In para 6 of the instructions as adopted, relevant Annexure A of the same has been placed on record as Annexure P-17, envisages that every lecturer will be eligible for placement in a senior scale of Rs. 3,000--5,000 if he/she has completed 8 years of service after regular appointment or has reached the basic pay of Rs. 2,800

whichever is earlier. Besides, in para 8 thereof, it is stated that every lecturer in the senior scale will be eligible for placement in a selection grade of Rs. 3,700--5,700, if he has completed 12 years of service in the senior scale or has reached the basic pay of Rs. 4,375 whichever is earlier. It is to be noted as held in Dr. Romila Jain's case, that the language used in para 11 of Appendix-I to the letter dated 22nd July, 1988 uses the expression "completed 8 years of service after regular appointment" and that the word "continuous" has not been used between the word of and the word service. It was held therein that the expression used in para 11 is not so couched as to indicate that the UGC intended continuous service of 8 years after regular appointment as a condition precedent to the grant of senior scale. The letter clearly shows that according to UGC itself, previous service rendered by that employee before appointment as a lecturer in the University/College can be counted for the purpose of grant of senior scale/selection grade under the Career Advancement Scheme for lecturers on fulfilment of various conditions enumerated therein. Even the letter of Haryana Government appended as Annexure P-17 accepting UGC guidelines dated 27th July, 1988 in para 6 of Annexure A of the Haryana Government letter does not use the word "continuous" for the purpose of placement of a lecturer in senior scale. In other words, the word "continuous" has not been used in the expression "completed 8 years of service after regular appointment". Similar is the position with regard to placement in selection grade for every eligible lecturer in the senior scale. There also in para 8 the word "continuous" has not been used in the expression "completed 12 years of service in the senior scale".

14. Therefore, in this view of the matter, it is to be seen whether the Petitioners are entitled to count their respective services rendered by them at DAV College, Hassangarh, for the purpose of grant of senior scale/selection grade after 8-16 years of service. It is not in dispute that DAV College, Hassangarh, was a government aided institute and that it was closed down with effect from 31st July, 1984. Consequent upon the closure, the Petitioners were absorbed/adjusted in other aided institutions. Respondent No. 2 Director, Higher Education, Haryana, issued memo dated 16th October, 1985 (Annexure P-8) directing the Principal, Indira Gandhi National College, Ladwa (Kurukshetra), Respondent No. 4 that appointment letter should be issued by competent officer appointing Petitioner No. 1 as lecturer in Hindi. The letter enjoins that the pay of Petitioner No. 1 would be protected as he was drawing in his earlier institute as per general instructions. Besides, their absorption should be on regular basis. Similar memo dated 16th October, 1986 (Annexure P-9) was addressed to Hindu College, Sonapat Respondent No. 5 in respect of Petitioner No. 2 directing the institute for his absorption on regular basis besides protecting his pay. Same is the position with regard to Petitioner No. 3 wherein Respondent No. 2 addressed memo dated 15th November, 1985 (Annexure P-10) for the absorption of Petitioner No. 3 by Chhotu Ram Kisan College, Jind Respondent No. 6. It was indicated therein that the pay that Petitioner No. 3 was drawing in the earlier institute was to be protected. It is also to be noticed that each of the Petitioners after their initial

appointment on probation by DAV College, Hassangarh,--vide appointment letters dated 2nd July, 1973 (Annexure P-2) 12th August, 1974 (Annexure P-4) and 6th July, 1972 (Annexure P-6) respectively were confirmed,--vide letters Annexures P-3, P-5 and P-7.

15. The Respondents have placed on record the letter dated 27th November, 1990 as Annexure R-II. It has been submitted that the said letter has been adopted by the State Government,--vide notification dated 8th December, 2000. Letter dated 27th November, 1990 Annexure R-II reads as under:

27th November, 1990

Dear Sir,

Kindly refer to para 3 of this office letter of even number, dated 29th January, 1990 containing the decision of the Commission regarding counting experience of a person, before appointment as lecturer in the University/College, rendered in equivalent grade in other universities/ colleges and the national laboratories or R & D organizations (CSIR/ICAR, DRDO, UGC etc.) and UGC Research Scientist, as qualifying service for placement in the senior scale/selection grade.

The commission in consultation with Ministry of Human Resource Development (Department of Education) reconsidered the matter at its meeting held on 11th October, 1990 and resolved revised guidelines as follows for counting of previous service for purposes of senior/selection grade under the career advancement scheme for lecturers:

1. Previous service without any break as a Lecturer or equivalent in a university/ college, national laboratory or other scientific organizations (CSIR, ICAR, DRDO, UGC etc.) and a UGC Research scientist should be counted for placement of Lecturers in Senior Scale/ Selection Grade provided that:

- (a) the post was in an equivalent grade/scale or pay as the post of a lecturer;
- (b) the qualifications for the post were not lower than the qualifications prescribed by UGC for the post of lecturer;
- (c) the Lecturers concerned possessed the minimum qualification prescribed by UGC for appointment as lecturers
- (d) the post was filled in accordance with the prescribed selection procedure as laid down by the university/ State Government;
- (e) the appointment was not ad hoc or in a leave vacancy is less than one year duration.

2. No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local/body/ Government) if the above criteria are satisfied.

You are requested to bring the above decision to the notice of the colleges under

your jurisdiction also.

Kindly acknowledge the receipt of the letter, With regards,

Yours Sincerely,

16. A perusal of the above shows that revised guidelines were issued for counting of previous service for the purpose of grant of senior scale/selection grade under the Career Advancement Scheme for lectures, the previous service without any break as a lecturer or equivalent in university/college is to be counted for placement of lecturer in senior scale/selection grade in terms of the conditions indicated in para 1 of the said letter dated 27th November, 1990 Annexure R-II. The conditions amongst others include that the post in the earlier college should be of an equivalent grade/scale of pay as the post of a lecturer, the qualification for the post were not lower than the qualification prescribed by UGC for post of lecturer, the lecturers concerned possessed the minimum qualification prescribed by UGC for appointment as lecturers, the post was filled in accordance with the prescribed selection procedure as laid down by the university/ State Government, and the appointment was not ad hoc or in a leave vacancy is less than one year duration.

17. The perusal of the above letter dated 27th November, 1990 shows that a reference has been made to para-3 of the U.G.C. letter dated 29th January, 1990 containing the decision of the U.G.C. regarding counting experience of a person before appointment as a Lecturer in the University/College. The U.G.C. letter dated 29th January, 1990 reads as under:

S.K. Khanna

UNIVERSITY GRANTS COMMISSION D.O. No. F. I-6/90(PS Cell) 29th January, 1990

Dear Sir,

As you are aware the revised pay scales of Lecturers,--vide Government of India notification No. F.1-21/87-U.1, dated 17th June, 1987/22nd July, 1988 inter alia provided for a scheme of Career Advancement leading to the senior scale (Rs. 3000--5000 p.m.) and selection grade (Rs. 3,700--4,500 p.m.) for Lecturers of the universities and colleges.

The Commission has finalised the guide-lines for the implementation of senior scale and selection grade for Lecturers and these are enclosed. The Universities are requested to ensure the implementation of the career advancement schemes as stipulated in these guide-lines.

The Commission in its meeting held on 18th December, 1989 agreed that the experience of a person before appointment as a lecturer in the university or college, in equivalent grade in other universities/colleges and the National Laboratories or R & D Organisations (CSIR/ICAR, DRDO, UGC etc.) and UGC Research Scientists be counted as qualifying service for placement in the senior

scale/selection grade.

Kindly acknowledge the receipt of the letter,

With regards,

Yours Sincerely,

18. A perusal of para 3 of the above letter dated 29th January, 1990, reference of which has been made in the subsequent letter dated 27th November, 1990, shows that the Commission i.e., UGC in its meeting held on 18th December, 1989 agreed that the experience of a person before appointment as a lecturer in the university or college, in equivalent grade in other Universities/Colleges and other organisations is to be counted as qualifying service for placement in the senior scale/selection grade. The contention that is sought to be raised by the Respondents is that the UGC,--vide its letter dated 29th January, 1990 had agreed that the experience of a person before appointment as lecturer in the university or college, in equivalent grade in other universities/colleges was to be counted as qualifying service for placement in the senior scale/selection grade. However, this policy was revised by the UGC--,vide its letter dated 27th November, 1990 (Annexure R-II). The revised guidelines provided that previous service without any break as a lecturer or equivalent in a university/ college should be counted for placement of lecturers in Senior Scale/ Selection Grade subject to the conditions provided in the said letter dated 27th November, 1990. Therefore, what is urged is that there is a break in the services of the respective Petitioners and as such the services rendered by them at the D.A.V. College, Hassangarh, cannot be counted for their placement in Senior, Scale/Selection, Grade.

19. We have considered this contention of the Respondents. The position with regard to letter dated 27th November, 1990 has been dealt with in Dr. Romila Jain's case, wherein it has been held that the ambiguity, if any, in the earlier guide-lines stood clarified by the letter dated 27th November, 1990. It was held that the said letter dated 27th November, 1990 clearly shows that according to U.G.C. itself previous service rendered by an employee before appointment as Lecturer in the University/College can be counted for the purpose of grant of senior scale/selection grade under the Career Advancement Scheme for lecturers on fulfilment of various conditions enumerated in the letter. First and foremost requirement is that the previous services must be without break and must be in the cadre of lecturer or equivalent in a university, college, national laboratory or other organisation. Further conditions are that the previous post must be in an equivalent scale/grade of pay as compared to the post of lecturer besides other conditions.

20. Therefore, in this view of the matter the break in service contemplated in the letter dated 27th November, 1990 is that there should not be break in the previous service i.e. the service in the earlier Institution where the lecturer had worked. It does not relate to the period of time taken after leaving the earlier

Institution till the time of joining the subsequent Institution. After leaving the D.A.V. College, Hassangarh, sometime was needed by the Respondent authorities to adjust/absorb the Petitioners. This period of time cannot be taken into account or be termed as break in previous service so as to non-suit the Petitioners for the grant of senior scale/selection grade. The expression "previous service without any break as a lecturer...." in the letter dated 27th November, 1990 relates to the break in the previous service and not break between the previous service at the D.A.V. College, Hassangarh, and the time taken for adjusting/absorbing the Petitioner in the subsequent colleges.

21. Besides, it is not the case of the Respondents that any of the conditions as indicated in the proviso to para 1 of the letter dated 27th November, 1990 has not been complied with. Rather the Director, Higher Education, Haryana, Respondent No. 2 while issuing instructions for the absorption of the Petitioners in other aided institutions--vide letter dated 16th October, 1986 Annexures P-8 and P-9 in respect of Petitioners No. 1 and 2 addressed to Respondent No. 4 and 5 respectively and letter dated 15th November, 1985 (Annexure P-10) in respect of Petitioner No. 3 addressed to Respondent No. 6 specifically provided that the appointment of the respective Petitioners as teacher is to be made on regular basis and their pay is to be protected as they were drawing in the earlier institution. In the previous institution it has not been pointed out as to whether there was any break. Besides, as already noted above, the Petitioners were also confirmed in the earlier institution i.e. D.A.V. College, Hassangarh. With their confirmation also they are deemed to be in the regular employment of D.A.V. College, Hassangarh.

22. The admitted case of the Respondents is that letter dated 27th November, 1990 Annexure R-II has been adopted by the State Government,--vide Notification dated 18th December, 2000. Therefore, in our view the conditions provided by the State Government in accepting the UGC guidelines,--vide notification dated 8th December, 2000 stands complied with. The period of time taken for adjusting/ absorbing the Petitioners which is of about two years in case of Petitioners No. 1 and 2 and about one year in case of Petitioner No. 3, is not to work to their disadvantage.

23. In the above circumstances, we are of the view that break in the service, if any, after closure of D.A.V. College, Hassangarh, i.e. on 31st July, 1984, till the date of respective appointments of the Petitioners on 8th December, 1986, 28th October, 1986 and 5th September, 1985 respectively is of no consequence for the grant of senior scale/selection grade. However, it is the regular service only rendered by Petitioners in D.A.V. College, Hassangarh, that is to be counted for the purpose of grant of senior scale and placement in selection grade after 8 and 16 years of service. The period of time taken in adjusting/absorbing the respective Petitioners in other institution is not to be counted.

24. Consequently, the writ petition is allowed. The order dated 23rd November, 2001 Annexure P-24 endorsed on 1st January, 2002 is quashed and the

Respondents are directed to count the respective previous regular service of the Petitioners rendered by them at D.A.V. College, Hassangarh, for the grant of senior scale and placement of selection grade after 8 and 16 years of service respectively. The arrears, as due to the Petitioners after counting their service, as stated above, would be paid to them. No costs.