
(2010) 08 P&H CK 0034
In the Punjab And Haryana At Chandigarh

Santosh Rani and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Haryana Civil Services (A.C.) Rules, 1988 — Rule 11, 12, 5.3

Citation : (2010) 08 P&H CK 0034

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.—The petitioners were appointed as Staff Nurse on various dates on ad hoc basis and their regular appointment was made in the year 1986/1988. They were granted benefit of Assured Career Progression (hereinafter referred to as "ACP") Scheme on completion of 8/18 years of service. While doing so, the respondents had counted ad hoc service rendered by the petitioners before their regularization. Lateron, a clarification was issued by the respondents that while counting length of service towards grant of increment under ACP Scheme ad hoc service is to be excluded. Vide impugned orders dated 15.3.2002 (Annexure P5), 23.4.2003 (Annexure P6) and 29.7.2008 (Annexure P7), recovery of the amount is sought to be made from the petitioners for having wrongly counted the ad hoc service for award of increments.

2. As per averments made in the petition, the petitioners were granted higher pay after counting their ad hoc service on completion of 8/18 years of service which are benchmark for grant of additional increment to overcome the stagnation in the cadre, for non grant of promotions, under the Assured Career Progression Scheme. It is averred in the writ petition that the official respondents had erred in effecting recovery of amount which was paid to them after higher pay was granted to the petitioners.

3. A Division Bench of this Court in Bharat Singh and Ors. v. State of Haryana and Ors. 2002 (4) SCT 432, has noticed as under:

...3. Facts are not disputed in the present petition. The only controversy requires consideration by the Court is whether the service rendered by the petitioners on stop-gap or ad hoc arrangement could be reckoned as part of their regular service for calculating the total service, which the petitioners have rendered for grant of the benefit of higher standard pay scale. The Government scheme for grant of higher standard pay scale admittedly provided that an employee shall be entitled to such benefit only after 10/20 years of regular satisfactory service. Under Rule 5.3 of Haryana Civil Services (A.C.) Rules, 1988, this concept was clear on the basis of which the Government issued different policy decisions Annexures P/6 to P/8 to the writ petition. The expression "continuance regular service" by its very necessary implication would not include stop-gap or ad hoc service. They are two different concepts and cannot be inter-mingled for grant of benefits to the petitioners.

4. The Division Bench, in the above said case, after noticing the entire case law, held as under:

5. The Hon'ble Supreme Court of India in the case of *The Southern Railways Co-op. Bank Ltd. v. A. Swamy and Anr.* 2001 (2) SCT 125 (SC) : 2000 (4) RSJ 167, while repelling the contention like the one raised by the petitioners now, held as under:

Rule 11 provides for continuation on probation for a period of 2 years and Rule 12 is the Rule for seniority.

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 for getting the benefits of the revised scale of pay 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....

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 year's 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 Classificatory (Clarificatory) Circular, dated 16th May, 1990. The Civil Appeal filed by the State of Haryana stands allowed.

In the case of *State of Punjab and Ors. v. Gurdeep Kumar Uppal and Ors.* 2001 (4) SCT 297 (SC) : 2001 (3) R.S.J. 15, again the Hon'ble Supreme Court re affirmed the above principle and held as under:

The main question that arises for consideration in these appeals is whether the

period of ad hoc services rendered by the respondents is to be included for calculating the period of 8 of 18 years of service for giving higher scale of pay under the proficiency step-up scheme. This question was considered by a three Judge Bench of this Court in State of Haryana Vs. Haryana Veterinary and A.H.T.S. Assn. and Another, , wherein this Court took the view that for calculating 8/18 years service required for giving higher scale of pay and for determination of seniority only regular service rendered by the employee is to be counted and not ad hoc service.

Learned Counsel for the respondent strenuously contended that the respondents who are doctors serving under the State of Punjab are governed by a set of Rules and circulars different from those which were considered in the decided case and, therefore, the ratio in that case will not be applicable in these cases. We have carefully considered the said contention. We have also considered the circular letter No. 4-15-81 IPP/16047 dated 14th December, 1981. On a plain reading of the circular it is clear that the instructions contained therein were based on the decision of the Punjab and Haryana High Court taking the view that ad hoc service should be taken into account for the purpose....

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 applied to the cases in hand. The Resultant 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 vacated. Accordingly, the appeals are allowed and the judgments/orders of the High Court under challenge are set aside.

5. Therefore, it stands concluded that the ad hoc service, rendered by the petitioners, is not liable to be reckoned towards total length of service, for the purpose of receiving the benefits under the Assured Career Progression Scheme.

6. The present writ petition was listed along with Civil Writ Petition No. 2799 titled as "Budh Ram and Ors. v. State of Haryana and Ors.", decided on 16.8.2010, wherein the Full Bench of this Court to determine as to whether the recovery can be effected from an employee who was wrongly paid higher pay scale after counting ad hoc service. The Full Bench of this Court, vide order dated 22.5.2009 held that in case there is no misrepresentation on the part of an employee and the same was granted by the employer under the bonafide mistake, such a recovery cannot be effected.

7. Therefore, the present writ petition is partly accepted and it is held that in view of the ratio of law as laid down in the present case by Full Bench of this Court in Budh Ram's case (supra), the respondent-employers shall not be liable to effect recovery of the amounts, paid to the petitioners, after counting ad hoc service. However, action of the respondents to withdraw the benefit, which was given under the erroneous belief that the ad hoc service be counted, is upheld.