

(2001) 02 SC CK 0162

In the Supreme Court Of India

Case No : Civil Appeal; Special Leave Petition (Civil) No: 6521 of 1998, 6535, 6537, 6533, 6555, 6528 of 1998, 3785 of 1999, 6062 of 2000, 1474 of 2001 1475 of 2001; 1565 of 1988, 5626 of 1999

State of Punjab and Others

APPELLANT

Vs

Gurdeep Kumar Uppal and Others

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Punjab Civil Medical Service Class II (Recruitment and Conditions of Service) Rules, 1943 — Rule 7(5)

Citation : AIR 2001 SC 2691 : (2001) AIRSCW 2607 : (2001) 89 FLR 1042 : (2001) 5 JT 57 : (2001) 2 SCALE 584 : (2003) 11 SCC 732 : (2001) 5 Supreme 525

Hon'ble Judges : Doraiswamy Rajuu Raju, J;D. P. Mohapatra, J

Bench : Division Bench

Advocate : Anup Chaudhary, for the Appellant; A.S. Sohal, for the Respondent

Final Decision : Dismissed

Judgement

1. Leave granted in SLP Nos. 1561 of 1998 and 5626 of 1999.
2. Heard Mr. Anoop Chaudhary, learned senior counsel for the appellants and Mr. A.S. Sohal, learned counsel for respondents.
3. The respondents are doctors serving under the Government of Punjab.
4. 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 or 18 years of service for giving higher scale of pay under the proficiency step up scheme. This question was considered by a three Judges Bench of this Court in the State of Haryana Vs. Haryana Veterinary and A.H.T.S. Asson. 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.

5. Learned counsel for the respondents 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 1PP/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 to be taken into account for the purpose. This circular in our view can no longer form the basis of the contention in view of the recent decision by this Court in State of Haryana Vs. Haryana Veterinary and A.H.T.S. Assn. and Another, . Undisputedly the respondent at the time of their appointment were governed by the Punjab Civil Medical Services Class II (Recruitment and Conditions of Service) Rules, 1943. In Clause (5) of Rule 7 of the said Rules it is provided that the seniority of the members, in each branch shall be determined by the dates of their confirmation in service. Further, in the orders appointing the respondents on ad hoc basis, it was specifically stated that they will be governed by the aforementioned Rules. It was further stated in paragraph III of the appointment letter that the appointees seniority will be determined only by merit in which he or she is placed by Punjab Public Service Commission. Thus it is clear that only regular service is to be counted towards seniority.

6. 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 (supra). We are satisfied that the ratio in that case applies 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.

7. However, we make it clear that if any of the respondents has drawn any amount on the basis of the higher scale of pay under the proficiency step up scheme granted to him by including the period of his ad hoc service then the State Government shall not recover the amount already drawn by the employee though for fixation of the cadre seniority the position as laid down in this order will given. No costs.