
(2004) 10 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Special Appeal No. 58 of 2004

State of Rajasthan and Others

APPELLANT

Vs

Farooq Ahmed and Another

RESPONDENT

Date of Decision : 28-10-2004

Acts Referred:

Rajasthan Subordinate Offices Ministerial Staff Service Rules, 1957 — Rule 25(4), 25(5), 7

Citation : (2005) 1 RLW 565 : (2005) 1 WLC 1

Hon'ble Judges : Anil Dev Singh, C.J.; K.S. Rathore, J.; K.C. Sharma, J

Bench : Full Bench

Advocate : Manish Bhandari, to assist the Court, Mohd. Rafiq, A.A.G and Aslam Khan, Harsh Vardhan Nandwana and Sumeet Bishnoi, for Bharat Vyas, A.A.G, for the Appellant; P.S. Asopa and Ajay Rastogi, S.P. Sharma, Man Singh, Sunil Samdariya, Dinesh Yadav, M.K. Sharma, Saurabh Purohit, P.C. Swami, P.C. Sawmi, Rajveer Sharma, Sweeti Mishra, Anupama Parashar, Ashok Joshi, V.K. Mathur, S.L. Songara, M.C. Jain and Virendra Dangi, Alok Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Anil Dev Singh, C.J.—In these batch of appeals, we are required to deal with the following question:

"Whether the period of ad hoc service rendered by an employee should be calculated for the purpose of granting selection scale on completion of 9, 18, and 27 years of service or whether such service rendered prior to the date of regular appointment should not be counted?"

2. The Supreme Court in *State of Haryana Vs. Haryana Veterinary and A.H.T.S. Asson. and Another*, held that service rendered on ad hoc basis will not be counted for grant of selection scale. A Division Bench, however, in *State of Rajasthan v. Uma Shanaker Agarwal and Ors.* (D.B. Civil Special Appeal No. 1142/2002), had distinguished the judgment of the Supreme Court and took the

view that the period of ad hoc service rendered by an employee should be counted for the purpose of granting him selection scale. This view was taken on the ground that the Haryana Rules, on the basis of which AHTS case was decided by the Supreme Court were different than the rules with which we are concerned. Two of us doubting the correctness of the view of the earlier Division Bench referred the matters to the Full Bench. This is how the matters have come up before us.

3. In order to appreciate the controversy it may be necessary to narrate the facts of one of the writ petitions, as the facts in all the cases broadly follow the same pattern with difference in the dates of the appointment of the petitioners on ad hoc or urgent temporary basis & dates of their regularization. For this purpose, we have selected appeal in writ petition No. 58/2004 as the lead case. The facts of the case reveal that on November 3, 1979 the first respondent Farooq Ahmed was initially appointed against the post of Lower Division Clerk on temporary basis in the office of the Settlement Officer, Kota until RPSC selected candidates became available for a period of one year, whichever was earlier. The first respondent was placed in the pay scale of Rs. 355-570. Besides he was also granted allowances permissible under rules. Pursuant to the order of his appointment he joined the post on November 7, 1979. The period of his appointment was extended from time to time. It is not in dispute that the first respondent had passed the typing test and was placed in regular pay scale w.e.f. November 7, 1980 by the order of the Settlement Officer, Kota dated January 4, 1981. According to the appellants, the first respondent qualified the proficiency test held on July 5, 1981. On September 17, 1982, the services of the first respondent were regularized. On June 30, 1994, the first selection grade was given to the first respondent w.e.f. November 7, 1992 i.e. after completion of 9 years service from the date of his initial appointment. On March 22, 2000, the first respondent was given second selection grade w.e.f. August 20, 1999 on completion of 18 years from the date of passing proficiency test. The first respondent preferred a representation to the appellants against the grant of selection grade with effect from the date of passing of the proficiency test. The grievance of the first respondent was that he ought to have been granted second selection grade on completion of 18 years of service from the date of his initial appointment. It was *inter alia*, pointed out in the representation that the first respondent had been drawing increments regularly from the date of his initial appointment and there was no jurisdiction to calculate 18 years of service from the date of passing of the proficiency test. The representation did not have the desired effect, whereupon the first respondent filed an appeal before the Rajasthan Civil Services Appellate Tribunal. The Tribunal allowed the appeal holding that the benefit of selection grade ought to have been given by computing the service from the date of initial appointment of the respondent. The appellants feeling aggrieved of the order passed by the Tribunal filed writ petition in this court. The writ petition was dismissed by the learned Single Judge by order dated February 14, 2003. Not satisfied with the order passed by the

learned Single Judge, the appellants filed the instant appeal.

4. As already pointed out, the facts of the other appears are also similar. We may notice that all the respondents were appointed on ad hoc/temporary basis between 1979 & 1989. The determination of the question involved in these appeals will largely depend upon various notifications issued by the State Government on the subject and the Rules governing the conditions of service of the respondent employees.

5. We have heard the learned counsel for the parties.

6. In order to determine the question in these writ petitions, it may be necessary to refer to the various Government orders, on the basis of which Selection Scale of pay to law-paid employees is/was being given. The Deputy Secretary, Finance (Gr.2), Government of Rajasthan, Jaipur issued the Order No. F.17(5) FD (Gr.2)/84 dated January 23, 1985, with a view to provide relief to those categories of persons working against the posts where promotional avenues were limited or non-existent. The order to the extent has bearing on the question in issue reads as under:-

"The State Government issued Revised Pay Scales Rules, 1983, making it effective from 1st September, 1981. The Government while prescribing these Pay Scales enlarged the existing Scale by 3-5 stages in addition to merger of Dearness Allowance and fixation benefits. The main purpose of enlarging the maximum of Pay Scale was to provide some relief to those categories where promotional avenues were limited or non-existent. The Pay Scale of lowest category of employees in Pay Scale No. 1 & 2 and also that of Subordinate Police Service were substantially enlarged, for these reasons also. It has been represented to the Government that this has not afforded relief to some of the categories particularly to those Government servants who were holding isolated posts. It is has also been represented that Government servants have not been able to get promotion in the next higher grade even after lapse of 15-20 years after regular service. This has been engaging the attention of the Government for some time past, the matter has been looked into and with a view to provide some relief to the employees of the aforesaid categories drawing pay in the Revised Pay Scales maximum of which does not exceed Rs. 1550/- the Governor has been pleased to order that the Government servants in the Ministerial and Subordinate Services including isolated posts drawing pay in Rajasthan Civil Services (Revised Pay Scales) Rules, 1983 may be provided with Selection Scales as indicated above:-

-----						Ordinary	Scale
No.	Selection	Scale	No.	Remarks	Scale	Scale	Scale
-----						370-530	3
380-610	4	380-610	4	400-700	5	400-700	5
420-740	6	420-740	6	450-840	7	450-840	7
460-840	7	520-925	9	500-860	8	520-925	9
570-985	9	610-1090	10	610-1090	10	610-1090	10
640-1180	12	625-1120	11	660-1180	12	640-1180	12
660-1340	13						

660-1240 13 660-1300 14 660-1300 14 740-1420 15 740-1420 15 820-1550
17 780-1550 16 820-1550 17 820-1550 17 860-1750 18

2. The appointment to the selection scale shall be subject to the fulfillment of the following conditions.

(i) Selection scale will be confined only to the Ministerial & Subordinate Services, except the following:

(a) Employees drawing pay in pay scale No. 1 "& 2 of the Revised Pay Scale Rules, 1968

(b) Member of Rajasthan Police Subordinate Service including Wireless & CID.

(c) Constable, Head-Constable, Platoon Commander of Home Guards.

(d) Members of Rajasthan Jail Subordinate Service.

(e) Members of Raj. Excise Subordinate Service.

3. The Selection Scale will not be admissible to those who do not possess the requisite basic qualification for promotion to the higher post in regular line in accordance with relevant recruitment rules of the Service.

4. The number of posts of Selection Scale will be 10% of such category of post as on 1.4.84 including temporary posts under a particular appointing authority. In offices/departments where number of posts are less than ten or in fraction thereof, number of posts upto five shall be ignored and for six onwards shall be allowed one Selection Scale post.

Note: In respect of categories of posts where seniority is maintained by an authority senior to the appointing authority, the appointing authority for the purpose of this order shall be that senior authority.

5. The admissibility of selection scale will be on completion of 15 years of service after regular appointment on that post.

6. The selection scale would be confined only to persons regularly appointed to the lowest grade of a particular service or on an isolated post having no promotional avenue.

7. The grant of selection scale will be admissible strictly on seniority subject to rejection of unfit persons.

8. Selection scale will not be allowed to Government servants whose record of service is not satisfactory or to those who have been superseded or overlooked on the basis of adverse record in the past.

9. Grant of Selection Scale will not affect the seniority of the persons in the cadre....."

The aforesaid order was subsequently modified by order No. F.17(5) FD (Gr.2)/84 (RPS 20/85), dated March 29, 1985, whereby Selection Scale was made available to Government servants, drawing pay in the pay scales Nos. 1 & 2 of the Rajasthan Civil Services (Revised Pay Scales) Rules, 1983; belonging to subordinate services and Class IV Service and initially appointed to the ordinary scale as a lowest entry grade post of the service as indicated below:-

							"Ordinary		Scale
No.	Selection		Scale	No.	Remarks		350-440		Scale
							350-440		(1)
360-460	(2)	360-460	(2)	370-530	(3)	...	...	...	...

On January 25, 1992, the Government of Rajasthan issued Order No. F.20(1)FD(Gr.2)/92, dated January 25, 1992, for and on behalf of the Governor of Rajasthan, whereby it prescribed Selection Grades for employees in Class IV, Ministerial & Subordinate Services and those holding isolated posts. This order was issued since the Government order dated January 23, 1985 did not provide any relief to the employees who were recruited directly to a post which was not lowest in the cadre and also the order dated January 23, 1985 did not deal with problem of stagnation in many cadres due to absence or limited opportunity of promotion. The order, to the extent is relevant, reads as follows:

"With a view to provide relief to the employees in Class-IV, Ministerial and Subordinate Services and those holding isolated posts, Selection grades were prescribed for the lowest posts in these services and isolated posts vide this Department Order No. F.17(5)FD(Gr.2), dated 23.1.1985. This order was amended from time to time to ensure availability of the intended relief, prescription of Selection Grades as above resolved the problem of stagnation at the maximum of the lowest scale in the cadre and allowed increase in pay scale of the employees who were covered by the order. The aforesaid order, however, does not provide any relief to the employees who are recruited directly to a post which is not the lowest in the cadre and also does not deal with the problem of stagnation in many cadres due to absence or limited opportunity of promotion. This has been engaging the attention of the Government for some time past. The matter has been considered and in supersession of all orders issued in this regard in the past, the Governor has been pleased to order that the Government servants of the categories mentioned hereunder and who are drawing pay in the pay scales prescribed under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 may be granted Selection Grades as indicated below:

1. This order shall be applicable to all Government servants in Class IV, Ministerial and Subordinate Services and those holding isolated posts and drawing pay in Revised Pay Scales, 1989, the maximum of which does not exceed Rs. 3220/-. This order shall not apply to Government servants in the State Services as defined in the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 and to those who have got Selection Grade of Rs.

2200-4000 in terms of this order.

2(i) The First Selection Grade shall be granted for the day following the day on which one completes service of nine years, provided that the employee has not got one promotion earlier as is available in his existing cadre.

(ii) The second Selection Grade shall be granted from the day following the day on which one completes service of eighteen years, provided that the employee has not got two promotions earlier as might be available in his existing cadre and the first Selection Grade granted to him was lower than the pay scale of Rs. 2200-4000.

(iii) The third Selection Grade shall be granted from the day following the day on which one completes service of twenty seven years, provided that the employee has not got there promotions earlier as might be available in his existing cadre and the first or the second Selection Grade granted to him, as the case may be, was lower than the pay scale of Rs. 2200-4000.

3. The service of nine, eighteen or twenty seven years, as the case may be, shall be counted from the date of first appointment in the existing cadre service in accordance with the provisions contained in the Recruitment Rules;

Provided that if an employee subsequent to his first appointment to a post in a cadre/service, as a result of direct recruitment, is appointed to some other post in the same cadre or any other cadre, service from the date of latter appointment shall be taken into consideration for the purpose of grant of Selection Grade.

7. Selection Grade in terms of this order shall be granted only to those employees whose record of service is satisfactory. The record of service which makes one eligible for promotion on the basis of seniority shall be considered to be satisfactory for the purpose of grant of the Selection Grade.

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9. Grant of Selection Grade shall not affect the seniority in the cadre nor the sanctioned strength of each category of posts in the cadre."

Subsequently, the Finance Department, after a period of about one year, issued a clarificatory Order No. F.20(1)FD(Gr.2)/92 dated April 03, 1993. The order is a long one and needs to be quoted to the extent the same is relevant for the purposes of disposal of the instant appeals. The order inter alia states as follows:-

"Attention is invited to Finance Department"s order of even number dated 25.1.1992 as amended vide order dated 14.2.1992 on the subject mentioned above. Many Heads of Departments have solicited clarification on a number of points regarding grant of Selection Grades. Accordingly, the points in respect of which references were received are clarified as under:

POINT OF DOUBT CLARIFICATION 1. ... 2. Years of service to be Years of

service to be counted for grant counted for the purpose of the Grade from the date employee of grant of Selection has regularly been recruited in the Grade existing/Cadre/Service as per provisions contained in the relevant recruitment rules. For example the following period of service is not countable for grant of Selection Grade: (i) the period of service rendered in the order cadre/service before appointment in the existing cadre/service. (ii) the period of service rendered in the existing cadre/service before regular appointment i.e. appointment in accordance with relevant recruitment rules to the post. Sd/- Deputy Secretary to the Government."

7. On February 17, 1998, the Government of Rajasthan in supersession of all past orders on the subject issued a fresh order, prescribing Selection Grade to employees in Class IV, Ministerial and Subordinate Services and those holding isolated posts. The order to the extent is relevant, is reproduced below:

"With a view to providing relief to the employees in Class IV, Ministerial and Subordinate Services and those holding isolated posts, three selection grades on completion of service of nine, eighteen and twenty seven years were prescribed vide this Department Order No. F.20(1) FD(Gr.2)/92 dated 25.1.1992. This order was amended from time to time. Consequent upon revision of pay scale of the State Government employees from 1.9.1996 under Rajasthan Civil Services (Revised Pay Scales) Rules, 1998, the matter has been considered and in supersession of all orders issued in this regard in the past, the Governor has been pleased to order that the Government servants of the categories mentioned hereunder and who are drawing pay in the pay scales prescribed under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1998 may be granted Selection Grades as indicated below:

1. This order shall be applicable to all Government servants in Class-IV, Ministerial and Subordinate Services and those holding isolated posts and drawing pay in Revised Pay Scales, 1998, the maximum of which does not exceed Rs. 10,500/-. This order shall not apply to Government servants in the State Services as defined in the Rajasthan Civil Services (Classification, Control and Appeal Rules, 1958 and to those who have got selection grade equivalent to the pay scales of the lowest post of State Service to which they are eligible for promotion or selection grade of 8000-13500 whichever is lower in terms of this order.

2(i) The first Selection Grade shall be granted from the day following the day on which one completes service of nine years, provided that the employee has not got one promotion earlier as is available in his existing cadre.

(ii) The second Selection Grade shall be granted from the day following the day on which one completes service of eighteen years, provided that the employee has not got two promotions earlier as might be available in his existing cadre and the first Selection Grade granted to him was lower than the pay scale of the lowest post of State Service to which he is eligible for promotion or selection

grade on 8000-13500 whichever is lower.

(iii) The third Selection Grade shall be granted from the day following the day on which one completes services of twenty seven years, provided that the employee has not got three promotions earlier as might be available in his existing cadre and the first or the second selection grade granted to him, as the case may be, was lower than the pay scale of the lowest post of State Service to which he is eligible for promotion or selection grade of 8000-13500 whichever is lower.

3. The service of nine, eighteen or twenty seven years, as the case may be, shall be counted from the date of first regular appointment in the existing cadre/service in accordance with the provisions contained in the Recruitment Rules. The period during which a Government servant remained/remains on extraordinary leave with or without medical certificate shall also be counted for reckoning the period of service for grant of selection grade:

Provided that if an employee subsequent to his first appointment to a post in a cadre/service, as a result of direct recruitment, is appointed to some other post in the same cadre or any other cadre, service from the date of latter appointment shall be taken into consideration for the purpose of grant of Selection Grade;

Provided further that if an employee subsequent to his first appointment to a post in a cadre/service, in accordance with provisions contained in the relevant Service Rules, is promoted to a post in some other cadre, then in such a case service from the date of promotion shall be taken into consideration for the purpose of grant of selection Grade.

... .. 8. Grant of Selection Grade shall not affect the seniority in the cadre nor the sanctioned strength of each category of posts in the cadre."

8. Most of the aforesaid notifications have been considered by a Division Bench of this Court, in the State of Rajasthan and Ors. v. Uma Shanker Agarwal and Ors. (supra), State of Rajasthan and Ors. v. Govind Hari Chaturvedi (D.B. Civil Special Appeal (W) No. 1143/2002), State of Rajasthan and Ors. v. Giriraj Vaishya and Anr. (D.B. Civil Special Appeal (W) No. 782/2002), State of Rajasthan and Ors. v. Narendra Kumar Tyagi (D.B. Civil Special Appeal (W) No. 1084/2002), State of Rajasthan and Ors. v. Kapoor Chand Gaur (D.B. Civil Special Appeal (W) No. 1085/2002); and State of Rajasthan and Ors. v. Najir Miyan and Anr. (D.B. Civil Special Appeal (W) No. 1086/2002). In the common judgment rendered by the Division Bench in the said cases on January 03, 2003, it was held that Selection Scale is to be granted by counting the period of service from the date of first appointment on the ad hoc/temporary service. In this regard, the Division Bench held as follows:

"We called upon learned Additional Advocate General to show as to how the ad hoc appointment as was given to the respondents/employees, was not an appointment in accordance with the relevant recruitment rules to the post. The

only answer which was given by him was that their appointment was only ad hoc appointment and therefore, it cannot be treated as a regular appointment. It is certainly an appointment in accordance with the relevant recruitment rules and we do find that the relevant rules do provide for ad hoc appointment and such rules are required to be followed. Once the relevant rules, provide for ad hoc appointment and such appointment has been given to the concerned employees in accordance with the rules, if it is not a regular appointment, period of service rendered on the basis of such appointment in accordance with the recruitment rules has to be counted for the purpose of grant of selection scale and, therefore, the question of denying the period of service rendered on the basis of initial ad hoc appointment after completion of 9 years, 18 years and 27 years of service simply does not arise."

While rendering the judgment, the Division Bench distinguished the decision of the Supreme Court in the case of *State of Haryana v. Haryana Veterinary & AHTS Association and Anr.* (supra), (for short, "Haryana Case"), wherein the Supreme Court examining the scope of expression "regular service" occurring in the Haryana Government Circular No. 6/38/3PR(FD)-87, dated June 02, 1989 as modified by Circular dated May 16, 1990, held that service rendered on the basis of ad hoc appointment made de hors the recruitment rules, although without interruption following by regular appointment on selection by the Public Service Commission, cannot be considered as regular service. The Division Bench rendering the judgment in *Uma Shanker Agarwal's* case (supra), pointed out that the State was not able to show that the appointments of the petitioners on ad hoc basis were outside the rules. It found as a matter of fact that the appointments of the respondents were in conformity with the rules and, therefore, the Division Bench was of the view that the judgment rendered by the Supreme Court in the Haryana Case (supra), was not applicable. Similarly, the Division Bench distinguished the case of *State of Punjab and Others Vs. Gurdeep Kumar Uppal and Others*, which was based on the decision rendered in the Haryana Cases (supra). The Division Bench analyzing the decision of the Supreme Court rendered in Haryana Case (supra), was of the opinion that the services rendered on ad hoc basis were not to be counted, if the ad hoc appointment was de hors the recruitment rules. The Division Bench in *Uma Shanker Agarwal's* case (supra) held that in case the ad hoc appointment cannot be excluded for calculating the period of 9 years, 18 years and 27 years for earning the Selection Grade.

9. On deep consideration and scrutiny of the circulars/notifications of the State of Rajasthan and the circulars relied upon by the Supreme Court in the Haryana Case (supra), we find that there is qualitative difference between the circulars of the State of Haryana considered by the Supreme Court and the circulars of the State of Rajasthan, which have been referred to above. There is also clear distinction between the fact-situations of the two cases, namely, the Haryana Case (supra), and *Uma Shanker's* case (supra). While in the Haryana Case (supra), ad hoc appointments were made de hors the rules, in *Uma Shanker's*

case (supra), this was not the position, as the ad hoc appointments were made in accordance with the rules. Coming to the cases in hand, the initial appointments of all the respondent-employees before us, were made in accordance with the rules. It is not the case of the State that the ad hoc/temporary appointments of the respondent-employees were outside the rules. This is a clear distinguishing feature between the instant case and the Haryana case (supra). It also needs to be pointed out that in the order dated January 23, 1985, issued by the Deputy Secretary, Finance (Gr.2) Department, a provision was made for grant of Selection Scale to certain categories of employees in whose cases promotional avenues were limited or non-existent. This order, however, was restrictive in nature. It clearly stipulated the admissibility of Selection Scale on completion of 15 years of service after regular appointment on that post. The benefit was also not admissible to employees, who did not possess the requisite basic qualification for promotion to the higher post in the regular line in accordance with the relevant recruitment rules of the service. Significantly, the words "regular appointment" were deliberately omitted in the Government order dated January 25, 1992, whereby Selection Scales for employees in Class-IV, Ministerial and Subordinate Services and those holding isolated posts were prescribed. This order was of a wider amplitude and it contemplated reliefs to the employees, who were recruited directly to a post, which was not the lowest in the cadre.

10. The first Selection Grade as per Clause 2(i) of the order was required to be granted from the date on which an employee completed service of 9 years, provided he/she did not get even one promotion earlier, which was available in his/her existing cadre. The second Selection Grade was required to be given according to Clause 2(ii) of the order on completion of service of 18 years, subject to the conditions mentioned therein. Similarly, according to Clause 2(iii), the third Selection Grade was to be granted on completion of 27 years of service, subject to the conditions specified therein. According to Clause 3 of the order, the service of 9, 18, and 27 years, was required to be counted from the date of first appointment in the existing cadre/service in accordance with the provisions contained in the recruitment rules. Unlike the 1985 Order and the Haryana Circulars, Clause 3 does not prescribe that service of 9, 18 & 27 years shall be counted from the first regular appointment in the cadre/service. None of the clause of the order use the word "regular appointment". The Selection Grade according to Clause 7 thereof, is required to be granted to the employees, whose record of service is satisfactory. It also postulates that by grant of selection grade seniority of the employees shall not be affected.

11. Some confusion was added by the clarificatory Order No. F.20(1) FD (Gr.2)/92 dated April 03, 1993, issued by the Finance (Gr.2) Department, Government of Rajasthan, wherein it was pointed out that several heads of departments had solicited clarification on a number of points regarding grant of Selection Grades. The points of doubt are listed in the order. Point No. 2 of the clarificatory order issued by the Finance Department may be reproduced against

for immediate reference:

"2) Years of service to be Years of service to be counted for grant counted for the purpose of the Grade from the date Employee of grant of Selection has regularly Been recruited in the Grade Existing cadre/service As per provisions Contained in the relevant recruitment Rules. For example the Following period of Service is not countable For grant of selection Grade: (i) the period of service rendered in the other cadre/service before appointment in the existing cadre/service. (ii) the period of service rendered in the existing cadre/service before regular appointment, i.e. appointment in accordance with relevant recruitment rules to the post."

As is clear from the above clarification, the years of service is required to be counted for grant of Selection Grade from the date the employee was regularly recruited in the existing cadre/service as per provisions in the relevant recruitment rules. Then, in order to clarify the meaning of the concept of "regular appointment" illustrations are given by the Finance Department. Illustration 2 (ii) needs to be analyzed for the purposes of judging its impact qua the case in hand. According to the illustration the period of service is not to be counted for grant of Selection Grade, in case the period of service rendered in the existing cadre/service was before the regular appointment. But the concept of regular appointment is clarified to mean an appointment in accordance with the relevant recruitment rules to the post. In other words, if the appointment was in accordance with the rules, it was to be counted for the purpose of grant of Selection Grade. Thus, "Regular appointment" according to the order dated April 03, 1993 only meant that it should be in accordance with the recruitment rules. That is to say, the appointment whether temporary/ad hoc or of any nature, in order to be considered for grant of Selection Grade must be in accordance with the rules. In the instant case, as already pointed out, the initial appointments on ad hoc basis/temporary of the respondents, were made in accordance with the rules. The State has not set up the Case that the appointments were not in accordance with the rules. The appointments of the respondents on ad hoc basis not being de hors the rules, were to be considered for grant of Selection Grade. Subsequently, the order dated January 25, 1992 was superseded by Order No. F.16 (2) FD (Rules) 98, dated February 17, 1998. According to this order the service of 9, 18 or 27 years is to be counted from the first regular appointment in the existing cadre/service in accordance with the provisions contained in the recruitment rules.

12. The order February 17, 1998 does not define the word "regular appointment." The words "regular appointment" has been used in Rule 25(4) of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (for short, the Rules of 1957"). The rule for immediate reference may be quoted:

"(4) Notwithstanding anything contained in Rule 7, the persons appointed on ad hoc basis against posts to be filled by direct recruitment as Upper Division Clerks during the period from 1.1.1962 to 7.11.1975 and continuously holding such

posts or higher posts shall be deemed to have been appointed regularly on temporary basis, provided they fulfil other conditions prescribed in these rules. Such persons shall be eligible to be appointed substantively as Upper Division Clerks according to the date of their temporary appointment and on occurrence of permanent vacancies subject to their work being found satisfactory.

Provided that a person working as Upper Division Clerk, whose work is found satisfactory, shall be liable to be removed from service by . following the procedure as laid down in the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958"

Thus, according to sub-rule (4) of Rule 25 of the Rules of 1975, ad hoc appointments of persons against posts of UDCs to be filled by direct recruitment during the period from January 01, 1962 to November 07, 1971 and holding higher posts continuously are deemed to have been appointed regularly on temporary basis. We have referred to this rule to show that regular appointment does not always mean appointment on permanent basis against a clear vacancy. Appointments on ad hoc or temporary basis have been considered as regular appointments, provided they are made in accordance with the rules and not de hors the same. Even the clarificatory order of the Government dated April 03, 1993 is a pointer in this direction. It clarifies to the effect that services rendered in the cadre before regular appointment, i.e. before the appointment is made in accordance with relevant recruitment rules to the post shall not be counted for grant of Selection Grade. In other words, the period of services rendered in a cadre/service in accordance with the recruitment rules to the post shall be counted for grant of Selection Grade. Appointment made in accordance with the rules, whether permanent, ad hoc or temporary for the purposes of the Government orders dated January 25, 1992, April 03, 1993 and February 17, 1998 is to be considered as regular appointment. In *Devi Singh v. State of Rajasthan and Ors.* (2004 WLC (Raj.)UC 327) , it was held that the purpose of the scheme in the three Government orders was to prevent stagnation of the persons serving in Class-IV, Ministerial and Subordinate Services. It was further held that grant of Selection Grade was not dependent on availability of any limited number or posts within the cadre. It was pointed out that grant of Selection Grade follows the completion of service in the cadre for a number of years without getting any promotion. The Division Bench was of the opinion that if there conditions are fulfilled, higher pay- scales on the same posts at the same place can be granted. According to the judgment of the Division Bench, such promotion is not referable to periodical exercise for selecting candidates to available Selection Scale post in the cadre. The Division Bench was also of the view that grant of Selection Scale did not involve any element of selection or determination of comparative merit and as per Clause (3) of the Government order dated January 25, 1992, Selection Grade is to be given to all the employees in Class-IV, Ministerial & Subordinate Services on completion of 9, 18 & 27 years of service, as the case may be, irrespective of the nature of services rendered by them and while doing so, their total length of service is to be

counted in their existing cadre of service for the purposes of grant of Selection Grade. While relying on an earlier judgment of this Court rendered in Smt. Pushplata Thada and Others Vs. State and Others, the Division Bench observed as follows:-

"In this connection, our attention was invited to the case of Smt. Pushplata Thada and Others Vs. State and Others, passed by the Division Bench of this Hon"ble Court referring to the scheme. The Division Bench said that that the Government of Rajasthan issued an order dated 25.1.1992 providing benefit of grant of selection grade for employees in Class-IV, Ministerial & subordinate Services on completion of 9, 18 & 27 years of service in case of government employees who are not granted one, two and three promotions during the aforesaid period respectively. According to the petitioner, a perusal of the order dated 25.1.1992 it is crystal clear that as per Clause 3 of the said order, all employees, irrespective of their nature of service who have rendered 9, 18 & 27 years of service, as the case may be, their total length of service shall be counted in their existing cadre/service for the purpose of grant of selection grade and there is no exception either way in the circular dated 25.1.1992 making out distinction between government employees among whom it is applicable. So far as the matter before Division Bench in Thada's case there was no exception either way making out distinction for grant of selection grade to trained or exception either way making out distinction for grant of selection grade to trained or untrained teachers. On the contrary, the circular contemplates one and only one situation which is to be considered that whosoever completed 9, 18 & 27 years of service, he or she became entitled to grant of selection grade as a matter of course."

13. It is significant to note that the respondents were appointed to a particular posts, which carried a time scale & pay. They were granted increments from time to time. This being so, there is no reason why their services on ad hoc/temporary basis, which were in conformity with the rules should not be counted for the purpose of grant of Selection Grade, after they were confirmed in the service. The Supreme Court in State of Rajasthan and Anr. v. Chandra Shekhar and Anr. (Decided on September 27, 2001, along with Civil Appeals Nos. 3443/1998, 3443/1998 & 3090/1998), on taking note of the finding of the High Court recorded in the impugned order and having regard to the fact that the respondents were appointed to a post which carried "time scale & pay" and they were given increments, rejected the special leave petition.

14. In State of Rajasthan v. Sohan Lal and Anr. (D.B. Civil Special Appeal (W) No. 152/2002, decided on May 14, 2002), the incumbent had joined service on May 22, 1976 and after passing the proficiency test, his services were confirmed on May 24, 1981. The Rajasthan Civil Services Appellate Tribunal came to the conclusion that benefit of services rendered prior to the regularization for the purposes of grant of Selection Scale can be given to the employee three times on completion of 9, 18 & 27 years of service and under the notification dated

January 25, 1992, entire service period is to be counted including services rendered on ad hoc/temporary basis. The State challenged the judgment of the Tribunal by way of writ petition being SB Civil Writ Petition No. 214/2002. The writ petition was dismissed by a learned Single Judge of this Court on January 14, 2002. While dismissing the writ petition, the learned Single Judge agreed with the view of the Tribunal that the whole of the period of service is to be counted including the services rendered on ad hoc/temporary basis for the purposes of grant of selection scale. Thereafter, the State filed DB Special Appeal (W) No. 152/2002 against the order of the learned Single Judge dated January 14, 2002, The Division Bench on May 14, 2002, while rejecting the appeal observed & held as follows:-

"The order of appointment dated 17.5.1976, which has been produced during the course of hearing shows that the respondent was appointed in time scale of pay 110-230 from the date he joined the service.

In view of aforesaid, the case of respondent is fully governed by the following observations made by the Hon''ble Supreme Court in State of Rajasthan and Another v. Chandra Shekhar and Anr. (decided on Sept. 27, 2001 (supra), along with CA Nos. 3443/1998, 3442/1998 and 3090/1998)

"The High Court has examined this aspect of the matter and has found that they had been appointed to a particular post which carries a time scale and pay. If that is so, if the benefits arising therein granting the increments had been given, we do not think there is any infirmity in the order made by the High Court."

In the circumstances, there is no merit in this appeal by the State for setting aside the order of the Tribunal and against the order of learned Single Judge.

The appeal, therefore, fails and is hereby dismissed in limine."

It is significant that the State filed a special leave petition, being SLP (Civil) No. 17342/2002, against the judgment of the Division Bench dated May 14, 2002, but the same was dismissed by the Supreme Court by its order dated September 13, 2002.

15. Again, a similar question arose in D.B. Civil Special Appeal (Writ) Nos. 145/2002, 146/2002, 149/2002, 150/2002, 143/200, 140/2002, 147/2002 and 151/2002, the State of Rajasthan v. Ramesh Chandra Audichya and Ors. etc., while disposing of the special appeal on August 27, 2003, a Division Bench of this Court held as follows:-

"On finding that the initial appointment was by way of regular process of selection, having called their names from Employment Exchange and from Social Welfare Department of State and after holding the type test and interview, the appointments have been made against the available vacant posts. The regular appointments were not offered only because of awaiting for making absorption of some surplus employees against such posts."

16. The Division Bench was of the view that when the initial appointment . whether on ad hoc or temporary basis is made by way of regular process, the benefit of Selection Grade on completion of 9 years of service is to be given from the date when the employee puts in the minimum of pay scale.

17. In D.B. Civil Special Appeal (W) No. 926/2003, State of Rajasthan and Ors. v. Jaswant Singh Meharda and Anr., decided on 29th October, 2003, the Division Bench dismissed the appeal of the State on coming to the conclusion that the ad hoc services rendered are to be counted for considering the question of grant of Selection Grade to the employees on completion of 9, 18 and 27 years of service rendered by them. The Government accepted the decisions in these appeals and did not file special leave petitions.

18. Thus, in several cases, the Division Bench has taken the view that the services rendered on ad hoc basis are to be counted for the purpose of giving benefit of Selection Grade to the employees, who have rendered 9, 18 and 27 years of service in Class IV, Ministerial and Subordinate Service. The view was even tested before the Supreme Court and the Special leave petitions were dismissed.

19. It is not the case of the appellants that the respondents were not qualified for the post for which they were appointed. It is also not in dispute that through the respondents were working on ad hoc basis, their pay was fixed in the regular pay scale and the benefit of increments was available to them. Referring to the cases of those respondents who were appointed on the posts of lower division clerks & Stenographers Grade III on temporary/ad hoc basis, it needs to be pointed out that at the time of recruitment, typing test was conducted and it was only after the passing of the typing test that they were taken into service. Subsequently, they even qualified the proficiency-test in accordance with Rule 25(5) of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957, as amended by notification dated May 13, 1981. The rule to the extent relevant needs to be noticed. It reads as follows:

"Rule 25 (5) of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957.

(5) Notwithstanding anything contained in Rule 7, all appointed as Lower Division Clerks during the period from 1.4.1978 to 31.3.1980 on ad hoc and who could not appear in or pass the competitive/qualifying examination held by the Commission as yet, shall on availability of permanent vacancies, be made permanent subject to the condition that they pass a Performance Text conducted by the Head of Department concerned in accordance with the syllabus prescribed in part IV of Schedule-I. Such persons shall be allowed three chances to pass the said test:

Provided that if a person cannot pass the said test in three chances, he shall be liable to be removed from the service:-

(i) by giving him one month's notice if he has served temporary in connection

with the affairs of the State for less than three years; and

(ii) by following procedure as laid down in the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, if he has served for more than three years." (Added vide notification No. F-15(1) DOP (A-II)/80 dated 13.5.1981."

20. Thus, persons who were appointed as LDCs during the period from April 01, 1978 to March 31, 1980 on ad hoc basis and who could not pass the competitive/qualifying examination held by the Commission, could appear in a performance test conducted by the Head of the Department. Such persons were to be allowed three chances to pass the test and on passing the test, they were required to be made permanent, subject to availability of vacancies. Similar provisions were made by the State Government vide notifications dated August 18, 1989 and on October 12, 1992 in respect of the persons, who were appointed during the period from April 01, 1980 to December 31, 1984; and from January 01, 1985 to March 31, 1990, respectively. The Government had also taken a decision on December 20, 1997 that the LDCs who were appointed on temporary basis, shall be given the benefit of Selection Grade on expiry of 9, 18 and 27 years of service and the period of 9, 18 and 27 years of service shall be counted from the day of their first appointment in service. This order, which is in Hindi, reads as follows:

dk;kZy; vkns"k

^^"kklu lfpoky; esa lu 1962 esa i"pkr ls Hkh JDC ls p;fur mEehnokjksa ds vHkko esa le;≤ ij vLFkk;h :i ls dfu"V fyfidksa dh HkrhZ gqbZ gS A bu O;fDr;ksa dks foRr&foHkkx ds vkns"k la- 20?11? FD@xzqi&2@92 fnukad 25-1-92 ds vuqlj.k esa mudh izFke fu;qfDr dh fnukad ls gh 9]18 ,oa 27 lky dh lsok dh x.kuk djus dk iz"u fopkjk/khu Fkk A bl ekeys dks eq[; lfpo egksn; dh v/;{krk ds "kklu lfpo] dkfeZd foHkkx] "kklu lfpo fof/k] la;qDr fof/k ijke"khZ] mi "kklu lfpo] dkfeZd ?d&1? foHkkx] mi"kklu lfpo] dkfeZd ?d&2? foHkkx] mi lfpo] foRr fu;e o mi lfpo] dkfeZd ? [k? foHkkx dh ,d cSBd gqbZ ftlesa ;g fu.kZ; fy;k x;k gS fd ,sls deZpkjh Hkh izFke fu;qfDr ds fnukad ls gh 9]18]27 lky dh x.kuk djus dh ik=rk j[krs gSa A

vr% mijksDr foRr foHkkx ds vkns"k ?ekad i- 20?1? FD@xzqi&2@92 fnukad 25-1-92 ds vuqlj.k esa p;fur osrueku dk ykHk nsus gsrq fu/kkZfjr izksQkekZ esa vkns"k tkjh djus gsrq izR;sd O;fDr dh futh i=koyh esa izLrko Mkys A

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Thus, the controversy itself was closed by the Government by issuance of the aforesaid order and the services for the purposes of grant of Selection Grade was

required to be counted from the date of first appointment on the post of LDG. In cases of employees in Class-IV, Ministerial and Subordinate Services and those holding isolated posts, the Government had earlier issued an order dated October 21, 1993, whereby para-3 of the Finance Department's order dated January 25, 1992 was amended and an exception was added thereto. The Exception reads as follows:

"Exception-The admissibility of Selection Grade to Junior Engineer would be on completion of nine, eighteen or twenty seven years of continuous service on the post of Junior Engineer."

Thus, according to the aforesaid amendment, the Selection Grade to Junior Engineers was to be made available on completion of 9, 18 and 27 years of continuous service rendered against the post of Junior Engineer. This means that benefit of Selection Grade was available even to Junior Engineers, who were appointed on ad hoc or temporary basis.

21. Thus, the Government having taken the view that irrespective of the nature of the employment, whether temporary or ad hoc, employees in Class-IV, Ministerial and Subordinate Service, were to be given the benefit of the Selection Grade from the date of their initial appointment, by providing admissibility of Selection Grade to them on completion of 9, 18 and 27 years of service cannot be allowed to take a different stance.

22. A learned Single Judge in *State of Rajasthan and Ors. v. Praveen Chand Singhvi and Anr.* (S.B. Civil Special Appeal No. 513/2001), vide order dated February 06, 2001, held that appointment of a Class IV Employees on temporary and ad hoc basis should be taken into consideration for the purposes of grant of Selection Grade. In this regard, the learned Single Judge observed as follows:-

"Having carefully gone through the impugned order passed by the Tribunal, it is clear that the respondent's entry in the service was not a back-door entry. He was appointed after due selection process on a permanent vacant post. Merely because he was given initial appointment on temporary and ad hoc basis, that would not come in his way. In fact, in a recent judgment of the Hon'ble Supreme Court, it has been held that such appointment on temporary and ad hoc basis should be considered as regular appointment in strict sense. Merely because the nomenclature given in their appointment order that their appointment was purely on temporary and ad hoc basis should not come in the way of an employee for getting the benefit of the service as a regular appointee."

The matter was carried in appeal by the State. The Division Bench dismissed the appeal *State of Rajasthan and Ors. v. Praveen Chand Singhvi and Anr.* (supra). Thereafter, the State filed special leave petition, being SLP (Civil) No. 1154/2003. The SLP too was dismissed on the ground of delay as well as on merits.

23. It is not necessary to refer to all the cases in which this Court had taken a view that ad hoc/temporary employees in Class- IV, Ministerial and Subordinate

Services are entitled to count temporary/ ad hoc services for the purpose of grant of Selection Grade. In case, the employees, who were not parties to those writ petitions, but are similarly circumstances, are deprived of Selection Grade on completion of 9, 18 and 27 years of continuous service from the date of their initial appointment in time scale, there shall be two classes of employees, one, to whom the Selection Scale will be available on completion of 9, 18 and 27 years of continuous service and others to whom Selection Grade will not be available, though they may have similarly worked for 9, 18 and 27 years continuously from the date of their initial appointment.

24. The learned Additional Advocate General appearing for the State submitted that only service rendered on regular basis can count for calculating the period of 9, 18 & 27 years of service for the grant of Selection Grade to the petitioners. The learned counsel relied upon the decisions of the Supreme Court in *State of Punjab and Others Vs. Ishar Singh and Others*, *State of Punjab v. Gurdeep Kumar Uppal and Ors.* (supra), and *Haryana Case* (supra). We have already noticed the decisions of the Supreme Court rendered in *Haryana Case* (supra), and *State of Punjab v. Gurdeep Kumar Uppal and Ors.* (supra). We have pointed out that the Notification in the instant case, on the basis of which the qualifying period of service for grant of Selection Grades was to be counted, are different from the circulars governing the grant of higher grades to the employees in the service of the State of Haryana & Punjab. The decision in *State of Punjab and Ors. v. Ishar Singh and Ors.* (supra), follows the decision rendered in the other two cases.

25. The learned Additional Advocate General, Mr. Rafiq submitted that an ad hoc employee has no right to a post and his service can be terminated at any point of time. As a sequitur, it was submitted that since an ad hoc employee has no right to the post his services cannot be deemed to have been regularized, by his mere continuance on the post for a number of years and period of service rendered by him on ad hoc basis cannot count for grant of Selection Grade. In order to support his submission, he relied upon the decision in *Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan*, This decision of the Supreme Court is of no avail to him, as the controversy involved in the case was different. In different set of facts it was held that unless the initial appointment is regularized through a prescribed agency, there is no scope for a demand for regularization merely on the ground that the employee continued on the post on above basis for several years before his services were terminated. The question in the instant case is whether the services discharged by the petitioners on ad hoc basis can be counted for the purposes of grant of Selection Grades. Determination of this question, as already pointed out, largely depends upon the notifications, which have been issued by the State in regard to the grant of Selection Grade to Class-IV & Ministerial employees of the State. The question involved in the instant appeals was not before the Supreme Court in *Dr. Chanchal's* case (supra).

26. The learned Additional Advocate General also referred to the decisions of the

Supreme Court in Santosh Kumar and Others Vs. G.R. Chawla and Others, A.G. Sainath Reddy Vs. The Govt. of A.P. and Others, and Keshav Chandra Joshi and others etc. Vs. Union of India and others, for buttressing his argument that an ad hoc appointment does not count for the purposes of seniority. There cannot be any quarrel with the proposition. The question of determination of seniority and the question of granting Selection Grade in the light of the Notifications issued by the Government of Rajasthan from time to time are two different matters. The Government being conscious of the fact that the services rendered on ad hoc basis do not count for determining seniority of an employee, clarified the position by incorporating Clause 9 in the orders dated January 25, 1992 and February 17, 1998. Clause 9 reads as follows:-

"9. Grant of Selection Grade shall not affect the seniority in the cadre nor the sanctioned strength of each category of posts in the cadre."

27. The learned Additional Advocate General submitted that dismissal of an SLP does not lead to the conclusion that the decision of the High Court has been approved by the Supreme Court. For this proposition, the learned Additional Advocate General relied on the following decisions:-

1. Collector of Customs, Bombay Vs. Elephanta Oil and Industries Ltd., Bombay,
2. Bhel v. Kamal Kar Matar and Ors. reported in, (2001) 1 LLJ 1697 SC
3. Kunhayammed and Others Vs. State of Kerala and Another,
4. Ram Ganesh Tripathi and others Vs. State of U.P. and others,

It is no doubt true that where the SLP is simply dismissed, there is no merger of the order of the Supreme Court with the order passed by the High Court against which the SLP is filed and it also does not lead to approval of the law laid down by the High Court. But, where the Supreme Court dismissed the SLP on merits, the situation is different. As already pointed out, in SB Civil Writ Petition No. 513/2001, a view was taken by the High Court that an appointment of Class-IV employee on ad hoc basis should be taken into consideration for purr pose of grant of Selection grade and the SLP Filed by the State being No. 1154/2003 was dismissed. The Supreme Court made a specific observation to the effect that the SLP was not only being dismissed on the ground of delay but was also being rejected on merits.

28. Having regard to the aforesaid discussion, we are of the view that where a person is appointed on ad hoc/temporary basis in accordance with the Rules and in time scale, the period of ad hoc/temporary services rendered by him/her, before his/her regularization, should be counted for the purpose of grant of Selection Grade on completion of 9, 18 & 27 years of Service, as the case may be. We, therefore, answer the question accordingly. Since we have answered the question in the affirmative, the aforesaid appeals filed by the State are dismissed, but with no orders as to costs.