

SUPREME COURT OF INDIA

State of Punjab

Vs.

Ashwani Kumar

C.A.No.5892 of 2008

(Dr.Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

29.09.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court holding that the ad-hoc services of the respondents were to be counted for the purpose of seniority. Reliance was placed on certain other orders of the High Courts passed earlier. It is stated by learned counsel for the appellants that this Court had occasion to deal with the appeals filed by the State questioning correctness of the judgments on which reliance has been placed by the High Court. Respondents were initially appointed during the period 1978 to 1987 as Clerks on ad-hoc basis and were regularized between the period from 1980 to 1990. Respondents submitted representations claiming the benefit of their ad-hoc services relying on the judgment to which reference has been made by the High Court in the impugned judgment. Prayer was to the effect that the ad-hoc service was to be counted for all intents and purposes including seniority.

4. The main question that arises for consideration in this appeal is whether the period of ad-hoc services rendered by the respondents is to be included for calculating the seniority. This question was considered by a three-Judge Bench of this Court in *State of Haryana v. Haryana Veterinary & AHTS Association and Anr.*¹ 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 Clerks 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 Government Letter No.4/8/85-3PPI/4408 dated

13.3.1996 containing the policy instructions. On a plain reading of the letter, 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. This letter in our view can no longer form the basis of the contention in view of the recent decision by this Court in *State of Hayana v. Haryana Veterinary & AHTS Association and Anr.* (supra). Undisputedly, the respondents at the time of their appointment were governed by the *Punjab Civil Services (General and Common Conditions of service) Rules, 1994*. In Rule 8 of the said Rules it is provided that the seniority of the persons appointed on purely provisional basis or on ad-hoc basis shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment. 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 Hayana v. Haryana Veterinary & AHTS Association and Anr.* (supra). We are satisfied that the ratio in that case applies to the case in hand. The resultant position that emerges is that the judgment/order 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 is unsustainable and has to be vacated. Accordingly, the appeal is allowed and the judgment/order of the High Court under challenge is set aside.

7. However, we make it clear that if any of the respondents has drawn any amount on the basis of the High Court's judgment granted to 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 govern. No costs.

¹(2000 (8) SCC 4)