

State of Haryana & Others

v.

Sita Ram & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE C. NAGAPPAN

Civil Appeal No. 5411-5430 Of 2009 With Civil Appeal No. 5431-5441 Of 2009 Civil Appeal No. 5442-5459 Of 2009 Civil Appeal No. 5460-5479 Of 2009 Civil Appeal No. 5480-5499 Of 2009 Civil Appeal No. 5500-5516 Of 2009 Civil Appeal No. 5517 Of 2009 Civil Appeal No. 5518-5537 Of 2009 Civil Appeal No. 5538 Of 2009 Civil Appeal No. 5539 Of 2009 Civil Appeal No. 5541 Of 2009 Civil Appeal No. 5543 Of 2009 Civil Appeal No. 5544 Of 2009 Civil Appeal No. 5545 Of 2009 Civil Appeal No. 912 Of 2010 | 29-10-2013

G.S. Singhvi, J.

1. Whether the work charge service of the respondents can be treated as regular service for the purpose of grant of benefit under the Haryana Civil Services (Assured Career Progression) Rules, 1998 (for short, 'the 1998 Rules') is the question which arises for consideration in these appeals filed against the orders passed by the Division Benches of the Punjab and Haryana High Court.

2. The respondents in all the appeals except Civil Appeal No.5544 of 2009, which has been filed by Haryana Urban Development Authority, were engaged as work charge employees in different branches of the Public Works Department of the Government of Haryana between 1966 and 1984. Their conditions of employment were governed by the provisions contained in PWD Code, paragraphs 1.129 and 1.132 of which are reproduced below:

"II-Work-Charged Establishment

1.129. Works establishment will include such establishment as is employed upon the actual execution, as distinct from the general supervision, of a specific work, of or sub-works of a specific project, or upon the subordinate supervision of departmental labour, stores and machinery in connection with such work or sub-works, provided that as an exception to the above, mistries and mates employed in the interests of Government on the technical supervision of contractors work and khalasis attached to subordinates for assisting them on works will be treated a work-charged establishment. When employees borne on the temporary-establishment are employed on work of this nature, their pay should, for the time being be charged direct, to the work.

(2) Works establishment does not include Clerks, Draftsman, Subordinate or extra establishment of any kind for the Divisional or Sub-Divisional Offices, such being properly chargeable to Temporary Establishment, but where Dak Runners are employed solely for a particular work of a temporary nature, for a period not exceeding six months, they may be treated as work-charged establishment.

(3) The Chief Engineer and Superintending Engineers are empowered to classify as "Works" or "Temporary" those classes of establishment about whose correct definition there is doubt, subject to the concurrence of the Audit Officer and to the proviso the general principles for entertainment of such establishment are not infringed.

(4) Chief and Superintending Engineer are authorized to waive the rule which requires that works establishments must be employed on a specific work and to determine, in such cases the properties in which the cost of such establishment shall be allocated between the works concerned.

Note - As an exception to the general rule, the cost of Khalasis attached to subordinate may be charged to annual maintenance and Repairs and other estimates in such provision for it has been made with the sanction of the Superintending Engineer, or the Chief Engineer, Electricity Branch, as the case may be.

(5) The cost of the works establishment must be shown as a separate sub-head of the estimate for a work.

(6) All pay bill for work-charged establishment shall be pre-audited by the Divisional Accountant and approved by the Divisional Officer before payment. Before a member of the work-charged establishment, whose services have been dispensed with, is settled up under paragraph 303 of the Pubic Works Account code, the Sub-Divisional Officer should invariably ascertain from the Divisional Office if there are any out standings against the man.

(7) Members of the work-charged establishment, other than Road Inspectors, who are engaged on the footing of monthly services will be subject to discharge at 10 days' notice except in the case of serious misconduct or gross inefficiency (when no notice will be given) or on payment of pay for 10 days or for such period up to this extent as may be due to them in lieu of notice. Should they desire to resign will be required to give 10 days notice or forfeit pay for this period or for such period up to this extent as may be due to them in lieu of notice.

1.130 to 1.131 xxx xxx xxx

1.132. A work-charged employee is not entitled to any pension, leave or travelling or other allowances except in the following cases:-

(i) (a) Short casual leave upto a limit not exceeding 15 days in calendar year, subject to a maximum of 10 days at any one time, on full pay at the discretion of the Sub-Divisional Officer and under ordinary rules for casual leave to ordinary-establishment. This leaves will not be cumulative and will not be given in combination with leave without pay. This leave will be calculated on basis of the calendar year, but where an appointment is made during the course of a year, the amount of leave admissible will be calculated proportionately for the broken period.

(b) Holidays to the community for whom a particular day is held sacred, restricted to five days, in a calendar year in the case of each community, the employees concerned being allowed to select the religious festivals on which they would like to enjoy the concession; provided that not more than half of gang employed on roads should be absent at one time.

(c) Alternate Sundays not more than half of the establishment to be absent on any one Sunday. The above concessions do not apply to casual labour on daily wages.

(ii) At the discretion of the Divisional Officer, actual travelling expenses not exceeding a single railway fare of the class, to which regular Government servants drawing the same pay are entitled, in case of places connected by rail and actual travelling expenses duly supported by original bus tickets, in case in places not connected by rail, for journeys, performed within the Punjab or to a bordering State or settlement in the interest of the work on which he is employed.

"Halting allowance should be allowed to work-charged Establishment at the same rates as are admissible to his counterpart in the regular establishment when a person spends the night away from his headquarters. No daily allowance will be admissible in case the person returns to his headquarters and does not spend the night out."

(iii) Transfer travelling allowance, i.e., single railway fare or actual travelling including the cost of carriage of personal effects to Road Inspectors, Road Roller Drivers and Fireman, Mistries (including Electric Mistries), Electric Mechanics and employees on the work-charged establishment in the Public Health Circle for themselves and dependent members of their families who are not males of over 18 years of age on the occasion of their transfer in cases of sheer necessity in the public interest, subject to the following conditions:-

(a) the limits of travelling allowances relating to the cost of carriage of personal effects and the class of railway accommodation admissible to regular Government servants of the same grades are not exceeded;

(b) the grant of travelling allowance will be at the discretion of the Divisional Officer;

(c) the transfer is from one place to another, except in the case of Road Roller Drivers and Firemen when travelling allowance will only be allowed for transfer from one division to another;

(d) the journey performed is in the interest of work on which the man is employed and not as a disciplinary measure.

(iv) Wound and other extraordinary pensions and gratuities in certain cases;

(v) Grain compensation allowance;

(vi) Compensation under Workmen's Compensation Act, 1923 and ex-gratia payment of the amount which would have been statutorily payable if the accident had occurred in British India in respect of accidents which happen to the Punjab Public Works Department employees of the Irrigation and Buildings and Roads Branches in the tracts to which the Act has not yet been-applicable.

Note (1) - This rule does not apply to members of the temporary establishment whose pay is charged to works under paragraph 1.131 of this Code. The leave salaries, travelling and other allowances of such establishment are regulated by the rules applicable to temporary establishment.

Note (2) - Rules for the recovery of rent from work-charged establishment are contained in paragraph 3.28."

3. With a view to give relief to the employees, who were stagnating on their posts due to non-availability of promotional avenues, the Government of Haryana framed scheme dated 14.5.1991 for grant of additional increments to all Grade 'C' and 'D' employees on completion of 10 and 20 years service. Another scheme was introduced on 7.8.1992 for grant of additional increments to Group 'C' and 'D' employees on completion of 8 and 18 years service. Yet another scheme was introduced by the State Government on 8.2.1994 for grant of higher standard pay scales to Group 'C' and 'D' employees on completion of 10 years or more and 20 years or more regular satisfactory service. After 4 years, the Governor of Haryana framed the 1998 Rules. Rules 1, 3(b), 3(d), 3(e), 3(q), 3(r) and 5 of those rules read as under:

"1. Short title, commencement and objective:- (1) These rules may be called the Haryana Civil Services (Assured Career Progression) Rules 1998.

(2) They shall be deemed to have come into force on the first day of January, 1996, unless otherwise provided by the Government for any class or category of persons.

(3) The objective of these rules is to provide such of Government servants who fall within the scope of these rules, at least two financial upgradations, including the financial upgradation, if any, availed by such Government servants as a consequence of the functional promotion, within the corresponding prescribed period of length of service during his entire career, as may be specified under these rules or by the Government from time to time within these rules, with reference to the functional pay scale of the post on which he joined the Government service as a direct recruited fresh entrant.

3. DEFINITIONS:- In these rules, unless the context otherwise requires -

(b) "direct recruited fresh entrant" with reference to a post or a Government servant means the post on which such Government servant was recruited as a regular and direct recruitee in the Government service and is in continuous employment of Government since such recruitment;

(d) "functional pay scale" in relation to a Government servant means the pay scale which is prescribed for the post held by the Government servant. It does not mean any other pay scale in which the Government servant is drawing his pay as a personal measure to him with any other justification like based on length of service, or on higher/additional qualification or on upgradation of pay scale due to any other reason.

(e) "first assured career progression scale" with reference to –

(i) Government servant means the revised scale as mentioned in column 3 of Part I of Schedule I against the name of post(s) in column 2 of Part I of Schedule I, on which the Government servant was recruited as a direct recruited fresh entrant in the Government service,

(ii) all other Government servants not covered in sub-clause (i) above but on whom these rules apply, the pay scale as mentioned in column 3 of Part II of Schedule I against the pay scale mentioned in column 2 of Part II of Schedule I, as the corresponding existing scale prescribed for the post against which such Government servant was recruited as a direct recruited fresh entrant in the Government service.

Provided that the First Assured Career Progression scale may also be referred to as 1st ACP scale or ACP-I scale.

(q) "second assured career progression scale" with reference to -

(i) Government servant means the revised scale as mentioned in column 4 of Part I of schedule I against the name of post(s) in column 2 of part I of schedule I, on which the Government servant was recruited as a direct recruited fresh entrant in the Government service;

(ii) all other Government servants not covered in sub-clause (i) above but on whom these rules apply, the pay scale as mentioned in column 4 of Part II of

Schedule I against the pay scale mentioned in column 2 of Part II of Schedule I, as the corresponding existing pay scale prescribed for the post against which such Government servant was recruited as a direct recruited fresh entrant in the Government service:

Provided that the Second Assured Career Progression Scale may also be referred to as 2nd ACP scale or ACP-II scale.

(r) "standard pay scale" (as it is or with the prefix "First" or "Second", as the case may be) with respect to any Government servant means the scale of pay, other than the existing pay-scale prescribed for the post on which such Government servant is working, in which the Government servant was drawing his pay prior to 31.12.1995 and also any pay scale granted to him for the purposes of drawing his pay as "pay scale as a personal measure to him" as defined under these rules through any other order/notification of the Government or with any other reason;

5. Eligibility for Grant of ACP Scales:- (1) Every Government servant who, after a regular satisfactory service for a minimum period of 10 years, if the minimum period is not otherwise prescribed to be different than 10 years either in these rules or by the Government for any class or categories of Government servant from time to time, has not got any financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995, on which he was recruited as a direct recruited fresh entrant:-

(a) either as a consequence of his functional promotion in the hierarchy, or

(b) as a consequence of the revision of pay scale for the same post, or

(c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995,

shall for the purposes of drawal of pay, be eligible for placement into the First ACP scale with reference to him.

(2) Every Government servant who, after a regular satisfactory service for a minimum period of 20 years, if the minimum period is not otherwise prescribed to be different than 20 years either in these rules or by the Government for any class or categories of Government servant from time to time, has not got more than one financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995 on which he was recruited as a direct recruited fresh entrant:-

(a) either as a consequence of his functional promotion in the hierarchy, or

(b) as a consequence of the revision of pay scale for the same post, or

(c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995,

shall for the purposes of drawal of pay, be eligible for placement into the Second ACP scale with reference to him;

Provided that grant of ACP scale shall also be considered financial upgradation for the purposes of this rule.

Note: For the purposes of these rules, "regular satisfactory service" would mean continuous service counting towards seniority under Haryana Government, including continuous service in Punjab Government before re-organisation, commencing from the date on which the Government servant joined his service after being recruited through the prescribed procedure or rules etc. for regular recruitment, in the cadre in which he is working at the time of being considered his eligibility for grant of ACP scales under these rules and further fulfilling all

the requirements prescribed for determining the suitability of grant of ACP scales.

**EXPLANATION:** The ACP scale upgradation will come into play only if due to functional promotion or upgradation of scale for the same post as specified above, the Government servant has not got the benefit of at least one pay scale upgradation within the prescribed period of 10 years or any other prescribed period for the grant of 1st ACP scale or two such financial upgradations within a period of 20 years or within the period otherwise specified for grant of second ACP scale. If within 10 years of service or within the prescribed period of service for the grant of 1st ACP, the employee has already got at least one financial upgradation or within 20 years of service, as the case may be, or otherwise prescribed period of service for the grant of second ACP scale, the Government servant has already got at least two financial upgradations, benefit of these rules will not be extended to such employees save if otherwise provided in these rules.

(3) For determining the eligibility of grant of ACP Scale, following conditions must also be fulfilled by the Government servant:-

(a) After completing the respective prescribed period for eligibility for the grant of ACP scales the Government servant should be fit to be promoted to the next higher post in the functional hierarchy in his cadre, but could not be functionally promoted due to lack of vacancy in the promotional post in the hierarchy to which he is eligible to be promoted;

(b) If such promotion involves test of any departmental post or other test etc. such condition should also be fulfilled by such Government servant.

(4) The eligibility for grant of the ACP scales shall further be subject to any other restriction as may be prescribed by the Government from time to time including the restriction of the number of Government servant to be granted the respective ACP scales in terms of percentage of posts in the cadre to which such ACP placements shall be limited;

Provided that till the time such restrictions are not imposed by the Government -

(a) there shall be no restriction on the number of Government servants to be granted the first or second ACP scales with reference to the Government servants covered in sub-rule (2) of rule 4.

(b) for the Government servants covered in sub-rule (1) of rule 4, there shall be no restriction on the number of Government servants for grant of first ACP scale. However, the grant of the second ACP scale for such Government servants as covered in sub-rule (1) of rule 4 shall be limited to 20% of the total posts in the cadre."

4. Since there was a lot of confusion on the issue of counting of work charge / ad-hoc service of the employees for the purpose of grant of ACP scales, increments, etc., the State Government issued office memorandums dated 15.3.2002 and 27.6.2002 and clarified that the ad-hoc and work charge service cannot be equated with regular service for the purpose of grant of additional increments or benefit of ACP scales.

5. Some of the work charge employees filed writ petitions before the High Court for grant of benefit under the 1998 Rules. The Division Bench of the Punjab and Haryana High Court dismissed CWP Nos. 18444/2002 Prem Chand and others v. State of Haryana and others and CWP No.18578/2002 Ved Pal and others v. State of Haryana by observing that Rule 5(1) of the 1998 Rules talks of regular satisfactory service which cannot possibly include work charge service. However, another Division Bench of the High Court allowed a batch of writ petitions vide order dated 8.7.2004, the operative portion of which reads as under:

"For the reasons afore-stated we allow these Writ Petitions and direct the State Government to consider the cases of the Petitioners in CWP Nos. 14400 of 2001, 1235 of 2002 and 13749 of 2003 for payment of additional increments under public policies of 1992 and 1994. Further, we also direct the State

Government to consider and grant to the petitioners in other Writ Petitions the ACP first and second scales in accordance with Rules and after counting the services rendered by them on work charge basis. Thus, we also quash the show cause notices issued by the Respondents for reduction of scales of the Petitioners and/or the orders passed after service of show cause notice reducing the pay scales of the Petitioners as well as the recoveries made in furtherance thereto."

6. By relying upon the aforesaid order, other Division Benches of the High Court allowed similar petitions vide orders dated 28.4.2005, 25.8.2005, 13.9.2005, 29.11.2005 and 7.12.2006.

7. Shri Neeraj Jain, learned senior counsel for the appellants argued that the impugned orders are liable to be set aside because the same are contrary to the law laid down by this Court in *State of Rajasthan v. Kunji Raman* (1997) 2 SCC 517, *State of Haryana v. Haryana Veterinary and AHTS Association* (2000) 8 SCC 4 and *Punjab State Electricity Board v. Jagjiwan Ram* (2009) 3 SCC 661. Learned senior counsel argued that work charge service cannot be treated as part of regular service because there is a marked distinction between appointments made on work charge basis and regular basis. He pointed out that work charge employee is engaged without any selection whereas regular appointment is always preceded by regular selection made in accordance with the relevant rules or administrative instructions after issuing appropriate advertisement and sending requisition to the employment exchange. Shri Jain submitted that the directions given by the Division Benches of the High Court are legally unsustainable because while entertaining the claim of work charge employees for grant of benefit under the 1998 Rules, they completely overlooked the distinction between two types of services. Learned senior counsel distinguished order dated 31.10.2000 passed by this Court in Civil Appeal Nos.5740-5741/1997 *State of Haryana and others v. Ravinder Kumar and others* by pointing out that the said order was not based on the interpretation of Rule 5 of the 1998 Rules.

8. Shri Dinesh Kumar Garg, learned counsel for the respondents argued that the order passed in Ravinder Kumar's case has direct bearing on the respondents'

case and the High Court rightly relied upon the same for declaring that work charge service should be treated as regular service for the purpose of ACP scales. Shri Garg also relied upon Rule 3.17 (ii) of the Punjab Civil Services Rules Vol.II, the judgment of the Full Bench of the High Court in Kesar Chand v. State of Punjab, Recent Service Judgments (1950-1988) Vol.I, 433 and argued that once work charge service is treated as part of qualifying service for the purpose of grant of retiral benefits, there can be no rationale or justification not to count that service for the purpose of grant of ACP scales.

9. We have considered the respective arguments. A careful reading of order dated 8.7.2004, which is under challenge in Civil Appeal Nos.5411-5430/2009 and batch shows that after taking cognizance of the judgment of the Full Bench in Kesar Chand's case, the Division Bench observed as under:

"In the light of the above observations of the Full Bench of this Court we are of the considered view that these work charged employees have been serving for a considerable period in their respective departments. They were getting the regular pay scales as provided under the Rules. This class of employees was also exposed to hostility of stagnation. Thus, to decline the benefit of providing increments under the schemes would patently be unfair and unjust. The physical reality that emerges in the recent time is that these employees are also the regular employees of the State of Haryana and have been continuously serving the State for more than the prescribed period. The mere fact that some part of their service is on work-charged basis, though under the conditions stipulated in the code, would not divest them of a legitimate right which otherwise accrues in their favour."

10. The Division Bench then relied upon the order passed by this Court in Ravinder Kumar's case and held that the writ petitioners are entitled to relief in similar terms.

11. In our opinion, the reasons recorded by the Division Bench of the High Court for granting relief to the respondents are legally untenable and the impugned orders are liable to be set aside because the same are based on erroneous interpretation of the expression "regular satisfactory service" used in Rule 5(1) and (2) of the 1998 Rules. The note appearing below Rule 5(2) makes

it clear that the expression "regular satisfactory service" means continuous service counting towards seniority under Haryana Government, including continuous service in Punjab Government, before reorganization, commencing from the date on which the Government servant joins service after being recruited through the prescribed procedure or rules, etc., for regular recruitment in the particular cadre. It is, thus, evident that the rule making authority has laid emphasis on regular recruitment in accordance with the prescribed procedure or rules as a condition for treating the particular service as regular service. This is in total contrast to work charge service which is always in work charge establishment and is not preceded by regular selection made in accordance with any set of rules framed under proviso to Article 309 of the Constitution or executive instructions. It is also not incumbent upon the competent authority to advertise the availability of work/post in the work charge establishment or send requisition to the employment exchange as per the requirement of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. Not only this, the conditions of appointment of work charge employees are altogether different from those who are regularly recruited in accordance with the rules framed under proviso to Article 309 or executive instructions issued by the State under Article 162 of the Constitution and whose service is treated as regular service.

12. The distinction between work charge establishment and regular establishment was aptly highlighted in Kunji Raman's case in the following words:

"A work-charged establishment as pointed out by this Court in *Jaswant Singh v. Union of India* (1979) 4 SCC 440 broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the works. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. Thus a work-charged establishment is materially and qualitatively different from a regular establishment.

A work-charged establishment thus differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a "work" and availability of funds for executing it. So far as employees engaged in work-charged establishments are concerned, not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged in the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government."

(emphasis added)

13. In *Punjab State Electricity Board v. Jagjiwan Ram* (supra), this Court considered whether work charge service is synonymous with regular service and whether two services can be clubbed for grant of time bound promotional scale/increment etc., referred to the judgments in *Jaswant Singh v. Union of India* (1979) 4 SCC 440, *Kunji Raman's case* and observed:

"Generally speaking, a work-charged establishment is an establishment of which the expenses are chargeable to works. The pay and allowances of the employees who are engaged on a work-charged establishment are usually shown under a specified sub-head of the estimated cost of works. The work-charged employees are engaged for execution of a specified work or project and their engagement comes to an end on completion of the work or project. The source and mode of engagement/recruitment of work-charged employees, their pay and conditions of employment are altogether different from the persons appointed in the regular establishment against sanctioned posts after following the procedure prescribed under the relevant Act or rules and their duties and responsibilities are also substantially different than those of regular employees.

The work-charged employees can claim protection under the Industrial Disputes Act or the rights flowing from any particular statute but they cannot be treated on a par with the employees of regular establishment. They can neither claim regularisation of service as of right nor can they claim pay scales and other financial benefits on a par with regular employees. If the service of a work-charged employee is regularised under any statute or a scheme framed by the employer, then he becomes member of regular establishment from the date of regularisation. His service in the work-charged establishment cannot be clubbed with service in a regular establishment unless a specific provision to that effect is made either in the relevant statute or the scheme of regularisation. In other words, if the statute or scheme under which service of work-charged employee is regularised does not provide for counting of past service, the work-charged employee cannot claim benefit of such service for the purpose of fixation of seniority in the regular cadre, promotion to the higher posts, fixation of pay in the higher scales, grant of increments, etc."

(emphasis added)

14. We may now advert to the judgment in *State of Haryana v. Haryana Veterinary and AHTS Association* (supra). The facts of that case were that one Rakesh Kumar Singla, who joined service as Assistant Engineer on ad-hoc basis on 4.1.1980, was appointed on regular basis with effect from 29.8.1982 after selection by the Public Service Commission. He represented to the Government for grant of selection grade on completion of 12 years' service commencing from 4.1.1980. Having failed to convince the competent authority to accept his plea, Rakesh Kumar Singla filed a writ petition in the High Court. The Division Bench, which heard the matter was of the view that the service rendered by the appellant on the basis of an ad-hoc appointment cannot be counted as part of regular service. However, keeping in view an earlier judgment in which a contrary view was expressed, the Division Bench made a reference to a three Judge Bench. By a majority judgment, the larger Bench held that the service rendered by an employee on the basis of ad-hoc appointment must be clubbed with his regular service for the purpose of grant of selection grade in terms of the policy framed by the State Government. This Court reversed the judgment of the majority and observed:

"Coming to the Circular dated 2-6-1989, issued by the Financial Commissioner and Secretary to the Government of Haryana, Finance Department, it appears that the aforesaid circular had been issued for removal of anomalies in the pay scale of Doctors, Deputy Superintendents and Engineers, and so far as Engineers are concerned, which are in Class I and Class II, it was unequivocally indicated that the revised pay scale of Rs 3000 to Rs 4500 can be given after completion of 5 years of regular service and Rs 4100 to Rs 5300 after completion of 12 years of regular service. The said Financial Commissioner had issued yet another Circular dated 16-5-1990, in view of certain demands made by officers of different departments. The aforesaid circular was issued after reconsideration by the Government modifying to some extent the earlier Circular of 2-6-1989, and even in this circular it was categorically indicated that so far as Engineers are concerned, they would get Rs 3000 to Rs 4500 after 5 years of regular and satisfactory service and selection grade in the scale of pay of Rs 4100 to Rs 5300, which is limited to the extent of 20% of the cadre post should be given after 12 years of regular and satisfactory service. The aforesaid two circulars are unambiguous and unequivocally indicate that a government servant would be entitled to the higher scale indicated therein only on completion of 5 years or 12 years of regular service and further the number of persons to be entitled to get the selection grade is limited to 20% of the cadre post. This being the position, we fail to understand how services rendered by Rakesh Kumar from 1980 to 1982, which was purely on ad hoc basis, and was not in accordance with the statutory rules can be taken into account for computation of the period of 12 years indicated in the circular. The majority judgment of the High Court committed serious error by equating expression 'regular service' with 'continuous service'. In our considered opinion under the terms and conditions of the Circulars dated 2-6-1989 and 16-5-1990, the respondent Rakesh Kumar would be entitled for being considered to have the selection grade on completion of 12 years from 29-1-1982 on which date he was duly appointed against a temporary post of Assistant Engineer on being selected by the Public Service Commission and not from any earlier point of time. The conclusion of the majority judgment in favour of Rakesh Kumar, therefore, cannot be sustained."

(emphasis added)

The Court then referred to the Haryana Service of Engineers, Class II, Public Works Department (Irrigation Branch) Rules, 1970 and held:

"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 an ad hoc basis or as a stopgap 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 or of the selection grade under the Government Memorandum dated 2-6-1989 and 16-5-1990, 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. The initial letter of appointment dated 6-12-1979 pursuant to which respondent Rakesh Kumar joined as an Assistant Engineer on an ad hoc basis in 1980 was also placed before us. The said appointment letter unequivocally indicates that the offer of appointment as Assistant Engineer was on ad hoc basis and Clauses 1 to 4 of the said letter further provides that the appointment will be on an ad hoc basis for a period of 6 months from the date of joining and the salary was a fixed salary of Rs 400 p.m. in the scale of Rs 400 to Rs 1100 and the services were liable to be terminated without any notice and at any time without assigning any reason and that the appointment will not enable the appointee any seniority or any other benefit under the Service Rules for the time being in force and will not count towards increment in the time scale. In view of the aforesaid stipulations in the offer of appointment itself we really fail to understand as to how the aforesaid period of service rendered on ad hoc basis can be held to be service on regular basis. The conclusion of the High Court is contrary to the very terms and conditions stipulated in the offer of appointment and, therefore, the same cannot be sustained. The regular letter of appointment dated 29-1-1982 in favour of Rakesh Kumar was also produced before us and that letter indicates that the respondent Rakesh Kumar along with others had applied to the Secretary, Haryana Public Service Commission for being appointed as an Assistant Engineer and the Service Commission after selecting the number of persons prepared a list and appointment letters were issued by the Government from the said list on the basis of the merit position of different candidates. Thus the appointment of respondent Rakesh Kumar was a fresh appointment in accordance with the statutory rules after the Public Service Commission adjudged their suitability and the regular service of the respondent Rakesh Kumar must be counted from the date he joined the post pursuant to the offer of appointment dated 29-1-1982 and the prior service rendered by him on ad hoc basis cannot be held to be regular service nor can it be tagged on to the later

service for earning the benefit under the Government Circular dated 2-6-1989 as well as the clarificatory Circular dated 16-5-1990. The conclusion of the majority judgment of the High Court, therefore, is wholly erroneous and cannot be sustained."

15. Ravinder Kumar's case, which was earlier tagged with State of Haryana v. Haryana Veterinary and AHTS Association's case, was de-linked from the main batch of the matters and was disposed of in the following terms:

"Delay condoned in SLPs.

These batch of cases were delinked while hearing an another batch of appeals from the same State, which were disposed of by us by Judgment dated 19th Sept. 2000. It is conceded by the Ld. Counsel appearing for the State that in these cases we are concerned with employees who had been engaged initially on work charge basis and later on they were regularised and brought into the cadre of the service. It is also not disputed by the Ld. Counsel appearing for the State that this period which the employees has rendered as work charge basis count for the purpose of the increment in the cadre as well as the qualifying service for the pension. We, therefore, see no justification in not counting their period for the purpose of giving additional increment on completion of 8 and 18 years of service as well as 10 and 20 years of service for getting higher scale as per the Govt, circular, which obviously are intended to avoid stagnation in a particular grade. In that view of the matter, we see no justification for our interference with the impugned order of the Punjab and Haryana High Court. These appeals and SLPs, accordingly stand dismissed."

It is admitted before us that after the above order, the State filed review application before the Hon'ble Apex Court against this order dated 31.10.2000 which was also dismissed by the Hon'ble Apex Court.

Further, it will be useful to notice that another Division Bench of this Court following the above Full Bench is Kesar Chand's case (supra) granted relief to

the Petitioners similarly places like the Petitioners of the present case and directed the Respondents to consider their service on work-charge basis towards computing total service of 8/18 years for grant of benefit under these schemes. The order passed by the Division Bench in CWP No. 18429 of 1996 titled as Banta Ram and others Versus State of Haryana and others, decided on 6.2.1997, attained finality.

Similar relief was also granted by a Division Bench of this Court following Banta Ram's case in the case of Babu Ram Versus State of Haryana, CWP No. 2225 of 1997, decided on 29.4.1997, and the Special Leave Petition preferred by the State in the case of Babu Ram was also dismissed by the Hon'ble Apex Court on 21.1.2002. In view of the above settled position of law, thus, we conclude that the Respondents are obliged to count the service rendered by the Petitioners no work-charge basis under the State itself if the said service is otherwise satisfactory. Consequently, we answer submissions no. 1 and 3 aforementioned, against the State."

16. In *Punjab State Electricity Board v. Jagjiwan Ram* (supra), this Court considered a question substantially similar to the one raised in these appeals. The Punjab State Electricity Board introduced a scheme for giving time bound promotional scales/increments on completion of 9/16/23 years of regular service. The scheme was circulated vide office order dated 23.4.1990. The respondents, who were engaged as work charge employees between 1971 and 1993 and were appointed on regular basis between 1979 and 1999, filed writ petitions for grant of promotional scales/increments by contending that their work charge service should be added to the regular service. The Division Bench of the High Court accepted their plea by relying upon the order passed in *State of Haryana v. Ravinder Kumar*. After noticing distinction between work charge establishment and regular establishment as also the judgments in *State of Haryana v. Haryana Veterinary and AHTS Association* (supra) and *State of Punjab v. Ishar Singh* (2002) 10 SCC 674, the Division Bench observed:

"A reading of the scheme framed by the Board makes it clear that the benefit of time-bound promotional scales was to be given to the employees only on their completing 9/16 years' regular service. Likewise, the benefit of promotional increments could be given only on completion of 23 years' regular service. The use of the term "regular service" in various paragraphs of the scheme shows that

service rendered by an employee after regular appointment could only be counted for computation of 9/16/23 years' service and the service of a temporary, ad hoc or work-charged employee cannot be counted for extending the benefit of time-bound promotional scales or promotional increments. If the Board intended that total service rendered by the employees irrespective of their mode of recruitment and status should be counted for the purpose of grant of time-bound promotional scales or promotional increments, then instead of using the expression "9/16 years' regular service" or "23 years' regular service", the authority concerned would have used the expression "9/16 years' service" or "23 years' service". However, the fact of the matter is that the scheme in its plainest term embodies the requirement of 9/16 years' regular service or 23 years' regular service as a condition for grant of time-bound promotional scales or promotional increments as the case may be."

The order passed in Ravinder Kumar's case was distinguished and it was held that the same cannot be treated as precedent for other cases. This is evinced from paragraph 22 of the judgment, which is extracted below:

"The order passed by this Court in Ravinder Kumar case is clearly distinguishable. In that case, counsel appearing for the State had conceded that the period during which an employee had worked on work- charged basis is counted for the purpose of grant of increment as well as for computation of qualifying service for pension. In view of his statement, the Court held that there is no reason why such service should not be counted for the purpose of giving additional increment on completion of 8/12 years' service and higher scale on completion of 10/20 years' service. The order does not contain any discussion on the issue whether the work-charged service can be equated or clubbed with regular service for grant of service benefits admissible to regular employees. Therefore, the same cannot be treated as laying down any proposition of law which can be treated as precedent for other cases."

(emphasis added)

17. We reiterate that even though Ravinder Kumar's case was de-linked from the batch of matters decided vide judgment in State of Haryana v. Haryana Veterinary and AHTS Association (supra) and was independently decided, the same cannot be relied upon for grant of benefit of ACP scales under the 1998 Rules or time bound promotional scales or additional increments by counting work charge or ad-hoc service where the rules/scheme provide that the employee must have rendered regular service for a particular period.

18. On the basis of the above discussion, we hold that the Division Benches of the High Court committed an error by directing the appellants to treat work charge service of the respondents as part of regular service for the purpose of Rule 5(1) and (2) of the 1998 Rules.

19. In the result, the appeals are allowed, the impugned orders are set aside and the writ petitions filed by the respondents are dismissed.