Before R.S. Mongia, G.S. Singhvi and S.S. Sudhalkar, JJ

SAROJ KUMARI AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

CWP 14874 of 1995

4th May, 1998

Constitution of India, 1950—Art. 226—Punjab Govt. circulars dated 6.2.1978 and 16.6.1978 and clarificatory circulars dated 6.1.1979 and 20.2.1979—Delay and laches—Maintainability of writ petition—Govt. granting pre-mature increment to such employees who did not participate in general strike on 8.2.1978—Claim for grant of benefit made after expiration of period of limitation prescribed for bringing suit for recovery—Right to pre-mature increment having direct bearing on current pay fixation is a continuing wrong and a fresh cause of action arises every month—Writ Court justified in granting relief but restricting the payment of arrears to 3 years and 2 months prior to the filing of the writ petition.

Held that in case where a person invokes the jurisdiction of this Court under article 226 of the Constitution of India for fixation of his pay under relevant rules/instructions or even on the basis of a judgment of a competent Court, the question of delay and laches would not come in as it would be a case of a continuing wrong and every month the person is paid the salary which according to him is not in accordance with the relevant rules and instructions a fresh cause of action would arise every month. Such a case is not a case of one time action like the case of termination or dismissal from service.

(para 12)

Further held, that since a civil suit would be maintainable for realizing arrears of three years and two months, the writ Court would be justified in restricting the payment of arrears of three years and two months prior to the filing of the writ petition. Apart from the above, it may be noticed that in such cases as the present one where only fixation of pay is sought and arrears are claimed, rights of third party do not intervene during the period the person may not have approached the Court. The correct fixation of pay

and the payment of arrears do not effect third party's right. We are of the view that in cases where only fixation of pay according the relevant rules/instructions or a judgment is prayed for, the writ petition cannot be dismissed at the threshold on the ground of delay and laches but the payment of arrears can be restricted to a reasonable period. Three years and two months would be considered a reasonable period as that is the period for which a person can ask for the payment of arrears before a civil Court.

(Paras 12, 13& 14)

Constitution of India, 1950—Art. 226—Punjab Govt. instructions dated 6.1.1979—Punjab Govt. clarificatory instructions restricting grant of pre-mature increment to regular employees is non-discriminatory qua ad hoc employees—Govt., however, clarifying that such ad hoc employees would also be entitled to the concession who were entitled to be regularised on or before 8.2.1978 and did not go on strike—All other ad hoc employees have no right to claim the concession—Ad hoc—Meaning of.

Held that the question that would require to be answered is whether the ad hoc employees are a class apart as compared to regular employees? For this purpose, we will have to consider what is the status of an *ad hoc* employee in law. An ad hoc employee is appointed for a specified purpose or as a stop gap arrangement for a short duration or for a fleeting purpose. He does not acquire the right to hold the post or to continue in employment indefinitely in contrast to a regular employee who not only possesses the right to hold the post but also has right to continue in service till it is terminated in accordance with the rules regulating the conditions of service and article 311of the Constitution of India. In the gamut of service law, an ad hoc employee virtually stands at the lowest rung as against a permanent, quasi-permanent and temporary employee. An ad hoc employee cannot stake his claim to remain in service till he is regularly employed or becomes a member of the service. He cannot claim equivalence with permanent/quasi-permanent or temporary employees. The right of the State Government or for that matter of any employer to terminate the services of an ad hoc employee in terms of appointment is inherent and well recognised whereas in case of regular employee, his services cannot be terminated by having resort to the terms of appointment because such an employees gets the protection of rules governing his service conditions and the protection under the Constitution. The services of the ad hoc employees are not governed

by any statute or service rules. Articles 14 and 16 are attracted when two similar classes are treated unequally or to put it in reverse unequals are treated equally. An ad hoc employee who may have been appointed for a particular purpose or as a stop gap arrangement cannot be deemed in the eye of law as identically equivalent to a person who has been appointed regularly by following regular procedure of appointment in accordance with the relevant rules. If ad hoc employee is as good as regular employee, then ipso facto the entire ad hoc service should be reckonable for purpose of seniority when such an ad hoc employee is regularised. However, in law it is not so.

(Para 15)

Further held, that the question, therefore, is whether the classification in not granting the premature increment to ad hoc employee who might not have resorted to strike has a reasonable nexus with the object to be achieved. The State Government in its wisdom thought of giving incentive only to its regular employees who might not have gone on strike on February 8, 1978 and had listened to the Government when it had issued instructions on February 6, 1978, that the Government employees should not go on threatened strike on February 8, 1978. The instructions dated February 6, 1978 made it clear to the ad hoc employees that if they resorted to strike, then their services would be dispensed with immediately. In other words, the right of termination which vested in the Government would be exercised in case the ad hoc employees went on strike. The incentive to them was already there in the instructions dated February 6, 1978, that in case the ad hoc employees do not go on strike, then the right to terminate their services would not be immediately exercised. The instructions which give benefit to certain employees have to be strictly construed. The instructions laid down that benefit to those employees who have no right to service i.e. ad hoc employees would not be given. We find nothing wrong in the same. The ad hoc employees did not go on strike because of the peril that their services may be terminated. At that stage they did not know that an incentive in the form of pre-mature increment may be given to them lateron. The Government wanted to give incentive lateron only to those employees who were to continue with the State Government as regular employees and not to those who were not entitled to be regularised or who could just leave the service without any hassles.

(Para 17)

(Ms. Sukhvarsha v. State of Punjab and others CWP 5625 of 1996 decided on 18.11.1996 (D.B.), over-ruled)

R.S. Mongia, J.

(1) By this judgment we propose to dispose of Civil Writ Petitions No. 16821 of 1992, 7048 of 1993, 11365 of 1993, 8430 of 1994, 11398 of 1995 and 14874 of 1995 as also Letters Patent Appeals No. 583 and 584 of 1992 as well as Regular Second Appeal No. 848 of 1994 as common question of law and facts is involved in these cases. Civil Writ petition No. 14874 of 1995 was admitted to be heard by a Full Bench whereas in rest of the cases it has been ordered that the same be heard along with the aforesaid writ petition.

(2) The petitioners in all the writ petitions as also the private respondents in the L.P.A.s were *ad hoc* Teachers at the relevant time in different Government Schools in the State of Punjab whereas the private respondents in the R.S.A. were either *ad hoc* Work Munshi or Ledger Keeper with the Punjab Water Supply and Sewerage Board at the relevant time.

(3) Brief facts relevant for the decision of the aforesaid cases may be noticed. Punjab Government employees had threatened to go on strike on February 8, 1978. Punjab Government issued a circular on February 6, 1978, which was addressed to all the Heads of Departments in the State of Punjab that the Government had always been considering sympathetically the genuine demands of the employees and had recently allowed additional dearness allowance instalment on the pattern of the Central Government and also allowed some instalments of additional dearness allowance to the teachers working in the privately managed Schools. In response to the questionnaire issued by the Pay Commission, about 400 memoranda had been submitted to it by various employees and their association. However, certain misguided employees had threatened to go on strike on February 8, 1978, instead of choosing to place their demands before the Pay Commission. The Government decided to deal firmly with such of the employees who would go on strike. The Heads of the Departments were asked to make it clear to the employees that in case they resort to strike, strict action would be taken against them and in case of *ad hoc* employees who join the strike steps should be taken to terminate their services straightway. In the case of other employees, the provision contained in rule 3.17-A(2) of the Punjab Civil Service Rules, Vol. II, would

be strictly enforced. The interruption in service caused by the strike would entail forfeiture of their past service. It would be apposite to reproduce the entire circular issued by the State of Punjab on February 6, 1978:—

"Copy of Punjab Government circular letter No. 550-3CE-78/3879, dated 6th February, 1978, from the Chief Secretary to Government, Punjab, addressed to all Heads of Departments, etc.

Subject:—Threatened strike by Punjab Government employees on the 8th February, 1978.

1. I am directed to address you on the subject noted above.

2. As you are aware, the Government has always been considering sympathetically the genuine demands of the employees. The Government recently allowed the additional dearness allowance instalment on the Central Government pattern and also allowed eight instalments of additional dearness allowance to the teachers working in privately managed schools. *Ex-gratia* grant in lieu of bonus @ 8.33 percent was allowed to the employees of the Punjab Roadways for the year 1976-77. The Government has discontinued the deduction of two month's emoluments from the death-cum-retirement gratuity payable to the retiring Government servants. The State Government has also followed the Central Government in allowing cash payment in lieu of unutilised earned leave upto 180 days on the date of retirement to its employees. The demand of the employees for the creation of a separate Directorate for Primary School Education has not only been accepted but a new Directorate has actually been brought into being. It has also been decided to allow free medical aid and reimbursement of medical charges to the 'State Government pensioners and their dependants and to allow free dental treatment to all Government employees and pensions and their dependants. The Government has set up a Pay Commission which itself had been one of the demands of the employees. Almost 50 per cent of the over all revenue expenditure of the State is on pay and other benefits admissible to the employees.

3. In response to the questionnaire issued by the Pay Commission, about 400 Memoranda have already been submitted to it by various employees and their associations. However, certain misguided employees have threatened to go on strike on the 8th February, 1978, instead of choosing to place their demands before the Pay Commission. The Government has decided to deal firmly with such of the employees who choose to go on strike. You are requested to make it clear to the employees that in case they resort to strike, strict action will be taken against. In the case of *ad hoc* employees who join the strike, steps should be taken to terminate their services straightway. In the case of other employees, the provisions contained in Rule 3.17A(2) of the Punjab Civil Services Rules, Volume II shall be strictly enforced. The interruption in service caused by this strike shall entail forfeiture of their past service. It may be made clear to them that there shall be no leniency in the enforcement of this provision. As you are perhaps aware, the provisions of the East Punjab Essential Services (Maintenance) Act, 1947 applied to all the employees under the State Government.

4. It is also reiterated that casual leave shall not be granted to any employees, for the 8th February, 1978."

(4) As observed above, the petitioners in all these writ petitions and private respondents in L.P.As and the R.S.A. were *ad hoc* employees either in the State of Punjab or with the Punjab Water Supply and Sewerage Board.

(5) On June 16, 1978, the State Government issued another set of instructions to the Administrative Secretaries to Government of Punjab and All Heads of Departments in the State of Punjab granting certain benefit to the employees who did not participate in the strike on February 8, 1978. The benefit to be granted was in the shape of a premature increment in the scale of pay in which such employees were working on February 8, 1978. The instructions dated June 16, 1978 are in following terms :—

Sub:—Grant of benefits to the employees who did not participate in the strike on 8th February, 1978.

Circular letter No. 550-3CE 78/3879 dated 6th February, 1978,—

vide instructions noted in the margin, the Punjab Government employees were cautioned not to strike on 8th February, 1978 as the Government was already considering their demands and had already extended certain concessions. Inspite of this certain sections of non-gazetted employees resorted to strike on 8th February, 1978. On the other hand a large number of non-gazetted employees did not observe the strike and in fact, attended encountered obstructions to such attandance. In appreciation of this gesture of discipline which is essential for smooth functioning of public administration,Government have decided to extend the following benefits to those non-gazetted employees of the Punjab Government who did not participate in the strike on 8th February, 1978:—

(i) They will be granted the premature increment in the scale of pay in which they were working on 8th February, 1978, by operation of Rule 4.10 of the Punjab Civil Services Rules, Volume I, Part I. This increment will not disturb the date of normal increment which would be admissible on the due date. The above decision regarding the grant of premature increment will not be applicable to those who had reached the maximum of the scale of pay before 8th February, 1978. Further the grant of this premature increment will not mean crossing of efficiency bar automatically. In other words in cases where the grant of aforesaid premature increment would involve crossing of efficiency bar, it will be released only after the formal decision in the prescribed manner in regard to the crossing of efficiency bar is taken.

AND

(ii) A letter of appreciation may be issued to all such employees who did not resort to strike on 8th February, 1978 by the appointing authority concerned in the enclosed form.

2. The decision at (i) above has the concurrence of the Finance Department as conveyed vide U.O. No. 10-3/78(3106-FPR-78, dated the 15th June, 1978."

Vide circular dated January 6, 1979, the State Government issued certain clarification on some points which were sought by some departments and offices regarding the implementation of the

instructions dated June 16, 1978. the clarification as given on various points may be noticed:—

I.	Whether the benefit of premature increment is to be allowed to adhoc employees.	No. The benefit is to be confined to regular employees.
II.	Whether the benefit of premature increment is to be given to an employee who had been awarded the penalty of stoppage of increment.	Yes. The benefit is to be allowed to such an employee as the grant of an incentive for attending office in defiance of the strike call has nothing to do with a penalty awarded to an employee for some other reason.
III.	Whether the benefit of premature increment is to be given to those regular employees who did not complete one year's service on 8th February, 1978 and attended office on that date.	Yes. The benefit of the premature increment is to be given to them. The length of service of an employee on the crucial date i.e. 8th February, 1978 has no relevance with this premature increment.
IV.	Whether the benefit of premature increment is to be given to official working as officiating or working on temporary posts in a higher scale on 8th February, 1978.	Yes. An actual increment is to be allowed to the scale of pay of higher post and a notional increment in the scale of pay of the lower post on which the employee may be holding a lien. In the event of his reversion, the benefit of premature increment in the lower scale will be allowed.
V.	Whether the benefit is to be allowed to those official who were under suspension on 8th February, 1978.	No. The benefit of premature increment is not to be given to such employees.

VI. Whether the premature increment is to be allowed to employee working in Punjab Government Offices outside the State i.e. Delhi, Faridabad and Calcutta, if they did not participate in the strike on 8th February, 1978.	Yes. The benefit is admissible to such employees provided it was a working day in the Punjab Government Offices located at those places.
VII. Whether the benefit of premature increment is to be allowed to probationers.	Yes. The benefit is to be given to probationers appointed on a regular basis.
VIII. Whether the benefit of premautre increment is to be allowed to those employees who remained on strike for two hours only and, there after attended office.	No. Because an employee who observed strike even for a part of the day does not deserve any encouragement."

(6) Still further clarifications were sought and the Government clarified the matter regarding the application of instructions dated June 16, 1978, on February 20, 1979. The relevant portions of the circular dated February 20, 1979, may be noticed.

(2) Whether the benefit of premature increment is to be allowed to those employees who were not in service on 8th February, 1978 because of their premature retirement but were reinstated in service after 8th February, 1978 and given leave of the kind due for the period they remained out of service.	No. They are not to be allowed the benefit of premature increment.
(5) Whether *ad hoc* and workcharged employees are entitled to the grant of premature increment.	Vide Punjab Government circular letter dated 6th January, 1979 mentioned above, it has been clarified that the premature increment is to

be allowed to the *ad hoc* employees and the benefit is to be confined to regular employees. It is further clarified that those *ad hoc* and work charged employees whose services stood regularised on 8th February, 1978, under Government instructions should be allowed the premature increment if they had attended the office on 8th February, 1978. Those employees whose services are to be regularised with effect from 8th February, 1978 or any date prior to that, from under the existing instructions relating to regularisation but the process of regularisation is still pending, should be allowed, premature increment, as soon as the process of regularisation of their services is completed if they had attended the office on 8th February, 1978. Those adhoc and work charged employees whose services are not entitled to be regularised as per the existing instructions with effect from 8th February, 1978 or any date prior to that are not entitled to the premature increment."

(7) Since as per the clarification issued by the Government on January 6, 1979, followed by clarification issued on February 20, 1979, the *ad hoc* employees were not given the premature increment despite their having not gone on strike on February 8, 1978, they filedthe aforesaid writ petitions. Paras Ram and some others lecturers/Teachers in the Government Schools, who were working on *ad hoc* basis on February 8, 1978, and had not gone on strike filed C.W.P. No. 3312 of 1989 claiming one premature increment in accordance with the instructions dated June 16, 1978. Similarly Joginder Singh Grover and some others filed C.W.P. No.

3313 of 1989 claiming the same relief as claimed by Paras Ram and others. The said writ petitions were allowed by the learned Single Judge,—*vide* judgment dated November 18, 1991, against which the two L.P.A.s, being disposed of by this judgment, were filed by the State.

(8) The motion Bench while admitting C.W.P. No. 14874 of 1995 to the Full Bench had observed that the petitioners are claiming the benfit under the instructions dated June 16, 1978, regarding the grant of one premature increment and the cause of action if any, having accrued to them on issuance of the aforesaid instructions or immediately thereafter, could relief be now granted to them when they filed the writ petition in the year 1995? Is the person claiming relief even on the basis of a judgment of a Court given in some other case obliged to approach the Court within a reasonable time after the State Government does not give the benefit or relief in accordance with the instructions on the basis of the judgment or he can approach the Court any time as if there is no limitation ? Is it that the writ petition should be entertained even when the period of limitation prescribed for filling a civil suit has already expired ?

(9) Learned counsel for the petitioners submitted that in case of wrong fixation of pay to which an employee may be entitled under the relevant rules, instructions or even on account of a judgment, there is no question of any limitation as the wrong payment of salary every month is a continuing wrong against him which gives rise to recurring cause of action each time he is paid salary which is not computed according to the relevant rules, instructions or a judgment. The employee in such a case has a right to ask for a direction to the State Government or to the employer to fix the pay correctly right from day one in accordance with the relevant rules and instructions. However, while granting the relief of arrears of pay etc., the same can be confined to reasonable period and he suggested that in a writ petition, the arrears can be confined to three years and two months which is the period of limitation provided for getting a relief of realization of arrears in a civil suit. In support of his contention learned counsel relief upon the apex Court judgment in *M.R. Gupta v. Union of India and others*(1). It will be apposite to reproduce paras 4 to 7 of the reported judgment

> 4. The Tribunal has upheld the respondents' objection based on the ground of limitation. It has been held that

(1) 1995 (4) RSJ 502

the appellant had been expressly told by the order dated 12th August, 1985 and by another letter dated 7th March, 1987 that his pay had been correctly fixed so that he should have assailed that order at that time "Which was one time action". The Tribunal held that the raising of this matter after lapse of 11 years since the initial pay fixation in 1978 was hopelessly barred by time. Accordingly, the application was dismissed as time barred without going into the merits of the appellant's claim for proper pay fixation.

5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1st August, 1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

6. The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See hota China Subba Rao Vs. Mattapalli Raju, AIR 1950 FC 1 = 1949 FCR 484 = 50 Bom LR 181 (1951) 1 MLJ 752).

7. Learned counsel for the respondents placed strong reliance on the decision of this Court in S.S. Rathore Vs. State of M.P. (1989) 11 ATC 913 = 1989 Supp (1) SCR 43. That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly comuted and paid. No further consideration of that decision is required to indicate its inapplicability in the present case."

(10) Learned counsel also cited a Division Bench judgment of this Court in *Rattan Singh and others v. State of Haryana and others*(2), support of his contention. In *Rattan Singh's case* (Supra), the Division Bench observed as under regarding delay and laches :

"6. Learned Assistant Advocate General (Haryana) reiterated the preliminary objection to the entertainability of the writ petition by arguing that the writ petitions have been filed after a long delay. Learned

(2) 1995 (1) RSJ 533

counsel argued that the petitioners have slept over their rights and, therefore, they are not entitled to any relief from this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. She relied on order dated 24th November, 1993 passed in Civil Writ Petition No. 7435 of 1993. Learned counsel for the petitioners argued that when this Court has accepted the claim of similarly situated persons relief should not be denied to the petitioners merely because they have approached this Court after passage of some time.

7. Delay and laches are twin grounds evolved by Courts for denying relief to a person who approaches it after a lapse of considerable time for issue of a writ under Article 226 of the Constitution of India. The rule that the Court will not give relief to a person who has filed a petition after a lapse of long time is a rule evolved by the Courts. It is not a legislative instrument like the Limitation Act which prevents the Courts from granting relief in a given case. Rather, it is a rule of self-imposed limitation innovated by the Courts for not issuing orders which would unsettle the settled things or where a third party would be adversely affected due to the issue of a writ after a long delay. This rule which forms part of the Judge-made law cannot, however, be applied to each and every case for non-suiting a petitioner irrespective of the nature of claim and the circumstances which have contributed to the delay in filing of the petition. What we wish to emphasize is that no strait-jacket formula or wooden rule can be applied for declining or not declining the relief to a petitioner, who has approached the High Court for appropriate relief under Article 226 of the Constitution of India. In each and every case the Court shall have to scrutinise the relevant facts for determining as to whether it will be appropriate to exercise jurisdiction in favour of a person who has approached it after a long lapse of time. In a given case Court may decline relief to a person only on the ground

that he has approached it after a passage of few months counted from the date of accrual of cause of action. In another case it may give relief to a person who has filed a petition even after lapse of many years. Primary consideration, which must weigh in the mind of the Court while adjudicating upon an objection of delay of laces, is as to whether the petitioner has been grossly negligent in pursuing his remedy and whether the delay has resulted in a situation where rights of others have been settled and it would be inequitable to unsettle those rights.

(11) Learned Advocate General, Punjab, on the basis of the observations made in Rattan Singh's case (Supra) argued that primary consideration which must weigh in the mind of the Court while adjudicating upon objection of delay and laches is to see whether the petitioner has been grossly negligent in pursuing his remedy and in case it is so found, the petitioner should be denied the discretionary remedy under Article 226 of the Constitution of India.

(12) After hearing learned counsel for the parties on this point we are of the view that in case where a person invokes the jurisdiction of this Court under Article 226 of the Constitution of India for fixation of his pay under relevant rules/instructions or even on the basis of a judgment of a competent Court, the question of delay and laches would not come in as it would be a case of a continuing wrong and every month the person is paid the salary which according to him is not in accordance with the relevant rules and instructions a fresh cause of action would arise every month. Such a case is not a case of one time action like the case of termination or dismissal from service. As observed by the apex Court in M.R. Gupta's case (Supra) that the Court while granting relief regarding the payment of arrears may apply law of limitation. Since a civil suit would be maintainable for realizing arrears of three years and two months, the writ Court would be justified in restricting the payment of arrears to three years and two months prior to the filing of the writ petition.

(13) We do not agree with the submission of the learned Advocate General, Punjab, that the writ Court should decline the relief to a person who is claiming correct fixation of his pay in accordance with the relevant rules and instructions merely bacause he has been negligent in approaching the Court. If such a person can file a civil suit for the correct fixation of his pay where he can further claim arrears upto a period of three years and two months prior to the filing of the civil suit, there is no reason why such relief should be denied by a writ Court. Apart from the above, it may be noticed that in such cases as the present one where only fixation of pay is sought and arrears are claimed, rights of third party do not intervene during the period the person may not have approached the Court. The correct fixation of pay and the payment of arrears do not affect third party's right. This was also so observed by the Division Bench in Rattan Singh's case which has been quoted above, on the basis of which the argument was raised by the learned Advocate General Punjab.

(14) For the foregoing reasons we are of the view that in cases where only fixation of pay according the relevant rules/ instructions or a judgment is prayed for, the writ petition cannot be dismissed at the threshold on the ground of delay and laches but the payment of arrears can be restricted to a reasonable period. Three years and two months would be considered a reasonable period as that is the period for which a person can ask for the payment of arrears before a civil Court.

(15) The question that remains to be decided is whether respondents have practised any invidious discrimination against *ad hoc* employees by not granting them the benefit of one premature increment which was granted to regular employees though both categories of employees may not have resorted to strike on February 8, 1978. In other words, the question that would require to be answered is whether the *ad hoc* employees are a class apart as compared to regular employees ? For this purpose, we will have to consider what is the status of an *ad hoc* employee in law. An *ad hoc* employee is appointed for a specified purpose or as a stop gap arrangement for a short duration or for a fleeting purpose. He does not acquire the right to hold the post or to continue in employment

indefinitely in contrast to a regular employee who not only possesses the right to hold the post but also has right to continue in service till it is terminated in accordance with the rules regulating the conditions and Article 311 of the constitution of India. In the gamut of service law, an ad hoc employee virtually stands at the lowest rung as against a permanent, quasi-permanent and temporary employee. An *ad hoc* employee cannot stake his claim to remain in service till he is regularly employed or becomes a member of the service. He cannot claim equivalence with permanent/quasi permanent or temporary employees. The right of the State Government or for that matter of any employer to terminate the services of an *ad hoc* employee in terms of appointment is inherent and well recognised whereas in case of regular employee, his services cannot be terminated by having resort to the terms of appointment because such an employee gets the protection of Rules governing his service conditions and the protection under the Constitution. The services of the *ad hoc* employees are not governed by any Statute or service rules. Articles 14 and 16 are attracted when two similar classes are treated unequally or to put it in reverse unequals are treated equally. An *ad hoc* employee who may have been appointed for a particular purpose or as a stop gap arrangement cannot be deemed in the eye of law as identically equivalent to a person who has been appointed regularly by following regular procedure of appointment in accordance with the relevant rules. If ad hoc employee is as good as regular employee, then ipso facto the entire *ad hoc* service should be reckonable for purpose of seniority when such an *ad hoc* employee is regularised. However, in law it is not so. It is under certain circumstances that *ad hoc* service followed by regular service is countable for seniority as has been held by the apex Court in *Direct Recruit Class II Engineering Officers Association* v. *State of Maharashtra* (3).

(16) Learned counsel for the petitioner argued that *ad hoc* employees have the requisite qualifications and were discharging the same duties as were being discharged by regular employees and they had also not gone on strike on February 8, 1978, and, therefore, the incentive which was lateron given to the regular

(3) 1990 (2) SLR 769

employees for not resorting to strike should be given to the *ad hoc* employees as well. It was further argued that the State Government while clarifying the instructions dated June 16, 1978, had clarified that those *ad hoc* employees who were entitled to be regularised on or before February 8, 1978, and had not gone on strike were also entitled to the premature increment though actually they had not been regularised on that day in as much as no order had been passed to that effect. In other words, the clarification granted the benefit of premature increment to *ad hoc* employees as well though the orders of their regularisation were passed lateron. Consequently, according to the counsel, the petitioners who were regularised later than February 8, 1978, could not be denied the benefit of premature increment if they had not gone on strike on February 8, 1978. Reliance was placed on the judgment of a learned Single Judge in *Paras Ram and others v. State of Punjab and others* (C.W.P. No. 3312 of 1989) rendered on november 18, 1991.

(17) It may be observed that against the aforesaid judgment of the learned Single Judge, two L.P. As No. 583 and 584 of 1992 are being disposed of by this judgment. Learned counsel for the petitioners also relied on a Division Bench judgment in *Ms. Sukhvarsha versus State of Punjab and others*, (C.W.P. No. 5625 of 1996) rendered on November 18, 1996, wherein it was held that *ad hoc* employee who might not have resorted to strike on February 8, 1978, is entitled to premature increment. As we have observed above, *ad hoc* employee falls in a different category as compared to a regular employee and has no right to continue on a particular post. The question, therefore, is whether the classification in not granting the premature increment to *ad hoc* employee who might not have resorted to strike has a reasonable nexus with the object to be achieved. The State Government in its wisdom thought of giving incentive only to its regular employees who might not have gone on strike on February 8, 1978 and had listened to the Government when it had issued instructions on February 6, 1978, that the Government employees should not go on threatened strike on February 8, 1978. The instructions dated February 6, 1978, made it clear to the *ad hoc* employees that if they resorted to strike, then their services would be dispensed with

immediately. In other words, the right of termination which vested in the Government would be exercised in case the ad hoc employees went on strike. The incentive to them was already there in the instructions dated February 6, 1978, that in case the ad hoc employees do not go on strike, then the right to terminate their services would not be immediately exercised. The instructions which give benefit to certain employees have to be strictly construed. The instructions laid down that benefit to those employees who have no right to service, i.e. *ad hoc* employees would not be given. We find nothing wrong in the same. The *ad hoc* employees did not go on strike because of the peril that their services may be terminated. At that stage they did not know that an incentive in the form of premature increment may be given to them lateron. The Government wanted to give incentive lateron only to those employees who were to continue with the State Government as regular employees and not to those who were not entitled to be regularised or who could just leave the service without any hassies. So far as the judgment of a learned single Judge in Paras Ram's case cited by the learned counsel for the petitioners is concerned, it may be observed that learned Judge relied upon *Rajinder Kumari v. State of Punjab and others*(4). Wherein this Court had held that if certain increments or higher pay scale was given to regular employees on getting higher qualifications, the same could not be denied to adhoc employees who were performing identical duties. It may be observed that in Rajinder Kumari's case, the point was totally different as to the emoluments that are liable to be given to an ad hoc employee who has the same qualifications as a regular employee and performing identical duties. That was not a case of grant of a particular incentive. With respect to the learned Judge, we are of the view that the ratio of Rajinder Kumari's case could not be extended to a case where only incentive is given to a particular class of employees. In *State of Punjab and others v. Om Parkash Kaushal*(5), while discussing Punjab privately managed recognised School employees, (Security of Service) Act, 1979, it was held by the apex Court that the pay scales and dearness allowance of Teachers of private Aided Schools had been brought at par by

(4) 1988 (4) SLR 297
(5) A.I.R. 1996 S.C. 2584

the State Government with the Teachers of same status in the Government service. However, they could not claim advance increments as were given to regular employees who fulfilled certain conditions on the ground that this was a form of an incentive which could not be claimed by the Teachers of the private State Aided Schools. In *State of Haryana* v. *Jasmer Singh*,(6), the apex Court while discussing the theory of equal pay for 'equal work' held that a daily wage employee though may be doing the same work is not entitled to the same pay as of a regular employee as he cannot be treated on par with the persons in regular service of the State. It was observed that such employees are not selected in the manner in which regular employees are selected. The requirement for selection is not as rigorous as of a regular employee. Other provisions relating to regular service are not applicable to such daily wage employees and they are not subjected to any disciplinary control. According to us, these observations are fully applicable even to ad hoc employees. We are of the view that the learned Judge is Paras Ram case was not legally correct to hold that ad hoc employees who might not have gone on strike on February 8, 1978, would also be entitled to premature increment as given to the regular employees. The judgment of the learned Single Judge is liable to be set aside.

(18) So far as the other judgment in *Sukhvarsha's case* (Supra) is concerned, suffice it to mention that no reasons have been given in the judgment as to why two classes of employees 'ad hoc' and 'regular' cannot be treated differently. Moreover, we have been told that S.L.P. No. 15219 of 1997 has been filed against the aforesaid judgment and while issuing notice in the S.L.P. interim stay was granted by the apex Court. For the reasons we have given above, with respect to the learned Judges of the Division Bench in Sukhvarsha's case, we are unable to subscribe to the view taken in the said case.

(19) So far as the point raised by the learned counsel for the petitioner that those ad hoc employees who had yet not been regularised by February 8, 1978, were also granted the benefit of premature increment though they might have been regularised

(6) JT 1996 (3) S.C. 876

lateron but w.e.f. a date prior to or up to February 8, 1978, and, therefore, the petitioners who were also regularised though much after February 8, 1978, should not be discriminated against, we find no force in this argument. Those ad hoc employees who were liable to be regularised on or before February 8, 1978, but for no fault of theirs no orders had been passed were held entitled to the benefit by the Government as if in fact they were regular employees as on February 8, 1978. In other words, the benefit has only been given of premature increment to regular or virtually regular employees who were there as such on February 8, 1978.

(20) For the foregoing reasons, we dismiss Civil Writ Petitions No. 16821 of 1992, 7048 of 1993, 11365 of 1993, 8430 of 1994, 11398 of 1995 and 14874 of 1995 and allow L.P.A.s No. 583 and 584 of 1992 and quash the judgment of the learned Single Judge dated November 18, 1991, passed in Civil Writ Petitions No. 3312 and 3313 of 1989. R.S.A. No. 848 of 1994 will also stand allowed and the judgment and decree of the lower appellate Court dated September 20, 1993, is set aside and that of the trial Court dated November 25, 1992, is restored.

R.N.R.

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