

*Before Rajiv Narain Raina, J.*

**PARMOD KUMAR AND OTHERS—Petitioners**

*versus*

**STATE OF HARYANA AND OTHERS—Respondents**

**CWP No.6305 of 2009**

September 17, 2018

**A) Constitution of India, 1950—Art. 226, 227—Adhoc Service whether to be counted for Additional Increment, Higher Standard Pay Scale, ACP Pay Scale and Seniority—Recurrent expression in the Schemes/Rules is minimum requirement of ‘regular satisfactory service’—Intension of Government— Regular service and not adhoc service.**

*Held*, that a careful reading of all the relevant schemes noticed above and the statutory Rules providing for time bound promotional increments and promotional pay scales and reproduced in the preceding paragraphs of the judgment show that the said schemes/Rules provide for these benefits i.e. additional increment, Higher Standard Pay Scale, ACP Scale on completion of a specified length of regular service. The expression which is recurrent in these schemes/Rules and the burden of the song played by them is the minimum requirement of ‘regular satisfactory’ or ‘regular service’. Therefore, the intention of the Government that the service to be reckoned for the purpose for grant of these time bound promotional benefits is without doubt ‘regular service’ and not just ‘service’ so as to be inclusive of temporary, ad hoc or work charge service, and this plain meaning is clearly discernible through the thread of the concessions to ameliorate stagnation in service which was the accepted bane of efficiency in administration so that the will to work is not stifled. Once the Scheme or the Rules categorically provide for ‘regular service’, the same is to be taken as such without making any further interpolations or introducing interpretative processes more than what is required in the text and context of how the benefits work.

(Para 20)

*Further held*, that for what has been discussed above, it is held that:-

- (i) The petitioners are not entitled to count their period of ad hoc/ work-charged/ temporary serviced towards seniority

in the cadre before the date they were regularized and became members of service for the first time in terms of the relevant policies of State Government.

- (ii) The Petitioners are not entitled to benefit of Additional Increments for the period of their ad hoc/work-charged service on completion of 8/18 years of service as well as 10/20 years, since such period does not qualify as regular satisfactory service as per modified scheme dated August 7, 1992.
- (iii) Similarly, the petitioners are not entitled to the benefit of financial up-gradations of Higher Standard Scale or to the Assured Career Progression Scales for the period of their ad hoc/work charge/temporary service etc. Only regular service rendered satisfactory counts for claiming rights to these monetary benefits strictly as per the provisions of these schemes.

(Para 43)

**B) *Dispute qua seniority—Affected private parties not impleaded—Petitions dismissed.***

*Held that*, therefore, the crucial question arises as to the effect of dismissal of State appeal on the issue of seniority qua the present petitioners working in different departments clamouring for adding ad hoc/work-charged/temporary service which may make them steal a silent march over regular recruits who are not parties before the court but are likely to be affected in the matter of their seniority behind their backs and without a reasonable opportunity of hearing given to them. And on this ground the petitions in which private persons are not made party are liable to be dismissed.

(Para 22)

*Further held*, that it is settled position that a claim for re-determination of seniority should not be entertained when it is likely to affect the prevailing interest of those in the cadre past and present who have not been impleaded as parties to the proceedings. Of the many judgments, reference may be had to one of the Supreme Court in *State of Rajasthan v. Uchhab Lal Chhanwal*, (2014) 1 SCC 144. This is an additional reason to refuse issuing writ of certiorari and mandamus.

(Para 35)

**C) *Doctrine of merger—Dismissal of SLP before or after grant of relief—When High Court can interfere.***

*Held*, that dismissal of Special Leave Petition in *limine* by a non-speaking order does not justify any inference that by necessary implication, the contention raised in the SLP on the merits of the case has been rejected by the Supreme Court and such dismissal of the petition will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution of India or in review. The position is entirely different when leave is granted and the petition is converted into an appeal. Dismissal of an appeal after grant of leave by non-speaking order even without reasons or detailed reasons attracts the doctrine of ‘merger’ wherein the superior court upholds decision of lower court from which appeal has arisen.

(Para 24)

For the Petitioner:-

R.L. Sharma, Advocate

Anand Bhardwaj, Advocate

Ravi Verma, Advocate

Madan Pal, Advocate

Sanjiv Gupta, Advocate

Monika Arora, Advocate

Anurag Goyal, Advocate

Jaspal Singh Maanipur, Advocate, and

Sonam Janjua, Advocate

Anuj Garg, Advocate for

Sachin Gupta, Advocate

N.K. Malhotra, Advocate

S.K. Yadav, Advocate

Jasbir Malik, Advocate

Umesh Narang, Advocate

B.K. Bagri, Advocate

Deepak Sonak, Advocate

Ravinder Malik, Advocate

Narender Pal Bhardwaj, Advocate

Ravinder Malik (Ravi), Advocate

Ravi Sharma, Advocate

Abhay Gupta, Advocate

R.D. Yadav, Advocate

R.S. Hooda, Advocate

P.L. Verma, Advocate

Subhash Ahuja, Advocate.

For the State of Haryana:-

Harish Rathee, Sr. DAG, Haryana

Shruti Jain Goyal, DAG, Haryana.

None for the private respondents.

**RAJIV NARAIN RAINA, J.**

(1) This order will dispose of the above mentioned writ petition as well as other connected writ petitions tabulated at the foot of the order\* (numbering 101 cases) even though some of them present different facets involving in one or more forms the question whether to count ad hoc service towards different service entitlements such as Additional Increment, Higher Standard Pay Scale, ACP Pay Scale and Seniority as the main focus to claim these cascading reliefs sought by the petitioners in this bunch of cases.

(2) Many of these cases involve appointments initially made by calling names from the employment exchange, while some of them were by public advertisements and selection made through localized Selection Committees at the department level.

(3) These cases were adjourned to await the decision of the Supreme Court in *State of Haryana versus Hanumant Singh*, Civil Appeal No. 322 of 2015 (arising out of SLP No. 11128 of 2009) orders of which have been pronounced recently on May 10, 2018 dismissing the bunch of appeals of which the main petition is cause titled *State of Haryana and others versus Rajender Kumar and others*, bearing Civil Appeal No.321 of 2015.

(4) The State of Haryana had approached the Supreme Court praying for grant of special leave to appeal against the judgment and order of the Division Bench of this Court in *Hanumant Singh and*

*others versus State of Haryana and others*<sup>1</sup>. In the said batch of Writ Petitions, petitioners had prayed for quashing of the impugned orders by which the benefit of seniority, Higher Standard Pay Scale and ACP scale granted after completion of 8/18 years of service had been withdrawn. In view of the pleadings made in these cases, the Division Bench framed the following three questions for its answer:

“1. Whether ad hoc service/work charged service, followed by regular service, can be counted for the purposes of grant of higher pay scale/benefit of Assured Career Progression on completion of 8/18 or 10/20 years of service?

2. Whether ad hoc service/work charged service, followed by regular service, can be counted for the purpose of grant of additional increment in the running scale on completion of 10/20 years or 8/18 years of service?

3. Whether ad hoc/ work charged service, followed by regular service, is to be counted for the purpose of pension and seniority?”

(5) In order to determine the controversy, the Division Bench considered the various schemes framed by the State of Haryana from time to time taking care of stagnation and lack of promotional avenues for employees belonging to Group 'C' and 'D' services. Since in the present batch of Petitions, various claims have been made under these schemes therefore, it becomes necessary to briefly discuss these schemes before proceeding further.

**Re: Additional Increments.**

(6) The Government of Haryana vide circular dated May 14, 1991 for the first time decided to grant one additional increment on completion of the 10th and another on the 20th year of service in the time scale as applicable from 1st January, 1986 to all Group 'C' and 'D' employees in addition to regular annual increment. The relevant portion of the said instructions is reproduced below:

"(Copy of F.D. Hr. No. 9/9/91-3 PR(FD) dated 14.5.91)

I am directed to invite your attention on the subject noted above and to say that the State Government have decided to grant one additional increment at 10th and another 20th year point in the time scale as applicable from 1.1.1986 to

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<sup>1</sup> 2008 (4) SCT 427

all group 'C' and 'D' employees in addition to regular increments.

1(i) The 10th year point means the date on which an employee reaches the 11th" stage of his pay scale (say after having earned 10 increments). The employee who reached such stage on or before 1.1.91 will get the additional increment on 1.1.91.

(ii) 20th year point means the date on which an employee reaches the 22nd stage of his pay scale (i.e. after earning 20 regular increment and on additional increments).

(iii) All such employees who have crossed 21st point of their scale of above before 1.1.1991 shall get only one additional increment on 1.1.1991.

(iv) If the pay of an employee as a result of grant of additional increment of 10th and 20th year point reaches the stage beyond the efficiency bar, the benefit shall be subject to the condition that he clears the efficiency Bar.

(v) The benefit of additional increment would be available in the scale and not at the stage beyond the maximum of the scale given to the employees in terms of para 4(3) of this letter."

(7) Thereafter, the above scheme was further modified vide Government instructions dated August 7, 1992. Under the said scheme, it was decided to grant additional increment on completion of 8/18 years of regular satisfactory service instead of 10/20 years of service. The instructions read as under:

"(Copy of F.D.Hr.No. 1/13 8/92-1(FD) dated 7.8.92)

I am directed to invite your attention to Haryana Government letter No.9/9/91-3PR(FD), dated 14.5.1991. read with letters No. 9/9/91/3PR(FD)), dated 9.4.1992 and to say that on persistent demand of employees the matter regarding revision of the scheme cited as subject has been engaging attention of the State Government. After careful consideration, the Government have decided to modify the scheme, as under:

(i) Now the benefit of additional increment(s) would be available to Group-'C' and 'D' employees on completion of

8 and 18 years of regular satisfactory service in a particular group. The first additional increment will be granted after 8 years of service and the second after 18 years of service.

(ii) Grant of such additional increment(s) will take effect from 1st day of the month next following in case the due date falls after 1st day of the month.

(iii) For the purpose of counting service for group 'C' or 'D' the whole service rendered in a particular group will be reckoned as prescribed length of service. For example, service as clerk, Assistant and Deputy Superintendent etc. will count in group 'C' and service rendered as Peon, Daftri, Jamadar etc. will count in Group 'D'.

(iv) The employees who have already availed of two additional increment under the old scheme will not be entitled to any increment under the New Scheme. In case, an employee had got only one increment under the old scheme, he will be entitled to the second on completion of 18 years of service in a particular group to be granted with effect from the prescribed date or later date, as the case may be.

(v) If the additional increment(s) has/have become due before 1.7.92 under the old scheme, the benefit of additional increment(s) will be granted under the old scheme.

(vi) Cases decided under the old scheme prior to the issue of these instructions will not be re-opened.

(vii) The existing provision relating to open-ended scale for group 'C' and 'D' employees will remain unchanged.

(viii) The date of normal annual increment will remain unchanged.

(ix) New scheme will come into force with effect from 1.7.1992."

**Re: Higher Standard Scale.**

(8) The State Government introduced another scheme vide notification dated February 8, 1994 with effect from January 1, 1994. Under the scheme known as Higher Standard Scale Scheme, it was

decided to grant Higher Standard Scale after completion of 10/20 years of regular service. The instructions contained in the circular dated 8th February, 1994 read as under:

"(i) Every employee of group 'C' or 'D' category who has not got any promotion or promotional scale/higher time scale/selection grade in his service career and has completed twenty years or more of **regular satisfactory service** before 1.1.1994 will be allowed with effect from 1.1.1994 in place of his present pay scale the second higher standard pay scale specified in column 4 of the enclosed Annexure with respect to the pay scale of the post applicable from 1.1.1986. An employee who completes such **regular satisfactory service** of twenty years after 1.1.1994 and has not got any promotion or promotional scale/higher time scale/selection grade in his service career will be allowed the aforesaid second higher standard scale from first day of the month following the month in which he completes such service.

(ii) Every employee of group 'C' or 'D' category who has not got any promotion or promotional scale/higher time scale/selection grade in his service career and has completed ten years or more but less than twenty years of **regular satisfactory service** before 1.1.1994 will be allowed with effect from 1.1.1994 in place of his present pay scale the first higher standard scale specified in column 3 of the enclosed Annexure with respect to the pay scale of the post applicable from 1.1.1986. An employee who completes such **regular satisfactory service** of ten years after 1.1.1994 and has not got any promotion or promotional scale/higher time scale/selection grade in his service career will be allowed the aforesaid first higher standard scale from first day of the month following the month in which he completes such service.

(iii) Every employee of group 'C' or 'D' category who has completed twenty years or more of **regular satisfactory service** before 1.1.1994 but has got only one promotion or promotional scale/higher time scale/selection grade in his service career will be allowed with effect from 1.1.1994 in place of his present pay scale the first higher standard scale specified in column 3 of the enclosed Annexure with



respect to the pay scale of the post applicable from first January, 1986. An employee who completes **such regular satisfactory service** of twenty years after 1.1.1994 but has got only one promotion or promotional scale/higher time scale/selection grade/higher standard scale in his service career will be allowed the aforesaid first higher standard scale with effect from first day of the month following the month in which he completes such service."

3. The highest standard pay scale to be granted under these instructions will be Rs. 2000-60-2300-75- 2900-EB-100-3500.

4. An employee who foregoes promotion or seeks reversion to a lower post at his own request will render himself ineligible for the benefit of higher standard scale under these instructions.

5. In case an employee who has got promotion already but the pay scale of the promotion post is either equal or lower than the pay scale of the feeder post, the benefit of the higher standard scale will be granted in such cases.

6. '**Regular Satisfactory Service**' means actual continuous service under Haryana Government or erstwhile Punjab Government before re-organisation **on regular basis** in the present cadre to be reckoned within the same Group and assessed fit for promotion as per procedure prescribed for promotion cases. Inter-district transfers on a corresponding cadre within the same department, and the service of an employee on different posts in the same cadre carrying the same pay scale will be treated as continuous service in relation to these instructions. Non-grant of higher standard pay scale on account of unsatisfactory service record will not be considered as a punishment under the Punishment & Appeal Rules.

7. These instructions do not cover the employees governed by the UGC pay scales.

8. If an employee finds the existing pay scale beneficial to him, he can retain that pay scale provided he gives an option in writing to do so within a period of two months to his appointing authority through proper channel which will be placed in the service book of the employee after

counter-signatures of the appointing authority. The option once exercised will be final.

9. In case the time scale and the selection grade of a post have been clubbed together and replaced by one single revised pay scale effective from 1.1.1986, the restriction of selection grade imposed in the foregoing paras for grant of higher standard scale will not apply.

10. Pay Fixation : On grant of higher standard scale under these instructions, the pay of the employee in the higher standard pay scale will be fixed at the stage next above his pay drawn by him in his present pay scale and the date of next increment would be on completion of the normal period. However, if pay is once fixed in the pay scale of Rs. 2000-3500 it will not be fixed again in the same pay scale.

"PAY" means the pay as defined in Rule 2.44(a)(i) of the Punjab Civil Services Rules Volume I Part I (as applicable to Haryana State).

11. Special pay admissible, if any, being drawn by an employee on the present post in the present scale will continue to be drawn as a separate element so long as he holds the post carrying special pay.

12. Since the grant of higher standard pay scale under these instructions is **compensation for stagnation and is therefore based on length of service without involving higher responsibilities**, this will be treated as a fortuitous circumstance and no benefit of step-up of pay to a senior just on the basis of seniority in the hierarchy will be admissible.

13. The existing provisions relating to open-ended pay scales for group 'C' and 'D' categories of employee shall continue to be in force.

14. The benefit of additional increments already granted to an employee prior to 1.1.1994 on completion of 8 and 18 years of service or on 10th and 20th year point of pay scale in terms of earlier instructions will not be withdrawn.

15. These instructions take effect from 1.1.1994.

16. The contents of this letter may be brought to the notice of all under your control.

17. The receipt of this letter may please be acknowledged."

**Re: Assured Career Progression scales.**

(9) Thereafter, to provide extra incentives to the Class 'C' and 'D' employees, the State of Haryana vide Notification No. G.S.R.4/Const./Article 309/98 dated January 7, 1998 issued Haryana Civil Services (Assured Career Progression) Rules, 1998. Rules 1, 3(b) 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**.

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**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 recruit** in the Government service and is in continuous employment of Government since such recruitment;

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**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."

(10) The Division Bench relied upon the Judgment of the Supreme Court in *State of Haryana versus Haryana Veterinary and AHTS Association and another*<sup>2</sup> and held that the employees are not entitled to count ad hoc service for the purpose of grant of higher scale/ACP scale. The second query was answered in the affirmative in view of the Judgment dated October 31, 2000 passed in Civil Appeal Nos. 5740- 5741 of 1997, *State of Haryana versus Ravinder Kumar and others* and other connected matters, to hold that the employees are entitled to count ad hoc/work-charged service for the purposes of grant of additional increment after completion of 10/20 years of service or 8/18 years of service. In Ravinder Kumar case the Supreme Court passed the following order, the State counsel conceding the case:-

“These batch of cases were delinked while hearing an another batch of appeals from the same State, which were

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<sup>2</sup> 2000 (4) SCT 664

disposed of by us by judgment dated 19-9-2000.

2. It is conceded by the learned 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 learned counsel appearing for the State that this period which the employees have rendered on work-charge basis counts 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 government circular, which obviously is 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.”

(11) However, without any discussion on the issue of seniority, the Division Bench also answered the second part of the third query in favour of the Petitioners to hold that the ad hoc service/work-charged service followed by regular service is to be counted for the purpose of seniority. These observations are obiter dicta.

(12) During the period between the law declared in Haryana Veterinary and AHTS Association and Hanumant Singh cases, there have been delivered a series of Judgments of the Supreme Court stating the law on the point, namely, *State of Punjab and others versus Harjinder Kaur and others*, Civil Appeal No. 6525 of 1998 decided on February 20, 2001; *State of Punjab and others versus Ishar Singh and others*<sup>3</sup> and *State of Punjab and others versus Gurdeep Kumar Uppal and others*<sup>4</sup> and various Division Benches of this Court rendered in cases *Bharat Singh versus State of Haryana*<sup>5</sup>; *Badal Singh and Others versus State of Haryana and others*<sup>6</sup> and *Punjab*

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<sup>3</sup> 2002(1) SCT 72 : 2002 (10) SCC 674

<sup>4</sup> 2003(11) SCC 732

<sup>5</sup> 2002(4) S.C.T. 432

<sup>6</sup> 2007(1) SCT 649

*State Tubewell Corporation Workers Union versus State of Punjab*<sup>7</sup>, which relied upon the judgment in *State of Haryana versus Haryana Veterinary & AHTS Association* (supra); *Vinod Kumar Gupta versus State of Haryana*<sup>8</sup> which relied upon the Judgment in *Direct Recruit Class II Engineering Officer' Association versus State of Maharashtra*<sup>9</sup> and held that work charge/ad hoc service rendered by the respondents cannot be clubbed with their regular service for the purpose of grant of revised pay scales, senior/selection grade, proficiency step-up, ACP Scale and for fixation of seniority. However, another Division Bench in *Varinder Kumar versus State of Haryana*<sup>10</sup>, accepted the claim of the Petitioners to count the work-charged service towards 'regular service' for grant of additional increments and Higher Standard Pay Scale on completion of 10/20 or 8/18 years of service. The contention raised by the State that the Judgment in Ravinder Kumar's case is per-incuriam as it did not consider the issue that the work-charged employees are neither appointed in the manner as the regular employees nor they from part of the regular cadre, rather they are controlled by a separate code, was rejected by the Court. The Judgment in Haryana and AHTS Veterinary Association was distinguished on the ground that in the said case, the Supreme Court was seized of the issue pertaining to counting of ad hoc service toward regular service for grant of said increments and the cases pertaining to work-charged service were delinked and decided in Ravinder Kumar's case and the appeals filed by the State of Haryana were dismissed. The Judgment in Varinder Kumar's case was followed by other Division Benches in *Satbir Singh versus State of Haryana*<sup>11</sup>, *S.K. Malhotra versus State of Haryana*<sup>12</sup> and *Sita Ram versus State of Haryana*<sup>13</sup>.

(13) After the decision of the Division Bench in Hanumant Singh's case, the issue of counting of work-charged service towards grant of promotional scale and promotional increments on completion of specified years of regular service came up for consideration of three Judges' Bench of the Supreme Court in *Punjab State Electricity*

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<sup>7</sup> 2008 (5) SLR 684

<sup>8</sup> 2007(1) SCT 525

<sup>9</sup> 1990 (2) SCC 715

<sup>10</sup> 2002 (2) S.C.T. 799

<sup>11</sup> 2002 (2) S.C.T. 354

<sup>12</sup> 2003 (1) S.C.T. 330

<sup>13</sup> 2004 (4) S.C.T. 562



**Board versus Jagjiwan Ram**<sup>14</sup>. The Division Bench in the said case had granted the relief by relying upon the judgment passed in **State of Haryana and ors. versus Ravinder Kumar & ors.** (supra). The Supreme Court considered the Judgments in **Jaswant Singh and others versus Union of India and others**<sup>15</sup> and **State of Rajasthan versus Kunji Raman**<sup>16</sup> and held that the ratio of the above mentioned judgments is that work-charged employees constitute a distinct class and they cannot be equated with any other category or class of employees much less regular employees and further that the work-charged employees are not entitled to the service benefits which are admissible to regular employees under the relevant rules or policies framed by the employer. The Court distinguished the order in Ravinder Kumar's case and allowed the appeal of the Board by relying upon its earlier judgments in **State of Haryana versus Haryana Veterinary & AHTS Association, State of Punjab and others versus Ishar Singh and others** and **State of Punjab and others versus Gurdeep Kumar Uppal and others** (supra) holding as follows:

“13. 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, adhoc 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 concerned authority would have used the expression '9/16 years service' or '23 years service'. However, the fact of the matter is that the scheme

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<sup>14</sup> 2009 (5) SLR 499 : 2009 (3) S.C.T. 92

<sup>15</sup> 1979 (4) SCC 440

<sup>16</sup> 1997 (1) SCT 497 : 1997 (2) SCC 517

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. For the reasons mentioned above, we hold that the respondents were not entitled to the benefit of time bound promotional scales/promotional increments on a date prior to completion of 9/16/23 years regular service and the High Court committed serious error by directing the appellants to give them benefit of the scheme by counting their work charged service.

14. The order passed by this Court in Ravinder Kumar's case is clearly distinguishable. In that case, counsel appearing for the State had conceded that 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)

(14) The judgment in Punjab State Electricity Board's case was followed by the Division Bench of this Court in *State of Haryana versus Om Parkash Nagra*<sup>17</sup> and the Court held as follows:

"5. Having heard learned counsel for the parties at length and perusing the paper book we are unable to subscribe to the view taken by the learned Single Judge that the petitioner-respondent No. 1 is entitled to the benefit of counting of ad hoc service rendered by him as a Clerk from 11.5.1970 to 25.2.1973. A glance of the factual position noticed above make it clear that the appointment to the post of Clerk could have been made only by the

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<sup>17</sup> 2012(2) S.C.T. 76: 2012(3) SLR 714

Subordinate Services Selection Board and not by any departmental selection committee or by the Assistant Inspector General of Police. It cannot be concluded that competing claims of all persons in the field were considered and the procedure followed for appointment of the writ petitioner-respondent No. 1 was consistent with Articles 14 and 16(1) of the Constitution. At one stage it was considered constitutionally and legally acceptable if the vacancies are filled up by sending requisition to the employment exchange. The case of *Union of India* versus *N. Hargopal*, (1987) 3 SCC 308, supported the proposition that vacancies should be filled up by candidates sponsored by employment exchanges after the names have been requisitioned by the department. The aforesaid view has, in fact, been virtually overruled in the case of *Excise Superintendent, Malkapatnam* versus *Visweshwara Rao*, (1996) 6 SCC 216.

(15) The Division Bench also considered the Judgment in Hanumant Singh's case. The relevant paragraph of the Judgment is reproduced below:

“11. We are further of the view that the Division Bench judgment rendered in the case of Hanumant Singh (*supra*) have no bearing on the issue decided by us. In that case the learned Division Bench has proceeded on the assumption that appointment of Diesel Pump Attendants in that matter was made through proper channel and after following due procedure of law. It was in that situation that the benefit of ACP was granted. However, the factual position in the present case is entirely different and we have reached the conclusion that the procedure required to be followed by complying with the provisions of Articles 14 and 16(1) of the Constitution was not complied with. Once that is the factual matrix then there is no escape that the Division Bench judgment in Hanumant Singh's case (*supra*) has been incorrectly followed by the learned Single Judge and, in fact, is not applicable to the facts of the present case.”

(emphasis supplied)

(16) In *Amarjit Singh versus State of Punjab*<sup>18</sup>, another Division

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<sup>18</sup> 2011(4) SLR 526; 2012 (1) S.C.T. 701

Bench rejected the claim of the petitioners for counting of ad hoc service towards grant of ACP scale relying upon the judgment in Punjab State Tubewell Corporation Workers' Union case.

(17) The judgment of the Division Bench in Hanumant Singh's case was carried to the Supreme Court by the State of Haryana in a petition seeking special leave to appeal. Leave was granted. While these Special Leave Petitions were pending since January 03, 2009, the Supreme Court specifically considered the issue of ad hoc service in relation to seniority in another judgment pronounced in case *State of Haryana and others versus Vijay Singh and others*<sup>19</sup> (arising out of CWP No.2409 of 2008, Vijay Singh v. State of Haryana). In Vijay Singh's case, the Supreme Court noticed the Division Bench order in Hanumant Singh's case (Supra) and did not approve the law laid down therein as far as seniority is concerned. The Supreme Court considered the leading judgments delivered by it earlier in *Direct Recruit Class II Engineering Officers' Association versus State of Maharashtra*<sup>20</sup> as subsequently explained in *State of West Bengal versus Aghore Nath Dey*<sup>21</sup> reconciling directions 'A' & 'B' in Direct Recruit Class II case. The Court thereafter considered the Judgment in *M.K.Shanguman & Anr. versus Union of India*<sup>22</sup> in which both the above mentioned judgments were considered and it was held that it is only in those cases where initially employee had been recruited even though they have been appointed ad hoc basis, where the recruitment was subject to the same process as had been done in the case of regular appointments and that the same was not a stop- gap arrangement.

(18) In Vijay Singh's case, the Court also considered the law on the subject re: seniority propounded in *State of Haryana versus Haryana Veterinary & AHTS Association*, (supra) apart from other case law noticed and discussed in detail in the judgment and their Lordships held that it was insufficient compliance with Articles 14 and 16 of the Constitution to make appointments to public posts restricted to names sponsored by the employment exchange/s when selection should have come from the designated recruiting authority prescribed in the rules, namely, the erstwhile Subordinate Services Selection Board, at present known as the Haryana Staff Selection Commission or

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<sup>19</sup> 2012 (8) SCC 633

<sup>20</sup> (1990) 2 SCC 715

<sup>21</sup> (1993) 3 SCC 371

<sup>22</sup> 2000 (2) SCT 954

the State Public Service Commission, as the case may be. The Supreme Court held that the mere fact that ad hoc appointments were preceded by sending requisition to the local employment exchanges and appointments based on recommendations made by the District Selection Committee cannot lead to an inference that candidates were appointed on regular basis. Cases in which recruitment and conditions of service including seniority are regulated by law enacted by Parliament or State Legislature or rules framed under Article 309 of the Constitution, general propositions laid down in any judgment cannot be applied de hors the relevant statutory framework. Paragraph 24 of the Judgment is relevant to this case and is reproduced below:

“24. None of the aforesaid judgments can be read as laying down a proposition of law that a person who is appointed on purely ad hoc basis for a fixed period by an authority other than the one who is competent to make regular appointment to the service and such appointment is not made by the specified recruiting agency is entitled to have his ad hoc service counted for the purpose of fixation of seniority. Therefore, the respondents, who were appointed as Masters in different subjects, Physical Training Instructor and Hindi Teacher on purely ad hoc basis without following the procedure prescribed under the 1955 Rules are not entitled to have their seniority fixed on the basis of total length of service. As a corollary to this, we hold that the direction given by the High Court for re-fixation of the respondents’ seniority by counting the ad hoc service cannot be approved.”

(19) Meanwhile, another Special Leave Petition filed by the State of Haryana against the Judgment of the Division Bench in Sita Ram *versus* State of Haryana (*supra*) was decided by the Supreme Court on October 29, 2013 in *State of Haryana versus Sita Ram*<sup>23</sup>. The question which fell for consideration in these appeals was 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. The Court considered import of Rule 5 of the 1998 Rules on the question and held that in view of the ratio laid down by the Supreme Court in cases *State of Rajasthan versus Kunji Raman*, *State of Haryana versus Haryana*

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<sup>23</sup> 2014 (1) SCT 515

***Veterinary and AHTS Association, Punjab State Electricity Board versus Jagiwan Ram and Jaswant Singh versus Union of India*** the legal position would be as follows; observing:-

“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 versus 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.”

(20) A careful reading of all the relevant schemes noticed above and the statutory Rules providing for time bound promotional increments and promotional pay scales and reproduced in the preceding paragraphs of the judgment show that the said schemes/Rules provide for these benefits i.e. additional increment, Higher Standard Pay Scale, ACP Scale on completion of a specified length of regular service. The expression which is recurrent in these schemes/Rules and the burden of the song played by them is the minimum requirement of ‘regular satisfactory service’ or ‘regular service’. Therefore, the intention of the Government that the service to be reckoned for the purpose for grant of these time bound promotional benefits is without doubt ‘regular service’ and not just ‘service’ so as to be inclusive of temporary, ad hoc or work charge service, and this plain meaning is clearly discernible through the thread of the concessions to ameliorate stagnation in service which was the accepted bane of efficiency in administration so that the will to work is not stifled. Once the Scheme or the Rules categorically provide for ‘regular service’, the same is to be taken as such without making any further interpolations or introducing interpretative processes more than what is required in the text and context of how the benefits work. This issue has been examined threadbare in *Haryana Veterinary & AHTS Association, Punjab State Electricity Board and Sita Ram's case* (supra) and therefore, is no longer res-integra. The issue regarding ad hoc service vis-à-vis seniority has been thrashed out and re-stated by the Supreme Court in Vijay Singh's case (supra) after noticing and considering the Judgment of the Division Bench in Hanumant Singh's case (supra) as well as the Court's earlier judgments on the issue.

(21) The Special Leave Petition (subsequently converted into Civil Appeal) filed by the State of Haryana in Hanumant Singh's case and bunch of cases were ultimately dismissed recently on May 10, 2018 by the Supreme Court by a short order. While dismissing the Civil Appeal in Hanumant Singh case and other connected appeals, the Supreme Court found that no case for interference is made out observing in the short order:

- “1. Heard learned counsel for the appellants.
2. We find that no case for interference is made out. The civil appeals and petitions are accordingly dismissed. Pending application, if any, shall stand disposed of.
3. Let the order be complied with, within three months from today.”

(22) The order has been passed in lead case i.e. Civil Appeal No.321 of 2015, ***State of Haryana and others versus Rajender Kumar and others***. Rajender Kumar's case was part of the bunch of cases tagged with Hanumant Singh batch of petitions decided by the Division Bench of this Court. The petitioners rely heavily on this order on the question of seniority for clubbing period of ad hoc service with period spent after they were brought on regular establishment on regularization. However, it is apparent that the attention of the Supreme Court was not drawn on the issue of seniority to its afore-mentioned judgments dealing with one of the issues under consideration while the counsel ought to have referred to them in extenso as they covered the ground and properly assisted the Supreme Court on additional increments and seniority issues. It may be reiterated that this Court in Hanumant Singh case had declined relief to the petitioners on question (1) (supra) and the answer holds the field. However, on the question of seniority, though granted, there is no discussion whatsoever in the judgment of this Court in Hanumant Singh case on the point and the judgment appears to be, with great respect, per incurium. Therefore, the crucial question arises as to the effect of dismissal of State appeal on the issue of seniority qua the present petitioners working in different departments clamouring for adding ad hoc/work-charged/temporary service which may make them steal a silent march over regular recruits who are not parties before the court but are likely to be affected in the matter of their seniority behind their backs and without a reasonable opportunity of hearing given to them. And on this ground the petitions in which private persons are not made party are liable to be dismissed.

(23) Nevertheless, the position in law is that the orders passed by the Supreme Court under Article 136 of the Constitution of India are different from those passed under Article 133 of the Constitution of India. There are two stages before the Supreme in a matter, case or cause. The first is the SLP stage. At this stage, while hearing the petition for Special leave to Appeal, the Supreme Court is called upon to see whether the appellant should be granted Special Leave or not. While hearing such petition, the Supreme Court is not exercising its appellate jurisdiction; it is merely exercising discretionary jurisdiction to grant or not to grant leave to appeal. This has been explained by the Supreme Court in *Kunhayammed & Ors versus State Of Kerala & Anr.*<sup>24</sup> as under:-

“41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.”

(24) The Supreme Court elucidated succinctly in the above judgment that at the first stage, the petitioner is outside the gate of entry. If the petition seeking grant of leave to appeal is dismissed, it is an expression of opinion by the court that a case of invoking appellate jurisdiction of the court was not made out. However, in the second

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<sup>24</sup> 2000 (6) SCC 359



stage, if leave to appeal is granted, the appellate jurisdiction of the court stands invoked; a gate for entry in the appellate arena is opened. The petitioner is in and the respondent may be called upon to face, though in an appropriate case inspite of having granted leave to appeal, the court may dismiss the appeal without noticing the respondents. Dismissal of Special Leave Petition in *limine* by a non-speaking order does not justify any inference that by necessary implication, the contention raised in the SLP on the merits of the case has been rejected by the Supreme Court and such dismissal of the petition will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution of India or in review. The position is entirely different when leave is granted and the petition is converted into an appeal. Dismissal of an appeal after grant of leave by non-speaking order even without reasons or detailed reasons attracts the doctrine of 'merger' wherein the superior court upholds decision of lower court from which appeal has arisen.

(25) In *Medley Pharmaceuticals Ltd. versus CCE*<sup>25</sup>, the Supreme observed as under:-

“8. Different considerations apply when a special leave petition under Article 136 of the Constitution is simply dismissed by saying ‘dismissed’ and an appeal provided under Article 133 is dismissed also with the words ‘the appeal is dismissed’. In the former case it has been laid by this Court that when a special leave petition is dismissed this Court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. But what the Court means is that it does not consider it to be a fit case for exercise of its jurisdiction under Article 136 of the Constitution. That certainly could not be so when an appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case, the Supreme Court upholds the decision of the High Court or of the Tribunal from which the appeal is provided under clause (3) of Article 133. This doctrine of merger does not apply in the case of dismissal of a special leave petition under Article 136.”

(26) With the dismissal of the appeal on 10<sup>th</sup> May, 2018 in *Rajender Kumar's case*, the order and the judgment of the High Court

merged with the order of the Supreme Court and is *res judicata inter se* the parties and therefore, it would tantamount to the law of the land under Article 141 of the Constitution of India. The State of Haryana is bound by the order respecting the respondents in the Civil Appeals, even though the orders are non-speaking. However, the present petitioners were not parties to those proceedings. The view of the Division Bench in Harbans Singh's case represented in the Supreme Court in Rajender Kumar's case, as part of the bunch on the point that ad hoc/work-charged service followed by regular service will not count for the purposes of higher standard pay scale and benefit of ACP Scheme on completion of the specified period has been in the negative, and therefore, it is against the present petitioners. There is no difficulty with regard to pension as that right exists in the present petitioners for clubbing ad hoc/work-charged service with regular service. However, a difficulty arises in the case of additional increments and seniority. As far as the additional increments is concerned, the order of the Supreme Court in *State of Haryana versus Ravinder Singh* has been distinguished by different view taken by subsequent Supreme Court judgment in *Jaggiwan Ram's* case taking a contrary view. Jagjiwan Ram's case was delivered by a Bench comprising two Hon'ble Judges of the Supreme Court, and although it was a Punjab matter, but the Haryana Government policy had suffered modification as right to additional increments introduced the expression "regular satisfactory service" for grant of additional increments above the usual annual increments on completion of 8/18 years of regular service instead of 10/20 years of service. The Division Bench in *Hanumant Singh's* case applied the order in *State of Haryana versus Ravinder Singh* which has been distinguished in *Jaggiwan Ram's* case. In both the States of Punjab and Haryana, the provisions of the grant are in *pari materia* and should bear the same judicial stamp.

(27) In *Harpal Singh and others versus State of Haryana*, (LPA No.1743 of 2016 and connected appeals) decided on 14<sup>th</sup> September, 2016: Law Finder Doc.ID 903306, the Division Bench culled out the following principles from the existing law on the subject regarding place of *ad hoc* service in its relationship with seniority in the cadre as under:-

"15...

(a) Where the ad hoc appointment was made by an authority not authorized to make such appointment under the Rules, such ad hoc service cannot be counted for

fixation of the seniority;

(b) Even if the ad hoc appointment is made by the competent authority but if such appointment has not been made on the recommendations of the recruiting agency prescribed under the Rules, the benefit of ad hoc service cannot be granted towards seniority;

(c) Save where the Statutory Rules expressly grants the benefit of ad hoc service towards seniority after appointment on regular basis, the seniority has to be fixed as per the provisions of the Rules;

(d) Where ad hoc appointee has been subsequently selected for regular appointment by the Public Service Commission/Staff Selection Commission/Board, such appointee cannot seek benefit of ad hoc service towards seniority except in category (c) above and in such a case his seniority has to be fixed as per his placement in the merit list. In other words, he cannot march over the candidates who are higher in merit merely on the strength of previous ad hoc service;

(e) Where ad hoc services are regularized under a Government policy, the conditions contained in such notification shall apply in full force. State of Haryana has regularized services of ad hoc employees through various policy-decisions notified from time to time and each such policy specify the date when the ad hoc appointee is brought on regular establishment. The service rendered by such ad hoc appointee before regularization therefore cannot count for seniority though it may be countable for other incidental service benefits like pension etc.”

(f) Therefore, in such a situation, a tricky question arises for consideration i.e. when there is a direct conflict between the two decisions of the Supreme Court rendered by co-equal Benches in *State of Haryana v. Ravinder Singh* case (based on a concession) and *Punjab State Electricity Board v. Jagjiwan Ram* (reasoned judgment), which of them should be followed by the High Courts and the courts below. In *Indo Swiss Time Limited* versus *Umrao And Ors.*, AIR 1981 P & H 213, a similar issue arose before the Full Bench of this Court. S.S.Sandhawalia, C.J. speaking

for himself (in minority view on the merits of the case, later to be upheld by the Supreme Court in appeal by setting aside the majority view) held, observing:-

“23. Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior court are of co-equal benches and therefore of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extant than both of them cannot be binding on the courts below. Inevitably a choice, though a difficult one has to be made in such a situation. On principles of it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of co-equal Benches of the Superior Court are earlier or later is a consideration which appears to me as hardly relevant.”

(g) The aforesaid view received the concurrence of the other two Hon'ble members of the Full Bench in the following words of P.C.Jain, J.:-

“39. On this question, my Lord the Chief Justice in his elaborate judgment has held that the Courts may follow the judgment which appears to them to state the law accurately and that mere incidence of time whether the judgment of the co-equal Benches of the superior Court are earlier or later is a consideration which appears to be hardly relevant. I have also given my thoughtful consideration to the entire matter and find myself in respectful agreement with the aforesaid observation of my Lord the Chief Justice.”

(h) This view of choice of precedent on the parameters set down has been endorsed and followed by two other Full Benches of the Patna and Allahabad High Courts respectively in *Amar Singh* versus *Shanti Devi*, AIR 1987 Patna 191 and *Ganga Saran* versus *Civil Judge, Hapur*, AIR 1991 Allahabad 114.

(i) After collating and going through various judgments of the Supreme Court and spending time on them on the issues involved herein, I am of the considered view that taking into consideration the law declared in *Haryana Veterinary & AHTS Association, Punjab State Electricity Board, Vijay Singh* and *Sita Ram* cases, the law in *Hanumant Singh's* case by this Court with respect has to be disregarded as not the correct legal position or binding ratio on seniority, Additional Increments, Higher Standard Scale or any other time bound promotional incentives vis-à-vis its relationship with previous ad hoc, temporary or work-charged service inspite of orders in *State of Haryana and others v. Rajender Kumar and others* which do not contain binding ratio on the legal issues involved in the cases in hand.

(j) Right to pension by treating such service prior to regularization or confirmation/permanency in service is quite another ball game to be regulated by separate legal principles evolved by this Court and approved by the Supreme Court starting from the forerunner Full Bench decision of this Court in *Kesar Chand* versus *State of Punjab*, AIR 1988 P & H 265. This benefit is open to be claimed by the petitioners and granted to them at the time of superannuation irrespective of the nature of service rendered prior to regularization so long as it was continuous.

(k) As regards determination of issue of seniority, one more aspect is required to be gone into since in this batch of petitions the services of the Petitioners, who were working on ad hoc or in any other temporary capacity, were regularized under respective regularization policies issued by the State Government from time to time. Therefore, the issue which arises for consideration is seniority of such ad hoc/temporary employees so regularized vis-à-vis the employees appointed on regular basis. The State has produced all the relevant policies of regularization and a perusal thereof would show that in every policy of regularization, there is a specific stipulation regarding seniority. To elucidate, we may examine the relevant provisions of the regularization policy dated January 1, 1980 which are extracted as below:

“In exercise of the powers conferred by article 309 of the Constitution of India, read with the proviso to clause 6 of the notification No. 523-3GS-70/2068, dated 28th January, 1970, the Governor of Haryana hereby excludes from the purview of the Subordinate Service Selection Board, Haryana, such Class III posts as have been held, for a minimum period of two years on the 31st December, 1979 by ad hoc employees who are to be regularized if they fulfill the following conditions;

“2. The seniority of the ad hoc employees so regularized may, vis-à-vis the employees appointed on regular basis, be determined with effect from 1-1- 1980. The inter se seniority of such ad hoc employees shall be determined in accordance with the date of joining the post. If the date of joining the post on ad hoc basis by such employees was the same, then an older member would rank senior to employee younger in age.”

(l) The aforesaid provisions are recurrent in all the regularization policies that followed, to wit, the services of ad hoc/daily wagers/casual/work-charged/casual employees were to be regularized on fulfillment of certain conditions provided therein, by taking out the requisite posts from the purview of the Subordinate Services Selection Board (now called the Haryana Staff Selection Commission), Further, they expressly provide the method as to how the seniority of the employees, *so regularized*, is to be determined. The policy dated December 28, 1991 and the policies framed thereafter go a step further as regards the provision regarding seniority is concerned to say: “*If the date of appointment of direct recruit and the date of regularization of ad hoc employees is the same, the direct recruit shall be senior*”. Once the services of an ad hoc/daily rated/work-charged/casual employee are regularized under a policy, it constitutes a binding contract and the services of such employee would be bound by all other terms/stipulations of the said policy, especially, in the absence of any challenge to any of the provisions of the policy.

(m) In these cases barring eight dealt with separately in the succeeding paragraphs 37 to 43, the employees likely to be

affected in seniority are not impleaded as party respondents. It is settled position that a claim for re-determination of seniority should not be entertained when it is likely to affect the prevailing interest of those in the cadre past and present who have not been impleaded as parties to the proceedings. Of the many judgments, reference may be had to one of the Supreme Court in *State of Rajasthan versus Uchhab Lal Chhanwal, (2014) 1 SCC 144*. This is an additional reason to refuse issuing writ of certiorari and mandamus.

### **Cases in which private respondents are arrayed as respondents.**

(28) The petitioners in CWP No. 2800 of 2007, CWP No. 1591 of 2007, CWP No. 4705 of 2007, CWP No. 3090 of 2007 and CWP No. 9691 of 2007 are working in Excise and Taxation Department, Haryana. They were engaged initially on ad hoc basis through Employment Exchange and their services were subsequently regularised under the various regularisation policies issued by the State Government from time to time. In some petitions, Sh. Rampal Singh has been impleaded as a respondent and in some cases Sh. Madan Mohan has also been arrayed as a respondent.

(29) The claim of these Petitioners is that since the aforesaid persons, alongwith some other persons whose names are mentioned in the chart inserted in the petitions, have been moved up in the seniority list, they should also be given the same treatment. However, no details have been furnished whether these persons were appointed on regular basis or were given benefit of ad hoc service towards seniority.

(30) Further, reliance has been placed on the decision in *State of Haryana versus Subash Chander Kirar*, RSA No. 3212 of 2005 decided on January 20, 2006 to claim benefit of ad hoc service towards seniority. In the reply filed by State to these writ petitions, it has been categorically stated that Sh. Ramphal Singh and Sh. Madan Mohan were appointed on regular basis, therefore, the petitioners cannot lay claim to parity of treatment with them. It has been further explained in the written statement that one Subash Chander Kirar, employee of the said department, had filed Civil Suit in the court of Civil Judge Senior Division, Rohtak claiming their period of ad hoc service should be counted toward seniority. The suit was decreed on February 10, 2004 and the appeal by the State of Haryana was dismissed on May 11, 2005 by the Learned Additional District Judge-1 Rohtak. The Regular Second Appeal was dismissed by this court on January 20, 2006 observing that the appointment was as per rules and they were duly

selected. Later on, the ad hoc appointment was regularised without any break. In compliance of the decree Subhash Chander Kirar was granted the relief. In the present case, the state has urged that the decision is not according to settled position. Ad hoc service cannot be counted toward seniority. They quote the decision of the Supreme Court in *State of Haryana versus Piara Singh*<sup>26</sup>. This is also the stand of the State that all the aforesaid writ petitions are hit by delay and laches being filed in the year 2007 whereas the seniority list of Class-III employees in the Department was prepared in the year 1995 and was finalised in the year 2000.

(31) Same is the case in CWP No. 1751 of 2010 wherein it is the admitted case of the petitioner that services of the private respondent were regularized as Master/Mistress and were promoted as Lecturer prior to regularization of service of the petitioner as Lecturer. Reliance has been placed on judgment of Division Bench in *Vijay Singh versus State of Haryana*, CWP No. 2409 of 2008 decided on December 18, 2008 which was allowed relying upon the judgment in Hanumant Singh's case.

(32) In CWP No. 19502 of 2009, the chart only reflects that the respondent No. 4 was appointed on March 5, 1979 and the petitioner was appointed on September 15, 1982, there is no pleading to the effect that the respondent No. 4 was appointed on ad hoc basis after the petitioner or that he was given benefit of ad hoc service towards seniority warranting the similar treatment. Further reliance has been placed on decision in Subash Chander Kirar's case as well as decision in Hanumant Singh's case.

(33) I find the petitioners are not entitled to the same relief as was granted to Subhash Chander Kirar. Merely because one employee obtained a civil decree it did not become the law. The jurisprudential value of that solitary decree even after merger in second appeal in the state of the law on the subject makes it is a questionable one and is not binding on the State in the case of the petitioners, in view of what has already been said before in this order on ad hoc service in its relationship with cadre seniority.

(34) All the present petitions have been filed almost two decades after the petitioners became members of their respective services. During the interregnum the rights of other employees vis-a-vis seniority have settled/ crystallized. Therefore, inordinate delay is more

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<sup>26</sup> AIR 1992 SC 2130



often than not fatal to claims of seniority. The law on the subject of delay and laches in service matters relating to seniority has been culled out and reviewed by the Supreme Court in *Shiba Shankar Mohapatra versus State of Orissa*<sup>27</sup> noticing its past precedents in the following words :-

“18. The question of entertaining the petition disputing the long-standing seniority filed at a belated stage is no more *res integra*. A Constitution Bench of this Court, in *Ramchandra Shankar Deodhar v. State of Maharashtra* considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in *Tilokchand Motichand v. H.B. Munshi*, wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under: (*Tilokchand case*, SCC p. 115, para 7)

“7. ... The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.”

19. This Court in *Ramchandra Shankar Deodhar case* also placed reliance upon its earlier judgment of the Constitution Bench in *Rabindranath Bose v. Union of India*, wherein it has been observed as under: (*Rabindranath Bose case*, SCC p. 97, para 33)

“33. ... It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be

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<sup>27</sup> (2010) 12 SCC 471

entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.”

20. In *R.S. Makashi v. I.M. Menon* this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in *State of M.P. v. Bhailal Bhai*, wherein it has been observed that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured. The Court observed as under: (*R.S. Makashi case*, SCC pp. 398-400, paras 28 & 30)

“28. ... ‘33. ... we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. ...’

\* \* \*

30. ... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the court with the challenge against the seniority principles laid down in the Government Resolution of 1968. We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of 22-3-1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition insofar as it related to the prayer for quashing the said Government Resolution should have been dismissed.”

21. The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in *K.R. Mudgal v. R.P. Singh*. The Court held as under: (SCC pp. 532 & 536, paras 2 & 7)

“2. ... A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his

appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. ...

\* \* \*

7. ... Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties. ... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches.”

22. While deciding *K.R. Mudgal* case, this Court placed reliance upon its earlier judgment in *Malcom Lawrence Cecil D’Souza v. Union of India*, wherein it had been observed as under: (*Cecil D’Souza* case, SCC p. 602, para 9)

“9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one’s position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

23. In *B.S. Bajwa v. State of Punjab* this Court while deciding the similar issue reiterated the same view, observing as under: (SCC p. 526, para 7)

“7. ... It is well settled that in service matters the question

of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.”

(emphasis added)

24. In *Dayaram A. Gursahani v. State of Maharashtra*, while reiterating the similar view this Court held that in absence of satisfactory explanation for inordinate delay of 8-9 years in questioning under Article 226 of the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained.

25. In *P.S. Sadasivaswamy v. State of T.N.* this Court considered the case where the petition was filed after a lapse of fourteen years challenging the promotion. However, this Court held that the aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. The Court observed as under: (SCC p. 154, para 2)

“2. ... A person aggrieved by an order promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion.”

The Court further observed that it was not that there was any period of limitation for the courts to exercise their powers under Article 226 nor was it that there could never be a case where the courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claim and try to unsettle settled matters.

26. A similar view has been reiterated by this Court in *Sudama Devi v. Commr.; State of U.P. v. Raj Bahadur Singh and Northern Indian Glass Industries v. Jaswant Singh*.

27. In *Dinkar Anna Patil v. State of Maharashtra* this Court held that delay and laches in challenging the seniority is always fatal, but in case the party satisfies the Court regarding delay, the case may be considered.

28. In *K.A. Abdul Majeed v. State of Kerala* this Court held that seniority assigned to any employee could not be challenged after a lapse of seven years on the ground that his initial appointment had been irregular, though even on merit it was found that seniority of the petitioner therein had correctly been fixed.

29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (*Vide Aflatoon v. Lt. Governor of Delhi; State of Mysore v. V.K. Kangan; Municipal Council, Ahmednagar v. Shah Hyder Beig; Inder Jit Gupta v. Union of India; Shiv Dass v. Union of India; A.P. SRTC v. N. Satyanarayana and City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla*).

30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In *K.R. Mudgal*, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”

(35) For what has been discussed above, it is held that:-

(i) The petitioners are not entitled to count their period of ad hoc/work-charged/temporary service towards seniority in the cadre before the date they were regularized and became members of service for the first time in terms of the relevant

policies of State Government.

(ii) The petitioners are not entitled to benefit of Additional Increments for the period of their ad hoc/work-charged service on completion of 8/18 years of service as well as 10/20 years, since such period does not qualify as regular satisfactory service as per modified scheme dated August 7, 1992.

(iii) Similarly, the petitioners are not entitled to the benefit of financial upgradations of Higher Standard Scale or to the Assured Career Progression Scales for the period of their ad hoc/work charge/temporary service etc. Only regular service rendered satisfactorily counts for claiming rights to these monetary benefits strictly as per the provisions of these schemes.

(36)As a result, the petitions are dismissed. Reliefs claimed by the petitioners in these cases are declined save for period of ad hoc engagement to be counted towards qualifying service for pension and other pensionary benefits.

<b>Sr. No.</b>	<b>Case No.</b>	<b>Parties Name</b>
1.	CWP No.8276 of 2009	Bimal and another v. State of Haryana and others
2.	CWP No.8536 of 2009 (O&M)	Jagdish Chand and others v. State of Haryana and others
3.	CWP No.10105 of 2009 (O&M)	Hardevi and others v. State of Haryana and others
4.	CWP No.12378 of 2009	Prem Wati v. State of Haryana and another
5.	CWP No.12407 of 2009	Shiv Narain v. State of Haryana and another
6.	CWP No.12529 of 2009	Rajesh Kalra and others v. State of Haryana and others
7.	CWP No.12549 of 2009	Ranbir Singh and others v. State of Haryana and others
8.	CWP No.12552 of 2009	Jai Singh Dabas v. State of Haryana

9.	CWP No.12559 of 2009	Kiran Mehta and others v. State of Haryana and another
10.	CWP No.19074 of 2010	Chander Pal and others v. State of Haryana and others
11.	CWP No.21656 of 2010	Hans Raj Gupta and others v. State of Haryana and others
12.	CWP No.7097 of 2011	Randhir Singh and others v. State of Haryana and another
13.	CWP No.7206 of 2011	A.K. Gupta v. State of Haryana and others
14.	CWP No.7418 of 2011	Ashok Kumar and others v. State of Haryana and others
15.	CWP No.10061 of 2011	Krishna Devi and others v. State of Haryana and others
16.	CWP No.12440 of 2011	Shakuntla Devi and others v. State of Haryana and others
17.	CWP No.12891 of 2011	Naresh Chand Arora and others v. State of Haryana and another
18.	CWP No.18153 of 2011	Hamir Singh v. State of Haryana and others
19.	CWP No.5324 of 1995	Jagtar Singh and others v. State of Haryana and others
20.	CWP No.1121 of 2000 (O&M)	Ram Mehar Singh and others v. State of Haryana and others
21.	CWP No.7103 of 2003 (O&M)	Chander Bala Sharma v. State of Haryana
22.	CWP No.8614 of 2007	Harsh Kumar and others v. State of Haryana and another
23.	CWP No.13278 of 2007 (O&M)	Surat Singh v. State of Haryana and others
24.	CWP No.943 of 2008 (O&M)	Kailash Sharma and others v. State of Haryana and others
25.	CWP No.3903 of 2008 (O&M)	Veena Kumari v. State of Haryana and others

26.	CWP No.2879 of 2008 (O&M)	Shri Ram and others v. State of Haryana and others
27.	CWP No.15459 of 2008 (O&M)	Joginder Kaushal v. State of Haryana and others
28.	CWP No.704 of 2009 (O&M)	Ved Parkash Kakkar and others v. State of Haryana and others
29.	CWP No.722 of 2009 (O&M)	Sher Singh v. State of Haryana and others
30.	CWP No.765 of 2009	Jai Parkash Arya v. State of Haryana and others
31.	CWP No.803 of 2009	Satish Kumar and others v. State of Haryana and another
32.	CWP No.804 of 2009	Nand Kumar Deo and others v. State of Haryana and others
33.	CWP No.805 of 2009	K.P. Singh and others v. State of Haryana and another
34.	CWP No.886 of 2009	Vipin Kumar and others v. State of Haryana
35.	CWP No.15728 of 2008	Madan Lal and others v. State of Haryana and others
36.	CWP No.3090 of 2007	Kartar Singh and others v. State of Haryana and others
37.	CWP No.13834 of 2008	Shakuntla Devi and others v. State of Haryana and others
38.	CWP No.208 of 2009	Raj Singh and others v. State of Haryana and others
39.	CWP No.230 of 2009	Kuldip Singh Jaglan and others v. State of Haryana and others
40.	CWP No.1795 of 2009	Balwant Singh and others v. State of Haryana and others
41.	CWP No.2219 of 2009 (O&M)	Ram Diya and others v. State of Haryana and others
42.	CWP No.2442 of 2009	Yoginder Rana and others v. State of Haryana and others



43.	CWP No.2559 of 2009	Pritpal Singh and others v. State of Haryana
44.	CWP No.2604 of 2009	Satpal Singh and others v. State of Haryana and others
45.	CWP No.2649 of 2009	Dhan Raj Singh and others v. State of Haryana and another
46.	CWP No.2730 of 2009 (O&M)	Suresh Kumar and others v. State of Haryana and others
47.	CWP No.3913 of 2009 (O&M)	Balwan Singh and others v. State of Haryana and others
48.	CWP No.4271 of 2009	Seema Rani and others v. State of Haryana and others
49.	CWP No.4284 of 2009 (O&M)	Shri Pal and others v. State of Haryana and others
50.	CWP No.4587 of 2009	Karnail Singh and others v. State of Haryana and others
51.	CWP No.4714 of 2009 (O&M)	Madan Lal Sharma and others v. State of Haryana and others
52.	CWP No.5061 of 2009	Jagdish Rai Kultana and others v. State of Haryana and others
53.	CWP No.5119 of 2009	Daya Nand and others v. State of Haryana and others
54.	CWP No.5183 of 2009	Mahavir Singh and others v. State of Haryana and others
55.	CWP No.6514 of 2009	Prithvi Singh and others v. State of Haryana and others
56.	CWP No.6536 of 2009	Ramesh Kumar and others v. State of Haryana and others
57.	CWP No.7212 of 2009 (O&M)	Tulsi Bai Bathla and others v. State of Haryana and others
58.	CWP No.7363 of 2009 (O&M)	Davinder Kumar and others v. State of Haryana and others
59.	CWP No.15183 of 2008	Zile Singh and others v. State of Haryana and others

60.	CWP No.9867 of 2009	Suresh Chand Bhardwaj v. State of Haryana and others
61.	CWP No.11150 of 2009 (O&M)	Bhag Singh and others v. State of Haryana and others
62.	CWP No.5501 of 2009	Ram Kishan Lamba v. State of Haryana and others
63.	CWP No.1591 of 2007	Arjan Dev v. State of Haryana
64.	CWP No.2800 of 2007 (O&M)	Mahinder Pal and others v. State of Haryana and others
65.	CWP No.9691 of 2007	Ram Paul v. State of Haryana and others
66.	CWP No.9760 of 2007	Moti Ram v. State of Haryana and others
67.	CWP No.19651 of 2008 (O&M)	Radhey Shyam Verma and others v. State of Haryana and others
68.	CWP No.21293 of 2008	Ashok Kumar and others v. State of Haryana and others
69.	CWP No.9644 of 2015	Anil Kumar Sharma and others v. State of Haryana and others
70.	CWP No.612 of 2009	Rajvir Rawat and others v. State of Haryana
71.	CWP No.1271 of 2009	Mahabir Singh v. State of Haryana and others
72.	CWP No.1417 of 2009	Navratan and others v. State of Haryana and others
73.	CWP No.1486 of 2009	Devender Singh and others v. State of Haryana and others
74.	CWP No.1663 of 2009 (O&M)	Satya Pal and others v. State of Haryana and others
75.	CWP No.2583 of 2009 (O&M)	Ramesh Kumar and others v. State of Haryana and others
76.	CWP No.2586 of 2009	Risal Singh and others v. State of Haryana and others

77.	CWP No.2596 of 2009	Satbir Singh and others v. State of Haryana and others
78.	CWP No.2615 of 2009	Dal Chand and others v. State of Haryana and others
79.	CWP No.2662 of 2009	Satya Narain and others v. State of Haryana and others
80.	CWP No.5057 of 2009	Om Prakash v. State of Haryana and others
81.	CWP No.5062 of 2009	Anju and others v. State of Haryana and another
82.	CWP No.5086 of 2009	Alka Chaudhary and others v. State of Haryana and others
83.	CWP No.5116 of 2009	Jai Parkash and others v. State of Haryana and others
84.	CWP No.6501 of 2009 (O&M)	Mangat Ram and others v. State of Haryana and others
85.	CWP No.6518 of 2009	Nand Kishore and others v. State of Haryana and others
86.	CWP No.7583 of 2009 (O&M)	Sudhir Kumar Sethi and others v. State of Haryana and others
87.	CWP No.7686 of 2009	Dharamvir Bisla and others v. State of Haryana and others
88.	CWP No.9520 of 2009	Om Kumari v. State of Haryana and others
89.	CWP No.13065 of 2009	Baljit Singh and another v. State of Haryana and others
90.	CWP No.13077 of 2009	Partap Singh and others v. State of Haryana and others
91.	CWP No.13164 of 2009	Amrit Lal Goel and others v. State of Haryana and others
92.	CWP No.13298 of 2009	Amardeep and others v. State of Haryana and others
93.	CWP No.14766 of 2009	Mahabir Parshad Mittal v. State of Haryana and others

94.	CWP No.19234 of 2009	Ram Bhaj and others v. State of Haryana and others
95.	CWP No.19502 of 2009	Bhudev Sharma v. State of Haryana and others
96.	CWP No.1751 of 2010	Yudhvir Singh v. State of Haryana and others
97.	CWP No.9814 of 2010	Kamal Kumar Jain v. State of Haryana and others
98.	CWP No.4705 of 2007 (O&M)	Ranvir Singh and others v. State of Haryana and others
99.	CWP No.13649 of 2007	Surinder Singh v. State of Haryana and others
100.	CWP No.4946 of 2009	Ram Phal v. State of Haryana

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*Shubreet Kaur*