

Before Jasbir Singh & K.C. Puri, JJ.

HANUMANT SINGH & OTHERS,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No. 7862 of 2006

4th July, 2008

Constitution of India, 1950—Art. 226—Petitioners initially appointed on ad hoc basis after following due procedure—Regularizations of services—Whether ad hoc/work charged service followed by regular service can be counted for grant of higher pay scale/benefit of ACP—Held, no—However, such service followed by regular service held to be counted for grant of additional increment in running scale on completion of 10/20 or 8/18 years of service and for purposes of pension and seniority.

Held, that ;

- (a) *ad hoc*/work charged service followed by regular service shall not be counted for the purposes of grant of higher pay scale/benefit of Assured Career Progression Scheme on completion of 8/18 or 10/20 years of service.
- (b) *ad hoc*/work charged service followed by regular service shall be counted for the purposes of grant of additional increment in the running scale on completion of 10/20 or 8/18 years of service.
- (c) *ad hoc* work service followed by regular service shall be counted for the purposes of pension and seniority.

(Para 25)

R.K. Malik, Senior Advocate with Parvesh Kumar Rohilla, Advocate, R.N. Sharma, Sanjiv Gupta, H.N. Khanduja, B.K. Bagri and S.P. Laler Advocates *for the petitioners.*

Harish Rathee, Senior DAG Haryana.

JUDGMENT**K.C. PURI, J.**

(1) As in the instant Civil Writ Petition and Civil Writ Petition Nos. 6044 of 1995, titled **Savitri Devi and others versus State of Haryana and others**, 7684 of 1995 titled **Yash Pal Dass and others versus State of Haryana and others**, 8374 of 1995 titled **Raj Kumar and others versus State of Haryana and others**, 8381 of 1995 titled **Charanjeet Sharma and others versus State of Haryana and others**, 8382 of 1995 titled **Yoginder Singh Sharma and others versus State of Haryana and others**, 8383 of 1995 titled **Subhash Chand Bansal and others versus State of Haryana and others**, 8384 of 1995 titled **Subhash Chander and others versus State of Haryana and others**, 546 of 2003 titled **Mange Ram versus State of Haryana and others**, 5144 of 2003 titled **Ashok Kumar Arora and others versus State of Haryana and others**, 12929 of 2003 titled **Tej Pal and others versus State of Haryana and others**, 13363 of 2003 titled **Ram Bhaj Sharma and others versus State of Haryana and others**, 18749 of 2003 titled **Jai Singh Saini and others versus State of Haryana and others**, 2523 of 2004 titled **Hans Raj Dahiya and others versus State of Haryana and others**, 2973 of 2004 titled **Kamla Devi and others versus State of Haryana and others**, 14895 of 2004 titled **Daya Nand and others versus State of Haryana and others**, 15389 of 2004 titled **Mohinder Singh and others versus State of Haryana and others**, 18352 of 2004 titled **Mewa Devi and others versus State of Haryana and others**, 8500 of 2005 titled **Mangat Ram and others versus State of Haryana and others**, 10565 of 2006 titled **Parveen Kumar Goel and others versus State of Haryana and others**, 12568 of 2006 titled **Dharam Singh and another versus State of Haryana and others**, 15804 of 2006 titled **Dr. Satya Pal Sharma and another versus State of Haryana and another**, 17048 of 2006 titled **Tek Chand and others versus State of Haryana and others**, 19742 of 2006 titled **Shanta Devi and another versus State of Haryana and others**, 2874 of 2007 titled **Ishwar Singh and others versus State of Haryana and others**, 5454 of 2007 titled **Mast Ram and others versus State of Haryana**

and others, 5667 of 2007 titled **Bhajan Singh and others versus State of Haryana and others**, 9585 of 2007 titled **Baisakhi Ram versus State of Haryana and others**, 11800 of 2007 titled **Asha Rani versus State of Haryana and others**, 15014 of 2007 titled **Piara Lal versus State of Haryana** 18356 of 2007 titled **Baljit Singh and others versus State of Haryana and others**, 19310 of 2007 titled **Rajender Kumar and others versus State of Haryana and others**, 5485 of 2008 titled **Brij Lal versus Director Secondary Education Haryana and another**, 7391 of 2008 titled **Dharampal and others versus State of Haryana and others**, 7471 of 2008 titled **Smt. Salochna Gupta and others versus State of Haryana and others**, 1595 of 2008 titled **Kalawati versus State of Haryana and others**, identical questions of fact and law are involved, so the concurrence of learned counsel for the parties, all these Civil Writ Petitions are being disposed of by this common judgment. However, facts are being taken from Civil Writ Petition No. 7862 of 2006.

(2) The petitioners filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of Certiorari, for quashing impugned orders dated 10th May, 2006 (Annexures P-8, P-9 and P-10),—*vide* which the benefit of seniority, Higher Standard Pay Scale and ACP granted after completion of 8/18 years of service had been withdrawn. They also seek a writ in the nature of Mandamus, thereby directing the respondents to allow them to draw their pay as was drawn by them prior to the passing of the impugned orders.

(3) Short and shorn of unnecessary details, the case of the petitioners is that they were appointed as Diesel Pump Attendants on 11th December, 1973, 20th May, 1977 and 18th April, 1974 respectively. Subsequently, they were promoted to the posts of Assistant Cashiers in the pay scale of Rs. 400—600. Even list of Diesel Pump Attendants was prepared and the names of the petitioners also figured in the seniority list.

(4) The first grievance of the petitioners is that initially they were appointed as Diesel Pump Attendants through proper channel and their appointment was made after following due procedure. As such,

they were entitled to seniority from the dates of initial appointments as Diesel Pump Attendants.

(5) Their second grievance is that from the date of regularization i.e. with effect from the grant of seniority, they are also entitled to regular pay scale of Diesel Pump Attendants. Apart from this, they are also entitled to the revision of pay scale as admissible to the Haryana Government employees by introduction of Haryana Revised Pay Scales Rules, 1998, which were made applicable with effect from 1st January, 1996.

(6) The petitioners have also averred that persons, who are juniors to them, have already been granted pay scale of Rs. 5,000—7,800. Those junior persons were either appointed or promoted much after their dates of promotions as Assistant Cashiers. They also lay claim to the higher standard pay scale after completion of 10/20 years of service.

(7) The petitioners have further pleaded that in compliance with the order passed in a petition filed by the Ishwar Singh, they have been granted the benefits and their pay had been fixed and arrears have been paid to them. Their appointment in the years 1973, 1974 and 1977 is substantive and not *ad hoc* and even the benefit of seniority had been given to them. They received notices dated 8th March, 2006 to which they replied but without considering their reply, their substantive claim had been declined and the benefit of pay and ACP/Higher Standard Pay Scale had been withdrawn,—*vide* order dated 10th May, 2006 and even recovery from them had been ordered which could not be done.

(8) The claim of the petitioners has been contested by Respondent Nos. 1 to 3. They have averred that *ad hoc* service is not to be counted for the benefit of Higher Standard Pay Scale/ACP on completion of 10/20 years service. The petitioners were appointed as Diesel Pump Attendants on temporary/*ad hoc* basis and as such they were not entitled to Higher Standard Scale/ACP Scales before regularization of their service. The respondents supported the impugned orders as legal, valid and constitutional.

(9) We have heard arguments addressed by the counsel for the parties and have gone through the record of the case.

(10) The following questions need to be answered, after hearing both sides.

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 ?

(11) To determine the real controversy, the back ground of various instructions issued by the State of Haryana has to be taken into consideration.

(12) On the demand of various Associations/Unions of employees, the State of Haryana introduced various schemes in order to take care of stagnation and lack of promotional avenues for employees belonging to Group 'C' and 'D' as a welfare measures from time to time. The first scheme was introduced,—*vide* instructions dated 14th May, 1991. The relevant portion of the said instructions is given as under :—

“Copy of F.D.Hr.No. 9/9/91-3PR(FD) dated 14th May, 1991).

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 1st January, 1986 to 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 1st January, 1991 will get the additional increment on 1st January, 1991.
- (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 1st January, 1991 shall get only one additional increment on 1st January, 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.”

(13) Thereafter, the above scheme was further modified,—*vide* Government instructions dated 7th August, 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 are given as under :—

“[Copy of F.D.Hr.No. 1/138/92-1(FD) dated 7th August, 1992].

I am directed to invite your attention to Haryana Government letter No. 9/9/91-3PR(FD), dated 14th May, 1991 read with letters No. 9/9/91-3PR(FD), dated 9th April, 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 increments 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 1st July, 1992 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 1st July, 1992."

(14) The State Government introduced another scheme,—*vide* notification dated 8th February, 1994 with effect from 1st January, 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.

(15) To provide more incentives to the class 'C' and 'D' employees, the State of Haryana,—*vide* notification No. G.S.R.4/Const./Art.309/98, dated 7th January, 1998 issued Assured Career Progression) Rules, 1998. The eligibility for grant of ACP Scale under the said Rule is given in Rule 5 which is re-produced as under :—

- “5. Eligibility for Grant of ACP Scale (1) Every Government servant who, for a minimum period of 10 years, if the minimum period is not otherwise specified to be different than 10 years either in these rules or by the Government for a 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 31st December, 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 31st December, 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 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 31st December, 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 31st December, 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.

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 Ist 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 Ist ACP, the employee has already got at least on financial upgradation or within 20 years of services,

as the case may be, otherwise prescribed period of service for grant of second ACP scale, the Government servant has already got atleast 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 scale in terms of percentage of post 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 scale 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 servant 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.”

(16) Some Government employes filed various writ petitions in the Punjab and Haryana High Court seeking therein the benefit of *ad hoc* service rendered by them for calculating the total period of service for the grant of benefit of higher standard scale. Those writ petitions were disposed of by the High Court in terms of Full Bench Judgment in case **R.K. Singla versus State of Haryana**, Civil Writ Petition No. 15034 of 1993. R.K. Singla claimed benefit of *ad hoc* service of 12 years for computing his service towards benefit of selection grade granted by the State Government to the Engineers of PWD (three wings) and the doctors,—*vide* letter dated 2nd June, 1989.

(17) While disposing of **R.K. Singla's** case (*supra*), the Full Bench of High Court held that *ad hoc* service which is countable for the purpose of seniority and other service benefits, in the light of judgment of Supreme Court in Direct Recruitment case as explained in **Aghore Nath's** case and Full Bench of this Court in **Chambel Singh's** case, shall be counted for the purpose of regular service in the context of circular dated 2nd June, 1989. The State preferred Special Leave Petitions in the Hon'ble Apex Court. The Hon'ble Apex Court in Civil Appeal No. 13423 of 1996, **State of Haryana versus Haryana Veterinary and AHTS Association and another**, passed the following order :—

“Thus, the appointment of respondent Rakesh Kumar was a fresh appointment in accordance with the statutory Rules after the Public Service Commission adjudged their suitability and the regular service of the respondent Rakesh Kumar must be counted from the date he joined the post pursuant to the offer of appointment dated 29th January, 1982 and the period of service rendered by him on *ad hoc* basis cannot be held to be regular service nor can it be tagged on to the later service for earning the benefit under the Government

Circular dated 12th June, 1989 as well as the clarificatory circular dated 16th May, 1990. The conclusion of the majority judgment of the High Court, therefore, is wholly erroneous and cannot be sustained.”

(18) The Full Bench judgment of the Punjab and Haryana High Court in **R.K. Singla's** case (*supra*) has been set aside.

(19) 16 Special Leave Petitions, preferred by the State of Punjab against the relief of counting of work charged service granted by the High Court were de-linked by the Apex Court, while deciding **Haryana Veterinary and AHTS Association and others'** case (*supra*) and the Apex Court ordered the listing of these cases for hearing. These 16 cases were ultimately decided by Three Judges Bench of Hon'ble Supreme Court on 31st October, 2000 in main appeal Nos. 5740-5741 of 1997, **State of Haryana versus Ravinder Kumar and others**. The operative part of the judgment reads as under :—

“These batch of cases were de-linked while hearing another batch of appeal from the same State, which were disposed of by us by judgment dated 19th September, 2000. 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 charged basis and later on they were regularized and brought into the cadre of the service. It is also not disputed by the learned counsel appearing for the State that his period, which the employees have rendered on work charged basis, count for the purpose of increments 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 are intended to avoid stagnation in particular grade”.

(20) The State of Haryana by taking into account the authorities in cases **Haryana Veterinary and AHTS Association and others and**

Ravinder Kumar (*supra*) issued circular No. 6/16/2001-3PR (FD), dated 15th March, 2002, Annexure R-VI, wherein it was decided as under :—

“The *ad hoc* service is not to be counted towards regular service for the purpose of calculation of prescribed length of service for the grant of additional increments on completion of 8/18 years service under the scheme introduced,—*vide* Government letter dated 7th August, 1992. The scheme was introduced by the Government for Engineers of PWD (three wings) and Doctors,—*vide* Government instructions dated 2nd June, 1889 read with clarificatory instructions dated 16th May, 1990, and the higher standard scales under the scheme of Higher Standard Scales introduced for Group ‘C’ & ‘D’ employees introduced,—*vide* letter dated 8th February, 1994 but effective from 1st January, 1994.

- (ii) That the service rendered on work charge basis followed by regular service which count for the purposes of increments in the cadre as well as qualifying service for pension, the same is to be taken into account for the purpose of calculation of prescribed length of service under the scheme of additional increments on completion of service of 8/18 years service implemented,—*vide* Government instructions dated 7th August, 1992 and for grant of higher standard scales on completion of 10/20 years service under the scheme of Higher Standard Scales introduced by the Government,—*vide* letter dated 8th February, 1994 in compliance of the order of the Hon’ble Supreme Court of India in **Ravinder Kumar’s** case.

Provided that the said benefits may be granted on notional basis on the relevant date(s) but the actual payment of arrears shall be confined to a period of 38 months prior to to the issuance of these instructions. However, in cases where the requisite benefit has been granted by the Hon’ble Punjab and Haryana High Court,

the payment of arrears be allowed to the petitioners in such cases for a period of 38 months prior to the date of filing of civil writ petitions by them or the date of introduction of relevant scheme whichever is later. Further, in case there are specific directions by the Hon'ble Court in given case to pay arrears for more than 38 months period, then the payment be made as per specific directions only. Other terms and conditions of the scheme shall remain unchanged.

- (iii) It may please be ensured that the work charged service shall be countable towards the benefit of additional increments under the scheme introduced,—*vide* Government instructions dated 7th August, 1992 and for Higher Standard Scale under the scheme introduced,—*vide* instructions dated 8th February, 1994.”

(21) The State Government has extended the benefit of work charged service followed by regular service for the purpose of grant of additional increment on completion of 8/18 years of service,—*vide* instructions dated 7th August, 1992, keeping in view **Ravinder Kumar's** case (*supra*). However, the said benefit has been declined to the *ad hoc* service followed by regular service. The said distinction drawn by the Government is imaginary and is not in consonance with the authority in **Ravinder Kumar's** case (*supra*). *Ad hoc* service, followed by regular service, is as good as work charged service, followed by regular service. So, the said distinction does not stand the test of legal scrutiny.

(22) The pay scales mentioned in circulars dated 14th May, 1991 and 7th August, 1992 were given to class 'C' and 'D' employees on completion of service mentioned in those circulars. In authority reported in **Ravinder Kumar's** case (*supra*), the Hon'ble Apex Court has held 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. However, the Apex Court in **Haryana Veterinary and AHTS Association and other's** case (*supra*), has categorically held that the employees are not entitled to

count *ad hoc* service for the purpose of grant of higher scale/ACP scale. So, we are of the considered opinion that keeping in view the above said authority, *ad hoc* service/work charged service has to be counted for the purpose of grant of additional increment after completion of 10/20 years of service or 8/18 years of service as detailed in the circular mentioned above. It is further held that the said *ad hoc* service/work charged service followed by regular service is also to be counted for the purpose of seniority and pension.

(23) So far as authority **State of Rajasthan and others versus Farooq Ahmed and another, (1)** is concerned, the same is distinguishable as in that authority itself, it has been mentioned that counting of *ad hoc* service depends upon the circular issued by the Government. The circular issued by the State of Rajasthan are not same as that of circulars issued by the State of Haryana. The relevant portion is given as under :—

“The Supreme Court in **State of Haryana versus Haryana Veterinary and AHTS Association and another, 2000(8) SCC 4**, held that service rendered on *ad hoc* basis will not be counted for grant of selection scale. A Division Bench, however, in **State of Rajasthan versus Uma Shanker Aggarwal and Ors., (D.B. Civil Special Appeal No. 1142/2002)** had distinguished the judgment of the Supreme Court and took the view that the period of *ad hoc* service rendered by an employee should be counted for the purpose of granting him selection scale. This view was taken on the ground that the Haryana Rules on the basis of which AHTS case was decided by the Supreme Court were different than the rules with which we are concerned. Two of us doubting the correctness of the view of the earlier Division Bench referred the matters to the Full Bench. This is how the matters have come up before us.”

So far as reliance of petitioners on Civil Writ Petition No. 8833 of 1999 titled **Hanumant Singh and others versus**

State of Haryana and another is concerned, that authority does not help the petitioners as in that case the writ petition was disposed of with the direction that the respondents shall decide the dispute of petitioners regarding seniority within four to six months.

(24) The petitioners also cannot have any benefit of authority reported as **Union of India versus Madras Telephone SC and ST Social Welfare Association (2)**, as no benefit has been given to any of the petitioners under the order of the Court. In the said authority, it has been laid down that any benefit given to the employee under the order of the Court cannot be taken away on account of change of law subsequently.

(25) Therefore, in view of the above discussion, question No. 1, referred to above, stands answered against the petitioners whereas question Nos. 2 and 3 stand answered in favour of the petitioners and against the respondents and it is held as under :—

- (a) *ad hoc*/ work charged service followed by regular service shall not be counted for the purposes of grant of higher pay scale/benefit of Assured Career Progression Scheme on completion of 8/18 or 10/20 years of service.
- (b) *ad hoc*/work charged service followed by regular service shall be counted for the purposes of grant of additional increment in the running scale on completion of 10/20 or 8/18 years of service.
- (c) *ad hoc* service followed by regular service shall be counted for the purposes of pension and seniority.

(26) So, all these writ petitions stand disposed of with the above-said observations. The respondents are directed to fix the salary of the petitioners, after taking into account the above-said observations.

R.N.R.