

Before Rajesh Bindal & Harinder Singh Sidhu, JJ.
THE STATE OF PUNJAB AND OTHERS-- Appellants
versus
GURCHARANA SINGH AND OTHERS—Respondents
LPA No. 1578 of 2014 in CWP 9393 OF 1997

May 09, 2016

Constitution of India, 1950 Art.14— Adhoc service— Counting of —Proficiency step up scheme on completion of 8/18 years of service— Learned Single Judge directed counting of ad hoc service for the purpose of Proficiency step up relying on memo dated 05.01.1996 which has been kept in abeyance vide memo dated 26.09.1996—Held, that ad hoc service cannot be counted for determination of seniority and for the purposes of higher scale of pay after 8 or 18 years under the Proficiency step up scheme —Judgment of the Learned Single Judge set aside and writ petition dismissed.

Held, that ad hoc service cannot be counted for determination of seniority and for the purposes of higher scale of pay after 8 or 18 years of service under the proficiency step up scheme.

Munisha Gandhi, Additional A.G, Punjab with

Harleen Kaur, AAG, Punjab, *for the appellants.*

Bikramjit S. Randhawa, Advocate, for respondent No.2.

Alka Chatrath, Advocate for respondent Nos. 3 to 7, 9, 11, 12, 14, 16 18 and 21 to 27.

HARINDER SINGH SIDHU, J.

(1) This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 25.09.2013 of the learned Single Judge, whereby, the writ petition filed by the respondents praying for including the ad-hoc service rendered by them for grant of proficiency step up on completion of 8/18 years of service has been allowed. Also challenged is the order dated 01.05.2014 whereby the review application filed by the appellants was dismissed.

(2) Along with the appeal, the application seeking condonation of 325 days delay in filing the appeal has also been filed. The application is allowed and the delay of 325 days in filing the appeal is

condoned.

(3) The respondents initially joined service in various Government Schools in the State of Punjab on ad hoc basis. Their services were later regularized in view of Government notifications issued from time to time.

(4) As the appellants did not grant them proficiency step up increments on completion 8/18 years by including their ad hoc service, they filed the writ petition.

(5) For claiming the benefit of inclusion of ad hoc service reliance was placed on instructions dated 20.09.1994 (Annexure P-4) and memo dated 05.01.1996.

(6) The relevant part of the memo dated 05.01.1996 is extracted hereunder:

“In this case the subject of decision is whether as per Govt. policy Service rendered on adhoc basis is to be counted or not for placing employees who have put in 8/18 years service. The main instructions were issued by the personnel Department on 1.9.1989. In this clarification it was laid down that for senior scale/Selection Grade/Proficiency Step-up service rendered on adhoc is not counted. Later on, keeping in view of the directions of the High Court in one case. Personnel Department issued another clarification on 20.09.1994. Clarifying that instructions dated 1.9.1989 and 26.03.1990 are to be effected who joined before 1989 are to be taken. Keeping in view the instructions of 1988, in the case in which writ petitions have been filed. The employees who joined service before 1989 will be governed by instructions issued in 1988. In the instructions issued in 1988 it has now here been mentioned that adhoc services is not to be counted for this purpose. In the case of Ajit Kumar Jain Versus State of Punjab as per High Court decision and on the basis of which the other decisions are to be followed service of the employee is counting, the service is to be counted for Senior Scale/Selection Scale/ Proficiency Step-up. Keeping in view the instructions pertaining to year 1988 the decision in the qualification may be issued immediately.

1. Petitioner who were in service before 1.9.1989 and in whose case is no break in service then adhoc/temporary regular service is to be counted for giving benefit of Senior

Scale/Selection Grade/Proficiency Step-up.

2. xxxxxx

3. xxxxxx”

(7) Learned Single Judge relying on the memo dated 05.01.1996 held that the respondents are entitled for being considered for proficiency step up in the light of these instructions. Accordingly the writ petition was allowed and the appellants were directed to reckon monetary benefits within a period of 12 weeks and release the same.

(8) Learned counsel for the appellants has argued that vide subsequent circular dated 26.09.1996, the Government of Punjab had kept the circular dated 05.01.1996 in abeyance till further orders. He further argued that Hon'ble the Supreme Court in SLP No.6525 of 1998 *State of Punjab versus Harjinder Kaur and others* decided on 20.02.2001 held that for purpose of cadre seniority and higher pay under the proficiency step up scheme only regular service is to be counted and not ad-hoc service. Reliance has also been placed on the decision in LPA No.1400 of 2010 '*State of Punjab and others Vs. Surjit Kaur*' (decided on 08.02.2011) .

(9) Having heard learned counsel for the parties, we are of the view that the present appeal deserves to succeed.

(10) Firstly, the memo dated 05.01.1996, relying on which, learned Single Judge had directed that ad-hoc service is to be counted for the purpose of proficiency step up has been kept in abeyance vide memo dated 26.09.1996. The relevant part of this memo reads thus:

“1. In reference to memo No.1/37/96-4E-2/736-740 dated 5 Jan. 1996 on the above said subject.

2. After reconsidering this subject Government has decided to keep in abeyance the above referred instructions till next orders and in this regard final decision shall be informed to you soon.”

(11) Secondly, the issue with regard to counting of ad hoc service for proficiency step up with reference to the relevant instructions has been considered in detail by this Court in *State of Punjab versus Surjit Kaur* (*supra*). The relevant part of this judgment wherein the relevant instructions have also been reproduced is extracted hereinbelow:

“Having heard the learned counsel, we are of the considered view that the learned Single Judge has fallen in an error of

law by extending the benefit of adhoc service for making addition to regular service for the purpose of granting proficiency step- up(s). The appellant- State issued instructions dated 1.12.1988 stipulating that subject to suitability in addition to regular annual increment one additional increment on each occasion on completion of 8 and 18 years of service on or after 1.1.1986 in the form of proficiency step up shall be granted to an employee. The aforesaid benefit is to be given on adjudging the suitability of an employee for the proficiency step up and the procedure for assessing the work and conduct for the aforesaid purpose would be the same as is applicable to a case of promotion. The provisions of the aforesaid instructions are set out here under:

“PG No. 7/14/88-5pp(1)2269/18527 dated 1st December,1988 LPA 1400 of 2010 3 On careful consideration of the recommendations of the Third Punjab Pay Commission regarding proficiency step up (PROP), the President of India is pleased to decide as follows:-

1. Subject to suitability, besides the regular annual increment one additional increment on each occasion on completion of 8 years' and 18 years' service on or after 'the appointed day' as defined in Punjab Civil Services (Revised Pay) Rules, 1988, published in Punjab Government Gazettee (Extra) on 13th September, 1988) against a post, in the form of proficiency step up(s) shall be granted to all the Punjab Government employees except the Members of the Punjab Civil Service (Executive Branch), Deputy Superintendent of Police and Members of the Punjab Forest Service Class II.

2. In adjudging the suitability for the proficiency step-up(s), the procedure for assessing the work and conduct to be satisfactory as applicable to a case of promotion, shall be followed and it shall be given only if the employee is found suitable for the same. An employee, who is not considered for a proficiency step up(s) , that is, whose assessment of work and conduct is below the requisite standard, shall not be given the additional increment(s) but his regular increment, if otherwise due, shall be released as usual,”

There were some doubts raised which lead to the issuance of clarification on 1.9.1989. Item No.6 of the clarification is as

under:

“(PG No. 7/14/88/5FFI/16200 dated 1st September, 1989) I am directed to say that various department/ offices have LPA 1400 of 2010 4 raised certain points for clarification in respect of grant of proficiency step up, the procedure for which was laid down in the letter dated 1 st December, 1988. The matter has been considered in detail in consultation with the department of Finance and the following clarifications are given on the various points.

Points 1 to 5 xx xx	Clarification 1 to 5 xx xx
6. An employee was appointed on adhoc basis wherein he had put in 3 yeas of service. Subsequent he was appointed on regular basis. For the grant Of proficiency whether the period of 8/18 years to be taken From the date of this appointment on adhoc basis or From the date he joined on regular basis as appointed by The Subordinate Service Selection Board/Departmental Selection Commission/Punjab Service Commission etc.	The period of eight or eighteen years is to be reckoned from the Date of appointment on regular basis. Service rendered on adhoc basis is not to be counted for the purpose of grant of proficiency step up(s).

A perusal of the aforesaid clarification would show that the period of 8 or 18 years is to be reckoned from the date of appointment on regular service and any service rendered on adhoc basis is not to be counted for the purposes of grant of proficiency step-up(s). Even otherwise, the view of Hon'ble the Supreme Court as laid down in the case of State of Haryana v. Haryana Veterinary and Ahts Association and another (2000) 8 SCC 4 is absolutely clear that it is only regular service which could be counted for the purpose of grant of ACP scale ”

(12) Hon'ble the Supreme Court in SLP No. 6525 of 1998 State of Punjab and others *versus* Harjinder Kaur and others decided on February 20, 2001 considered this question. It was held that ad hoc service cannot be counted for determination of seniority and for

purposes of higher scale of pay after 8 or 18 years of service under the proficiency step up scheme.

(13) It thereby reversed the decision of this Court in CWP No.11704 of 1989 *Harjinder Kaur and others versus State of Punjab and others* (decided on 24.04.1996), wherein it has been directed that ad hoc service be counted for grant of proficiency step up.

The Court observed as under:

“The core question that arises for determination in these cases is whether the period of ad hoc services rendered by the respondents, who are teachers in Punjab State Services, is to be counted for determination of seniority and for purpose of higher scale pay after 8 or 18 years of service under the proficiency step up scheme. The question was considered by a three Judge Bench of this Court in the case of State of Haryana *versus* Haryana Veterinary & AHTS Association and another 2000(8) SCC 4. Therein this Court took the view that for the proficiency step up scheme only regular substantive service of an employee is to be counted and not ad hoc service.

The respondents were initially appointed on ad hoc basis without following the procedure prescribed under the Recruitment Rules and without referring their case to the Punjab Public Service Commission. Subsequently their services were dismissed and fresh appointment orders were issued. The question formulated above arose when the employees claimed higher scale of pay under the scheme and wanted ad hoc service rendered by them to be included for counting 8 to 18 years of requisite service.

On perusal of the paper and on the consideration of the submission made by the learned Counsel for the parties we are satisfied that this case is covered by the decision in State of Haryana *versus* Haryana Veterinary & AHTS Association and another (supra). Accordingly the appeals are allowed and the judgment/ orders under challenge are set aside ”

(14) To the same effect are the decisions of Hon'ble the Supreme Court in *State of Punjab versus Ishar Singh*¹ and *State of Punjab*

¹ (2002) 10 SCC 674

*versus Gurdeep Kumar Uppal*².

(15) Accordingly, the appeal is allowed. The judgment of the Ld. Single Judge is set aside and consequently, the writ petition is dismissed.

Dr. Payel Mehta

² (2003) 11 SCC 732