*Before M. M. Kumar & Gurdev Singh, JJ.*

**STATE OF HARYANA AND ANOTHER,**—*Appellants*

*versus*

**OM PRAKASH NAGRA AND OTHERS,** —*Respondents*

**L.A.P. No. 1667 of 2011**

19th July, 2011

***Constitution of India.—Art. 14 & 16—Respondent initially appointed on ad hoc—Then appointed on regular basis—Respondents filed Petition for counting his ad hoc for the purpose of seniority—Petition Allowed by Single Bench placing reliance on Division bench judgment in Hanumant Singh's case—Appellant filed present appeal raising issue Whether the period of ad hoc service rendered prior to regularization could be reckoned for the purpose of grant of seniority and other benefits—Appeal allowed setting aside judgment of Single Bench.***

*Held.* that in the case of ***Hanumant Singh*** *versus* ***State of Haryana,*** the Division Bench has proceeded on the assumption that appointment in this case was made through proper channel and after following due procedure of law. Further held that in the present case procedure required to be followed by complying with provisions of Article 14 and 16(1) of the Constitution was not complied with.

(Para 11)

Aman Chaudhary, Add. Advocate General, Haryana, *for the appellants*

Manohar Lall, Advocate, *for respondent No. 1*

**M. M. KUMAR, J.**

(1) The short issue raised in the instant appeal, filed under Clause X of the Letters Patent, is whether the period of *ad hoc* service rendered by an employee prior to his regularisation could be reckoned for the purposes of grant of seniority and other attendant benefits such as higher

pay scale/ACP on completion of 8/18 or 10/18 years of service, additional increment etc. etc.. The State of Haryana and its officers have filed the instant appeal under Clause X of the Letters Patent against the judgment dated 19th July, 2010 rendered by the learned Single Judge. The writ petition filed by the petitioner-respondent No. 1 has been allowed by setting aside the seniority lists dated 1st January, 1991 (P-8 and P-9) and order dated 28th February, 1992 (P-11). The appellants have been directed to count the *ad hoc* service rendered by him w.e.f. 11th May, 1970 to 25th February, 1973 for all intents and purposes. In that regard, the learned Single Judge has placed reliance on a Division Bench judgment of this Court rendered in the case of **Hanumant Singh and other** *versus* **State of Haryana and others** (CPW No. 7862 of 2006, decided on 4th July, 2008). The view of the learned Single Judge is discernible from his short order, which reads thus :

> "Having thoughtfully considered the submissions made by the learned counsel for the parties, I am of the view that the petitioner is entitled to the benefit of the *ad hoc* services rendered by him.
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> It is not in dispute that the petitioner has rendered *ad hoc* service as Clerk with effect from 11th May, 1970 to 25th February, 1973. It is also not in dispute that the *ad hoc* service rendered by the petitioner was followed by regular service because he was appointed as Clerk on regular basis on 26th February, 1973.
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> The controversy regarding grant of benefit of *ad hoc* service for the purpose of seniority, pension etc. has been dealt with by this Court in Hanumant Singh's case (supra) in which it has been held that *ad hoc* sservice followed by regular service shall be counted for the purpose of grant of higher pay scale/ACP on completion of 8/18 or 10/18 years of service, additional increment in the running scale on completion of 10/20 pr 8/18 years of service, pension, seniority etc.
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> In view of the aforesaid discussion, the present writ petition is allowed and the order Annexures P.8. P. 9 and P. 11 are quashed. Accordingly, the official respondents are directed to count the *ad hoc* services rendered by the petitioner with effect from 11th May, 1970 to 25th February, 1973 for all intents and

purposes in the light of judgment rendered by this Court in **Hanumant Singh's** case *(supra)*. It is further directed to the official respondents to release all the consequential benefits to the petitioner within a period of six months from the date a certified copy of this order is received."

(2) It is conceded position that the petitioner-respondent No. 1 worked as Clerk on *ad hoc* basis with effect from 11th May, 1970 to 25th February, 1973. He was appointed as Clerk on regular basis on 26th February, 1973. He filed the writ petition challenging seniority lists dated 1st Junuary, 1991 (P-8 and P-9) and order dated 28th February, 1992 (P-11),—*vide* which Shri Joginder Pal Adia-respondent No. 2 has been promoted to the post of Deputy Superintendent (Office). The precise grievance of the petitioner-respondent No. 1 was that if the aforementioned period of *ad hoc* service rendered by him is counted then he would become senior to respondent No. 2.

(3) It would be necessary to set out some additional facts which have direct bearing on the issue raised in the instant appeal and are available on record. The name of the writ petitioner-respondent No. 1 was requisitioned from the employment exchange, which was forwarded to the Director General of Police, Haryana-appellant No. 2. A committee was constituted by appellent No. 2 and all the documents concerning eligibility and qualifications for the post of Clerk were scrutinised. Thereafter the writ petitioner-respondent No. 1 appeared in the written test. He was declared successful after the interview by the Assistant Inspector General of Police, Haryana, against the quota reserved for Scheduled Castes. Accordingly, an appointment letter was issued on 11th May 1970 (P-1), which incorporated various conditions. The opening para of the appointment letter would show that the appointment was for a period of six months or till the date candidates belonging to Scheduled Caste category are selected by the Subordinate Services Selection Board, Haryana an report for duty. Under clause 2 and 6 of the appointment letter following stipulations were made :—

"2. It should be clearly inderstood that this proposal of appointment is for a temporary vacancy and no assurance of a permanent service subsequently can be given, as a vest your services can be dispensed with, without notice i.e. when there will be no such vacancy againsst which your appointment can be continued with."

6. Yor are again informed that your service will not be required when candidates belonging to Scheduled Caste category selected as Clerks by S. S. Board, Haryana join. Therefore, it is in your interest that you clear the examination of Clerk when conducted posts advertised by S.S. Board, Haryana."

(4) In accordance with the aforesaid clauses, the writ petitioner-respondent No. 1 appeared for the competitive test for the post of Clerk conducted by the Subordinate Services Selection Board, Haryana, where he was duty selected for regular appointment as Clerk on 26th February, 1973. On 16th November, 1973, the State of Haryana issued instructions clarifying that the benefit of *ad hoc* service of a Government employee could be counted towards annual increment and leave nut bot towards seniority. It was clarified that the benefit of *ad hoc* service cannot also be given for promotion (R-1).

(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 beniefit of counting of *ad hoc* service rendered by him as a Clerk from 11th May, 1970 to 25th February, 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 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 sendint requisition to be employment exchange. The case of **Union of India** *versus* **N. Hargopal, (1)** 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, (2).** The following paragraphs extracted from the later judgment would show that confining selection

(1) (1987) 3 SCC 308
(2) (1996) 6 SCC 216

process to the candidates sponsored by the employment exchange would not answer the requirements of Articles 14 and 16 of the Constitution and the same reads as under :—

> "4. This Court in **Union of India** *versus* **N. Hargopal,** (1987) 3 SCC 308, noted the contention of counsel appearing for respondents therein that excluding the candidates who were not sponsored through medium of employment exchange and restricting the choice of selection to the candidates sponsored through the medium of employment exchange, would offend the equality clause of Articles 14 and 16 and held that the contention was attractive and it was not open to the Government to impose restriction on the field of choice. But in view of the fact that even the paper publication would not reach many a handicapped who would be unable to have access to the newspaper, it was held that the sponsorship through the medium of employment exchange would not violate Articles 14 of 16. On the other hand, it would advance the rights to the handicapped. In that view, this Court upheld the restriction imposed by the State and Central Governments to consider the cases of the candidates through medium of employment exchange, while holding that such a restriction was not intended to be applicable to the private employment as held in para 6 of the judgment.
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> 5. Shri Ram Kumar, the learned counsel for the State, contended that in view of the above decision, the direction issued by the Tribunal is not in accordance with law. On the other hand, sarvshri Shanti Swarup and L.R. Rao, the learned counsel appearing for the respondents, contended that the restriction of the field of choice to the selected candidates sponsored through the medium of employment exchange prohibits the right to be considered for employment to a post under the State and many people cannot reach the employment exchange to get their names sponsored and the employment exchanges are not adopting fair means and procedure to send the names strictly according to seniority in their record. So, the better course

would be to adopt both the mediums, viz., of employment exchange and publication in the newspaper as that would subserve the public purpose better.

6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, through their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins ; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subsserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

(6) Once the *ad hoc*/temporary appointment of the writ petitioner-respondent No. 1 was not in conformity with the procedure acceptable under Articles 14 and 16(1) of the Constitution then the principle laid down by the Constitution Bench of Hon'ble the Supreme Court in the case of **Direct Recruit Class-II Engineering Officers' Association** *versus* **State of Maharashtra, (3)** would be applicable. According to various

(3) (1990) 2 SCC 715

propositions. laid down in Direct Recruit's case (Supra), if the initial appointment is only *ad hoc* and not according to the rules then officiation on such post cannot be taken into account for the purposes of seniority. The aforesaid two positions laid down in **Direct Recruit's case** *(supra)* would read as under :—

> "(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only *ad hoc* and not according to rules and made as a stop-gap arrangement, the officiation insuch post cannot be taken into account for considering the seniority.
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> (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

(7) If the principles laid down in the aforesaid judgments are applied to the facts of the present case then the benefit of counting *ad hoc* service rendered by the writ petitioner-respondent No. 1 as Clerk from 11th May, 1970 to 25th February, 1973 would not qualify for the purposes of seniority and promotion.

(8) In so far as counting of ad hoc service for the purposes of promotional scales/promotional increments is concerned, the issue is no longer *res integra*. A similar issue came up for consideration of Hon'ble the Supreme Court in the case of **Punjab State Electricity Board and others** *versus* **Jagjiwan Ram and others, (4)** wherein their Lordships' in para 21 has held as under :

> "21. 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."

(4) (2009) 3 SCC 661

(9) It is obvious that for the purposes of seniority, promotion or some other benefits, the service rendered on work-charge basis, *ad hoc* basis or daily rate basis could not be counted. However, this principle would not be attracted in a case where the consideration proceeds on different plane i.e. when the question of pension comes.

(10) The judgment cited to the countrary by Mr. Manohar Lall, learned counsel for the writ petitioner-respondent No. 1, in the case of **M. K. Shanmugam** *versus* **Union of India, (5)** could also not be applicable because in that case it was found on facts that the initial appointment was made by following the same procedure as was required to be followed for regular appointment. The position is entirely different in the case in hand.

(11) We are further of the view that the Division Baench 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 be 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 judgement 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.

(12) As a sequel to the above discussion, the instant appeal succeeds. The judgment dated 19th July, 2010 rendered by the learned Single Judge is set aside. No order as to cost.

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*A. AGG*

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(5) (2000) 4 SCC 476