

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**C.W.P. No. 2409 of 2008**

**Date of decision December 18, 2008**

**Vijay Singh and others**

**..... Petitioners**

**Versus**

**State of Haryana and others**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL  
HON'BLE MR. JUSTICE K. KANNAN**

Present: Mr. Rajiv Atma Ram, Sr. Advocate with  
Ms. Sunita Chauhan, Advocate  
for the petitioner.

Mr. Harish Rathee, Sr. DAG., Haryana.

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**K.KANNAN, J**

1. The batch of three writ petitions address the same issue as to whether the period held under ad hoc appointments should be counted for reckoning seniority that would be relevant for consideration for promotion to the post of lecturers. The claim has been rejected by a cryptic Circular No. 8398-FR-56-6156 dated 14.9.1956 and 1028-GSSS-11-27804 dated 29.3.1957 that benefits of ad hoc service would be counted towards annual income or leave but could not be counted towards seniority of employees. This circular has been referred through the communication from the office of the Chief Secretary to Govt. of India to all the Heads of Departments, while purporting to the answer the question whether the benefit of ad hoc service was to be counted or not as experience towards promotion, "that the matter has been examined and it is clarified that ad hoc service could not be counted as experience towards promotion."

2. The statement of the government spells out a reference to

the same communication and the circular that the promotion cases of masters/mistresses and C&V teachers whose services were regularized up to 31.12.1998 alone would be taken up for consideration for promotion and that since the services of the petitioners in CWP No. 8444 of 2007 had been regularized only w.e.f. 1.10.2003, they were not eligible for being considered for promotion as per letters issued by the department.

3. While coming to the averments made in CWP No. 2409 of 2008 where the petitioners have sought for quashing of the gradation list under which the seniority list had been drawn up leaving out the claim of the petitioners to which the govt. has filed statement by reference to the rules of Haryana State Education School Cadre Service Rules, 1998 that seniority inter se of the members of the service shall be determined by the length of continuance of service on any post of service. As regards the claim of the petitioners in CWP No. 20664 of 2008 where the petitioners have sought for determination of the seniority after counting the service rendered by them on ad hoc basis and for issue of writ in the nature of Prohibition against the respondent to make promotions to the post of lecturers of persons who were juniors to the petitioners without finalizing the issue of seniority by counting their ad hoc service for the purpose of seniority, the government has not filed any statement in the above writ petitions but treats the objections filed in the other writ petitions as constituting the ground of objections in CWP No. 20664 of 2008 also.

4. It will be completely wrong for the State to contend as a general rule that ad hoc service cannot be counted for the length of service that determines seniority. It always depends on whether the person who held an ad hoc post was merely occupying a temporary post or was officiating for

certain specific administrative exigencies. The issue has been settled by the Supreme Court in Direct Recruits Class II Engineering Officers' Association Vs. State of Maharashtra and others AIR 1990 S.C. 1607 where the Supreme Court has held as follows:-

“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. Seniority cannot be determined on the sole test of confirmation for, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16.”....

The principle enunciated in this decision has found affirmation through several decisions, some while addressing the issue of grant of Assured Career Progression Scheme and some while fixing pension, for calculating the retiral benefits and some also while addressing the issue of regular promotions.

5. Learned counsel for the petitioners refers to a judgment of this Hon'ble Court in CWP No. 7862 of 2006 in Hanumant Singh Vs. State of Haryana and others dated 04-07-2008, which, after a consideration of several decisions of this Court and of the Hon'ble Supreme Court, has held that ad hoc service followed by regular service shall be counted for the purpose of grant of additional increment, pension and seniority. In the cases at hand, the petitioners have attempted to show that all the candidates had been sponsored through Employment Exchanges and they have also placed on record the communications received through certain information from the respondents under the RTI Act. In particular, the petitioners in CWP

No. 8444 of 2007 have given details of the fact that in the year 1994 requisition had been sent to the employment exchange for filling up the posts of masters and teachers in the department of education at Haryana on ad hoc basis. A selection committee had been constituted by the District Education Officer on the directions of the Director of Education when the District Education Officer himself was as a Chairman, Sr. Sub Divisional Education Officer along with Principal and Subject Specialists acted as other members of the Selection Committee. The committee adopted a well drafted selection criteria and appointments had been made against regular posts as per the rules of recruitment. Interview letters had been sent and the final selection had been made in different subjects in different districts in the year 1995. The selection process itself, was transparent in that the criteria spell out, inter alia, that 5 marks were to be assigned for interview and 50 marks for academic records. All the petitioners had been employed on regular scales of pay and ultimately they were regularized as per the directions of the High Court that yielded to a policy of the Government on 1.10.2003 when all the ad hoc teachers including petitioners were ordered to be regularized w.e.f. 1.10.2003. The above details would clearly point out that the teachers who had been employed on ad hoc basis actually held their posts in substantive vacancies. It was in a situation like this that the Supreme Court set down its judgment in **Dr. Chandra Parkash Vs. State of U.P.** (2002) 10 SCC 710: 2003 RSJ 553. The Supreme Court has laid down, in the context of U.P. Medical Services (Men's Branch) Rules, that it would be equitable and appropriate to treat all the employees temporarily appointed against substantive vacancies as having been appointed from the date from which they actually joined the service. Learned counsel also

relies upon several other decisions of this High Court which have been digested in Hanumant Singh's case (supra).

6. In the above circumstances, we have no hesitation to conclude that all the petitioners shall be entitled to treat the ad hoc service rendered by them in the respective posts held by them in which they were subsequently regularized for the purpose of their seniority, which, in turn, shall be the basis of being considered for promotion to the post of lecturers. We uphold the claims of the petitioners in all the three writ petitions and we direct the respondents to draw up the seniority list on the basis of the date of entry in their ad hoc posts and a gradation list will be prepared for being considered for promotion on such a basis.

7. The writ petitions are allowed on the above terms.

**(MEHTAB S. GILL)**  
**JUDGE**

**(K. KANNAN)**  
**JUDGE**

**December 18 , 2008**  
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