

Director of Public Instructions (S.E.), Punjab
Punjab School Education Board Complex, Phase-8, S.A.S. Nagar
(Establishment-3 Branch)

Order No. 4/52-2013 Estt.-3 (2)

Dated, S.A.S. Nagar:- 14-03-2017

These orders are being passed in compliance of the order dated 27.10.2016 passed by the Division Bench of the Hon'ble Punjab & Haryana High Court in a bunch of cases with main case LPA No. 589 of 2015, State of Punjab Vs. Kewal Singh and others.

1. The precise claim of the petitioners raised in the writ petitions in question was that service rendered by them on adhoc basis prior to the present appointment should have been treated for the purpose of seniority and other service benefits, in view of the law laid down by the Hon'ble Supreme Court of India in Dr. Chandra Prakash Vs. State of U.P. (2002) 10 SCC 710 and principle of law laid down in latest decision of Hon'ble Supreme Court of India in State of Haryana and others Vs. Vijay Singh and others, Civil Appeal No. 5947 of 2012 decided on 22.8.2012.
2. According to official records, in the year of 1992, the department got advertised 2461 posts relating to various disciplines of teaching staff. Against the said 2461 advertised posts, the then authorities filled up 7737 posts, which became available later during the recruitment process. However, in a related litigation, while deciding CWP No. 5985 of 1994 titled as Yashwinder Singh Rana and another Vs. State of Punjab, this Hon'ble Court quashed selection and appointment of those candidates who were recruited in excess of the advertised posts. As the selection and appointment of the petitioners was also found to be in excess of the advertised posts, therefore, services of the petitioners alongwith their fellow recruits were terminated. Later on in the year of 1994, such terminated candidates were offered appointments on 89 days and adhoc basis. Aggrieved by this the decision of this Hon'ble Court, some of aggrieved candidates preferred Special Leave Petitions in the Supreme Court of India, which were converted into civil appeals one of being CA No. 5807 of 1997. While dismissing said Civil Appeal No. 5807 of 1997 titled as Surinder Singh and others Vs. State of Punjab and another, vide order dated 27/08/1997, the Hon'ble Supreme Court of India Passed the following operative order:-

"It is in no uncertain words that this Court has held that it would be improper exercise of power to make appointments over and above those advertised. It is only in rare and exceptional circumstances and in emergent situation that this rule can be deviated from. It should be clearly spelled out as to under what policy such a decision has been taken.

Exercise of such power has to be tested on the touch stone of reasonableness. Before any advertisement is issued, it would, therefore, be incumbent upon the authorities to take into account the existing vacancies



and anticipated vacancies. It is not as a matter of course that the authority can fill up more posts than advertised.

Keeping the above principles in view, if we analyse the facts and circumstances of the present case, we find that no exceptional circumstance existed or there was any emergent situation for the State to deviate from the principle of limiting the number of appointments so advertised. In our view, the High Court was right in setting aside the appointments of teachers over and above those advertised. The State accepted the judgment of the High Court and did not come up in appeal in this Court. However, to get over the situation created because of the fact that more vacancies of teachers were noticed during the period of interview, it appointed candidates more than the number of posts advertised on ad hoc basis and continued them as such till fresh process of selection was gone into.

Admittedly, that process is on and in various writ petitions the High Court has been issuing directions from time to time extending the ad hoc appointments and in the meanwhile to complete the process of fresh selection. As noticed above, selection of 10,000 more candidates for appointment to various categories of teachers has already been completed and selection process of about 22,000 more such teachers has either been completed by now or under completion. We do not think at this stage that we should interfere in the matter and set the clock back particularly when we find no ground to invalidate the impugned judgment of the High Court. In the present appeals, there is no appellant who can claim to fall within the first 2461 posts for which advertisement was issued.

These appeals are dismissed with costs. Interim orders stand vacated, in this view of the matter the applications for impalement do not require any consideration and are also dismissed".

3. Subsequently, some of displaced candidates got secured their selection and appointment in pursuant of further selection process. And some of such displaced candidates were re-appointed by virtue of Punjab Teachers Recruitment Act, 1999, which was promulgated to adjust such displaced candidates. The matter as to whether the such re-appointed candidates are entitled to the annual increments or other related service benefits by adding previous service rendered by them on adhoc or regular basis had been subject matter of controversy in various litigation. Ultimately, the Punjab and Haryana High Court, while handing down the judgement and order dated 16.3.2004 in CWP No. 7765 of 2003 titled as Harinder Kaur and another Vs. State of Punjab turned down the claim of similarly situated persons.

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4. While allowing batch of writ petitions, against which the LPAs were preferred by the State, the learned Single Judge had, inter-alia, held that the adhoc service is countable towards seniority as well.

5. From the above, it is clearly emerges fact that appointment made in excess of the advertised posts in pursuance of advertisement dated 19.08.1992, was quashed by the Hon'ble Punjab and Haryana High Court vide its judgment in CWP No 5985 of 1994, on the ground of their appointments being in excess of the advertised vacancies. Consequently services of all such candidates were terminated in the year 1994. However, these candidates were adjusted on 89 days basis as a stop gap arrangement, till the filling up of vacancies by the fresh recruitments that were already in the process at that time. These appointments on 89 days basis were made purely on provisional basis with notional breaks at regular intervals. Thereafter certain candidates who had been serving on 89 days basis, were selected and appointed on regular basis, during the subsequent recruitments made in the year 1997. In those cases, where the teachers appointed in excess could not get selected on regular basis during subsequent recruitments, the State of Punjab promulgated ordinance which was subsequently replaced by the Punjab Recruitment of Teachers Act 1999, giving regular appointments to such teachers by creating special type of posts meant for such teachers. All those who have been given regular appointments under the Act, as per the provisions of the Act, were given benefit of regular service w.e.f. date of their joining under the Act which was during the year 1999. These teachers appointed under the Act were not given any benefit of the service rendered by them on 89 days basis. In those cases also, where such teachers whose initial appointments were quashed by the Hon'ble High Court in the year 1994 and they were selected on regular basis during subsequent recruitments, the benefit of service rendered by them on 89 days basis, was not given to them for any purpose. Such teachers filed various writ petitions before the Hon'ble High Court seeking the benefit of 89 days service rendered by them prior to their regular service for all intents and purposes.

6. The learned Single Judge of the Hon'ble High Court vide its judgment dated 03.11.2014 in CWP No. 18673 of 2012, allowed the writ petitions and held the petitioners entitled for all the service benefits in lieu of service rendered by them on 89 days basis. The State filed appeals against the said order, which have been decided on 27.10.2016, with the following order:-

"The dispute which arises for consideration in these intra-court appeals is whether adhoc service can be counted towards seniority or the benefit of such service will have to be restricted qua the pay fixation only? In some of the cases, the benefit of adhoc service is claimed towards pension and other retiral benefits also.

[2] So far as the claim of adhoc service towards seniority is concerned, this Court in a recent decision dated 14.09.2016 rendered in LPA No.1743 of

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2016 (*Harpal Singh and others versus State of Haryana and others*) considered such issue and has held that in some exceptional situations only the benefit of adhoc service towards seniority can be admissible. This Court held as follows:

“(15) A brief reference to the above-cited case-law should leave no room to doubt that:-

- (a) Where the ad hoc appointment was made by an authority not authorized to make such appointment under the Rules, such adhoc 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.....”

[3] The order under appeal whereby learned Single Judge has granted the benefit of adhoc service towards seniority is thus set-aside with a direction to the appellant-State to follow the above-reproduced parameters for the fixation of seniority of the respondent(s).

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[4] *As regard to the benefit of adhoc service towards pay fixation, no impediment either caused under the Rules or an Executive Policy has been pointed-out. Unless there is an embargo created by way of policy or rule for denying such benefit, the adhoc service followed by regular appointment without any break can be counted towards pay-fixation on regular appointment.*

[5] *Similarly, the question re: counting of adhoc service towards "qualifying service" for the purpose of pension is fully answered by Rules 3.17 and 3.17-A of the Punjab Civil Services Rules, Volume-II, Part-1.*

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[6] *It may be seen from the above-reproduced provision of the Rules that if the retiree was holding a permanent post on the date of retirement, his temporary or officiating service rendered in pensionable establishment without any interruption, shall count in full as 'qualifying service'. The word 'temporary' is of wide amplitude and it includes all types of stop-gap services other than regular/permanent service, if rendered in a pensionable establishment. The adhoc service followed by regular or permanent service thus falls within the ambit of 'continuous temporary service' and has to be counted towards 'qualifying service' provided that it was without any interruption in terms of Rule 4.23 of the Rules (ibid). The above-cited Rules have been considered by this Court in a catena of decisions to hold that where adhoc service was followed by regular establishment, such adhoc service shall also be clubbed together with regular service towards 'qualifying service' for the purpose of pension and other retiral benefits.*

[7] *For the reasons afore-stated, the State's appeals are allowed in part and the writ-petitions as well as other connected cases are disposed of in above terms."*

7. In view of the above judgment, claim of the petitioners as well as other similarly situated teachers, has been examined. These teachers can be broadly categorized into two categories. One category consists of those teachers who were appointed on regular basis during subsequent recruitments. The other category is of those teachers whose services were regularized under the Punjab Recruitment of Teachers Act 1999. The first category of teachers fall in clause (d) of the judgment in LPA No. 1743 of 2016 referred to by the Division Bench in its judgment and thus cannot be held entitled for the benefit of seniority on the basis of their ad-hoc service. The second category of teachers whose services have been regularized under the Act of 1999, fall in category (e) of the judgment in LPA No. 1743 of 2016 referred to by the Division Bench in its judgment. The matter to regularized

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services of those teachers who were appointed in pursuance of the Act of 1999 had been subject matter of separate litigation being CWP No. 8457 of 1999. In compliance with the directive of Hon'ble High Court given in the above said writ petition, the services of such teachers have already been ordered to be regularized vide this office order No. 20/486-15 Amla-2(6), dated 29.4.2014 as per provisions of the Act of 1999. The services of these teachers were regularized under the Punjab Recruitment of Teachers Act, 1999. The relevant section 4 and 5 of the said Act read as under:-

"Section 4 - Date of joining

The date of joining of the teachers shall be that date on which they actually join the posts in pursuance of this Act or it shall be deemed to be that date, after all the selected teachers in pursuance of the advertisements, dated the 28th December, 1994 and the 12th January, 1996, have joined the posts against which they were selected, whichever is later.

Section 5 - Seniority

The seniority of the teachers shall be determined from the date of their joining."

8. Thus, as per clause (e) of the judgment on the issue of seniority, such teachers are to be governed by the above provisions of the Act. As per the above provisions, such teachers are entitled for seniority from the date of their joining under the said Act. Meaning thereby, these teachers are not entitled for the benefit of seniority on the basis of their 89 days service rendered by them prior to their regularization under the said Act.

9. For the aforesaid reasons, claim of the petitioners as well as similarly situated persons, whether appointed on regular basis during subsequent recruitments or under the Punjab Recruitment of Teachers Act, 1999, is not sustainable and thus rejected.

10. However, petitioners of writ petition in question and other similarly situated incumbents are held entitled for the benefit of pay fixation on the basis of their ad-hoc service on 89 days basis rendered by them prior to their regular appointment provided there is no break between the ad-hoc service and regular appointment. However, the ad-hoc service shall not be countable for the purpose of grant of ACP for the reasons that for the purpose of ACP only regular service is considered. Further, such teachers are also held entitled for the benefit of said ad-hoc service for the purpose of qualifying service for pensionary benefits.

11. In pursuance of the said orders, the concerned petitioners and other similarly situated are advised to stake their claim before their respective existing Drawing and Disbursing Officers for taking into their service rendered on 89 days basis or temporary basis prior to regularization of their existing appointments for the purpose of their re-fixation of pay and revision of pensionary benefits, as the case may be. Thereafter, the concerned Drawing and Disbursing Officer shall re-fix of pay of an individual in accordance with these orders within a period not exceeding two months from the date of

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passing of these order. In case a need arise to get pensionary benefits of any individual revised, the same shall also be got revised from the competent authority within a period not exceeding two months. The concerned Drawing and Disbursing Officers shall complete this entire exercise within the above said stipulated period.

12. However, in order to clear any doubt, it is made clear that as neither the Single Judge nor the Division Bench of Hon'ble Punjab and Haryana High Court has held that the persons, who had rendered regular service prior to their existing regular appointment are entitled for any benefit, whatsoever, arising out of their previous regular service because their said appointments which were in excess of the advertised posts has already been declared as null and void even upto the Hon'ble Supreme Court of India, therefore, such service of the petitioners and any other similarly situated individuals, if any, will not be taken into account for any purpose, whatsoever.

Sukhdev Singh

Director Public Instructions (S.E.), Punjab.

Endst No. Even Dated, SAS Nagar: 20-03-2017

A copy of the above is forwarded to the following for information and further necessary action:-

1. Additional Chief Secretary to Govt. Of Punjab, Department of School Education (Education-2 Branch), Chandigarh.
2. Circle Education Officer, Nabha, Jalandhar and Faridkot.
3. All the District Education Officers (SE) in the State of Punjab.
4. All the Principals/ Headmasters in the State of Punjab (through official website).
5. Employees concerned (through official website).


Assistant Director (S.A.-3)
