

Case NO.:
Appeal (civil) 13423 of 1996

PETITIONER:
STATE OF HARYANA

RESPONDENT:
HARYANA VETERINARY & A.H.T.S. ASSOCIATION AND ANR.

DATE OF JUDGMENT: 19/09/2000

BENCH:
G.B. PATTANAIK & D.P. MOHAPATRA & DORAISWAMY RAJU

JUDGMENT:
JUDGMENT

2000 Supp(3) SCR 322

The Judgment of the Court was delivered by

PATTANAIK, J. Delay condoned.

Leave granted in SLP (C) Nos. 5518/97, 2948/98, 19093/98, 9932/2000 & SLP (C) NO. 17724/2000 (CC No. 3881).

PATTANAIK, J. In these batch of appeals, filed by the State of Haryana, the question for consideration is, the services rendered by an ad hoc appointee on the basis of appointment made de hors the Recruitment Rules whether can be counted for earning the benefits of higher scale of pay under the Government Memorandum, such appointees on being regularly appointed in accordance with the Recruitment Rules at a later point of time? Different appeals concern with the appointments made under the different departments of the State of Haryana. In all these appeals the Full Bench decision in Rakesh Kumar's case has been followed and, therefore, we have chosen to deal with the appeal relating to R.K. Singla (Civil Appeal No. 5192 of 1997).

Rakesh Kumar Singla filed Civil Writ Petition No. 15031 of 1993, praying for issuance of mandamus to the State of Haryana in the Department of Irrigation and Power as well as to Engineer-in-Chief in Chief Irrigation Department to grant him selection grade in the cadre of Assistant Engineer. It was alleged in the Writ Petition that he joined the post of Assistant Engineer on ad hoc basis on 4.1.1980 and later on applied to the Haryana Public Service Commission for being considered for the said post of Assistant Engineer on regular basis in accordance with the Statutory Rules. He was selected by the Haryana Public Service Commission and he was appointed on regular basis with effect from 29.1.1982. He prayed for grant of selection grade on completion of total period of service for 12 years commencing from 4.1.1980 in accordance with the circular of the Government of Haryana dated 2.6.1989. The Government, however, did not grant him the relief sought for and said Shri Singla then approached the High Court by filing the Writ Petition. According to the writ petitioner, since he was duly appointed on being selected by Public Service Commission on 29.1.1982, and prior to that had been appointed as Assistant Engineer on ad hoc basis on 4.1.1980, his continuous service from 1980 should be counted for the purpose of 12 years service, to earn the benefit under the Government Circular dated 2.6.1989 and, therefore, he is entitled to get the selection grade scale with effect from January 1992. The State Government resisted the claim of the respondents by contending, inter alia that the appointment of Rakesh Kumar Singla on 4.1.1980 was purely on ad hoc basis and was not in accordance with the provisions of Recruitment Rules and he got the regular appointment only on 29.1.1982 and, therefore, 12 years period required for getting the benefits under the Government Circular dated 2.6.1989 would count from the said date of 29.1.1982 and not

4.1.1980, as contended by the respondent. The aforesaid Writ Petition was listed before a Division Bench and the Bench was inclined to dismiss the Writ Petition by interpreting the Circular letter dated 2.6.1989 to mean that under the Circular it is only completion of 12 years regular service that would entitle the employee concerned for getting the benefit under the Circular, but since in another case a Coordinate Bench had taken a different view it was thought fit to refer the matter to a larger Bench, and accordingly, the Division Bench passed orders on July 27, 1994 directing that the case be placed before the Chief Justice for constitution of a larger Bench for deciding the issue; "whether the service rendered as a result of ad hoc appointment could be counted for the purpose of 12 years regular service in the context of Circular No. 638/3 PR (FD) - 87 dated 2.6.89 of the Government of Haryana". Because of this order the case was placed before three Hon'ble Judges of the High Court. Justice Jawahar Lal Gupta on consideration of relevant Circular as well as several other materials on record came to the conclusion that the expression "Regular Service" in the context of circular dated 2nd June, 1989, of the Government of Haryana implies the service rendered by a person after the appointment in accordance with the Rules governing the recruitment to the post and the service rendered by a person on ad hoc basis or otherwise, which is not in conformity with the Rules cannot be taken into consideration for the purpose of determining his seniority nor can it be taken into consideration for the purpose of computing the prescribed period of service under the Circular. The learned Judge, therefore, answered the reference against the employee. The majority view, however, was expressed by Hon'ble Sethi, J. (as he then was), who came to the conclusion that if the initial appointment is made following the procedure laid down by the Rules and the appointee continues on the post uninterruptedly till the regularisation of the service in accordance with the Rules then his period of ad hoc service shall be counted for the purpose of seniority and necessarily therefore such period would also ensure to the benefit of the employee for computation of the period of 12 years of regular service under the Circular dated 2.6.1989. The learned Judge was of the opinion that on reading the Circular dated 2.6.1989 it cannot be held that the intention of the Government was to deprive the claim of civil servants who are otherwise entitled to the benefit of ad hoc service for the purpose of the higher scale of pay on completion of 12 years service under the Circular dated 2.6.1989. On this conclusion the majority judgment allowed the claim of the Writ Petitioner R.K.. Singla.

Mr. Jain, the learned senior counsel appearing for the State of Haryana assails the legality of the majority view in Rakesh Kumar's case expressed through Hon'ble Justice Sethi, as he then was, on following grounds :

1. Circular of 89 (2.6.1989) having unequivocally indicated that the category of employees would get the higher scale of pay on completion of 12 years of regular service the High Court committed serious error in importing the Government intention into the same in deciding the matter on assumption. According to Mr. Jain the further Circular dated 16th May, 1990, having clarified the position and having categorically indicated that the selection grade can be claimed by an employee after 12 years of regular service, the High Court was not justified in directing that the period of ad hoc service should also be counted for the computation of 12 years period. According to Mr. Jain the recruitment to the post of Assistant Engineer being governed by a set of Rules framed under Article 309 of the Constitution called the Haryana Service of Engineers, Class II, Public Works Department (Irrigation Branch) Rules, 1970, (hereinafter referred to as 'Recruitment Rules'), the so called ad hoc appointment of Rakesh Kumar in the year 1980 being de hors the provisions of the Recruitment Rules, the aforesaid services till the appointment was made on regular basis cannot be held to be regular service contemplated under the Government Circular dated 2nd June, 1989, and therefore, cannot be counted for computing the 12 years of regular service which is required to earn the benefits of the Circular dated 2nd June, 1989. Mr. Jain also referred to the different provisions of the Recruitment Rules and contended that by no stretch of imagination the

services rendered by an ad hoc appointee can be held to be regular service and the majority view of the High Court, therefore, is erroneous. The learned counsel also contended, on the basis of the very appointment letter which had been issued to Rakesh Kumar on 6.12.1979, on the basis of which he had joined the services on 4.1.1980, that in view of the terms of conditions of the appointment the High Court in the majority judgment committed serious error of law in directing that the period of ad hoc appointment would also be counted for computation of 12 years of service under the Government Memorandum dated 2nd June, 1989. Mr. Jain lastly contended that the appointment letter that was issued to Rakesh Kumar on 29.1.1982 is in fact a fresh appointment after Rakesh Kumar was selected by the Haryana Public Service Commission pursuant to the application made by him to the Service Commission, and as such the earlier services rendered by him on an ad hoc basis cannot be tagged on to his regular services from 1982 for the purpose of computation of 12 years period to earn the benefit of higher scale of pay under the Government Circular dated 2nd June, 1989 and the majority judgment is, therefore, wholly unsustainable in law. When the matter was called since the counsel appearing for the respondent were not present we heard Mr. Jain at length and perused the different circulars and the provisions of the Rules, as pointed out for deciding the correctness of the submissions made by Mr. Jain, learned senior counsel appearing for the State of Haryana.

Coming to the Circular dated 2nd June, 1989, issued by the Financial Commissioner and Secretary to the Government of Haryana, Finance Department, it appears that the aforesaid Circular had been issued for removal of anomalies in the pay scale of Doctors, Deputy Superintendents and Engineers, and so far as engineers are concerned, which are in Class I and Class II, it was unequivocally indicated that the revised pay scale of Rs. 3,000 to Rs. 4,500 can be given after completion of 5 years of regular service and Rs. 4,100 to Rs. 5,300 after completion of 12 years of regular service. The said Financial Commissioner had issued yet another Circular dated 16th May, 1990, in view of certain demands made by officers of different departments. The aforesaid Circular was issued after re-consideration by the Government modifying to some extent the earlier Circular of 2nd June, 1989, and even in this Circular it was categorically indicated that so far as Engineers are concerned, they would get Rs. 3,000 to 4,500 after 5 years of regular and satisfactory service and Selection Grade in the scale of pay of Rs. 4,100 to Rs. 5,300. which is limited to the extent of 20% of the cadre post should be given after 12 years of regular and satisfactory service. The aforesaid two Circulars are unambiguous and unequivocally indicate that a government servant would be entitled to the higher scale indicated therein only on completion of 5 years or 12 years of regular service and further the number of persons to be entitled to get the selection grade is limited to 20% of the cadre post. This being the position, we fail to understand how services rendered by Rakesh Kumar from 1980 to 1982, which was purely on ad hoc basis, and was not in accordance with the statutory rules can be taken into account for computation of period of 12 years indicated in the Circular. The majority judgment of High Court committed serious error by equating expression "regular service" with "continuous service". In our considered opinion under the terms and conditions of the Circulars dated 2nd June, 1989 and 16th May, 1990, the respondent Rakesh Kumar would be entitled for being considered to have the Selection Grade on completion of 12 years from 29th January, 1982 on which date he was appointed duly against a temporary post of Assistant Engineer on being selected by the Public Service Commission and not from any earlier point of time. The conclusion of the majority judgment in favour of Rakesh Kumar, therefore, cannot be sustained.

The contention of Mr. Jain, learned senior counsel, appearing for the State of Haryana, with reference to the provisions of Recruitment Rules is also well founded, as would appear from the analysis made hereunder.

Under the Recruitment Rules which had been made in exercise of powers conferred by the Proviso to Article 309 of the Constitution "Member of

"Service" means an officer appointed substantively to a cadre post and includes in case of a direct appointment an officer on probation or an officer who having successfully completed his probation awaits appointment to a cadre post. In case of an appointment by transfer an officer who is on probation or who having successfully completed the probation awaits appointment to a cadre post.

Under Rule 6 of the Recruitment Rules, recruitment to the services in the cadre post could be made both by way of direct appointment as well as by promotion in the proportion from different sources mentioned in the said Rule. Sub-rule (3) of Rule 6 authorises appointment to a cadre post as stopgap arrangement from sources other than the allotted source when a candidate from the allotted source is not available from source 1 and 3, but such appointee is liable to be reverted to his original cadre when a candidate from the allotted source is available and the period of service rendered by such person shall not be reckoned for the purpose of his seniority.

Sub-rule (4) of the Rule thus enables the State Government to fill up a short-term vacancy in the exigencies of public service after recording reasons for a period not exceeding six months in each case without resorting to the select list prepared under Rule 9.

Under Rule 8 appointment to the service has to be made by way of direct recruitment strictly in the order of merit indicated by the Public Service Commission depending upon the number of vacancies available in the Cadre.

Under Rule 9 appointment by promotion-can be made from the panel to be prepared on the basis of merit and suitability in all respects with due regard to seniority, which list has to be forwarded to the Public Service Commission and the Commission on consideration of the list prepared by the Government alongwith other documents received, can make such changes as necessary and would then forward the approved list to the State Government. It is from this list appointment to the service has to be made by the Government in the order in which names have been placed by the Commission, as provided under sub-rule (9) of Rule 8.

Rule 11 provides for continuation on probation for a period of 2 years and Rule 12 is the Rule for seniority.

A combined reading of the aforesaid provisions of the Recruitment Rules puts the controversy beyond any doubt and the only conclusion which could be drawn from the aforesaid Rules is that the services rendered either on ad hoc basis or as a stopgap arrangement, as in the case in hand from 1980 to 1982 cannot be held to be regular service for getting the benefits of the revised scale of pay or of the selection grade under the Government Memorandum dated 2nd June, 1989 and 16th May, 1990, and therefore, the majority judgment of the High Court must be held to be contrary to the aforesaid provisions of the Recruitment Rules, consequently cannot be sustained. The initial letter of appointment dated 6.12.1979 pursuant to which respondent Rakesh Kumar joined as an Assistant Engineer on ad hoc basis in 1980 was also placed before us. The said appointment letter unequivocally indicates that the offer of appointment as Assistant Engineer was on ad hoc basis and Clauses 1 to 4 of the said letter further provides that the appointment will be on ad hoc basis for a period of 6 months from the date of joining and the salary was a fixed salary of Rs. 400 p.m. in the scale of Rs. 400 to Rs. 1100 and the services were liable to be terminated without any notice and at any time without assigning any reason and that the appointment will not enable the appointee any seniority or any other benefit under the Service Rules for the time being in force and will not count towards increment in the time scale. In view of the aforesaid stipulations in the offer of appointment itself we really fail to understand as to how the aforesaid period of service rendered on ad hoc basis can be held to be service on regular basis. The conclusion of the High Court is contrary to the very terms and conditions stipulated in the

offer of appointment and, therefore, the same cannot be sustained. The regular letter of appointment dated 29.1.1982 in favour of Rakesh Kumar was also produced before us and that letter indicates that the respondent Rakesh Kumar alongwith others had applied to the Secretary, Haryana Public Service Commission for being appointed as an Assistant Engineer and the Service Commission after selecting the number of persons prepared a list and appointment letters were issued by the Government from the said list on the basis of the merit position of different candidates. 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 joins the post pursuant to the offer of appointment dated 29.1.1982 and the prior 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 2nd 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.

In view of our conclusions, as aforesaid, the majority judgment of the Punjab and Haryana High Court and the directions contained therein is set aside and it is held that 12 years period of respondent Rakesh Kumar could be counted from year 1982 for being eligible to get the Selection Grade under the Government Circular dated 2nd June, 1989 as well as clarificatory Circular dated 16th May, 1990. The Civil Appeal filed by the State of Haryana stands allowed.

Since the judgment of Rakesh Kumar has been followed in all other cases which are also the subject matter of appeal before this Court in the tagged on matters, following the conclusions arrived at by us in Rakesh Kumar's case the impugned judgment and direction in all these matters are set aside and the appeals filed by the State of Haryana stand allowed.

Delay in filing the application for substitution in C.A. No. 179/97 is condoned, and application for substitution stands allowed.

Along with these matters, sixteen other cases (C.A. Nos. 5740-41/97, 6070/97, 24/98, 5833/98, 444/99, 808/99, 1461/99, 2649-2653/99, 1143/98, 844/ 2000, 1887-88/2000, 4487/2000 and S.L.P. (Civil) Nos. 9767/98, 19091/98, 5425/ 98 and 5424/99) had also been tagged on but in those cases the employees were initially appointed on work-charge basis and later on, their services stood regularised and one of the contentions of the respondents is that the period rendered on work-charge basis count for seniority, increment and pension. In this view of the matter, those cases are de-linked and would be listed afresh for hearing.