

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.890 OF 2009
(Arising out of S.L.P. (C) No.22843 of 2005)

Punjab State Electricity Board and others ... Appellants

Versus

Jagjiwan Ram and others

... Respondents

WITH

Civil Appeal No.891 of 2009
(Arising out of S.L.P. (C) No.22989 of 2005)

J U D G M E N T

G.S. Singhvi, J.

1. Leave granted.
2. With a view to give relief to the employees who were stagnating in particular positions for a long period of time, the Punjab State Electricity Board [for short, “the Board”] introduced a scheme for giving time bound promotional scales/increments on completion of 9/16/23 years of regular service. The same was circulated vide office order dated 23rd April, 1990, the relevant portions of which are extracted below:-

“In continuation consolidation and supersession of instructions contained in this office order No.174/PRC/Fin-1988 dated 17.07.1989, Memo No.11163/11863/PRC/Fin-I/1988/L-VI/(Prop) dated 19.1.1990 and O/o No.194/PRC/Fin-1988, dated 30.03.1990.

The Punjab State Electricity Board have been seized of the problems of stagnation prevailing amongst the various cadres of regular employees and its consequent effect on their efficiency, is felt that an employee should, under ideal service conditions get normally two promotions from his initial

recruitment level during his service. However, this is not always possible owing to non-availability of promotional posts. The aspiration of the employees, can, however be met to a great extent by allowing time bound higher scales to the employees at two stages in their service career. The Punjab State Electricity Board has therefore, decided to introduce a scheme to allow time bound benefit of promotional scales after the completion of 9/16 years of regular service in the PSEB, provided the maximum benefit on being placed in the time bound promotional scale does not exceed five increments including promotional increment(s) to the subordinate employee having a maximum scale upto Rs.3500/- except the categories where the benefit of time bound placement to higher scale is applicable on the Punjab Govt. pattern as in the case of teachers etc. When the benefit so exceeds five increments, the time bound promotional scale will be so revised that the minimum benefit on being placed in the time bound promotional scale is five increments including promotional increment(s). It is clarified that in devising the scale, the case of a direct recruit will be taken, who presumably enters service on minimum of the scale on 1.1.1986. A promotee employee will be fixed at the minimum of this promotional revised time bound scale and in case he has already crossed the minimum of time bound promotional scale or revised higher time bound scale, as the case may be, his pay will be fixed as if he has been promoted in the ordinary course i.e., by allowing promotional increment(s). Likewise a direct recruit on completion of nine years regular service will draw minimum of the promotional time bound revised scale irrespective of difference of more than five increments between the pay drawn by him on completion of 9 years service and the minimum of this promotional revised time bound scale and in the event of his pay having already crossed the minimum of this promotional revised time bound scale or promotional time bound scale, as the case may be, his pay will be fixed as he has promoted in the ordinary course i.e. by allowing promotional increment(s).

The scheme to allow 'Time Bound benefit of Promotional Scale' will take effect from 1.1.1986. However, the payment of arrears would be spread over to two years i.e. arrears from 1.1.1986 to 28.2.89 and 1989-90 would be paid in 1990-91 and 1991-92, respectively.

Features of the Scheme:-

1. The benefit of first time bound placement into promotional/revised promotional scale, as determined and notified on the basis of principles enunciated above, would become available to an employee on completion of 9 (Nine) years of regular service on a post and the second time bound Promotional/Revised Promotional Scale would become available after completion of 16 (sixteen) years of service. If an employee gets normal promotion to the next higher post before completion of 9 years service from the date of direct recruitment then he will not be given first time bound Promotional/Revised Promotional scale. He will be eligible to get second time bound Promotional/Revised Promotional Scale after the completion of 16

years of service counted from the date of direct recruitment provided he does not earn second normal promotion before the completion of the above said 16 years of service. Further, an employee placed into the first Promotional/Revised Promotional Scale on account of high length of service will not be placed into the second Promotional/Revised Promotional Scale before completion of at least three years from the date of his placement into the first promotional revised promotional scale.

For example an employee who has completed 17 years of service in an induction post and was not promoted upto 1.1.1986, will be allowed 1st time bound Promotional/Revised Promotional Scale on 1.1.1985 and the 2nd time bound Promotional/Revised Promotional Scale will be admissible on 1.1.1989 i.e. after completion of three years service in the first time bound Promotional/Revised Promotional Scale.

2. For granting the time bound Promotional/Revised Promotional Scale to each employee in any cadre, the prescribed period will be counted from the date of commencement of service on the lowest post on which regular appointment has been made through direct recruitment in the concerned cadre.
3. At the time of placement in the time bound Promotional/Revised Promotional Scale, the employee will be allowed promotional increment(s), as are admissible on promotion under the provisions of Regulation 8 of PSEB (Revised Pay) Regulations, 1988 and as amended from time to time.
4. If an employee already in the service of the Board is directly appointed to a higher post through open selection then for the purpose of grant of time bound Promotional/Revised Promotional Scale in that cadre counting of the period of service will commence from the date of joining the above post by direct recruitment.
5. The Board shall draw up schedule(s) indicating the lowest post(s) for direct recruitment in respect of various cadres for the purpose of this order, separately.

Xx xx xx xx xx

- i) The Punjab State Elec. Board has further decided to allow benefit of promotional increment(s) to an employee on completion of 23 years of regular service provided:-
- ii) He has not been benefited by the scheme of 9/16 years time bound promotional scale.

- iii) He has not earned three regular promotions in his career.
- iv) He has not earned third promotion in his regular service between 16th and 23rd years of service.
- v) The increments referred to in para-2 above are in the nature of advance promotional benefit to be absorbed in next regular promotion.

Sd/-
Deputy Secretary/Finance.”
(Emphasis added)

3. The respondents, who were engaged as work charged employees in the service of the Board between 18.11.1971 and 23.10.1993 and were appointed on regular basis on different dates between 7.11.1979 and 26.5.1999, filed writ petitions for issue of a direction to the Board and its officers to count their work charged service for the purpose of grant of time bound promotional scales/promotional increments from the date of completion of 9/16/23 years service.

4. The appellants contested the claim of the respondents by asserting that benefit of time bound promotional scales can be given only from the date of completion of 9/16 years regular service and promotional increments can be given on completion of 23 years regular service and that work charged service cannot be equated with regular service for the said purpose. In the counter-affidavit filed on behalf of the appellants, reliance was placed upon the judgments of this Court in *State of Haryana v. Haryana Veterinary & AHTS Association and another* [(2000) 8 SCC 4] and *State of Punjab and others v. Gurdeep Kumar Uppal and others* [(2003) 11 SCC 732] and it was averred that work charged service rendered by the writ-petitioners (respondents herein) cannot be counted for extending them the benefit of time bound promotional scales and /or promotional increments.

5. The Division Bench of the High Court did not advert to the rival pleadings and contentions but granted relief to the writ petitioners by simply relying upon order dated 31.10.2000 passed in Civil Appeal Nos. 5740-5741/1997, *State of Haryana and ors. v. Ravinder Kumar & ors.*

6. Learned counsel for the appellants argued that work charged service

cannot be treated as regular service for the purpose of the scheme framed by the Board for grant of time bound promotional scales on completion of 9/16 years of regular service or promotional increments on completion of 23 years of regular service because the work charged employees are not appointed after following the procedure prescribed for regular appointment. He further argued that work charged employees constitute a separate class and they cannot claim parity with regular employees in the matter of seniority, pay fixation, promotion, etc. Learned counsel for the respondents argued that even though the work charged service is not synonymous with regular service, the High Court did not commit any error by directing grant of benefit of the scheme to respondents because their services were subsequently regularized. They strongly relied on instructions issued by the State Government vide circular No.100012/39/2002-5 P-22/9406 dated 17th July, 2002 and argued that after having implemented the order passed by the High Court in Civil Writ Petition No.4382 of 2002, Satbir Singh and others v. State of Haryana, the appellants cannot deny them benefit of time bound promotional scales/ promotional increments on the spacious ground that work charged service cannot be clubbed with regular service.

7. We have considered the respective submissions. Generally speaking, a work charged establishment is an establishment of which the expenses are chargeable to works. The pay and allowances of the employees who are engaged on a work charged establishment are usually shown under a specified sub-head of the estimated cost of works. The work charged employees are engaged for execution of a specified work or project and their engagement comes to an end on completion of the work or project. The source and mode of engagement/recruitment of work charged employees, their pay and conditions of employment are altogether different from the persons appointed in the regular establishment against sanctioned posts after following the procedure prescribed under the relevant Act or rules and their duties and responsibilities are also substantially different than those of regular employees. The work charged employees can claim protection under the Industrial Disputes Act or the rights flowing from any particular statute but they cannot be treated at par with the employees of regular establishment. They can neither claim regularization of service as of right nor they can claim pay scales and other financial benefits at par with regular employees. If the service of a work charged employee is regularized under any statute or a scheme framed by the employer, then he becomes member of

regular establishment from the date of regularization. His service in the work charged establishment cannot be clubbed with service in a regular establishment unless a specific provision to that effect is made either in the relevant statute or the scheme of regularization. In other words, if the statute or scheme under which service of work charged employee is regularized does not provide for counting of past service, the work charged employee cannot claim benefit of such service for the purpose of fixation of seniority in the regular cadre, promotion to the higher posts, fixation of pay in the higher scales, grant of increments etc.

8. In *Jaswant Singh and others vs. Union of India and others* [(1979) 4 SCC 440], this Court considered the issue relating to nature of work charged establishment, status of work charged employees and held that the employees appointed on work charged establishment are not entitled to service benefits available to regular employees.

9. In *State of Rajasthan v. Kunji Raman* [(1997) 2 SCC 517], the Court considered the questions whether principle of equal pay for equal work can be invoked for granting parity to the work charged employees with regular employees and whether the provisions of the Rajasthan Service (Concessions on Project) Rules, 1962 and Rajasthan Service Rules, 1951 are violative of Articles 14 and 16 of the Constitution of India inasmuch as the same do not treat employees of the work charged establishment at par with regular employees. After noticing the earlier judgment in *Jaswant Singh's* case, the Court held:

“A work-charged establishment thus differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a “work” and availability of funds for executing it. So far as employees engaged in work-charged establishments are concerned, not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged in the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government. It is well settled that the

Government has the power to frame different rules for different classes of employees. We, therefore, reject the contention raised on behalf of the appellant in Civil Appeal No. 653 of 1993 that clauses (g), (h) and (i) of Rule 2 of RSR are violative of Articles 14 and 16 of the Constitution and uphold the view taken by the High Court.

The Project Rules have been framed by the Government in exercise of the power available to it under Rule 42 of the RSR. They are subsidiary rules made for the purpose of granting special concessions and allowances to government servants working on projects. When non-application of the main rules, namely, RSR to work-charged employees is not found to be violative of Articles 14 and 16 by the High Court it is difficult to appreciate how the subsidiary rules for that reason only can be held to be violative of those articles. The High Court failed to consider this aspect and in our opinion, erroneously struck down Rules 2(b) and (d) of the 1962 Project Rules and Rules 4(2) and (4) of the 1975 Project Rules.

It was also contended on behalf of the State that the High Court having held that the workmen working on the regular establishment and the employees working on a work-charged establishment belong to two separate categories and, therefore, separate classification made by the Government in that behalf is reasonable, committed a grave error in striking down Rules 2(b) and (d) of the 1962 Project Rules and Rules 4(2) and (4) of the 1975 Project Rules by invoking the principle of equal pay for equal work. The reason given by the High Court for taking that view is that the project allowance is compensatory in nature and, therefore, the classification made between the work-charged employees and the employees of the regular establishment has no rational nexus with the object sought to be achieved by those Rules. What the High Court failed to appreciate is that when an employee working in the regular establishment is transferred to a project he has to leave his ordinary place of residence and service and go and reside within the project area. That is not the position in the case of an employee who is engaged in the work-charged establishment for executing that work. Respondent Kunji Raman and other employees on whose behalf he had filed the petition were all engaged for execution of the Mahi Project and thus they became a part of the work-charged establishment of Mahi Project. They were not required to shift from their regular place of service. The High Court also failed to consider that for such employees the pay scales under the Pay Scale Rules are also different. The material produced by the State goes to show that while fixing the pay scales of employees of the work-charged establishment of Mahi Project the element of project allowance was also included therein and for that reason their pay scales were higher than the pay scales of general category work-charged employees, some of whom were transferred and posted on the Mahi Project. Except a general denial in the rejoinder-affidavit by Kunji Raman no other material has been produced to point out that the said claim of

the Government is not correct. The order dated 30-4-1981 annexed with the rejoinder-affidavit of Kunji Raman is with respect to those work-charged employees who were absorbed on 43 regular posts were newly created. They thus ceased to be work-charged employees employed on a project and became general category work-charged employees whose pay scales were different and were, therefore, paid the project allowance. Thus the claim made by respondent Kunji Raman and other similarly situated employees for granting them project allowance was really misconceived. From what is now stated by them in the counter-affidavit, it appears that what they really want is parity in all respects with the employees of the regular establishment. In other words, what they want is that they should be treated as regular employees of the Public Works Department of the Rajasthan Government and should be given all benefits which are made available under the RSR and the Project Rules. Such a claim is not justified and, therefore, the contention raised in that behalf cannot be accepted.”

10. The ratio of the above mentioned judgments is that work charged employees constitute a distinct class and they cannot be equated with any other category or class of employees much less regular employees and further that the work charged employees are not entitled to the service benefits which are admissible to regular employees under the relevant rules or policy framed by the employer.

11. What to say of work charged employees even those appointed on ad hoc basis cannot claim parity with regular employees in the matter of pay fixation, grant of higher scales of pay, promotion etc. In *State of Haryana vs. Haryana Veterinary & AHTS Association and another* (supra), a three-Judge Bench considered the question whether service of an employee appointed on adhoc basis can be equated with that of regular employee for the purpose of grant of selection grade in terms of the policy contained in circulars dated 2nd June, 1989 and 16th May, 1990 issued by the Government of Haryana and answered the same in negative. The facts of that case were that one Rakesh Kumar Singla who joined service as Assistant Engineer on adhoc basis on 4.1.1980 was appointed on regular basis with effect from 29.8.1982 after selection by the Public Service Commission. He represented to the government for grant of selection grade on completion of 12 years service commencing from 4.1.1980. As the government did not accede to his request, Rakesh Kumar Singla filed writ petition in the High Court. On a reference made by the Division Bench, the matter was placed before a bench of three-Judges. By majority judgment, the larger bench held that the service rendered by an employee on the basis of adhoc appointment must

be clubbed with his regular service for the purpose of grant of selection grade in terms of the policy framed by the State Government. This Court reversed the judgment of the High Court and held:

“Coming to the circular dated 2-6-1989, 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.3000 to Rs.4500 can be given after completion of 5 years of regular service and Rs.4100 to Rs.5300 after completion of 12 years of regular service. The said Financial Commissioner had issued yet another circular dated 16-5-1990, in view of certain demands made by officers of different departments. The aforesaid circular was issued after reconsideration by the Government modifying to some extent the earlier circular of 2-6-1989, and even in this circular it was categorically indicated that so far as Engineers are concerned, they would get Rs.3000 to 4500 after 5 years of regular and satisfactory service and selection grade in the scale of pay of Rs.4100 to Rs.5300, 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 the period of 12 years indicated in the circular. The majority judgment of the 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 2-6-1989 and 16-5-1990, the respondent Rakesh Kumar would be entitled for being considered to have the selection grade on completion of 12 years from 29-1-1982 on which date he was duly appointed 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 Court then referred to the provisions contained in the Haryana Service of Engineers, Class-II, Public Works Department (Irrigation Branch) Rules, 1970 and held:-

“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 an 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 2-6-1989 and 16-5-1990, 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 an 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 an 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 along with 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 joined 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 2-6-1989 as well as the clarificatory circular dated 16-5-1990. The conclusion of the majority judgment of the High Court, therefore, is wholly erroneous and cannot be sustained.”

12. In *State of Punjab and others v. Ishar Singh and others* [(2002) 10 SCC 674] and *State of Punjab and others v. Gurdeep Kumar Uppal and others* [(2003) 11 SCC 732], the two-Judge Benches referred to the judgment in *State of Haryana v. Haryana Veterinary & AHTS Association* (supra) and held that adhoc service rendered by the respondents cannot be clubbed with their regular service for the purpose of grant of revised pay scales, senior/selection grade, proficiency step-up and for fixation of seniority.

13. A reading of the scheme framed by the Board makes it clear that the benefit of time bound promotional scales was to be given to the employees only on their completing 9/16 years regular service. Likewise, the benefit of promotional increments could be given only on completion of 23 years regular service. The use of the term 'regular service' in various paragraphs of the scheme shows that service rendered by an employee after regular appointment could only be counted for computation of 9/16/23 years service and the service of a temporary, adhoc or work charged employee cannot be counted for extending the benefit of time bound promotional scales or promotional increments. If the Board intended that total service rendered by the employees irrespective of their mode of recruitment and status should be counted for the purpose of grant of time bound promotional scales or promotional increments, then instead of using the expression '9/16 years regular service' or '23 years regular service', the concerned authority would have used the expression '9/16 years service' or '23 years service'. However, the fact of the matter is that the scheme in its plainest term embodies the requirement of 9/16 years regular service or 23 years regular service as a condition for grant of time bound promotional scales or promotional increments as the case may be. 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.

14. The order passed by this Court in Ravinder Kumar's case is clearly distinguishable. In that case, counsel appearing for the State had conceded that period during which an employee had worked on work charged basis is counted for the purpose of grant of increment as well as for computation of qualifying service for pension. In view of his statement, the Court held that there is no reason why such service should not be counted for the purpose of giving additional increment on completion of 8/12 years service and higher scale on completion of 10/20 years service. The order does not contain any discussion on the issue whether the work charged service can be equated or clubbed with regular service for grant of service benefits admissible to regular employees. Therefore, the same cannot be treated as laying down any proposition of law which can be treated as precedent for other cases.

15. The instructions issued by the State Government on 17th July, 2002 for implementation of the order passed in C.W.P. No.4382 of 2002, Satbir Singh and

others v. State of Haryana are also of no help to the respondents' cause. The order passed by the High Court was binding and the same had to be given effect to and in the absence of any stay by this Court, the Government was bound to give effect to the same. Even if the benefit of that order was extended to some other employees, the same cannot be relied upon for interpreting the scheme framed by the Board. In any case, the view expressed by the High Court in Satbir Singh's case (supra) cannot be made basis for granting relief to the respondents by ignoring the law laid down by this Court in the judgments referred to herein above.

16. In the result, the appeals are allowed, the impugned orders are set aside and the writ petitions filed by the respondents are dismissed. However, the parties are left to bear their own costs.

[B.N. AGRAWAL]J.

[G.S. SINGHVI]J.

New Delhi,
February 12, 2009.