

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1018-1020 OF 2001

STATE OF PUNJAB & ORS. Appellant (s)
VERSUS
ONKAR SINGH & ORS. Respondent(s)

(With appln.(s) for C/delay to file the accompanied affidavit)
(With office report)

With
SLP(C) NO.19626/2005 (With appln.(s) for substitution of Lrs. of the deceased
respondent and with prayer for interim relief and office report)

S.L.P.(C) No. 25247/2004

(With appln for exemption from filing C/C of the impugned judgment and with prayer
for interim relief)

S.L.P.(C) No. 4225/2005

(With appln for c/delay in filing SLP and c/delay in refiling SLP and with prayer for
interim relief)

S.L.P.(C) No. 4303/2005

(With appln for substitution of L.Rs of the deceased respondent and c/delay in filing
substitution appln and office report)

S.L.P.(C) No. 3475/2005

(with appln.(s) for C/delay in filing substitution appln. and substitution of Lrs of the
deceased respondent and setting aside an abatement and with prayer for interim
relief and office report)

S.L.P.(C) No. 4973/2005

(With appln for c/delay in filing SLP and office report)

S.L.P.(C) No. 5863/2005

(With appln for exemption from filing O.T. And permission to submit additional
document(s) and permission to file rejoinder affidavit and with prayer for interim
relief and office report)

S.L.P.(C) No. 8397/2005

(With appln for permission to file rejoinder affidavit and with prayer for interim relief
and office report)

S.L.P.(C) No. 8392/2005

(With appln for substitution and setting aside an abatement and c/delay in filing
substitution application and with prayer for interim relief and office report)

S.L.P.(C) No. 5301/2005

(With appln for c/delay in filing SLP and c/delay in filing substitution appln. And
office report)

C.A. No. 3428 of 2002

(With appln for c/delay in filing substitution appln. and substitution and declaring the
respondent as major and office report)

S.L.P.(C) No. 14265/2003(With prayer for interim relief)

C.A. No. 5545/2005(with office report)

Date: 20/09/2007

These Appeals/petitions were called on for hearing today.

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CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s) Mr. Ajay Pal, Adv.
Ms. Preeti Singh, Adv.
Ms. Sukhda, Adv.
Mr. Nikhil Jain, Adv.

For Respondent(s) Mr. Goodwill Indeevar, Adv.
Mr. A.P. Mohanty, Adv.
Mr. S.D. Sharma, Adv.

Mr. Balbir Singh Gupta, Adv.

Mr. Jagjit Singh Chhabra, Adv.

Mr. Ranbir Singh Yadav, Adv.
Mr. Vijay Kr. Pandita, Adv.

Mr. K.L. Taneja, Adv.

Mr. K.G. Bhagat, Adv.
Mr. Vineet Bhagat, Adv.
Mr. Manohar Singh Bakshi, Adv.
Md. Etraz Zafar, Adv.
Mr. Debasis Misra, Adv.

Ms. Gargi Khanna, Adv.
Ms. Madhu Moolchandani, Adv.

Mr. S.K. Arora, Adv.
Mr. Narender Yadav, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

Ms. Sikha Roy Pabbi, Adv.
Mr. Ajit Kumar, Adv.
Mr. S.K. Sabharwal, Adv.

Mr. Jagjit Singh Chhabra, Adv.

Mr. S.K. Arora, Adv.
Mr. Narender Yadav, Adv.
Mr. Mushtaq Ahmad, Adv.

UPON hearing counsel the Court made the following
ORDER

Delay condoned.

Delay in filing application for substitution of L.Rs. is condoned.
The substitution applications are allowed and the

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legal representatives of deceased respondents are brought on record.

Abatement, if any, is set aside.

The application for declaring the respondent as major in C.A. No.
3428/2002 is allowed.

Leave granted in all the special leave petitions.

The appeals are allowed, the impugned judgments and orders
passed by the High Court are set aside and all the matters are remitted
back to the High Court in terms of the signed order.

(Ajay Kumar Jain)
Court Master

Court Master

(Vijay Dhawan)

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 1018-1020 OF 2001

State of Punjab & Ors. Appellants

Versus

Onkar Singh & Ors. Respondents

WITH

C.A. No. 4427/2007 @ SLP(C) 19626/2005, C.A. No. 4428/2007 @ SLP(C)
25247/2004, C.A. No. 4429/2007 @ SLP(C) 4225/2005, C.A. No.
4430/2007 @ SLP(C) 4303/2005, C.A. No. 4431/2007 @ SLP(C)
3475/2005, C.A. No. 4432/2007 @ SLP(C) 4973/2005, C.A. No.
4433/2007 @ SLP(C) 5863/2005, C.A. No. 4434/2007 @ SLP(C)
8397/2005, C.A. No. 4435/2007 @ SLP(C) 8392/2005, C.A.
No. 4436/2007 @ SLP(C) 5301/2005, C.A. No. 3428/2002, C.A. No.
4437/2007 @ SLP(C) 14265/2003 and C.A. No. 5545/2005

ORDER

Delay condoned.

Delay in filing application for substitution of L.Rs. is condoned.

The substitution applications are allowed and the legal representatives of
deceased respondents are brought on record. Abatement, if any, is set aside.

The application for declaring the respondent as major in C.A. No.
3428/2002 is allowed.

Leave granted in all the special leave petitions.

These appeals are directed against the judgments and orders
passed by the Division Bench of the Punjab & Haryana High Court whereby
the Division Bench has allowed the writ petitions filed by the respondents-
petitioners work-charge employees and directed the appellant-respondent
State of Punjab to grant the benefit of proficiency step up after counting the
work charge service of the respondents-petitioners relying upon an earlier
Division Bench decision of that High Court in the case of Banta Ram and
Others Vs. State of Haryana and Others (C.W.P. No. 18429/1996 decided on
6.2.1997). In view of the decision given in the case of Banta Ram (Supra)
the writ petitions filed by the respondents herein were allowed. Aggrieved
against the order of the Division Bench of the High Court of Punjab and
Haryana allowing the writ petitions filed by the respondents-petitioners, the
State of Punjab is before us by these appeals by special leave. These matters
were taken up for hearing alongwith other connected appeals in the case of
State of Punjab & Ors. Vs. Harjinder Kaur & Ors. (Civil Appeal No.
6525/1998 etc. decided on February 20, 2001) wherein following the
decision of this Court in the case of State of Haryana Vs. Haryana Veterinary

& AHTS Association and Another (2000 (8) SCC 4) the appeals were allowed. The present appeals were also clubbed together with the case of Harjinder Kaur (supra). A copy of the said order dated 20.2.2001 is reproduced hereunder :-

"Leave granted in SLP(C) Nos. 5090 of 1999 and 13171 of 2000.

Heard Mr. Anoop Chaudhary, learned senior counsel for the appellants and also learned counsel for the respondents.

The core question that arises for determination in these cases is whether the period of adhoc services rendered by the respondents, who are teachers in Punjab State Service, is to be counted for determination of seniority and for the purpose of higher scale of pay after 8 or 18 years of service under the proficiency step up scheme. This question was considered by a three Judge Bench of this Court in the case of State of Haryana Vs. Haryana Veterinary & AHTS

Association and another (2000 (8) SCC 4). Therein this Court took the view that for the purposes of cadre seniority and higher pay under the proficiency step up scheme only regular substantive service of an employee is to be counted and not adhoc service.

The respondents were initially appointed on adhoc basis without following the procedure prescribed under the Recruitment Rules and without referring their case to the Punjab Public Service Commission. Subsequently their services were regularised and fresh appointment orders were issued. The question formulated above arose when the employees claimed higher scale of pay under the scheme and wanted the adhoc service rendered by them to be included for counting 8 or 18 years of requisite service.

On perusal of the papers and on the consideration of the submissions made by the learned counsel for the parties we are satisfied that this case is covered by the decision in the State of Haryana Vs. Haryana Veterinary & AHTS Association and Another (supra). Accordingly, the

appeals were allowed and the judgments/orders under challenge are set aside. We make it clear that if any of the respondents has drawn any amount on the basis of the step up pay granted to counting the adhoc service following the judgment/order passed by the High court then the State shall not recover the amount drawn by him. But regarding the fixation/determination of cadre seniority the position laid down in this order will govern. No costs."

Against the above order dated 20.2.2001, review petitions were filed by respondents Onkar Singh and Others in C.A. Nos. 1018-1020/2001.

In the said review petitions by order dated 15.3.2002, the order dated 20.2.2001 was recalled. The order dated 15.3.2002 is reproduced hereunder :-

"Heard Shri B.S. Jain learned counsel for the petitioners and Shri Lokesh Kumar learned counsel for the respondents.

Respondents in C.A. Nos. 1018-1020 of 2001 have filed these petitions for review of our judgment dated 20th February, 2001 disposing of the appeals. In the said judgment the appeals were allowed on the basis that they were covered by the decision of this Court in the State of Haryana Vs. Haryana Veterinary & AHTA Association & Anr. reported in 2000 (8) SCC 4 and certain other cases of the State of Haryana wherein that decision was followed.

In the review petition it has been stated, inter alia, that the aforementioned decided case is not applicable in the fact and circumstances of the cases in hand, inasmuch as that the employees concerned in the cases in hand are work-charged employees and not ad-hoc employees as in the decided case. It is contended in the review petition that these cases are covered by the judgment passed by this Court in C.A. Nos. 5740-41/97 State of Haryana Vs. Haryana Veterinary (supra). Therefore, the review petitions are allowed and the order dated 20th February, 2001 is recalled. The Civil Appeals will be listed

for fresh disposal before an appropriate Bench."

Hence these matters are before us.

We have heard learned counsel for the parties and perused the record. The question before us is whether the work-charged or adhoc services rendered by the incumbents can be counted for the purposes of giving them benefit of proficiency step up by way of additional annual increment on completion of 8 years and 18 years of service. In this connection our attention has been invited by learned counsel for the appellants to a decision of this Court in the case of M.K. Shanmugam and Another Vs. Union of India and Others (200) 4 SCC, 476 wherein this Court has held that adhoc services cannot be counted though the incumbent has been regularized without any break. But learned counsel for the respondents has submitted that this question has already been considered by the Full Bench of the Punjab & Haryana High Court in the case of Kesar Chand Vs. Stae of Punjab Through The Secretary P.W.D.B. & R. Chandigarh and Others Punjab Law Reporter Vol. 94 1988(2), 223 wherein Rule 3.17(ii) of the Punjab Civil Service Rules, Vol. 2 was struck down and, therefore, no useful purpose will be served by remitting the matter to the High Court. After the judgment in the case of Kesar Chand (supra) there has been further development of law on the point and more particularly, the decisions in the case of M.K. Shanmugam (supra) and in the case of Union of India and Another Vs. Lalita S. Rao and Others (2001) 5 SCC 384 were not there when the impugned judgments and orders were passed on the basis of Kesar Chand's case. Therefore, in our opinion, the matter requires to be re-considered by the High Court in the light of various decisions of this Court on the point as well as the relevant rules and circulars, if any.

Learned counsel for the appellant-State of Punjab has also invited our attention to the Circulars dated 1.9.1989 and 29.10.1991 issued by the State Government. Since all the parties are not represented before us, we do not venture to undertake the exercise here and decide the issue on merits but deem it just and proper to remit these cases back to the High Court. We request the High Court to decide the issue afresh keeping in view the aforesaid decisions of this Court and other material and decide whether the Full Bench decision of the Punjab & Haryana High Court in the case of Kesar Chand (supra) on which the decision in the case of Banta Ram (supra)

is based and the impugned judgments and orders were passed is still good law. It will be open for all the parties to file any further additional material if they so desire before the High Court. Accordingly, all these appeals are allowed, the impugned judgments and orders passed by the High Court are set aside and all these matters are remitted back to the High Court for deciding the issue afresh.

Since the matters are quite old, we request the High Court to expedite hearing of these cases.

(A.K.MATHUR)

(MARKANDEY KATJU)

New Delhi
September 20, 2007