

CWP No. 18171-1998 (O&M) and
other connected cases

2025:PHHC:051160



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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(Sr. No. 104)**

(1) CWP No. 18171-1998 (O&M)
Date of Decision : 22.04.2025

Gurbax Rai and others

...Petitioner

Versus

The State of Punjab and others

...Respondents

(2) CWP No. 16360-2000 (O&M)

Harinder Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

(3) CWP No. 5882-2004 (O&M)

Kanwal Kant

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sudeep Mahajan, Advocate with
Ms. Saachi Mahajan, Advocate and
Mr. Shiv Charanjit, Advocate for the petitioners
in CWP-18171-1998.

Mr. Brahmjot Singh Nahar, Advocate for the petitioner(s)
in CWP-16360-2000 and CWP-5882-2004.

Mr. Malkiat Singh, Deputy Advocate General, Punjab.



Mr. Rajiv Atma Ram, Senior Advocate with
Ms. Shreya Kaushik, Advocate and
Ms. Shefali Bahia, Advocate for the private respondents.

Harsimran Singh Sethi J. (Oral)

1. In the present bunch of petitions, the challenge is to the seniority list of Junior Engineers dated 31.07.1996 (Annexure P-8) whereby the private respondents have been placed over and above the petitioners in the Cadre of Sectional Officer (now known as Junior Engineer).

2. The grievance being raised by the petitioners in the present bunch of petitions is that though, they were appointed temporarily by a duly constituted Selection Committee upon recommendation of their names by the employment exchange in November, 1967 but the petitioners continued to serve the department without there being any break hence, the petitioners were entitled for the grant of seniority from their date of initial appointment i.e. November, 1967 whereas, the private respondents who were appointed starting from March, 1968, have been placed over and above them in the Cadre of the Sectional Officer, which is causing prejudice. The prayer of the petitioners is that they be declared senior to the private respondents in the Cadre of Sectional Officer with all consequential benefits.

3. Upon notice of motion, the respondents have filed the reply, wherein, the respondents have resisted the claim of the petitioners. The State in its reply has pleaded that the appointment of the petitioners in November, 1967 was on temporary basis and their services were only regularized by the department vide order dated 01.06.1977 (Annexure P-6) and in the said



order, it was clearly mentioned that the petitioners are to be treated in the Cadre of Sectional Officer starting from 04.03.1969 onwards and the petitioners have been assigned seniority in the Cadre of Sectional Officer on the basis of the said order by which their services were regularized, hence, the seniority list by which the private respondents have been shown senior to the petitioners is in accordance with law as well as the order regularizing the services of the petitioner hence, the grievance being raised by the petitioners is incorrect and is liable to be rejected.

4. Learned senior counsel appearing on behalf of the private respondents submits that once, an order regularizing the services of the petitioners was passed on 01.06.1977 on certain conditions, which conditions have never been objected to by the petitioners and as per the terms and conditions of the said order regularizing the services of the petitioners, the petitioners were only to get the benefit of seniority in the Cadre of Sectional Officer starting from 04.03.1969, the claim of the petitioners that they should be considered as regular Sectional Officers from the date of their initial appointment, is contrary to the regularization order dated 01.06.1977, which order has never been assailed or objected to by the petitioners till the framing of the impugned seniority in the Cadre of the Sectional Officer, which has been challenged in the present petition.

5. Learned senior counsel appearing on behalf of the private respondents further submits that the claim being raised by the petitioners is that their initial appointments were in accordance with law and once they have continued working without there being any interruption, they are



entitled for the grant of seniority from the date of their initial appointment, is incorrect as, prior to November, 1967 i.e. when the appointments were to be made to the post of Sectional Officer, the same could have only been done through the Punjab Public Service Commission, which jurisdiction of the Punjab Public Service Commission was modified in February, 1968 taking away the power to make appointment to Class-III and Class-IV posts which power was given to the Punjab Subordinate Service Selection Board hence, the claim of the petitioners that they were selected in accordance with law by the recruiting agency empowered to make recruitment in November, 1967 is incorrect and is liable to be rejected.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. It may be noticed that the challenge in the present bunch of petitions is to the seniority list in the Cadre of Sectional Officer whereby the private respondents have been placed over and above the petitioners.

8. Certain facts have not been rebutted by either of the parties that the petitioners were appointed on temporary basis in November, 1967 though, by the Selection Committee after their names were recommended by the employment exchange whereas, the private respondents have been appointed on regular basis through the Punjab Subordinate Service Selection Board in March, 1968.

9. The only question which is to be decided is whether in the facts and circumstances of the present case the grant of seniority to the private respondents over and above the petitioners is correct or not.



10. It may be noticed that the temporary appointments of the petitioners which were made in November, 1967 was only regularized vide Annexure P-6 on 01.06.1977. The said order regularization of services contained certain terms and conditions such as that the seniority will be given to the petitioners starting from 04.03.1969 onwards. It is a conceded fact that the said condition has never been challenged by the petitioners at any given point of time including the present proceeding. Hence, the condition imposed in the order dated 01.06.1977 (Annexure P-6) are to be treated as a valid condition irrespective of any objection to the same at the hands of the petitioners, which has been addressed during the hearing of the present petitions.

11. The seniority list is to be framed keeping in view the service condition of each employee. Once, the petitioners have been granted seniority in the Cadre of Sectional Officer while regularizing their services only from 04.03.1969, any employee recruited through the recruiting agency prior to 04.03.1969 has to be treated senior to the petitioners. Said facts have only been reflected while framing the impugned seniority list. The seniority list is only reflection of the service record. Once, the service record i.e. the order regularization of the services of the petitioners from 04.03.1969 has gone unchallenged, the prayer that the said order dated 01.06.1977 (Annexure P-6) should be ignored so as to grant the seniority to the petitioners from their date of initial appointment cannot be accepted, hence, the grant of seniority to the petitioners starting from 04.03.1969 onwards is



perfectly valid and legal and in consonance with the service record of the petitioners.

12. The argument which has been raised by the learned counsel appearing on behalf of the petitioners is that the appointments of the petitioners starting from the date of initial appointment in November, 1967 were perfectly valid and legal and the same were done in accordance with law and as the Punjab Subordinate Service Selection Board only came into existence in February, 1968 hence, any appointment made prior to the said date was not required to be made by the Punjab Subordinate Service Selection Board hence, the authority which had made the selection of the petitioners is to be treated as a competent authority so as to grant the petitioners the benefit of seniority from the date of their initial appointment.

13. The said argument is to be tested on the basis of certain facts and the conduct of the petitioners.

14. Keeping in view the fact that initial appointments of the petitioners were temporary and their services were regularized in the year 1977 with condition that they will only be granted seniority from 04.03.1969, which order has gone unchallenged, the same estoppes the petitioners from claiming the seniority from the date of initial appointment i.e. November, 1967.

15. Further, the argument of the petitioners that the selection process of the petitioners was valid being recruited through the competent authority envisaged for appointment to the post of Sectional Officer is also incorrect. A bare perusal of the order appointing the petitioners in



November, 1967, copy of which has been appended as Annexure P-5, clearly envisages that the appointment is temporary and can be terminated at any given point of time when a candidate approved by the Punjab Public Service Commission joins. This condition shows that the appointment in November, 1967 was to be made through Punjab Public Service Commission, which process has never been followed while appointing the petitioners to the post of Sectional Officer in November, 1967, hence, it cannot be said that the petitioners were recruited through the proper process envisaged under law while making appointment to the post of Sectional Officer.

16. As per the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No.6026-6028 of 2021 titled as ***Malook Singh and others vs. State of Punjab and others***, decided on 28.09.2021, the Hon'ble Supreme Court of India has held that even if a candidate has continued uninterruptedly and his/her services have been regularized thereafter, unless and until the initial appointment of such candidate is by a competent recruiting authority, the seniority cannot be given. The relevant paragraphs of the judgment in ***Malook Singh and others' case (supra)*** are as under:

“18. As a matter of first principle, the view which has been adopted in the impugned judgment of the Division Bench of the High Court cannot be faulted. The policy for regularization issued on 3 May 1977 is clear in regard to the date of regularization, the principle for reckoning seniority and the basis on which seniority should be reckoned inter se between persons belonging to the group of ad hoc employees who were regularized. The policy clearly specifies that



regularization would be granted to persons who had fulfilled a minimum of one year service as on 31 March 1977. As regards seniority, clause 5(a) specifies that the seniority, upon regularization would date back to 1 April 1977 vis a vis candidates appointed on a regular basis after selection through the prescribed procedure. As between ad hoc employees who were regularized, inter se seniority would however be based on the length of service so that a person possessing longer service would rank senior to a junior in terms of the length of service.

19. The judgment of the Single Judge in Malook Singh's case essentially dealt with two facets. The first was that persons who were recruited after following the regular procedure for selection after the date of regularization of ad hoc employees on 1 April 1977 could not rank senior to those who had been regularized prior to their date of appointment. The second aspect on which the Single Judge held in favour of the petitioners in CWP No 2780 of 1980 was that once regularization takes place, the length of ad hoc service must count for the determination of seniority. It is important to note here that the second facet of the judgment of the Single Judge was specifically kept open in the Letters Patent Appeal by the Division Bench. Therefore, clearly the judgment in Malook Singh's case did not conclude the issue of whether ad hoc service would count for the purpose of determining seniority.

20. The law on the issue of whether the period of ad hoc service can be counted for the purpose of determining seniority has been settled by this Court in multiple cases. In Direct Recruits (supra), a Constitution Bench of this Court has observed:

"13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan case [(1977) 3 SCC 399: 1977 SCC (L&S) 391: (1977) 3 SCR 775] was unsound and fit to be overruled, but no attempt was



made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, 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. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary.....

47. To sum up, we hold that

(A) Once an incumbent is appointed to a post according to a rule, his seniority has to counted from the date of appointment



and not according to date of his confirmation. The corollary to the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account considering the seniority."

(emphasis supplied)

The decision in Direct Recruits (supra) stands for the principle that ad hoc service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgement dated 6 December 1991 on Direct Recruits (supra) to hold that the ad hoc service should be counted for conferring the benefit of seniority in the present case is clearly misplaced. This principle laid down in Direct Recruits (supra) was subsequently followed by this Court in Keshav Chandra Joshi v. Union of India, 1992 Supp (1) SCC 272. Recently a two judge Bench of this Court in Rashi Mani Mishra v. State of Uttar Pradesh, 2021 SCC Online SCC 509, of which one of us (Justice DY Chandrachud) was a part, observed that the services rendered by ad hoc employees prior to their regularization cannot be counted for the purpose of seniority while interpreting the Uttar Pradesh Regularization of Ad Hoc Appointment Rules. This Court noted that under the applicable Rules, "substantive appointment" does not include ad hoc appointment and thus seniority which has to be counted from "substantive appointment" would not include ad hoc service. This Court also clarified that the judgement in Direct Recruits (supra) cannot be relied upon to confer the benefit of seniority based on ad hoc service since it clearly states that ad hoc appointments made as stop gap arrangements do not render the ad hoc service eligible for determining seniority. This Court



speaking through Justice MR Shah made the following observations:

"36. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time; initial appointment orders in the year 1985 and the subsequent order of regularization in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularization as per the 1979 Rules shall not be counted for the purpose of seniority, vis-a-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent re-determination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularization in the year 1989 is to be restored.

37. Now so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the case before this Court, the appointments were made to a post according to rule but as ad



hoc and subsequently they were confirmed and to that this Court observed and held that where appointments made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. In the present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularized after following due procedure as required under the 1979 Rules and after their names were recommended by the Selection Committee constituted under the 1979 Rules. As observed hereinabove, the appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the "substantive appointments". Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules." The notification dated 3 May 1977 stated that the ad hoc appointments were made in administrative interest in anticipation of regular appointments and on account of delay that takes place in making regular appointment through the concerned agencies. In this regard, the vacancies were notified to the Employment Exchange or advertisements were issued, as the case maybe, by appointing authorities. The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board. However, subsequently a policy decision was made to regularize the ad hoc appointees since their ouster after a considerable period of service would have entailed hardship. Thus, the initial appointment was supposed to be a stop gap arrangement,



besides being not in accordance with the rules, and the ad hoc service cannot be counted for the purpose of seniority”.

17. The same question of law arose in CWP No. 25681 of 2024 titled as *Harminder Singh Vs. State of Punjab and others*, decided on 04.10.2024, wherein also, the same view has taken by this Court in somewhat similar facts and circumstances.

18. Keeping in view the above, no ground is made out for any interference by this Court in the present petitions.

19. It may be noticed that the petitioners as well as the respondents were appointed in the year 1967/1968 i.e. 57 years ago. Even the counsel appearing on behalf of the respective parties do not know as to whether the parties are alive or not but it is clear that none of the parties is in service as of now, hence, keeping in view the said fact also, no ground is made out for any interference by this Court in the facts and circumstances of the present petitions.

20. Dismissed.

21. Pending miscellaneous application, if any, also stands disposed of.

22. A photocopy of this order be placed on the file of connected cases.

April 22, 2025
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No