

# State Of Haryana & Anr vs Deepak Sood & Ors on 15 July, 2008

**Bench: Dalveer Bhandari, A.K.Mathur**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4446 OF 2008  
(Arising out of SLP(C) No.14099 of 2006)

STATE OF HARYANA & ANR.

Appellant(s)

Versus

DEEPAK SOOD & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO.4447 OF 2008  
(Arising out of SLP(C) No.10857 of 2006)

STATE OF HARYANA & ORS.

Appellants

Versus

HARI PARKASH & ORS.

Respondents

CIVIL APPEAL NO.4448 OF 2008  
(Arising out of SLP(C) No.3297 of 2007)

STATE OF HARYANA

Appellants

Versus

DHANI RAM

Respondents

ORDER

We have heard learned counsel for the parties.

Delay condoned.

Leave granted in all the matters.

All these three matters involve a similar question of law and, therefore, they are being disposed of by a common order. For the convenient disposal of these cases the facts given in Civil Appeal No.4447/2008 (arising out of SLP(C) No. 10857/2006 - State of Haryana & Ors. versus Hari Prakash & Ors.) are taken into consideration.

The respondents joined the service in the Octroi Branch of the Municipal Committee, Panipat. Subsequently due to closure of the Octroi Branch of the Municipal Committee in the State of Haryana, they were absorbed in the Education Department, Haryana. They applied for grant of the ACP Grade to the Sub Divisional Education Officer, Panipat. This claim was denied to them. Therefore, they filed a writ petition and claimed that they are entitled to the aforesaid benefit on account of having put in more than 10/20 years of service. The State Government contested the matter and took the stand that the respondents have not completed 10 years of service in the State of Haryana. Therefore, they are not entitled to the benefit of ACP Grade. It is alleged that they were the employees of Municipal Committee and have been absorbed by the State Government only in the year 2000. Therefore, they are not entitled to ACP grade as they have not completed 10 years or 20 years of service in the State of Haryana.

The Division Bench after considering the matter came to the conclusion that so far as surplus staff of Municipal Committees are concerned who have been absorbed on transfer basis as per the decision of the Government will get all benefits except the seniority due to them. Accordingly, a declaration was given that the persons who have been declared surplus in Municipal Committee, Panipat and who have been absorbed in the State of Haryana will not get the seniority but all the other benefits will be given to them. As a result of this, the respondents' services rendered by them in Municipal Committee have been counted for grant of ACP Grade.

Aggrieved against this order passed by the Division Bench, the State of Haryana has filed the present appeals by special leave.

We have heard learned counsel for the parties.

The admitted facts are that the respondents were employees of the Municipal Committee, Panipat and they have been absorbed in the State of Haryana on terms and conditions which shall be reproduced hereafter. Now, the question is whether the service put in by them in the Municipal Committee should be counted or not for the benefit of ACP grade. The condition on which they were appointed in the State of Haryana clearly stipulated that these officials shall be appointed on transfer basis and shall join as junior most employees in the categories on the date of appointment. These employees shall be eligible for pay and pensionary benefits of their past service. However, no benefit of past service in seniority matters shall be given when being adjusted in the department. The Government has granted various relaxations required for these adjustments. The relevant portion of the order reads as under :-

"The Government has decided that the surplus employees of Group 'C' of the abolished municipalities will be absorbed in your Department against the existing vacancies as per their bio data at Annexure A. It has also been decided to relax the provision of qualifications to absorb such employees if necessary.

These officials have to be appointed on transfer basis and shall join as the junior most employees in their categories on the date of appointment. These employees shall be eligible for pay and pensionary benefits of their past service. However, no benefit of past service in seniority matters shall be given, when being adjusted in your department. The Government has granted various relaxations required for these adjustments as per the following letters :-

(i) The posts against which these employees have to be adjusted have been taken out of purview of the Staff Selection Commission vide Govt. Notification No.G.S.R. 19/Const/Art.309/2000 dated 7.4.2000.

(ii) Relaxation in the instructions issued by the Finance Department letter No.5/6/92/B&C dated 2.4.1999 vide Finance Department's concurrence issued vide their U.O. No.5/14/2000-I dated 7.3.2000.

(iii) Relaxation in the minimum qualifications as laid down in the Service Rules of the concerned Departments/Boards/Corporations for the Group C and D employees for absorption of employees rendered surplus issued vide Chief Secretary's letter No.42/183/99-5GSI, dated 15.3.2000."

A perusal of these terms and conditions makes it clear that what is being lost by these surplus staff is their seniority. They will have to get zero seniority in the new Department but their past service has been counted for fixation of pay as well as pensionary benefits. The scheme of ACP Grade came subsequently. On that basis the respondents made a grievance that they were being denied the benefit of ACP and the services rendered by them in the Municipal Committee has not been counted for the purposes of calculating 10/20 years of service in the Department. It is a misfortune that the respondents have been declared surplus in the Municipal Committee, Panipat but the Government has been benevolent to them and absorbed them in the State Government but denied them the benefit of past service for the purpose of seniority. However, at the same time they have counted their past service for the purpose of pay and pensionary benefits. Once the Government considered them eligible for fixation of pay and pensionary benefit and counted their past service then there is no reason why ACP grade should be denied to them. Having lost, at one hand their seniority in the new department, it would be unfair to deny them the benefit of ACP grade. When the Government counts their past service for grant of the benefit of pay fixation and pension, there is no reason why their past service should not be given the benefit of ACP Grade.

A similar question came up before this Court in the case of (1) Dwijen Chandra Sarkar and another versus Union of India and another reported in AIR 1999 SUPREME COURT 598. In almost identical situation a person was transferred to another department on administrative grounds and his past

service of 16 years was not counted. He challenged the same and matter ultimately reached before this Court and this Court after considering the matter came to the conclusion that granting them higher grade under the Scheme for time bound promotion does not therefore, offend the condition imposed in the transfer order. It was observed by this Court, "We are, therefore, of the view that the appellants are entitled to the higher grade from the date on which they have completed 16 years and the said period is to be computed on the basis of their total service both in the Rehabilitation Department and the P & T Department."

Their Lordships referred to earlier judgments given by this court i.e. in the case of Renu Mullick versus Union of India 1994 (1) SCC 373. In this case also in identical situation the benefit was given to incumbent likewise in Raksha Mantri versus V.M. Joseph reported in 1998(5) SCC 305 and in the case of A.P. State Electricity Board versus R. Parthasarathi reported in 1998 (9) SCC 425. The same principle was re-affirmed recently in the case of State of Maharashtra & Ors. Vs. Uttam Vishnu Pawar (2008) 2 SCC, 646 to which one of us (A.K.Mathur, J.) was a party, wherein in para 13 it was observed as under :-

"Therefore, in view of the consistent approach of this Court, it is no more *res integra* that the incumbent on transfer to the new department may not get the seniority but his experience of the past service rendered will be counted for the purpose of other benefits like promotion or for the higher pay scale as per the Scheme of the Government."

Therefore, in the series of judgments given by this Court the view has been taken that in case of a transfer/absorption from one department to another or from public sector to State though the benefit of the seniority may be denied to the incumbent but not for other benefits like pay fixation and for the pensionary benefits. Therefore, when the benefit of past service rendered in the parent department was given for fixation of pay and pensionary benefits, there is no reason why the past service should not be counted for grant of ACP Grade. Consequently, we are of the view that the view taken by the Division Bench of the High Court in the impugned judgment and order is correct and there is no ground to interfere in this appeal. Consequently, this appeal is dismissed but with no order as to costs.

Civil Appeal No.4446 arising out of SL(C) No.14099 of 2006 and Civil Appeal No.4448/2008 arising out of SLP(C) No.3297 of 2007 Delay condoned.

For the reasons stated above, these two appeals are also dismissed. No order as to costs.

.....J. (A.K.MATHUR) .....J. (DALVEER BHANDARI) New Delhi, July 15, 2008