IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. of 2014

1. Rajbir Redhu S/O Sh. Sh. Maisukh Lecturer in History

presently posted at Govt. Sr. Sec. School. Jind .

-------------------- Petitioners

VERSUS

1. State of Haryana through Financial Commissioner cum Principal Secretary to Government of Haryana, Education Department, Civil Secretariat, Chandigarh.

2 The Director- General , Secondary Education Department of Education Haryana, Shiksha Sadan , Panchkula.

--------------------- Respondents

Civil Writ Petition under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction in the nature of Mandamus directing the respondents to count the ad hoc service rendered by the petitioners towards their seniority in the cadre of Lecturers (School Cadre) all consequential benefits arising out of it , in terms of law laid down by this Hon,ble Court in LPA No.886 of 2011 decided on 13.10.2011 **(Annexure P-4 )**

AND

Issue any other appropriate writ, order or direction as this Hon’ble Court may deem fit and proper in the peculiar facts and circumstances of the present case.

...

RESPECTFULLY SHOWETH:

1. That the petitioners are the permanent residents of State of Haryana and citizens of India and as such are entitled to invoke the extra ordinary writ jurisdiction of this Hon’ble Court under Article 226/227 of the Constitution of India.

1. That the Director, Secondary Education Chandigarh ,Haryana invited applications for appointments to the various posts (more then three thousand sanctioned and vacant) of Lecturers/Masters/Teachers on 89 days contract basis vide advertisement published in News Paper “JAN SATTA “ on dated 19.8.1997. A copy of the advertisement dated 19 Aug.1997 annexed as **Annexure P-1.**
2. That the petitioners being fully eligible and qualified for appointment as Lecturer applied in time .That the selection and appointment to the post of lectures, the respondent no.2 i.e Director- Secondary Education Department Haryana who was the appointing authority for lecturers constituted the Deptt. Selection Committee under the chairmanship of Deputy Directors of Sec. Education and the interview for the post of lectures were held on 30.8.1997 and 31.8.1997 and well reasoned criteria also adopted.
3. That the petitioners have come to know through in Polu Ram case in CWP no. 18835 of 1997 that the Department Selection Committee have followed the following criteria for making the selection and appointment to the post of Masters :-

Qualification First Class 2nd Class 3rd Class Total Marks

BA/B.Sc 25 15 10 25

B.Ed. 7-1/2 5 3 7-1/2

MA 5 3 1 5

M.Phill 5 3 1 5

Marks fixed for Interview 7-1/2

1. In this way, same above mentioned criteria was made for making the selection and appointment to the post of Lecturers .
2. That the claim of all the eligible candidates were considered and the petitioners on the basis of recommendation s of the department selection committees were selected for contractual appointments on 89 days basis on the post given against their names on a fixed i.e. Rs. 5000 /- per month salary and were issued appointment letters . A copy of such appointment letter dated 10.10.1997 of the petitioner no.1 is annexed as **Annexure P-2.** Similar appointments letters were issued to other petitioners.
3. That on receipt of the appointment letters issued by the respondent no.2 the petitioners joined on various dated on the post mentioned against their names .

8 That after some time, the petitioners and other similar contractual teachers filed the more then 20 writ petitions before Hon,ble High Court and prayed for issuance of a directions to the State to pay them salary in the regular pay scales and to allow them to continue in service **till the availability of regularly selected candidates** . These writ petitions in above said matter allowed by the Hon,ble Punjab and Haryana High Court Division Bench comprising Hon,ble Mr. Justice G.S Singhvi and Hon,ble Mr.Justice Iqbal Singh on dated 17 April -1998 in main case in CWP No. 18835 of 1997 titled as Polu Ram and Others v/s State of Haryana and Hon,ble High Court directed to the State of Haryana which is reproduced in last para no 21 of said judgment which is reproduced below for kind perusal of this Hon,ble High Court .

**“ For the reasons mentioned above ,the writ petitions are allowed . The conditions incorporated in the letters /orders appointing the petitioners limiting their appointment to 89 days are declared illegal ,unconstitutional and are struck down. Likewise , the condition of paying consolidated salary to petitioners is declared ultra vires to Articles 14 and 16 and 39 (d) of the Constitution. The respondents are directed to allow the petitioners to continue in service till the availability of regularly selected candidates” . And further held “The respondents are directed to pay to the petitioners salary in the regular pay scales from the date of their appointment/engagement. ”**

In this way , the petitioners after the decision passed by the Hon,ble High Court acquired the status of ad-hoc instead of contractual teachers for 89 days.

9 That on dated 3.10.2003 State of Haryana framed the policy of regularization who have completed Three Years service against vacant and sectioned post in the department . In this way .services of the petitioners were regularized according to this policy. The true typed copy of the regularization order of the petitioners dated 13.2.2004 is attached herewith as **Annexure P-3**  .

10 That after regularization of services of the petitioners ,they repeated represent to your department to consider the ad-hoc service for the purpose of the seniority and other consequential benefits but the non consideration of the genius claim of the petitioners to counting the ad-hoc service for seniority is contrary to law and also violative of Articles 14 and 16 of the Constitution of India in terms of the law laid down in LPA No. 886 of 2011 decided on 13 Oct. 2011 by the Hon,ble High Court in case of State of Haryana Versus Surinder Kumar Mishara and Others **reported as 2013 (2) RSJ page 368,**, where by it has been held ” that since the initial appointments have been made according to rule though called ad-hoc deficiency ,if any, stood cured at the time of regularization by the commission and that such regularization would relate back to the initial appointment to secure them the benefit of seniority from the initial date of appointment.” Further held If the foundation fact of status of first entry into service is legal and valid which commensurate with Article 14 & 16 (I) of the Constitution ,consequences of seniority would automatically follow from the initial date.

For kind perusal of this Hon,ble Court relevant para 9 to 11 of the above said judgment is being reproduced as under

**Para 9.** We are in agreement with the findings of the learned Single Judge on the issues debated and decided. If the foundational fact of status of first entry into service is legal and valid which commensurate with Article 14 & 16(1) of the Constitution, consequences of seniority would automatically follow from the initial date. It is contended by learned counsel for the respondents that in the face of appointment of petitioners respondents under the 1937 Rules in accordance with the procedure set out therein then such appointments having been made against substantive and clear vacancies existing in the cadre at the time of initial appointment seniority of such appointments can be made to run from such appointments held by the learned Single Judge. Mr. Pattar has been unable to distinguish the judgments relied upon, each of which help promote the case of the petitioner-respondents.

**Para 10.** Mr. S.S. Pattar, learned counsel for the appellant has further relied upon a Division Bench decision of this Court in the case of *Malook Singh and others Vs. State of Punjab and others* ***, 1991(7) SLR 367 [Para1], decided on 15.03.2011,*** to contend that ad hoc appointees are not entitled to seniority on the basis of length of their service. This case is distinguish able on facts as there was no issue of interplay of old and new Rules as in the present case. He has also relied upon a short order passed by a Division Bench of this Court in the case of *Madan Lal and others Vs. State of Haryana and others* ***in (CWP No.17738 of 2005) decided on 08.02.2007.*** There is no ratio discernible from the short order. It only follows the judgment of ***State of Haryana Vs. Haryana Veterniary and AHTS Association,*** case. We have therefore, examined the decision of the Hon'ble Supreme Court rendered in ***State of Haryana Vs. Haryana Veterniary and AHTS Association,*** in Civil Appeal No. 13423 of 1996 and do not find that decision is of any help to the learned counsel nor was it a case of transition from old to new rules.

**Para 11.** Learned counsel has not been able to satisfy us while placing reliance in *Dr. Gagan Inder Kaur & Ors. Vs. Union Territory of Chandigarh & Ors.* ***(CWP 368 of 1987) decided on 17.10.1995*** that even though an appointment may be described as ad hoc but in reality it is an -appointment on regular basis made in accordance with the procedure that was required to be followed for making a regular appointment under the Rules 1937, which were considered by the Bench and dubbing them as adhoc would be erroneous. The application of the law laid down in *Direct Recruit Case's case (supra)* would save the petitioner-respondents in this appeal inasmuch as that once an appointment is made to the post according to the extant Rule, then seniority has to be counted from the date of appointment and not according to the date of confirmation. Assuming that in case even some further technicality remained to the rectified then also the seniority from initial date of appointment would run as explained in *State of West Bengal Vs. Aghore Nath Dey* ***1 993 (3) SCC 371 : [1993 (2) SLR 528 (SC)],*** ;

:- Before the learned Single Judge the petitioners relied upon the judgments passed in the case of the *Direct Recruit Class-II Engineering Officers Association and others Vs. State of Maharashtra and others, AIR* ***1990 Supreme Court 1607 ;*** *Sports authority of India and another Vs. Adarsh Mehta and another* ***2004(4) SCT ( DB) 122* ;** *Rudra Kumar Sain and others Vs. Union of India and others****2000(4) RSJ SC I*** to contend that since the initial appointments have been made according to rule though called ad hoc, deficiency, if any, stood cured at the time of regularization by the Commission and that such regularization would relate back to the initial appointment to secure them the benefit of seniority from the initial date of appointment. The respondent-State before the learned Single Judge relied upon the judgment passed in the cases.

In this way , above cited Judgment of this Hon’ble High Court is fully applicable in the instant case and the petitioners are fully entitled for counting of their ad hoc service towards seniority and all consequential benefits arising out of it. True typed Copy of the said judgment dated 13.10.2011 is attached herewith as **Annexure P- 4.**

11 That the petitioners rendered their adhoc services from Sep.1997 to 1.10.2003 to the department honestly and sincerely, but not counting their services for the purpose of seniority which is discriminatory against the services rules and against the Article 14 of Constitution of India and against the law held by the Hon,ble High Court in varies cases . Where as posts were duly advertised in the newspapers for appointment of the eligible candidates and the recommendation and the selection were made by the duly constituted Selection Committee, the petitioners were selected after due procedure of law. It cannot be termed as adhoc or temporary appointment. After they were appointed on regular basis by the Committee , their initial appointment stood regularized and, as such, service rendered by them on adhoc basis is to be counted purpose of seniority. It is well settled law that on regularization of service of an employee, he is entitled to the counting of the service rendered on adhoc basis towards regular service. In support of , following judgments of Hon,ble Supreme Court and Hon,ble High Court cited below:-

(1) Direct Recruit Class II Engineering Officers Association versus State of Maharashtra AIR 1990 SC 1607;

(2) State of West Bengal versus Aghore Nath Dey 1993 SCC 371

(3) Rudra Kumar Sain Versus Union of India 2000 AIR (SC) 2808

(4) S.N. Dhingra versus Union of India 2001 AIR (SC) 1535

(5) Chandra Prakash versus State of Uttar Pradesh 2003 AIR

(SC) 588 ; and

(6) B.S. Mathur versus Union of India 2008 JT (11) 173.

The matter in dispute is no more res-Integra and in view of the law already

12. That the petitioners appointed on ad hoc basis through proper procedure and through proper constituted committee and petitioners fulfilled the all the necessary qualifications at the time of their ad hoc appointment, after appointment they were also granted of leave and other service benefits as they were regularly appointed lecturers and in the face of appointment of the petitioners in accordance with the procedure set out there in, then, such appointments having been made against substantive and clear vacancies existing in the cadre at the time of initial appointment, seniority of such appointments can be made to run from such appointment. In this way, their services must be counted for the purpose of seniority .

13. That the petitioners represented to the respondents many times in person or through representation to count the ad hoc service rendered by the them towards their seniority in the cadre of School Lecturer all consequential benefits arising out of it but their genuine request not considered by the respondent . it is pertinent to mention here that when the grievances of the petitioners were not redressed by the Department, ultimately, the petitioners got served upon a Legal Notice to the respondents on dated 15.7.2014 dairy no. 21938 ( office of the respondent no.2 ) through their Counsel. but till today no response has been received from the respondents. A copy of the Legal Notice dated 15.7.2014 is attached herewith as **Annexure P-5.**

14. That the main questions of law arises for the kind consideration of this Hon’ble Court are as :-

1. Whether great manifest injustice has been done to petitioners ?
2. Whether the action of the respondents is arbitrary, illegal and violative of article 14 and 16 of the constitution of India ?
3. Whether the case of the petitioners squarely covered with the law lay down in case Annexure P-4 ?

15. That the petitioners has not earlier filed any such or similar writ petition either in this Hon’ble High Court or in the Hon’ble Supreme Court of India.

16. That the petitioners is not left with any other alternative remedy of appeal or revision except to approach this Hon’ble Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India.

It is, therefore, respectfully prayed that this Hon’ble Court may kindly be pleased to :-

(i) Issue an appropriate writ, order or direction in the nature of Mandamus directing the respondents to count the ad hoc service rendered by the petitioners towards their seniority in the cadre of School Lecturers all consequential benefits arising out of it , in terms of law laid down by this Hon,ble Court in LPA No.886 of 2011 decided on 13.10.2011 (Annexure P-4 )

ii ) Issue any other appropriate writ, order or direction as this Hon’ble Court may deem fit and proper in the peculiar facts and circumstances of the present case.

iii ) Filing of true typed copies and certified copies of Annexures P1- to P- 5 may kindly be dispensed with.

CHANDIGARH

DATED:

Through Counsel

SURESH AHLAWAT

ADVOCATE

Counsel for the Petitioners