

(2005) 12 P&H CK 0023

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 19909 of 2005

Jagdish Chand and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Dec. 20, 2005**Citation:** (2006) 143 PLR 93 : (2006) 1 RCR(Civil) 827**Hon'ble Judges:** M.M. Kumar, J**Bench:** Single Bench**Advocate:** K.S. Dadwal, for the Appellant;**Final Decision:** Dismissed

Judgement

M.M. Kumar, J.

This petition is being treated only on behalf of petitioner No. 1 as Court fee in respect of 35 others has not been paid.

2. A short question raised in this petition is whether the petitioner is entitled to add up his work charge period of service to the regular service rendered by him for the purposes of proficiency step up and enhancement of his pay on the basis of Full Bench judgment of this Court in the case of Kesar Chand v. State of Punjab 1988 (5) S.L.R. 27 and Division Bench judgment of this Court rendered in C.W.P. No. 219 of 2003, decided on 13.11.2003 (Annexure P3)?

3. The petitioner is stated to have made representation on the basis of aforesaid pronouncements of this Court, which have been dismissed by the respondent department on the ground that the judgments of this Court taking similar view, have been stayed by the Supreme Court. The aforementioned vide of the department is evident from the perusal of paras 6, 7, 8, 9, 10 and 11 of the impugned order and the same reads as under:-

6. Whereas the State of Punjab Department of Public Health and Ors. had filed Civil Appeal No. 1174 of 2003 (Arising out of SLP (C) No. 13546 of 2001) titled as Mehash Mittar and Ors. and the same was allowed by the Hon"ble Supreme Court of India

on 10.2.2003. Copy of order dated 10.2.2003 is attached.

7. Whereas the decision of Hon"ble High Court in C.W.P. No. 13876 of 2001 is on the similar grounds of SLP 14265 of 2003 against C.W.P. No. 16534 of 2001 State of Punjab v. Bhajan Singh and Ors. filed for praying the Hon"ble Supreme Court of India has stayed the operation of judgment dated 6.2.2003 of Hon"ble High Court of Punjab and Haryana in this case. The case is still pending before the Hon"ble Supreme Court of India. During the pendency of said SLP the claim of the petitioners cannot be considered for the benefits of proficiency step up(s) after completion of 8 years or 18 years service. Copy of order dated 18.8.2003 is attached.

8. Whereas the decision dated 10.2.2003 of Hon"ble High Court in Civil Writ Petition No. 7565 of 2001 on the similar grounds (sic) SLP (C) No. 20782 of 2003 against C.W.P. No. 7565/2001, State of Punjab v. Resham Singh and Ors. filed for praying the Hon"ble Supreme Court of India has stayed the operation of judgment dated 10.2.2003 of Hon"ble High Court of Punjab and Haryana in this case. The case is still pending before the Hon"ble Supreme Court of India. During the pendency of said SLP the claim of petitioners cannot be considered for the benefits of proficiency step up(s) after completion of 8 years or 18 years service. Copy of order dated 20.8.2004 is attached.

9. Whereas the Hon"ble Supreme Court of India in the case of State of Punjab v. Gurdeep Kumar Uppal and Ors. 2001(4) S.C.T. 297 : 2001(3) S.L.R. 256 has held that the period of ad hoc service rendered by an employees cannot be included in calculating the period of service for giving higher scale of pay and only the regular service is to be counted.

10. Whereas the interpretation of law has been changed with the dated 20.2.2001 of the Supreme Court of India in Civil Appeal No. 6525 of State of Punjab and Ors. v. Harjinder Kaur and Ors. which lays down that for purpose of cadre seniority and Higher Pay under Proficiency step up scheme, only regular service and not ad hoc service is to be counted.

11. Whereas already explained in para 10 above the interpretation of law has changed with the order of Hon"ble Supreme Court of India order dated 20.2.2001 in Civil Appeal No. 6528 of 1998 State of Punjab v. Harjinder Kaur and Ors., that for the purpose of cadre seniority and higher pay under proficiency step up scheme, only regular service and not ad hoc service is to be counted. In view of this order, the work charged service cannot be counted for the purpose of reckoning 8/18 years service for the grant of Proficiency step up(s).

Hon"ble Court in the aforementioned judgment on behalf of respondent No. 5 and 6 i.e. Executive Engineer, Shah Nehar Extn. (Civil) Division Hoshiarpur and Executive Engineer, Investigation Division, I.B., Hoshiarpur on the basis of record put up before us. The claim of the petitioners has been considered and is hereby rejected, being devoid of any merit.

Having heard learned Counsel for the petitioner and perusing the impugned order (An-nexure P-10) dated 12.8.2005 passed by the respondent department, we are of the view that there is no legal infirmity in the view taken by it. This Court has taken the view that the ad hoc/work charge service rendered by an employee is entitled to be added to the regular service for the purposes of granting benefit of proficiency step up enhancing the pay of the petitioners. However, the aforementioned view is under a cloud on account stay order passed by the Supreme Court. Therefore, we are of the view that no relief can be granted to the petitioner in this petition at this stage and the petition is liable to be dismissed.

4. For the reasons aforementioned, this petition fails and the same is dismissed.