(1992) 03 P&H CK 0021

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 16539 of 1991

Dr. J.S. Gill and Others		APPELLANT
	Vs	
The State of Punjab and Another		RESPONDENT

Date of Decision: March 27, 1992

Citation: (1994) 1 ILR (P&H) 431

Hon'ble Judges: V.K. Jhanji, J; B.C. Verma, J

Bench: Division Bench

Advocate: R.K. Handa, for the Appellant; S.S. Saron, DAG, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. This order will also govern the disposal of C.W.Ps. Nos. 17525, 18680, 18400 of 1991 and 1710 of 1992.

2. Notice of motion was issued. Reply has been filed. Arguments heard at length.

3. Two points have been raised. The first contention is that while fixing the seniority of the Petitioners as P.C.M.S. Class-II, the entire period in service including the one rendered as ad hoc. temporary or officiating should be taken into account in terms of Rule 12 of the Punjab Civil Medical Service (Class-II) Rules 1982, which reads as follows:

The seniority inter se of the members of the service shall be determined by the length of continuous appointment on a post in the service....

The reply submitted and reiterated at the time of hearing is that the seniority list of officers borne on the cadre of P.C.M.S. Class II service is being prepared. As and when it is done, the Petitioners certainly shall have a right to make representation if they feel aggrieved by the proposed seniority list. If such objections are raised, they shall be duly considered and the list shall then be finalised. If the list so finalised prejudicially affects the rights of the Petitioners or persons similarly situated, they

will certainly then have a cause of action to challenge that list. We, therefore, leave this matter of determination of Petitioners seniority and the consequent preparation of the seniority list, as claimed at this stage only making it clear that we are not taking any decision on the contentions raised in this regard.

4. The second contention has been that since the Petitioners have put in more than eight years service, they have become entitled to the higher scale of pay in view of the notification dated April 21, 1989, Annexure R-1, filed with the return. On a reading of that notification, we find that this higher scale of pay of Rs. 3,700--5,300 is admissible to those members of the Punjab Medical Service Class II who have put in more than eight years of regular service. It is common ground that the Petitioners have not rendered 8 years of regular service. The contention, however, is that there is no rational basis in awarding this scale of pay only to the regular employees and to deprive those who had rendered equal number of years of service although not as regular employees, but in other capacities like ad hoc etc. It is submitted that the intention of the notification is to reward the experience and the length of service rendered. We are, however, of the opinion that since the ad hoc doctors are treated as regular only after appointment is approved and they are duly recommended by the Service Commission, those who are to regularised form a distinct class and that such distinction is well founded and quite reasonable. In &#65533;he Director Recruit Class II Engineering Officers Association v. State of Maharashtra J.T. 1990 (2) S.C. 264, while considering the question of counting ad hoc service for purposes of determining seniority, it has been observed in paragraph 13 of the judgment that if an appointment is made by way of stop-gap arrangement without considering the claims of all eligible available persons and without following the rules of appointment, the experience of such appointment cannot be equated with the experience of regular appointment because of the qualitative difference in the appointment. The Supreme Court proceeded to say that to equate the two would be to treat the two unequal as equal which would violate the equality clause. These observations squarely answer the approach of the Petitioners based on experience. Counsel for the Petitioners placed reliance upon a Single Bench decision of this Court in Dr. Ravinder Paul Kaur v. State of Punjab 1979 SLR 645. S.C.K. The question in that case was whether in terms of the rules applicable, the experience gained while serving on ad hoc basis should also be reckoned for fulfilling the requisite experience qualification. The rule prescribed that for appointment as Professor, post-graduate degrees in the specialty concerned teaching experience as Assistant Professor in the specialty concerned for five years in a Medical College after requisite post-graduate qualifications, was necessary. It was in this context that the Court observed that the teaching experience while serving on ad hoc basis could not be ignored for ascertaining the necessary teaching experience. The notification, as we have noted above in the instant case is entirely in different terms. Benefit is sought to be given only to regular employees having rendered eight year of service. This decision, therefore, lends no support to the Petitioners.

5. The writ petitions are dismissed subject to the observations made above. No costs.