



IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 20th OF MARCH, 2025

WRIT PETITION No. 2624 of 2025

VIJAY BHANDARI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri D.P. Singh and Shri Surya Pratap Singh- Advocates for petitioner.

Shri G.K. Agarwal – Government Advocate for respondent/State.

ORDER

This petition, under Article 226 of the Constitution of India, has been filed seeking following relief (s):-

i) That, the respondents be commanded to take cognizance over his representation with a further to count his services rendered on ad-hoc basis under work charge contingency from 06.08.1988 to 05.02.1996 since his engagement was after following due process of law with a further to settle his post terminal claims by counting aforesaid period for the pensionary benefits, in the interest of justice.

ii) That, any other relief which is suitable in the facts and circumstances of the case in favour of the petitioner including the costs throughout may also be granted.

2. It is submitted by counsel for petitioner that the services rendered by him as



a daily wager are not being counted for the purposes of settlement of his terminal claims. Although petitioner has claimed that he was appointed as a daily wager in work-charged contingency, but he has not filed any document to show that he was appointed as a daily wager in work-charged contingency. The documents show that he was merely appointed as a daily wager.

3. Now, the only question for consideration is as to whether the services rendered by an employee as a daily wager can be considered for grant of terminal benefits or not?

4. The Supreme Court in the case of **Malook Singh and others Vs. State of Punjab and others** decided on 28/09/2021 in **Civil Appeal No.6026-6028 of 2021**, has held as under:-

“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 India¹⁵ . Recently a two judge Bench of this Court in **Rashi Mani Mishra v. State of Uttar Pradesh**¹⁶ , 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-à-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.”

5. As a daily wager, petitioner was not having any service conditions. A Full Bench in the case of **Ashok Tiwari Vs. M.P. Text Book Corporations and**



Another, reported in **2010 (2) MPLJ 662** has held that a daily rated employee is not appointed to any post and before he is appointed, the pre-conditions contemplated for appointment to the post are not followed. His appointment is on a day-to-day basis as per need of work and normally the conditions of service regarding transfer, suspension, disciplinary action cannot be applied to such an employee.

6. Since petitioner was not appointed against any substantive post and the counsel for petitioner has also failed to *prima facie* establish that under which provision of M.P. Civil Services (Pension) Rules, 1976, the case of petitioner is covered, this Court is of the considered opinion that the services rendered by petitioner as a daily wager cannot be counted for pensionary purposes.

7. Accordingly, petition fails and is hereby *dismissed*.

(G.S. Ahluwalia)
Judge