

and, therefore, the Government Company was bound to reinstate them. The plea of the workmen was accepted and they were directed to be reinstated. This case is of no help to the workmen in the present case because in the case before us retrenchment of the workmen had become final and they had never challenged the same. Had they challenged their retrenchment and if that had been set aside in any appropriate proceedings, they could have then claimed that they should be deemed to be in the employment of the company immediately prior to the appointed day and thereafter in the employment of the petitioner but such is not the case here.

(10) In the result, the writ petition is allowed and the impugned award of the Labour Court quashed. There is no order as to costs.

R.N.R.

Before Hon'ble R. P. Sethi, Jawahar Lal Gupta & N. K. Kapoor, JJ.

RAKESH KUMAR SINGLA,—Petitioner.

versus

STATE OF HARYANA & ANOTHER,—Respondents.

C.W.P. No. 15034 of 1993

21st July, 1995

Constitution of India, 1950—Art. 226—Haryana Government Circular dated 2nd June, 1989—Grant of selection grade admissible after 12 years regular service—Ad hoc service whether can be counted towards length of service/regular service—Where ad hoc service is otherwise countable for the purposes of seniority and other benefits, it would be countable for the purpose of regular service in the context of circular dated 2nd June, 1989.

Per majority, J. L. Gupta, J. dissenting.

Held, that the circular dated 2nd June, 1989 was never intended to be a departure from the general principles of the service rules applicable to the civil servants nor was it intended to create a special class of civil servants being entitled to the grant of senior scale of pay to be determined in isolation of the service rules or the principles of law applicable which were held to be governing their service conditions.

(Para 35)

Per majority, J. L. Gupta, J. dissenting.

Further held, that *ad hoc* service which is required to be counted for the purposes of seniority of the civil servant in the light of the Full Bench judgments in *Chambel Singh's case* based upon the judgments of the Supreme Court in *Direct Recruit's case* and as explained in *Aghore Nath's case* is required to be counted for the purposes of 12 years regular service in the context of the circular No. 6/38/3 PR(FD)-87 dated 2nd June, 1989.

(Para 44)

Per minority.

Held, that (i) regular service in the context of circular dated June 2, 1989 of the Government of Haryana implies the service rendered by a person after his appointment in accordance with the rules governing the recruitment to the post ;

(ii) The service rendered by a person on *ad hoc* basis or otherwise which is not in conformity with the rules and which cannot be taken into consideration for the purposes of determining the seniority, is not to be taken into consideration for the purpose of computing the prescribed period of service under the circular ;

(iii) The principles of 'Equal pay for Equal work' is not violated when the service rendered by a person whose appointment is not in conformity with the rules, is excluded from consideration under the Circular ; and

(iv) The decisions of the three Division Benches of this Court in *Ajit Kumar Jain, Brish Bhan Mittal and Suresh Chander Chhabra*, do not lay down correct law.

(Para 27)

Amar Vivek, Advocate, for the Petitioner.

Arun Nehra, Addl.A.G. Haryana, for the Respondents.

JUDGMENT DATED 21ST JULY, 1995; PASSED BY FULL BENCH

Jawahar Lal Gupta, J.

(1) Whether the service rendered as a result of *ad hoc* appointment could be counted for the purpose of 12 years' regular service in the context of Circular No. 6/38/3PR(FD)-87, dated 2nd June, 1989 of the Government of Haryana This is the short question that has been posed for consideration. To appreciate the context in which this question has arisen, the facts may be briefly noticed.

(2) On January 4, 1980, the petitioner was appointed as an Assistant Engineer on *ad hoc* basis. On being selected by the

Haryana Public Service Commission, he was given regular appointment order dated January 29, 1982. On January 15, 1992, the petitioner made a representation that he having been appointed on January 4, 1980, had completed 12 years of service and was entitled to the grant of selection grade of Rs. 4,100—5,300 in accordance with the policy decision notified by the Government of Haryana,—vide letter dated June 2, 1989. The Government did not accept the petitioner's claim. He has consequently, approached this court through the present writ petition. The petitioner rests his claim not only on the letter dated June 2, 1989 but also on the three decisions of different Division Benches of this Court in *Ajit Kumar Jain v. State of Punjab*, (1) *Brish Bhan Mittal v. State of Haryana*, Civil Writ Petition No. 6235 of 1993, decided on September 17, 1993 and *Suresh Chander Chhabra v. State of Haryana*, Civil Writ Petition No. 389 of 1994, decided on August 30, 1994.

(3) The respondents contest the claim of the petitioner. It has been pointed out that under the circular dated June 2, 1989, an officer becomes entitled to the selection grade only after he has rendered "12 years of regular service". The respondents maintain that the period of service rendered by the petitioner on *ad hoc* basis cannot be taken into consideration. Since the petitioner has been appointed on regular basis,—vide order dated January 29, 1982 he became eligible to be considered for the grant of selection grade only after January 28, 1994. Since the Bench hearing the petition had certain reservations about the view expressed in *Brish Bhan Mittal's case*, their Lordships have directed that the point be considered by a larger Bench.

(4) Another case viz. Civil Writ Petition No. 5716 of 1994 (*Gian Singh and others v. The State of Haryana etc.*) was also listed before their Lordships. The case having been adjourned to await the decision in Civil Writ Petition No. 15034 of 1994, an application for permission to intervene has been made by Mr. K. K. Jagia, learned counsel for M/s Gian Singh etc. The Bench heard the counsel in both these cases.

(5) Learned counsel for the petitioners have submitted that since length of service determines the pay and pension of an employee, the expression 'Regular Service' should be construed to mean

'continuous or uninterrupted' service. They have also invoked the principle of 'Equal Pay for Equal work' to contend that those who have served for equal number of years, must be paid equally. Learned counsel have placed strong reliance on the three decisions as referred to above. On the other hand learned counsel for the respondent-State of Haryana, has contended that under the Circular of June 2, 1989, an employee is entitled to the higher scale of pay only on completion of the prescribed years of 'regular service' and *ad hoc* service cannot be taken into consideration for the purpose of determining his entitlement to the senior scale or the selection grade.

(6) Before proceeding to consider the respective contentions, it is apt to notice the contents of the Circular dated June 2, 1989. It reads as under :—

"No. 6/38/3PR (FD)-87, dated 2nd June, 1989

From

The Financial Commissioner
& Secretary to Government.
Haryana, Finance Department.

To

1. All Heads of Departments,
Commissioners, Ambala/Hissar
Division ;
Deputy Commissioners & Sub
Divisional Officers (Civil)
in Haryana ;
2. The Registrar,
Punjab and Haryana High Court,
Chandigarh.

Dated, Chandigarh, the 2nd June, 1989.

Subject : Revision of pay scale—Removal of anomalies in the pay scales of HCMS (Doctors), Deputy Superintending Engineers.

Sir,

I am directed to invite a reference to Haryana Government Finance Department Letter No. 6/38/3PR (FD)-87, dated 16th May, 1989, wherein the pay scales of HCMS Doctors, Deputy Superintendents of Police and Superintending Engineers were revised with

effect from 1st May, 1989. The matter has been considered further and after careful consideration the State Government has decided to revise the pay Scale of Doctors and Engineers with effect from 1st May, 1989 as indicated below :—

S. No.	Name of Post	Existing Scales	Revised Scales of Pay
1.	HCMS (Doctors) Class I & II	2,200—4,000 +NPA 3,000—4,500 (After 8 years of regular service) 4,100—5,300 (After 18 years of regular service)	2,200—4,000 +NPA 3,000—4,500 (After 5 years of regular service) 4,100—5,300 +NPA (After 12 years of regular service)
2.	Engineers AEE/AE/SDO/ SDE (Class I & II)	2,200—4,000) 2,200—3,500	2,200—4,000 3,000—4,500 (After 5 years of regular Service) 4,100—5,300 (After 12 years regular Service).

The pay of these employees may be refixed in the newly revised scales of pay in accordance with the normal rules as laid down in Punjab Civil Service Rules, Vol. I Part. I.

Sd/-
(S. K. Sexena),
Joint Secretary Finance (PR)
for Financial Commissioner
& Secretary to Govt.
Haryana, Finance Department.

(7) *Vide* letter dated May 16, 1990, the Government decided to partially modify the letter dated June 2, 1989. It was provided that senior scale shall be admissible "after five years of regular satisfactory service". It was further provided that the selection grade shall be admissible to a person "after 12 years of regular satisfactory service limited to 20 per cent of the cadre posts".

(8) The first question that arises for consideration is—Does 'Regular Service' mean 'Continuous Service' and include even *ad hoc* service ?

(9) The normal rule of interpretation is that the words of a Statute, an instrument or a document should be given their plain and natural meaning. The words must be given their ordinary meaning. The language of a document should be read grammatically. The purpose of the Statute and the context in which the particular words have been used are permissible inputs for judicial interpretation. In the words of Chinappa Reddy, J. "Interpretation must depend on the 'text' and the 'context'. One may well say if the text is the texture, context is what gives colour." Let us first see the 'text' and the 'context'.

(10) A perusal of the letter of June 2, 1989 as reproduced above, shows that Doctors and Engineers who are holding Class I & II posts, are entitled to the grant of the senior scale or the selection grade on completion of the prescribed "years of regular satisfactory service". The word 'Regular' is derived from the Latin expression 'Regula' which means 'a Rule'. According to Webster's Third New International Dictionary, 'Regular' means "selected.....in conformity with established or prescribed usages, rules or discipline." It may imply "conformity to a prescribed rule standard or established pattern". In *Corpus Juris Secundum*, 'Regular' has been *inter alia* defined to mean "governed by the rule or rules; duly authorised; made according to rule ; conformable to law or custom ; agreeable to an established rule, law, type, or principle or to a prescribed mode or to established customary forms".

(11) If the 'text is literally construed and the word 'Regular' is given its plain meaning, it means that the service should conform to the law and the rules. When examined in the light of the **text, it means that the person should have been appointed in accordance with law and should have continued to hold the post for the prescribed number of years in conformity with law. As against this, the word 'Continuous' has an entirely different meaning. It has defined to mean "connected, extended or prolonged without**

separation or interruption of sequence ; unbroken, unceasing, uninterrupted, without break, cessation or interruption or without intervening space of time....." In a nut-shell, 'Continuous' only means uninterrupted. It is not synonymous with 'Regular'.

(12) It can happen that in a peculiar context and in a particular statute, the expressions 'Regular' and 'Continuous' may overlap. However, in service Jurisprudence, the expression 'Regular Service' has a different connotation. It is understood to mean that service **has been rendered by a person after he had been selected according to the prescribed procedure and that it conforms to the law and the rules.** It is distinct from 'Continuous Service'. A person appointed against a leave vacancy may hold a post continuously but his service may not be 'Regular'. It can be without interruption but it may not unnecessarily conform to the rules and the law. It is only an interim arrangement. It is an *ad hoc* appointment made to meet a particular situation or an exigency. It is not regular. It does not conform to law and the rules. To illustrate, direct appointment to the post in Class I & II Services can be made according to the rules after advertisement and selection by the Public Service Commission. However, till such time as a regular selection is made by the Commission and the person recommended by it is appointed, the Department may fill-up the available vacancy without making a selection on purely *ad hoc* basis. The person so appointed may also compete for regular appointment. He may be selected or rejected. If selected, he would be entitled to be considered for regular appointment. Otherwise, his service shall not be 'regular'. The appointment of the person made by the authority without following the prescribed procedure shall not be 'regular'. The period of service rendered by such persons till his appointment in accordance with the rules shall not be 'Regular' in spite of the fact that it may be continuous. The regular service would commence only after the appointment is made in accordance with the rules and after following the prescribed procedure.

(13) The Government is surely aware of the meaning of '*ad hoc*', 'continuous' and 'regular' service. If it had intended to confer benefit of merely *ad hoc* or continuous service for the purpose of granting the senior scale or the selection grade, it could have so provided. The fact that it has chosen to grant the benefit only on completion of the prescribed period of regular service, shows that it intended to exclude the periods of *ad hoc* or in certain cases, even continuous service. The words used in the Circular issued by the

Government are clear. Their meaning is plain. The intention of the Government is manifest. The 'text' and 'context' of the document leave no manner of doubt that the Government intended to confer the benefit only on such persons as had completed the requisite period of 'regular service'. Not on others.

(14) Learned counsel for the petitioners contend that the service rendered on *ad hoc* basis is taken into consideration at the time of fixation of pay and even for the purpose of computing pension. It is undoubtedly so. However, these are benefits conferred under statutory rules. A person earns increments while he is working on *ad hoc* basis. These increments are based on pure length of service. It is also true that the period of service rendered by a person on *ad hoc* or work-charged basis, is added to the regular service rendered by a person while computing his pension. This also is a benefit conferred by statutory rules. However, in the matter of the grant of senior scale or the selection grade, the competent authority has taken a conscious decision to take into consideration only the period of service rendered on regular basis. Apparently, the purpose of the Circular issued by the Government is to ensure the grant of some promotion only to a person who has worked on regular basis for the prescribed number of years. The purposes of the Rules and the Circular are apparently different. In the normal course, the Engineers or Doctors working in the Class I and II Services of the State were not getting promotion in spite of putting a long years of service. It appears that the Circular dated June 2, 1989 was issued to remove stagnation. Consequently, the authority took a decision to restrict the grant of the higher scale to only such persons as had rendered regular service for the prescribed duration of time. The grant of the senior scale or the selection grade is in the nature of promotion. It is not merely the grant of an increment in a running scale. Consequently, the Government has prescribed a condition of eligibility. Its action cannot be said to be either unreasonable or unfair.

(15) There is another aspect of the matter. The period of *ad hoc* service does not *ipso facto* count for seniority. In *State of West Bengal and others v. Aghore Nath Dey and others* (2), the period of *ad hoc* service rendered by various persons prior to the date of their regularisation was not taken into consideration by the Government for the purpose of determining the seniority. The challenge to the action of the Government of West Bengal was up-held by the High Court of Calcutta. However, the appeal filed by the State was accepted and it was held that the *ad hoc* appointment having not been made in accordance with the provisions of Rule 11, the period

of service rendered by Aghore Nath Dey etc. prior to the regularisation of their services on February 26, 1980 "cannot be counted for reckoning their seniority". Similarly, A Full Bench of this Court in *Chambel Singh v. The State of Haryana and another* (3), held that "ad hoc service per se cannot be counted to determine appointee's seniority in the cadre". Since the senior scale and the selection grade are in the nature of promotion, the Government has, it appears, advisedly restricted the grant of the benefit to persons who had completed the prescribed number of years of 'regular' service. Otherwise, it could have led to the anomalous situation that a person though junior but had completed the prescribed number of years of service, would have become entitled to the higher scale while his senior who had been selected for regular appointment earlier, would have been working in the lower scale. Such an intention cannot be attributed to the Government. In fact, the language of the Circular clearly militates against such a result.

(16) At this stage, it is also relevant to refer to the letter dated May 16, 1990 issued by the Government whereby the Circular dated June 2, 1989 was partially modified and it was provided that the grant of selection grade shall be "limited to 20 per cent of the cadre posts". This means that if in a cadre of 100 posts, 50 persons have completed the prescribed per period of "12 years of regular satisfactory service", the selection grade shall not be admissible to all but only to the senior most 20 persons provided their performance is satisfactory. In the very nature of things, seniority would be one of the relevant considerations in the grant of selection grade. This leads to the inevitable inference that such period of service as cannot be taken into consideration for the purpose of determination of seniority, cannot also be taken into account while considering the claim for the grant of the senior scale or the selection grade.

(17) Learned counsel for the petitioners have then invoked the principle of 'Equal pay for Equal Work' to contend that person who have put in the same number of years of service, should be entitled to the grant of same pay. It is undoubtedly true that by virtue of Article 38 (2) of the Constitution, the State has to "strive to minimise the inequalities in income.....". Furthermore, under Article 39(d), it is a principle to be followed by the State

(2) J.T. 1993 (2) S.C. 598.

(3) I.L.R. 1995 (1) P & H 75.

that "there is equal pay for equal work for both men and women". The provisions in part IV of the Constitution embody the aims and objects of the State. These are aimed at 'redressing unconscionable or unfair bargains'. The principles embodied in Articles 38 and 39 have been judicially considered. In *Daily rated casual Labour, P&T Department v. Union of India and others* (4), it was observed by their Lordships (Para 6) that "on the facts and in the circumstances of this case, the classification of employees into regularly recruited employees and casual employees for the purposes of *paying less than the minimum pay payable to the employees in the corresponding regular cadres particularly in the lowest rungs of the Department where the pay scales are the lowest, is not tenable*". (emphasis supplied). Similarly in *U.P. Income Tax Department Contingent Paid Staff Welfare Association v. Union of India and others* (5), where "the contingent paid staff" were being "paid wages as daily rated labourers lower than the salary and allowances which the Class IV employees of the Department" had been drawing, was held to be unsatisfactory. Accordingly, it was directed that the **contingent paid staff doing the work of Class IV employees should be paid "at the rates equivalent to the minimum pay in the pay scale of the regularly employed workers in the corresponding cadres without any increments....."**. However, as observed by their Lordships of the Supreme Court in *All India Stenographers Union v. Union of India* (6), the problem of equal pay cannot be translated into a mathematical formula and a certain amount of value judgment must be left with the administrative authorities, with which the Court can interfere only if the differentiation is irrational, without any basis or *mala fide*". Even though the functions are similar, the responsibilities or the quality of work can be different. In such a situation, differential treatment is permissible.

(18) Besides the above, it is also clear that neither the Constitution nor the rules contemplate absolute equality. Classification can be made on rational basis. Just as a differential treatment in the matter of promotion etc. can be made on the basis of qualifications, similarly, the competent authority can decide that in the higher rungs of different services, the employees shall be granted promotion or higher scale of pay etc. only after they have been selected in accordance with the rules and have worked satisfactorily for the

(4) A.I.R. 1987 S.C. 2342.

(5) A.I.R. 1988 S.C. 517.

(6) 1988 (3) S.C.C. 91.

prescribed number of years. To illustrate, a person who has been **recruited on *ad hoc* basis, can be rejected at the time of regular selection. He may be allowed to continue in service on *ad hoc* basis in spite of rejection for regular selection** on account of the fact that adequate number of suitable candidates are not available. Still, he cannot claim to be senior to a person who **has been found suitable for regular recruitment. Such a person may** compete again but may still be rejected. Another person who has not worked on *ad hoc* basis may be selected. He would become junior to that person who has been selected at the time of such **subsequent selection. If such an *ad hoc* employee is given the** benefit of the service rendered by him and, thus, held entitled to the higher scale, the action of the State may well be challenged as being violative of the guarantee of equality enshrined in Articles 14 and 16. If in order to avoid such a situation, the State Government decides that the higher scale or the selection grade shall be admissible only to persons who have put in the requisite number of years of regular service, it is only the exercise of a 'value judgment' by the State. It does not militate against the principle of 'Equal pay for **Equal Work**'. **In such a situation, the classification based on the** 'regular service' as distinguished from '*ad hoc* service', would be perfectly legal and valid.

(19) In view of the above, it is held that the action of the State Government does not violate the principle of 'Equal pay for Equal Work'.

(20) Learned counsel for the petitioners have referred to certain decisions of this Court as well as those rendered by their Lordships of the Apex Court to contend that the action is violative of the principle of 'Equal pay for Equal Work'. A strong reliance has been placed by the learned counsel on the three decisions referred to above. **The first of these decisions was in the case of *Ajit Kumar Jain*. He was recruited as a Junior Engineer in the Punjab Tubewell Corporation Limited. *Vide* order dated April 11, 1983, he was ordered to look after the work of an Assistant Engineer but was paid the salary of the post of Junior Engineer. He challenged the action of the Corporation by filing C.W.P. No. 4733 of 1985. By **order dated February 6, 1987, the writ petition was allowed and he** was held entitled to the salary and allowances of the post of Assistant Engineer. On completion of eight years of service in the junior scale of Rs. 2,200-4,000, he claimed pay in the senior scale of Rs. 3,000-4,500. The Corporation contested this claim on the ground that in**

view of the order of the Punjab Government (which had been adopted by the Corporation), the senior scale was admissible "after 8 years of regular service". The Division Bench invoked the principle of 'Equal pay for Equal Work' and held that since the petitioner had completed eight years of service, without any interruption or break, he was entitled to be placed in the senior scale like permanent employees. It was further held that the ordinary meaning of the word 'Regular' in the context would be "continuous or consistent". Their Lordships also observed that "since the benefit of the principle of 'Equal pay for Equal Work' has already been extended to even *ad hoc* employees, casual labour, temporary employees, there is no scope for holding that a person who has worked on the post for a period of eight years without any break should be denied the benefit of this principle". In coming to this conclusion, their Lordships have relied upon the decisions of the Supreme Court in *Mrs. Raj Kanta v. Financial Commissioner, Punjab* (7), and *A. K. Chatterjee v. U.O.I. and others* (8), and distinguished the decisions in the cases of *Daily rated Casual Labour employees, P & T Deptt. v. U.O.I. and others* (9) and *Delhi Municipal Karamchhari Union v. U.O.I.* (10). In the two cases that subsequently came up for consideration before two different Benches, reliance was placed on the decision in Ajit Kumar's case and the claim of the respective petitioners for the grant of senior scale etc. was up-held.

(21) Since the decision in Ajit Kumar's case on the meaning of word 'Regular' and on the principle of 'Equal pay for Equal Work' is based on the decisions of their Lordships of the Supreme Court, it is apt to notice these decisions.

(22) The first of these decisions is in the case of *Mrs. Raj Kanta* (supra). This was a case under the Punjab Security of Land Tenures Act. Section 9(i) (ii) of the Act *inter alia* provided that "no landowner shall be competent to eject a tenant except when such tenant— (ii) fails to pay rent regularly without sufficient cause". The Revenue Courts had taken the view "that the mere fact that the tenants made a single default in payment for the rent for Kharif 1961. was sufficient to attract the penalty of ejection envisaged by Section 9(1) (ii) of the Act". However, the High Court took the

(7) A.I.R. 1980 S.C. 1964.

(8) A.I.R. 1991 S.C. 996.

(9) A.I.R. 1987 S.C. 2342.

(10) A.I.R. 1988 S.C. 517.

view that "on a proper interpretation of the term 'Regularly', it will appear that the Legislature did not contemplate that the ejection should be ordered straightaway even if a single default, though unexplained, is committed by the tenant which interpretation would run against the avowed object of the Legislation which was to advance and ameliorate the lot of the tenants". Their Lordships of the Supreme Court reversed the view taken by the High Court and held (para 8) that "the Legislature clearly intended to use the word 'regularly' to mean payment of rent in a uniform and consistent manner without any breach or default. The Legislature never contemplated that a single default could be condoned". Their Lordships further held (para 10) that "in order to escape ejection, the tenant must atleast be regular in payment of the rent and if he wants to get rid of the consequences of his default, he must prove sufficient cause". On a consideration of this decision, it is clear that the word 'regularly' was defined to mean "payment of rent in a uniform and consistent manner without any breach of default" in the context of the plain language of the Statute and its object. The Division Bench hearing Ajit Kumar's case interpreted the words 'without any breach or default' to mean 'without any break or breach'. This, with utmost respect, was not warranted by the text or the context of the Circular which fell for consideration before the Bench. It appears that the Bench construed the word 'Regular' in a totally wrong context and erred in holding it to be synonymous with 'continuous' or 'without any break'.

(23) The decision in *A. K. Chatterjee's case* may also be noticed. In this case, their Lordships were dealing with an *inter-locutory*, application and had given certain interim directions. One of these directions was in the following terms :—

"There has been some grievance that the promotions from the Junior Time scale in the cadre of Assistant Collectors to the Senior Time Scale have not been done. It is also necessary to direct—we do so accordingly—that if any promotee-officer in the cadre of Assistant Collector has completed 4 years of service, whether regular, temporary or *ad hoc*, he be given the senior Time Scale with effect from the date on which he or she, as the case may be, has completed the required service of four years as prescribed".

(24) The above direction was essentially in the background of the factual position as projected before the Court that on account

of the pendency of litigation, a number of cadre posts were lying vacant as a result of which the collection of revenue was suffering. With utmost respect, it appears that the above mentioned directions do not embody an enunciation of law to mean that an Assistant Collector gets a right to be promoted to the senior time scale on completion of "four years of service, whether regular, temporary or *ad hoc*.....". It was only a direction in the peculiar facts of the case. It does not mean that a person becomes entitled to the grant of senior scale, irrespective of the fact whether he has worked on regular, temporary or *ad hoc* basis. This decision does not lay down that 'Regular' is synonymous with 'continuous' or that it would even include the period of '*ad hoc*' service.

(25) The other two decisions in the cases of *Daily rated Casual Labour and Delhi Municipal Karamchhari Union* (supra), were relied upon on behalf of the State to show that even by applying the principle of 'Equal Pay for Equal Work', their Lordships had only directed that in the lower rungs of service, the minimum of the pay scale should be given to the casual labourers and that the future increments were not to be allowed. The Bench took the view that the acceptance of the contentions raised on behalf of the Government would "nullify the principle of 'Equal Pay for Equal Work...'" It does not appear to be possible to endorse the view taken by the Bench.

(26) In the case of *Brish Bhan Mittal v. State of Haryana*, C.W.P. 6235 of 1993, decided on September 17, 1993 and *Suresh Chander Chhabra v. State of Haryana* C.W.P. No. 389 of 1984, decided on August 30, 1994, the respective Benches have merely followed the view taken in *Ajit Kumar Jain's case*. Whatever has been observed with regard to the view taken in *Ajit Kumar Jain's case*, applies to even these decisions.

(27) Accordingly, it is held that :—

- (i) Regular service in the context of Circular dated June 2, 1989 of the Government of Haryana implies the service rendered by a person after his appointment in accordance with the rules governing the recruitment to the post ;
- (ii) The service rendered by a person on *ad hoc* basis or otherwise which is not in conformity with the rules and which cannot be taken into consideration for the purpose of

determining the seniority, is not to be taken into consideration for the purpose of computing the prescribed period of service under the Circular ;

(iii) The principle of 'Equal Pay for Equal Work' is not violated when the service rendered by a person whose appointment is not in conformity with the rules, is excluded from consideration under the Circular ; and

(iv) The decision of the three Division Benches of this Court in Ajit Kumtr Jain, Brish Bhan Mittal and Suresh Chander Chhabra, do not lay down correct law.

(28) As a result, the question posed by the Division Bench is answered in the negative and it is held that the period of *ad hoc* appointment cannot be counted for the purpose of computing 12 years regular service in the context of Circular dated June 2, 1989 issued by the Government of Haryana.

(Sd.) . . . ,

JAWAHAR LAL GUPTA,

Judge.

July 21, 1995.

R. P. Sethi, J.

(29) Despite being benefitted by the perusal of the well prepared judgment of brother J. L. Gupta, J. I could not persuade myself to the conclusions drawn by his Lordship for issuing directions regarding the counting of *ad hoc* service for the purposes of conferment of benefits of the circular in question dated June 2, 1989. Even though I agree with the broad propositions of law enunciated in the judgment, yet I am not in a position to hold that the period of *ad hoc* appointment, cannot, in any case, be counted for the purposes of computing five years/ten years regular service as specified in the circular.

(30) The admitted facts and undisputed propositions of law are not required to be repeated. The order of reference has also been elaborately dealt with by brother J. L. Gupta, J. On the admitted facts and settled proposition of law, I am of the opinion that the regular service in the context of circular No. 6/38/3 PR (FD)-87, dated 2nd June, 1989 would include such *ad hoc* service also which is computable for the purposes of determining the seniority on the

basis of the Full Bench judgment of this Court in '*Chambel Singh v. State of Haryana* (11) and the judgment of the Supreme Court in '*State of West Bengal v. Aghore Nath Dey*' (12), and *Direct Recruits case*. Brother Gupta, J. has also rightly concluded :

“The service rendered by a person on *ad hoc* basis or otherwise which is not in conformity with the rules and which cannot be taken into consideration for the purpose of determining the seniority, is not to be taken into consideration for the purpose of computing the prescribed period of service under the circular.”

Relying upon the Full Bench judgment of this Court in *Chambel Singh's case* (Supra), which is based upon the judgment of the Supreme Court in *Aghore Nath Dey's case* (supra), Brother Gupta, J. has again, in clear terms, held

“.....This leads to the inevitable inference that such period of service as cannot be taken into consideration for the purpose of determination of seniority, cannot also be taken into account while considering the claim for the grant of the senior scale or the selection grade.”

(31) After holding, “since the senior scale or the selection grade are in the nature of promotion”, brother Gupta, J. has presumed that the Government had restricted the grant of benefits of the circular only to the persons who had completed the prescribed number of years of regular service and concluded. “In fact, the language of the circular clearly militates against such a result”. He has, further held that the judgments of this Court in *Ajit Kumar Jain*, *Brish Bhan Mittal* and *Suresh Chander Chhabra's cases* do not lay down correct law. I do not agree with these conclusions arrived at by my learned brother.

(32) In *Ajit Kumar Jain's case*, the Division Bench of this Court dealt with the case of an Assistant Engineer working with the Punjab Tubewell Corporation Limited who had sought issuance of a direction to the respondent-State and the Corporation to allow him the scale of Rs. 3,000—4,500 after completion of 8 years of service without interruption and break in the junior scale and also to consider him for promotion as Divisional Engineer as soon as vacancy

(11) 1995 (1) S.L.R. 1.

(12) 1993 (3) S.L.R. 528.

occured. The petition was resisted on the ground that as the petitioner had not been appointed as regular Assistant Engineer, he was not entitled to be paid the Senior Scale of pay. The Bench noted that the corporation was following the pay scales of Punjab Government which had been revised. For Sub-Divisional Engineer/ Assistant Engineer for the old scale of pay of Rs. 940—1,850, the revised scale was Rs. 2,200—4,000 for Junior Scale. The selection grade was Rs. 1,700—2,000 which was revised to Rs. 3,000—4,500 senior scale after 8 years of regular service as Sub-Divisional Engineer or Assistant Engineer. After 18 years the scale of pay was to be Rs. 3,700—5,300. The Court in that case was concerned with the claim of senior scale payable after 8 years of regular service. Relying upon the judgment of the Supreme Court in '*Surinder Singh v. Engineer-in-Chief*' (13), and C.W.P. No. 4821 of 1983 filed by the employees of *Nehru Yuvak Kendras* and C.W.P. No. 4817 of 1983 '*Dhirendra Chamali v. State of U.P.*' the Bench noted that the Central Government, the State Government and likewise, all Public Sector Undertakings are expected to function like model and enlightened employers so far as the services of their employees are concerned. Reference was also made to '*A. K. Chatterjee v. U.O.I.*' (14), wherein it was held that the persons, who were promoted on *ad hoc* basis but continued to work for a period of four years, were entitled to senior time scale with effect from the date of completion of required service of four years. As the petitioner in Ajit Kumar's case was found to have completed 8 years un-interrupted service without any break, he was held entitled to the senior scale of Rs. 3,000—4,500 like permanent employees after completion of 8 years of service. The Bench noted that the ordinary meaning of the word 'Regular' in the context would be continuous or consistent, phraseology which was held to have been accepted by the Supreme Court in '*Raj Kanta v. The Financial Commissioner, Punjab*' (15). The Supreme Court in that case relied upon the observations made in '*Arab Bank v. Ross*' (16), and concluded that the word 'Regular' means the consistent course adopted without any break or breach."

(33) Similarly in *Brish Bhan Mittal* and *Suresh Chander Chhabra's* cases this court followed the earlier judgment delivered in *Ajit Kumar's* case.

(13) A.I.R. 1986 S.C. 584.

(14) A.I.R. 1991 S.C. 996.

(15) A.I.R. 1980 S.C. 1464.

(16) 1952 (2) Q.B. 216.

(34) A perusal of circular dated June 2, 1989, would show that the same was issued with the object of revising the pay scales for removal of anomalies in the pay scales of the employees of HCMS (Doctors) and Engineers. It was specifically mentioned in the circular that the Haryana Government, Finance Department, had decided to revise the pay scales of Doctors and Engineers with effect from May 1, 1989, in the manner and to the extent as indicated in the circular which was issued basically for removal of the anomalies. The benefit was intended to be given to the employees after completion of specified number of years. It is worth mentioning that for the then existing words of 8 years and 18 years, the words 5 years and 12 years were substituted. The pay scales of the employees were directed to be revised in new revised scales of pay in accordance with the normal rules as laid down in the Punjab Civil Service Rules, Volume I, Part I.

(35) The purpose and object of the circular apparently appears to confer benefit upon the Doctors and Engineers on the basis of their length of service to be granted in accordance with the normal rules of service as laid down in the Punjab Civil Service Rules. The circular was never intended to be a departure from the general principles of the service rules applicable to the civil servants nor was it intended to create a special class of civil servants being entitled to the grant of senior scale of pay to be determined in isolation of the service rules or the principles of law applicable which were held to be governing their service conditions. It is not disputed that in the light of the judgment of the Supreme Court and of this Court, the civil servants were entitled to the grant of benefit of *ad hoc* service under specified circumstances for the purposes of fixation of seniority and other promotional avenues. The circular dated 2nd June, 1989 was not intended to be an exception to the service conditions already applicable to the civil servants of the respondent-State.

(36) The settled position regarding interpretation of statutes is that the Courts are required to give such interpretation to the laws, rules and the orders which defines the purpose and object of such laws, rules and orders and should not adopt a conservative or technical approach which may frustrate the object for which the provision was made. If a provision is proved to have been made for the benefit of the civil servant after removal of anomaly no construction can be put upon the words which defeat the very object for which the circular was issued. The Courts should strongly lean against any construction which tends to reduce a Statute to a futility. The

words would be construed so as to make it effective and operative and not in the manner which would defect the purpose and object. The narrower interpretation which may fail to achieve the manifest purpose of the order should be avoided and the courts should adopt an approach accepting the bolder construction, based upon the purpose for which the order was issued. Such a purpose could be inferred from the attending circumstances of a case.

(37) After conferment of statutory benefits, regular service would mean such service which is in conformity with law and the rules, initial appointment to the service having been made strictly in accordance with the law which is continuous for the prescribed number of years under the relevant law. It has rightly been noted by brother Gupta, J. that sometimes the expression 'regular and continuous' may overlap. Regular service would always cover within its ambit the continuous service, but mere continuous service may not be regular. Continuous service would become regular retrospectively only when it is permanently made under the law or the service rules applicable provided the incumbent initially possessed the requisite qualification and had been appointed on available post though on *ad hoc* basis.

(38) Constitution Bench of the Apex Court in '*The Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra* (17), held that once an incumbent is appointed to a post according to the Rules, his seniority is to be counted from the date of his appointment and not according to the date of his confirmation. However, where the initial appointment was only *ad hoc* and not according to the Rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. After referring to various judgments and the Rules applicable in the case, the Supreme Court in that case concluded :—

“(a) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of 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 for considering the seniority ;

- (b) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted

(39) A Full Bench of this Court in *Chambel Singh's case* (supra) dealt with this point of law and enumerated the circumstances under which the *ad hoc* service can be counted towards seniority. It held :—

“For the purpose of present enquiry, clauses (A) and (B) in the Direct Recruit Class II Engineering Officers' Association and others case (supra) coupled with elucidation of these clauses in *Aghore Nath Dey's case* (supra) and also the views expressed in the earlier judgments of the apex Court, it can be said; (i) that the period as an *ad hoc* appointee cannot be taken into account for considering the seniority of an incumbent; (ii) it is only when such an appointment is as per rules and not by way of a stop gap arrangement and only a procedural formality is required to be complied with that the services so rendered will be taken into account towards his seniority in the cadre; (iii) In the absence of Rules, it would have to be kept in view as to whether the appointment so made is against an existing vacancy and not for a limited period and in that case the period so spent by an incumbent can be considered to determine his seniority in the cadre; (iv) if the appointment is otherwise regular except for the deficiency of certain procedural defects, such defect/defects stand cured with the subsequent regularisation; (v) mere long stay at the post on account of some inaction on the part of delinquent officer or on account of interim direction of the Court will not clothe an appointee with any right to tag such a period to determine his seniority in the cadre. Period of service as a stop gap arrangement shall be ignored while determining his seniority in the cadre. The above points are only illustrative and not exhaustive in content. Any point which is not specifically covered the rain is to be examined in the light of clauses

(A) and (B) of Direct Recruit Class II Engineering Officers' Association and others case (supra) as explained in *Aghore Nath Dey's case* (supra)." ,

(40) In *Aghore Nath Dey's case* (supra), the Supreme Court had held :—

"In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, "if the initial appointment is not made by following the procedure laid down by the rules" and the later expression 'till the regularisation of his service in accordance with the rules.' We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employees and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the

appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on *ad hoc* basis as a stop gap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."

(41) In the light of the judgments of the Supreme Court in *Direct Recruit's case* (supra) *Aghore Nath's case* (supra) and Full Bench of this Court in *Chambel Singh's case* (supra) a civil servant is entitled to the benefit of *ad hoc* service for being counted to determine his seniority if his case is covered under the circumstances referred to and enumerated herein above. It follows, therefore that if the initial appointment is made by following the procedure laid down by the Rules and the appointee continue in the post uninterruptedly till the regularisation of services in accordance with the Rules his period of officiation/*ad hoc* service shall be counted. However, if the appointment is not made according to the Rules or the appointee has not continued or is not regularised, such period of officiation/*ad hoc* service shall not be counted for the purposes of his seniority. The corollary of the rules 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 for considering the seniority. If the period of *ad hoc* service can be counted for the purpose of seniority or for the purposes of computing pension, how can it be denied for giving the benefit of higher scale of pay permissible on the basis of the length of the service. If such a position is accepted, the anomaly thus created cannot be resolved but on the other hand the future of a civil servant would be dragged into wrangles on technicalities leading to uncertainties in his service career. Different lengths of service cannot be permitted to be prescribed for the purposes of seniority, promotion, pension and grant of higher scale of pay. It is not disputed that all such benefits are attributes of a service career of an incumbent. If it is accepted that *ad hoc* service of a civil servant cannot be taken into account for the purposes of determining his regular service so far as the benefit of salary on the basis of circular is concerned, the result would be that a person who may be senior on the basis of his *ad hoc* service in the light of the Full Bench judgment of

this Court in *Chambel Singh's case* (supra) may be forced to get lessor scale of pay than a person who is regularly appointed after him. Such could not be the intention of the State. If such intention is accepted it may result in demoralisation in the services of the State and provide avenues and opportunities to employers to fix different dates for the purposes of seniority and promotion or for the grant of senior scale of pay. If the person is eligible to be appointed to a post on regular basis but on account of certain technicalities of law or the circumstances not within his control he is initially appointed on *ad hoc* basis and subsequently regularised, can he be punished for such lapse attributable to the employer? The answer is emphatically 'No'. The appointment not being in the hands of a civil servant could not be made basis for depriving him the benefit of service which are intended to be provided on the basis of the length of the service.

(42) Providing different period for counting regular service for the purposes of granting benefits of the circular dated 2nd June, 1989 would amount to depriving a civil servant of the right to which they have been held entitled by the Supreme Court in *Direct Recruit's case* (supra) and by a Full Bench of this Court in *Chambel Singh's case* (supra).

(43) It has been rightly observed by brother Gupta, J., "the government is surely aware of the meaning of '*ad hoc*', 'continuous' and 'regular' service." If the respondent-State had intended not to confer the benefit of continuous service to the *ad hoc* employees for the purposes of senior scale or selection grade, it could have so provided in the circular itself. The Government only referred to the regular period of service and did not refer to its nature of either being *ad hoc* or otherwise. If *ad hoc* service is counted as regulars service for the purposes of other service benefits, the Government in order to deprive such persons of the benefit of the circular should have specifically held that while counting the period of regular service, *ad hoc* period would not be tagged with it. The Government is proved to have intended to grant the benefit of senior scale of pay only on completion of the prescribed period of service provided that the same was not interrupted or rendered against the service rules. The intention of the Government cannot be held to be of depriving the claim of civil servants who are entitled to the benefit of *ad hoc* service for the purposes of other service benefits. The omission in the circular to not deprive such benefit is apparent and not accidental. It is worth mentioning that in the reply filed on behalf of the respondent-State

it is nowhere stated that *ad hoc* service was not intended to be counted for the purposes of granting the benefit of the circular dated 2nd June, 1989. Under the cloak of technicalities, the benefits of the circular cannot be taken away from those who are otherwise entitled to in the light of the judgment noted herein above.

(44) I am, therefore, of the view that *ad hoc* service which is required to be counted for the purposes of seniority of the civil servant in the light of the Full Bench judgments in *Chambel Singh's case* (supra) based upon the judgments of the Supreme Court in *Direct Recruit's case* (supra) and as explained in *Aghore Nath's case* (supra) is required to be counted for the purposes of 12 years regular service in the context of the circular No. 6/38/3 PR (FD)-87 dated 2nd June, 1989.

(45) In view of this finding, there is no necessity of giving any separate finding regarding the principle of equal pay for equal work as noted by brother Gupta, J.

(46) The reference made by the Division Bench is answered by holding that such period of *ad hoc* service which is countable for the purposes of seniority and other service benefits in the light of the judgments of the Supreme Court in *Direct Recruit's case* (supra) as explained in *Aghore Nath's case* (supra) and of the Full Bench of this Court in *Chambel Singh's case* (supra) shall be counted for the purpose of regular service in the context of the circular dated 2nd June, 1989.

Sd/-
R. P. Sethi,
Judge.

July 21, 1995,

N. K. Kapoor, J.

(47) I have gone through the separate judgments given by brother Jawahar Lal Gupta, J. and brother R. P. Sethi, J. I agree with the view taken by brother R. P. Sethi, J.

July 21, 1995,

Per majority.

(48) In view of the opinion expressed by the majority, the reference is answered as under :—

“That such period of *ad hoc* service which is countable for the purposes of seniority and other service benefits in the light of the judgments of the Supreme Court in *Direct Recruit's case* (supra) as explained in *Aghore Nath's case* (supra) and of the Full Bench of this Court in *Chambel Singh's case* (supra) shall be counted for the purpose of regular service in the context of the circular dated 2nd June, 1983.”

R.N.R.