

Jagdish Lal and others vs. State of Punjab and others
(C.J.)

After the result is declared the successful candidates shall undergo training under the Quanungos in the Land Revenue Department as provided by Appendix B to the Rules and if finally accepted as candidate Zilladars they shall be appointed as officiating Zilladars on probation or additional Revenue Clerks in the Circles to which they are attached. The names of the Zilladar candidates who fail in the examination shall be removed from the list of selected candidates from the date of declaration of the result of the examination.

(43) The costs in each petition are assessed at Rs. 500 which shall be paid by respondents Nos. 1 and 2.

R.N.R.

FULL BENCH

Before V. Ramaswami, C.J., Ujagar Singh and G. R. Majithia, JJ.

JAGDISH LAL and others,—*Petitioners.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 3310 of 1986.

May 24, 1988.

Constitution of India, 1950—Art. 226—Regularisation of services of ad hoc temporary Class III teachers—Eligibility—Instructions making minimum one year continuous service ending April 1, 1985 a condition precedent—Break of more than 30 days during financial year on account of summer-vacation made ground for non-regularisation—Condition for regularisation i.e. one year service as on April 1, 1985—Whether should be interpreted as service of one year immediately preceding said date.

Held, that there is no warrant for the assumption that the reference to completion of minimum of one year service on April 1, 1985, is a reference only to continuous employment of one year immediately preceding April 1, 1985. If the very object of regularising the services of ad hoc employees who acquire necessary experience after considerable period of service is to avoid hardship to employees as a whole and not to accentuate the problem of unemployment, we are unable to find any reason as to why we should take that the continuous service of one year immediately preceding April 1, 1985 was

alone to be taken into account. The more rational and just view to be taken on the interpretation of the relevant notification is that the minimum continuous period of service of one year need not necessarily be the year immediately preceding April 1, 1985. Hence, the *ad hoc* teachers are entitled to regularisation provided they fulfill other conditions. (Para 5).

This case referred to Full Bench by the Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice J. V. Gupta,—vide order dated 23rd October, 1986 for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. V. Ramaswami, Hon'ble Mr. Justice Ujagar Singh and Hon'ble Mr. Justice G. R. Majithia finally decided the case on 24th May, 1988.

Petition under Arts. 226/227 of the Constitution of India praying that a writ of Mandamus of any other suitable writ, direction or order be issued, directing the respondents :—

- (i) to produce the complete records of the case ;
- (ii) a Writ in the nature of Mandamus directing the Respondents to regularise the services of the petitioners as Masters/Teachers in terms of the Government instructions dated March 29, 1985 Annexure P-1 subsequent instructions dated August 8, 1985 Annexure P. 2, be issued. The Respondents be directed to affect the said regularisation from the dates when persons junior to the petitioners were regularised ;
- (iii) It is further prayed that during the pendency of the Civil Writ Petition, the termination of the services of the Petitioners be stayed and they be treated to be regular Masters/Teachers in the service of the Respondents ;
- (iv) costs of the Petition be also awarded ;
- (v) condition regarding filing of certified copies of the annexures be dispensed with ;
- (vi) condition regarding service of advance notice of the Writ petition be dispensed with ;
- (vii) this Hon'ble Court may also grant any other relief deemed just and fit in the circumstances of the case ;
- (viii) this Hon'ble Court may also grant all the consequential reliefs in the nature of arrears of salary, seniority etc. etc.

G. K. Chathrath and R. C. Chathrath, Advocates, for the Appellant.

K. P. Bhandari, A.G. Punjab, Himinder Lal and A. N. Mago, Advocate with him, for the respondents.

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JUDGMENT

V. Ramaswami, C. J.

(1) This is a petition for the issue of a writ of mandamus directing the Government to regularise the services of the petitioners as Master/Mistresses in terms of the Government instructions dated March 29, 1985, as amended by the subsequent instructions dated August 8, 1985.

The Government instructions dated March 29, 1985, reads as follows :—

“The President of India is pleased to decide that the services of all *ad hoc*/temporarily appointed employees to class III services or posts under the Punjab Government in various Departments/offices shall be regularised subject to the following conditions :—

- (i) that the *ad hoc*/temporarily appointed employee should have completed a minimum of two years service on 1st April, 1985. While calculating the period of service any break of notional nature, falling between *ad hoc*/temporary appointments in the same category of posts and in the same department is to be ignored. However, the break in *ad hoc*/temporary service would not be ignored in cases where :—
 - (a) the employee concerned left service of his own volition either to join some other Department or for some other reasons; or
 - (b) the *ad hoc*/temporary appointment was against a post/vacancy for which no regular recruitment was intended/required to be made e.g. leave arrangements or filling of other short-term vacancies;
- (ii) that they fulfil the conditions of eligibility as prescribed (i.e. they have been recruited through the Employment Exchange or by open advertisement) academic qualification, experience and the condition of age at the time of their first *ad hoc*/temporary appointment in accordance with the Departmental Service Rules and instructions issued by the Government;

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- (iii) that their record of service is satisfactory;
- (iv) that they have been found medically fit for entry into the Government service and that their character and antecedents have also been duly verified and found suitable for Government service.
- (v) that a regular post/vacancy is available for regularisation ;
- (vi) that they have been found fit for regularisation by the Departmental Selection Committee constituted in accordance with instructions contained in Government circular No. 12/45/80-1 GF/10825, dated 12th September, 1983. These Departmental Selection Committees shall also consider the cases of common categories of employees ;
- (vii) *Inter se* seniority of *ad hoc*/temporary employee will be determined on the basis of service rendered on *ad hoc*/temporary basis. The older member will be senior to a younger member appointed on the same date. All such *ad hoc*/temporarily appointed employees will be placed junior to those working on regular basis."
2. The cases of such *ad hoc*/temporarily appointed employees who have already completed three years service on 1st April, 1985 and have satisfactory record of service but who do not fulfil the prescribed conditions with regard to qualifications; age or mode of their initial recruitment will also be considered for regularisation in relaxation of these conditions if the Departmental Service Rules, applicable to these employees provided for relaxation of these conditions of recruitment.
3. The orders of regularisation of *ad hoc*/temporary services will be effective from 1st April, 1985 and the process of finalisation of all such cases shall be completed within a maximum period of three months.
4. The *ad hoc*/temporarily appointed employees whose services are regularised under these orders will hence forth

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be governed by the relevant Departmental Service Rules and Government instructions issued from time to time."

This was amended by instructions dated August 8, 1985, the relevant portion of which reads as follows :—

- "2. The matter has been considered and Government have now decided that the services of all ad hoc/temporary employees appointed to Class III Services/posts, who have one year service to their credit on 1st April, 1985 may also be regularised. The conditions for such regularisation as contained in this Department's earlier communication, dated 29th March, 1985, as referred to above, however, remain the same and should be meticulously observed.

The petitioners in this writ petition were appointed as Master/Mistresses in Government Schools in the District of Amritsar on *ad hoc* basis and have continued in service with notional breaks and on the date of the petition in June 1986, they have more than three years' service to their credit. As seen from the written statement filed on behalf of the respondents, it is seen that if we take the school year, i.e., June 1 of the year to May 31 of the succeeding year, then during 1982-83, the break in service of petitioners 2 to 8 are 13, 10, 15, 11, 8, 12 and 17 days respectively; for the year 1983-84, their break in service was 25, 26, 22, 31, 21, 43, and 25 days respectively; and for 1984-85, i.e. June 1, 1984 to May 31, 1985, the break in service was 24, 14, 25, 24, 25, 31 and 18 days respectively. We have taken the year as school year June to May because the petitioners are all school masters or mistresses employed in secondary schools under the control of the District Education Officer, Amritsar. If we take the financial year as the criterion, then the break in service for 1982-83 in respect of the petitioners was 45, 49, 33, 42, 39, 15, 48 and 49, days respectively, for 1983-84, the break in service was 6, 7, 6, 6, 11, 7, 26 and 10 days respectively and for 1984-85, the break in service was 42, 47, 48, 42, 48, 41, 50 and 41 days respectively. But, the Government have taken not only the financial year as the criterion, but also 1984-85 as the only relevant year and on the basis that in the financial year 1984-85, the break in service for each of these petitioners was more than 30 days, did not send up their names to the Director of Public Instruction for regularisation. Feeling aggrieved by this, the petitioners have filed this writ petition praying for the relief above-mentioned.

(2) When the writ petition came on for orders, the Division Bench noticed two earlier conflicting decisions of this Court reported in *Malkiat Singh v. State of Punjab and others*, (1) and that reported in *Giani Ram and another v. The State of Haryana and others*, (2) and in view of this apparent conflict between these two Bench judgments, the matter was admitted for consideration by a Full Bench.

(3) The argument of the learned counsel for the petitioner was if a teacher had been in service without a break or with a break of a total period of less than 30 days in any year prior to March 30, 1985, he would be entitled to the benefit of the instructions. This contention finds support in the decision reported in 1981 (2) S.L.R. 803. On the other hand, relying on the decision in I.L.R. 1980(1) P & H 185, the learned Advocate General, Punjab, contended that before the services of an *ad hoc* employee can be regularised, he shall have a continuous service of one year to his credit ending on March 31, 1985 and the notional break, if any, should not be more than 30 days. If the total period of break exists for one month in the period of one year ending with March 31, 1985, the teacher would not be entitled to the benefit even though he might have completed a year of service without a break or with a nominal break of less than 30 days at any time prior to the end of the financial year 1984-85.

(4) As amended by the instructions dated August 8, 1985, the services of all *ad hoc*/temporarily appointed employees to the class III services or posts under the Punjab Government shall be regularised subject to the conditions mentioned in the instructions dated March 29, 1985. The first condition, as seen above, was that the *ad hoc*/temporary appointed employee should have completed a minimum of one year service on March 31, 1985. While calculating the period of service, any break of notional nature, falling between *ad hoc*/temporary appointment in the same category of posts and in the same department has to be ignored. The instructions also state when the break in *ad hoc* service has not to be ignored. It is the case of the petitioners that none of them left the service on his own volition either to join some other department or for some other reason and that the *ad hoc* appointment was against the post or vacancy for which no regular appointment

(1) I.L.R. 1980(1) Pb. & Hry. 185.

(2) 1981(2) S.L.R. 803.

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was required to be made such as in the case of leave arrangement or filing of other short-term vacancies and these allegations of the petitioners are not denied. Whether the petitioners fulfil the conditions in clauses (ii) to (vii) of the notification and whether they are eligible for relaxation of the rules as contained in paragraph 2 of the notification, are to be decided only by the departmental selection committees if their names have been sent for such regularisation in pursuance of the notification and, therefore, those conditions do not concern us at this stage. The only ground on which their names were not sent to the Director of Public Instruction for consideration for regularisation is that the period of notional break during the year ending March 31, 1985, was more than 30 days. Though the instructions dated March 29, 1985, above referred to, do not refer to any number of days break or as to when the break can be called notional in nature, it appears the Director of Public Instruction (Schools) had instructed the District Education Officer to send the cases of only those masters/mistresses in whose cases the break does not go beyond 30 days probably in the view that if it goes beyond 30 days, it cannot be called as notional in nature. We could not find any legal basis for such instructions, nor do we find any jurisdiction or justification for issuing such instructions which are in the nature of amendment of the Government order or instructions dated March 29, 1985. In all the cases of the petitioners, the normal procedure followed appears to be to appoint them on 89 days basis and after a break of one or two days, take them again in employment. We find that during the financial year 1984-85, the entire break in service except two or three days in respect of all the petitioners was from 8th/9th May to 15th to 19th of June, 1984. The month of May is the vacation period in all the schools and the break in that period is normally in order to avoid payment of salary for the vacation period. The petitioners contended that this break in service in May, 1984 and the first half of June, 1984 was due to summer vacation and the curfew imposed at various places during the period of "operation bluestar". In fact, it appears that a number of representations were made relating to the exclusion of the curfew period in calculating the notional period of break. By another proceedings No. 6/4/84-GE/7017, dated July 11, 1984, of the Government of Punjab, the Government have informed all the Departments that the Government have decided that such absence whether as a result of imposition of curfew in Chandigarh, S. A. S. Nagar or any other part of the State may be treated as duty for all purposes and in another communication

of the Government No. 6/4/84-6GE/2172, dated February 19, 1985, the Government have further clarified that the absence on account of imposition of curfew is to be treated as duty for all purposes and that the employees concerned are entitled for daily allowance for those days also. If this period of summer vacation and the absence due to imposition of curfew is taken into account, even in the year 1984-85, the period of absence will be 4 to 7 days only and, therefore, it will satisfy the condition of national break. On these facts, there can be no doubt that the petitioners satisfy the first condition referred to in the first paragraph of the Government notification.

(5) Even otherwise, we do not find any warrant for the assumption that the reference to completion of minimum of one year of service on April 1, 1985, is a reference only to continuous employment of one year immediately preceding April 1, 1985. The very object of deciding to regularise the services of *ad hoc* employees, as seen from some of the earlier orders was :—

“Whereas by continuation of the *ad hoc* appointments made as above as an administrative necessity, the *ad hoc* employees have acquired necessary experience and their ouster after a considerable period of service would entail hardship to *ad hoc* employees as a whole and accentuate the problem of unemployment, the President of India is pleased to decide

If this was the very object of regularising the service, we are unable to find any reason as to why we should take in that the continuous service of one year immediately preceding April 1, 1985, was alone to be taken into account. That was the view also taken by a Division Bench of this Court in 1981(2) S.L.R. 803. In that case, the notification that was considered was the one issued on January 1, 1980 and that notification reads as follows :—

“(a) Only such *ad hoc* employees as have completed a minimum of two years service on 31st December, 1979 should be made regular. However, break in service rendered on *ad hoc* basis upto a period of one month may be condoned but break occurring because the concerned employees had left service of his own volition or where the *ad hoc* appointments were required/extended to be made, i.e. leave arrangements or filling up of other short term vacancies, may not be condoned.”

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The learned Judges held that "if the clause in dispute is interpreted keeping in view this purpose then the only rational view would be to extend the benefit of this clause to all those *ad hoc* employees who have to their credit two years completed service without a break of more than one month on the relevant date and not necessarily to those only who have two years continuous service immediately preceding the said date." However, in the other decision reported in I.L.R. 1980 (1) P. & H. 185, with reference to a similar communication, dated May 3, 1977, another Division Bench has taken the view that the minimum qualifying period of one year must precede the crucial date on March 31, 1977. The notification under consideration in that case was not identical. Even otherwise, for the reasons mentioned above, with great respect to the learned Judges, we are unable to agree with this view. In our opinion, the more rational and just view to be taken on the interpretation of the relevant notification is that the minimum continuous period of service of one year need not necessarily be the year immediately preceding April 1, 1985. If that is so, the petitioners have satisfied the first condition of the notification and, therefore, they are entitled to be referred to the departmental selection committee for consideration for regularisation after finding whether they satisfy the other conditions referred to in the first paragraph of the notification.

(6) We accordingly issue a writ of *mandamus* directing the District Education Officer (Secondary), Amritsar to send up the names of the petitioners to the Director of Public Instructions (Schools) Punjab, Chandigarh, so as to enable him to refer the names to the departmental selection committee for consideration for regularisation. There will, however, be no order as to costs.

S. C. K.