*Before Tapen Sen, J.*

DHANPAT SINGH,—*Petitioner*

versus

STATE OF HARYANA & ANOTHER,—*Respondents*

*C.W.P. No.* 4993 of 1989

24th May, 2005

*Constitution of India, 1950—Art. 226—Haryana State Co-operative Bank's Staff Service (Common Cadre) Rules, 1976—Rl. 8.3—Appointment of petitioner as Clerk on adhoc basis—After rendering approximately 1 year 9 months service on adhoc basis petitioner selected against a temporary post—Respondents placing the petitioner in the seniority w.e.f. the date of his permanent absorption—Rl. 8.3 permitting recruitment on ad hoc basis as an accepted as mode of appointment—Claim for counting the period rendered as an ad hoc employee—Respondents failing to consider the legal notice sent by petitioner & instead promoting juniors to him—Challenge thereto—At the time of his ad hoc appointment petitioner possessing requisite qualifications laid down under the 1976 Rules—Respondents allowing the petitioner to continue on the post with short breaks till the date of absorption—Petitioner entitled to the benefit of continuity of service as he would be deemed to have been in continuous service and the short breaks liable to be condoned—Whether failure to implead the affected persons, petitioner is not entitled to the relief—Held, no—Gross injustice to the petitioner—Respondents directed to fix the seniority of petitioner notionally and grant him all consequential benefits—However, orders passed by the respondents may not prejudice the promotions given to those persons who have not been impleaded by the petitioner.*

*Held,* that the respondents must bear in mind that they were dealing with a Legal Notice. Once they admit that they have received it, they were bound to have considered and disposed it off by a speaking order and in accordance with law. It is not enough to merely say that the same was totally vague, baseless, frivolous and not maintainable. Every employer in a democratic set up governed by a Constitution, which is a sacrosanct as the Constitution of India, is expected and supposed to act and behave reasobably and in a fair and

equitable manner. They must also act like a model employer. This Court, after having very carefully read and perused the contents of the Legal Notice is definitely of the opinion that it was neither vague nor baseless nor frivolous nor could it have been termed as "not maintainable".

(Para 9)

*Futher held,* that there is no dispute about the existence of 1976 Rules, as the same have not been denied by respondent No. 2 in the written statement. What has been denied are the statements of the petitioner to the effect that *ad hoc* appointments were permissible and that the petitioner at the time of his *ad hoc* appointment, possessed the requisite qualifications laid down under the Rules for appointment to the post of Clerk.

(Paras 12 & 14)

*Further held,* that the statement made by the respondents in their written statement goes to show that the appointment of the petitioner, after having been taken on in an *ad hoc* capacity, was allowed to be continued with only 12 short breaks in between but right upto 26th April, 1980 i.e. the date on which he was permanently absorbed making the said appointment effective on and from 5th May, 1980.

(Para 19)

*Further held,* that since the appointment of the petitioner was allowed to continue till absorption the plea taken by the respondents to the effect that the initial appointment of the petitioner was made without following the procedure and without considering the claims of other eligible candidates is plainly misconceived. Such pleas are, therefore, rejected and it is held that the interruptions of 1+2+1+8 days between 4th August, 1978 to 26th April, 1980 cannot be treated as interruptions/breaks because these short periods, each time, ended in the re-induction of the petitioner and he was allowed to continue till his final absorption. Thus, the petitioner must be deemed to have been in continuous service and the breaks of 1+2+1+8 days, in the interest of justice, must be condoned so as to entitle the petitioner the benefit of continuity in service.

(Para 23)

*Further held,* that the petitioner has not impleaded all persons who could be affected, but merely because he has not done so, should it be taken to be so fatal so as to disentitle relief to him. This Court is plainly of the view that gross injustice has been meted out to the petitioner. Therefore, exercising jurisdiction under Article 226, this Court must undo injustice but at the same time, following the principles of *Actus curiae neminem gravavit,* it must also not cause prejudice to those who are not before it. This Court orders that the respondents must notinally fix the seniority of the petitioner and having done so, they must calculate and release to him all consequential benefits that would have enured to his credit had the respondents dealt with the legal notice in time and in accordance with law instead of filing it in their archives. This order should not be construed to mean that the respondents have been given the liberty of passing any order that may prejudice the promotions given to those persons who are not before this Court.

(Paras 25, 26 & 27)

Puneet Bali, Advocate, *for the petitioner.*

M.S. Sindhu, DAG, Haryana, *for respondent No. 1.*

Subhash Ahuja, Advocate *for respondent No. 2.*

**ORDER**

**TAPEN SEN, J.**

C.A.V. on 27th April, 2005

Pronounced on : 24th May, 2005.

24th May, 2005 : In this Writ Petition, the Petitioner prays for the issuance of an appropriate Writ or a Writ of or in the nature of a Writ of Mandamus commanding upon the Respondents to take into consideration the past services rendered by him on *ad-hoc* basis from 4th August, 1978 to 5th May, 1980 (1 year 9 months approximately) for purposes of counting his seniority together with all consequential benefits.

(2) On 4th August, 1978, the Petitioner was appointed as a Clerk on *ad-hoc* basis for a period of 6 months. It is stated that prior to the expiry of the period of 6 months, his term was extended and

he continued to be in service and in the meantime, on the basis of an application filed on 16th April, 1979, he was called for interview on 6th April, 1980 for the post of a Clerk and having been selected, he was finally given appointment against a temporary post of Clerk *vide* appointment letter dated 26th April, 1980 as contained in Annexure P-1. The 1st paragraph of the Appointment Letter, issued by the Managing Director, reads, thus :—

> "With reference to your application dated 16th April, 1980 for the post of clerk, we are pleased to offer you appointment against a temporary post of clerk likely to continue for an indefinite period in this Bank subject to the following terms and conditions....."

The last paragraph of the said letter makes the appointment effective from 5th May, 1980.

(3) It is stated that in the year 1985 (as on 1st January, 1985), the Respondent Bank published a tentative seniority list of Clerks/ Steno-typists/SDCs/Accounts Clerks. When this was published, the Petitioner was surprised to find that his name stood included at Serial No. 51 although his date of appointment was correctly mentioned as 4th August, 1978. Learned Counsel for the Petitioner submits that people who had joined after the Petitioner [such as persons at Serial Nos. 21, 23 to 50] were placed above him. Learned Counsel therefore submits, that Respondents, by placing him at Serial No. 51, made him junior to so many people and the only reason for doing so was because they reckoned his senority w.e.f. the date of his permanent absorption i.e. 5th May, 1980 and did not count the period he had rendered as an *ad-hoc* employee i.e. the period from 4th August, 1978 to 5th May, 1980.

(4) Being aggrieved, the Petitioner sent Annexure P-3, which is a copy of the Legal Notice through his lawyer and demanded justice. However, the Respondents did nothing and on the contrary, in October 1988, they promoted persons who were junior to the Petitioner without so much as even bothering to reply to the said legal notice.

(5) Mr. Punit Bali, Learned Counsel for the Petitioner submits that under Rule 8.3 of the Haryana State Co-operative Bank's Staff

Service (Common Cadre) Rules, 1976, there are only three modes of recruitment and they are through :—

(a) *ad-hoc* appointments;

(b) temporary appointments; and

(c) regular appointments.

Mr. Bali further submits that the Petitioner was appointed under Rule 8.3 of the aforesaid 1976 Rules by following one of the modes of recruitment namely by appointing him on *ad-hoc* basis of 4th August, 1978. According to him, there was thus no irregularly and consequently, the period rendered by the Petitioner on such *ad-hoc* capacity should have been counted and could not have been snatched away depriving him of his service benefits.

(6) Mr. Subhash Ahuja, learned Counsel for the Respondents No. 2, submits that the Writ Petition is not maintainable because the Petitioner has not impleaded all those persons who would be affected by reason of any Order that may be passed in this case. He further submits that the seniority list was published on 1st January, 1985 and the Petitioner did not object to the same and he filed the Writ Petition only on 27th March, 1989 and therefore, the Writ Petition should be dismissed as being belated. He further submits that under Rule 8.6 of the aforementioned Rules, the *ad-hoc* appointment comes to an end on the exipry of a period of 6 months, which in the case of the Petitioner, would be deemed to have ended on 4th December, 1979. He further submits, with reference to the statements made in the Written Statement of the Respondent No. 2, that the Petitioner remained on an *ad-hoc* capacity as a Clerk w.e.f. 4th August, 1978 to 3rd May, 1980 but during this period there were a number of breaks in service. Learned Counsel submits that these breaks are all the more reason why the benefit of continuous service cannot be given to the Petitioner.

(7) So far as the point relating to delay is concerned, this Court is not inclined to give much importance to this submission becuase it is seen that the Petitioner had sent the Legal Notice as early as on 21st November, 1988,—*vide* Annexure P/3. The Respondents did not even bother to reply. In fact in paragraph 5 of the Written Statement, the Respondents have admitted that they received the Legal Notice. However, in order to escape the charge that they chose in ignore the

same and remained silent, these Respondents have replied to the same in a very casual and routine manner, as under :—

> "In reply to this para it is submitted that legal notice of the petitioner was received by the respondent-Bank, i.e. Annexure : P.3. Since the objections raised by the petitioner in his legal notice were totally vague, baseless and friviolous and not maintainable it was filed." (SIC) (emphasis added)

(8) The reply given, apart from being ludicrous speaks volumes about the manner in which the Respondents dealt with the Petitioner. There is nothing on record to establish as to who considered the legal notice to be vague, baseless, frivolous and not maintainable. There is also nothing on record to show that if at all there was such a consideration, then what were the materials before the Respondents to come to the conclusion that the same was devoid of merit. A Mere bald statement made by the Respondents in their Written Statement cannot be accepted in the absence of supportive materials.

(9) The Respondents must bear in mind that they were dealing with a Legal Notice. Once they admit that they had received it, they were bound to have considered and disposed it off by a speaking Order and in accordance with law. It is not enough to merely say that the same was totally vague, baseless, frivolous and not maintainable. Every employer in a democratic setup governed by a Constitution, which is as sacrosanct as the Constitution of India, is expected and supposed, to act and behave reasonbly and in a fair and equitable, manner. They must also act like a model employer. This Court, after having very carefully read and perused the contents of the Legal Notice which has been brought on record,—*vide* Annexure P-3, is definitely of the opinion that it was neither vague nor baseless nor frivolous nor could it have been termed as "not maintainable". In fact, the contents of the Legal Notice were such that the Respondents perhaps had no answer and that was why they again perhaps chose to merely **"file"** it ! The relevant portions of the said Legal Notice would therefore be worth quoting and they read thus :-

> "1. That my client was appointed as a clerk on 4th August, 1978 on *ad-hoc* basis for a period of six months. Prior to the expiry of the period aforesaid his term for *ad-hoc* appointment was extended from time to time till he was finally obsorbed on 5th May, 1980 on regular basis.

2. That as per Haryana State Co-operative Bank Staff's Service (Common Cadre) Rules, 1976 and the provisions contained therein, the seniority is based upon the length of service and therefore, my client although appointed initially on *ad-hoc* basis on 4th August, 1978 against which post he was finally absorbed on regular basis, has necessarily to rank senior to all those who were appointed after 4th August, 1978.

3. That it is settled law that if the ad-hoc service finally results into absorption of the civil servant on regular basis, the period spent on ad-hoc basis cannot be counted as nonest and has necessarily to be counted towards seniority."

4. That the promotion order passed recently reflects that instead of counting service of my client from 4th August, 1978, the same has been considered from 5th May, 1980 when he was given regular appointment. Accordingly, persons junior to my client have also been promoted. It further transpires from the records maintained by your goodself that many other persons in the same category of service have been shown senior to my client irrespective of the fact that they were appointed after 4th August, 1978. The list of such persons is separately annexed with their respective dates of appointments." [SIC] **[but emphasis added]**

(10) Can anybody reading the aforesaid few lines of the Legal Notice say that the Petitioner's claims were vague, baseless, frivolous and not maintainable ? After all, the Petitioner felt that injustice had been meted out to him when other persons appointed after him were promoted. He certainly therefore did have the right to feel aggrieved when the period spent by him on ad-hoc service was not counted. Therefore, **way back in the year 1988,** he stated that it was *a settled law that if the ad-hoc service finally results into absorption of the civil servant on regular basis, the period spent on ad hoc basis cannot be counted as nonest and has necessarily to be counted towards seniority.* This is **exactly** what the Constitution Bench of the Hon'ble Supreme Court of India has also said in the case

of **Direct Recruit Class-II Engg. Officers' Assocn.** versus **State of Maharashtra (1) (in para 44 at page 1627).** The relevant portions of their Lordships observations in para 44 are as follows :—

"(44). To sum up, we hold that :

(A) Once an incumbent is appointed to a post according to rule his seniority has to be counted from the date of the 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 regularization of his service in accordance with the rules, the period of officiating service will be counted."*

(11) In terms of the judgment of the Hon'ble Apex Court, one must consider two questions, viz., (a) whether the Petitioner was appointed as per Rules and secondly, (b) If not, then whether the Petitioner continued on the post uninterruptedly till the regularization of his service ?

(12) On the question as to whether the Petitioner was appointed as per Rules, this Court notices from the pleadings, that there is no dispute about the existence of "The Haryana State Cooperative Bank's Staff Service (Common Cadre) Rules, 1976" [hereinafter referred to for the sake of brevity as the said Rules]. While referring to and quoting Rule 8.3 of the said Rules in Para-6 of the Writ Petition, the Petitioner has stated that *"ad-hoc appointments are permissible under Statutory Rules" [SIC] and that "it is positively asserted that the petitioner at the time of his ad-hoc appointment possessed the requisite qualifications laid down under the Rules for appointment to the post of Clerk" [SIC].*

(1) AIR 1990 S.C. 1607

(13) The reply given by the Respondent No. 2 is in paragraph-6 of the Written Statement. It is stated therein that *"Para 6 of the Writ Petition is admitted to the extent it reproduces rule 8.3 of the Haryana State Cooperative Staff Service (Common Cadre) Rules, 1976. Rest of the averments contained in this para of the writ petition are totally misconceived and misleading and hence not admitted."*

(14) Thus the existence of Rule 8.3 of the said Rules has neither been denied nor disputed. What **has** been denied are the statements of the Petitioner to the effect that *ad-hoc* appointments were permissible and that the petitioner, at the time of his ad hoc appointment, possessed the requisite qualification laid down under the Rules for appointment to the post of Clerk.

(15) In this context, it is relevant to notice Rules 8.3 and the relevant portion of Rule 8.6 of the said Rules which read thus :—

**8.3 Nature of Appointment**

An appointment may be made in **any** of the following **manners** subject to the prescribed qualifications for the post :—

(a) One *ad-hoc* basis.

(b) Temporary basis

(c) On regular basis (substantive)

**8.6 Appointment by direct recruitment**

Except in the case of *ad-hoc* appointment where the period **shall not exceed 6 month** and where the number of such appointment shall not exceed 5% of the sanctioned strength of that category of the post : ....."

(16) It is evident that under Rule 8.3 which is a part of chapter II of the said Rules and which relates to Appointment and Training, three modes of appointment have been prescribed. The written statement of the Respondent No. 2 does not deny the fact relating to the appointment of the Petitioner on ad-hoc basis. In paragraph 3 of the written statement, the Respondents have stated that the Petitioner remained on ad-hoc basis as clerk since 4th August, 1978 to 3rd May, 1980 with certain breaks. The details of the breaks

have been given in this paragraph. Upon reading the contents of the said paragraph, it is evident that there were 4 **(four) breaks in all** and the total number of days said to be breaks were 12 **(twelve)** days. These details, given in paragraph 3 of the Written Statement, discloses the periods of ad-hoc service and the breaks in the following manner :—

**Period of ad-hoc service and No. of Breaks in**

**between**

4th August, 1978 to 3rd February, 1979

**1 day's break**

5th February, 1979 to 4th May, 1979

**2 day's break**

7th May, 1979 to 6th August, 1979

**1 day's break**

8th August, 1979 to 19th January, 1980

**8 day's break**

28th January, 1980 to 26th April, 1980

(17) It is thus evident that the **first** break **after** 3rd February, 1979 is only for 1 (one) day. The Petitioner was thereafter again engaged again on 5th Feburary, 1979. The **Second** break **after** 4th May, 1979 is for 2 (two) days. The Petitioner was thereafter taken back in service on 7th May, 1979. The **third** break **after** 6th August, 1979 is for 1 (one) day. The Petitioner was taken back in service on 8th August, 1979. The **fourth and last break** is **after** 19th January, 1980 which lasted for 8 (eight) days.

(18) Thus, the total number of breaks as is evident from the statement made in the written statement itself is only 12 days.

(19) The aforementioned statement made by the Respondents themselves in paragraph 3 of the written statement goes to show that the appointment of the Petitioner, after having been taken on in an ad-hoc capacity, **was allowed to be continued with only 12 short breaks in between but right up to 26th April, 1980 i.e. the date**

**on which he was permanently absorbed** making the said appointment efective on and from 5th May, 1980.

(20) Therefore this Court cannot accept the plea/denial of the Respondents to the effect that the Petitioner did not possess the requisite qualifications because if he was disqualified, then they could have easily terminated his services forever but they did not do so. On the contrary, they allowed him to remain, and in order to circumvent the operation of Rule 8.6, they ensured that just before 6 months, there was a break of 1 or two days and thereafter they again re-inducted him. Only the last break, just before his permanent absorption, was for 8 days.

(21) This Court is therefore of the view that the denial of the Respondents has been resorted to only for the sake of denial and as such the same must be rejected.

(22) Another striking feature about the letter of appointment is that it clearly stated that the Petitioner was being offered appointment against a temporary post of a clerk, **which was likely to continue for an indefinite period of time.** Thus, though the appointment was against a temporary post but the Respondent made it clear that **it was likely to continue for an indefinite period.** The overall picture, from the narration of the sequence of events, shows therefore, that the Petitioner was firstly inducted on an ad-hoc capacity and then he was allowed to continue on that post till the date of his absorption. It is also evident that short breaks were created for 1+2+1+8 (12 in all) days in the manner indicated above. In any event, short breaks of 1, 2 and 8 days are such that they cannot be deemed to be major breaks at all because they were followed each time by the immediate re-induction of the Petitioner. The last break is of 8 days but in the opinion of this Court and in the interests of justice, this should not come in the way of the Petitioner to seek continuity in service.

(23) Thus, this Court has no hesitation in holding that since the appointment of the Petitioner was allowed to continue till absorption, the plea taken by the Respondents to the effect that the initial appointment of the Petitioner was made without following the procedure and without considering the claims of other eligible candidates is plainly misconceived. Such pleas are therefore rejected and it is held that the interruptions of 1 + 2 +1 + 8 days between

4th August, 1978 to 26th April, 1980 cannot be treated as interruptions/ breaks because these short periods, each time, ended in the re-induction of the Petitioner and he was allowed to continue till his final absorption. Thus the Petitioner must be deemed to have been in continuous service and the breaks of 1 + 2 +1 + 8 days, in the interests of justice, must be condoned so as to entitle the petitioner the benefit of continuity in service.

(24) Taking into consideration the fact that the Petitioner was taken on in employment on 4th August, 1978 and was allowed to continue right up to the date when he was permanently absorbed, this Court is of the opinion that this is the minimum that the Petitioner must be granted. This Court has already held that the breaks only of 12 days were such that they should not prevent the Petitioner the status of continuity in service. The Respondents, in order to balance Rule 8.3 with 8.6, appear to have created the aforesaid breaks but at the same time, did not tell him to go because his services were obviously required.

It would therefore be reasonable to expect that in the process of balancing the two Rules, there were bound to be one or two intervals. In instant case there were only four. What is therefore relevant is not the length of the intervals or the break. What is really relevant is that one must take into consideration as to whether these breaks were so gross that they disentitled the Petitioner totally and completely. **In the opinion of this Court, they did not.**

This Court is therefore inclined to taken the view that firstly, the Petitioner was appointed as per Rules and then, since those Rules made the tenure fixed for 6 months, the Respondents, considering their needs, created breaks and allowed the Petitioner to continue till he was finally absorbed. Therefore, even it be contended by the Respondents that the initial appointment was not as per Rules, even then, they cannot dispel the contentions of the Petitioner because they themselves allowed the Petitioner to continue on the post till his absorption in service. So far as the interruptions are concerned, this Court, in the preceding paragraphs, has already held that the breaks of only 12 days were such that they should not prevent the Petitioner the status of continuity in service. This Court has also held that the Respondents, in order to balance Rule 8.3 with 8.6, appear to have created the aforesaid breaks but at the same time, did not tell him to go because his service were obviously required.

(25) However, while concluding, this Court must take into consideration that the Petitioner has prayed that after counting his *ad hoc* period, his seniority be fixed with all consequential benefits. It is true that the Petitioner has not impleaded all persons who could be affected, but merely because he has not done so, should it be taken to be so fatal so as to disentitle relief to him and that too in the background of the present facts and circumstances of this case ?

The answer is in the negative and exercising jurisdiction under Article 226, this Court must do equity between the Parties once it comes to the conclusion that injustice was meted out to the Petitioner. **Here is a case** where, on the one hand, the Petitioner was taken in employment and thereafter, was allowed to continue till absorption. On the other hand, the Respondents promoted others who were junior to the Petitioner by not counting the period of approximately 1 year and 9 months which the Petitioner had spent as an *ad hoc* employee with only 12 short breaks of 1 day + 2 days + 1 day + 8 days.

In the year, 1988, when the Petitioner sent a legal notice saying that his juniors should not have been promoted over him, the Respondents kept totally silent and now, in their Written Statement, they come forward with a weird explanation saying that the said notice was misconceived and therefore, **"filed"** !

(26) This Court is plainly of the view that gross injustice has been meted out to the Petitioner. Therefore, exercising jurisdiction under Article 226, this Court must undo injustice but at the same time, following the principles of *Actus curiae neminem gravavit,* it must also not cause prejudice to those who are not before it.

(27) Consequently, this Court disposes off the writ petition and Orders that the Respondents must NOTINALLY fix the seniority of the Petitioner and having done so, they must calculate and release to him all consequential benefits that would have enured to his credit had the Respondents dealt with the legal notice in time and in accordance with law instead of **"filing"** it in their archives. This Order should not be construed to mean that the Respondents have been given the liberty of passing any Order that may prejudice the promotions given to those persons who are not before this Court. The Writ Petition is accordingly disposed off.

(28) No Order as to costs.

***R.N.R.***