

From

No 8pl-I/2009-2pl (21)

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

To

1. All the Head of Departments, Commissioners of Divisions,
All Deputy Commissioners and Sub Divisional Officers
(Civil) in Haryana
2. Registrar, Punjab & Haryana High Court, Chandigarh

Subject:-

Date: 12-6-09
Filing of Review Application against the orders dated 04.07.2008,
passed by the Hon'ble High Court in CWP No. 7862 of 2008-
Hanumant Singh & Others V/s State of Haryana.


Sir,

I am directed to refer to the subject noted above and to say that Hon'ble High Court of Punjab & Haryana disposed of various CWPs in terms of judgement of Hon'ble Punjab & Haryana High Court in CWP No. 7862 of 2006 titled Hanumant Singh & Others V/s State of the Transport Department. The operative part of the judgement is reproduced as under:-

- (a) adhoc/work charged service followed by regular service shall not be counted for the purposes of grant of higher pay scale/benefit of Assured Career Progression Scheme on completion of 8/18 or 10/20 years of service.
- (b) adhoc/work charged service followed by regular service shall not be counted for the purposes of grant of additional increment in the running scale on completion of 10/20 or 8/18 years of service.

2. Hon'ble High Court also decided in CWP No. 11054 of 2008- Mohinder Singh Vs State of Haryana in terms of its judgement in Hanumant Singh Vs State of Haryana (in CWP No. 7862 of 2006 decided on 4.7.2008) whereas, the facts of this case were not identical with the facts of CWP No. 7862/2006. Therefore, Government has decided to file Review Application. A copy of draft Review Application filed by the Education Department in CWP No. 11054/2008- Mohinder Singh Vs State is enclosed herewith with a direction to re-examine the cases pertaining to their departments and if the facts of cases of your department are different from the facts of the case of Hanumant Singh and the case has been disposed of in terms of judgement in CWP No. 7862 of 2006, in that case Review Application may be filed in the Hon'ble Punjab & Haryana High Court in consultation with Advocate General, Haryana without any delay.

Yours faithfully,


Senior Accounts Officer (PR)
for Financial Commissioner & Principal Secretary
to Government, Haryana, Finance Department.

12/06

IN THE HON'BLE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

Review Application No-----of 2009
In CWP No. 11054 of 2008

Mohinder Singh and other

Petitioners

Versus

State of Haryana and other

Respondents

Application under Section 151 read with order 47 of CPC to review the
Order dated 7.7.2008 of this Hon'ble court in CWP No. 11054 of 2008.

Respectfully Showeth :

1. That CWP No. 11054 of 2008 was filed by Sh. Mohinder Singh and other with prayer to quash the orders ^{dated} 15.3.2002(P-4) & 23.4.2003(P-5), 07.06.2008(P-8) by which respondents denied the additional increments after 8/18 years of service by including adhoc service rendered by them.
2. That said writ petition was listed for hearing on 07.07.2008 for notice of Motion. During the course of argument it was pointed out by the counsel appearing on behalf of petitioners that relief claimed by the petitioners is squarely covered in their favour as per ratio of judgment of this court in Hanumant Singh and others vs State of Haryana and others(CWP No.7862 of 2006)decided on 4.7.2008. Since the counsel appearing on behalf of State Government failed to show anything to the contrary, this Hon'ble Court was pleased to allow the said writ petition in the same terms as in Hanumant Singh's case(supra).
3. That in CWP No. 11054 of 2008 the petitioners challenged the Government Notification dated 15.3.2002 and clarificatory letter dated 23.4.2003 and claimed benefit of adhoc service for grant of additional increments after 8/18 years service. Therefore, issue involved in this writ petition was already settled by Division bench of this Hon'ble Court in a bunch of writ petitions (in main CWP No. 15555 of 2003, decided on 27.4.2004) and in CWP No. 15055 of 2003 , decided on 16.8.2006 titled as Badal Singh Vs. State of Haryana reported as SLR 2006(6) 379. Copy of judgment dated 27.4.2004 in main CWP No. 15555 of 2003 and judgment dated 16.8.2006 in CWP No.15055 of 2003 are annexed herewith as annexure R-1 and R-2. Since the issue involved in this case was already settled by this Hon'ble Court and both these judgments were not before this Hon'ble Court at the time of disposing of Writ Petition filed by the petitioners and the case was disposed of at motion level. The present review application is filed with a prayer to review the order dated 7.7.2008 on the following grounds:-
 - i) That the Government instructions dated 15.3.2002 (P-4) were issued by the State Government on the basis of observations of Hon'ble Apex Court in the cases mentioned therein. Thereafter, clarification was

given vide letter dated 23.4.2003 that excess amount already received by Government employees due to grant of benefit of adhoc service for grant of additional increments after 8/18 years will not be recovered.

- ii) That said decision of State Government was challenged by Government employees in various writ petitions. A bunch of writ petitions in main CWP No. 15555 of 2003 was disposed of by this Hon'ble Court. In these writ petitions the petitioners challenged the Government Notification dated 15.3.2002 and clarificatory letter dated 23.4.2003. While disposing of these writ petitions this Hon'ble Court considered all the facts and circumstances of the case and observations of Hon'ble Apex Court in some cases on this issue. Accordingly, this Hon'ble Court was pleased to dismiss all the writ petitions vide order dated 27.4.2004(A-1). However, it was observed by this Hon'ble Court that excess amount already received by Government employees due to grant of additional increments after 8/18 years service by counting adhoc service rendered by them cannot be recovered.
- iii) That again the same issue was considered by this Hon'ble Court while disposing of CWP No. 15055 of 2003 (R-2). Operative part of the judgment is reproduced as under :-

"If the facts of the present case are examined in the light of the principles laid down by the Hon'ble Supreme Court in the aforementioned judgments, it become evident that Petitioner No. 24 and all other petitioners are not entitled to count the period of their adhoc service for the purposes of earning increment at the stage of 8/18 years or 10/20 years. Smt. Santosh Sharma was appointed on adhoc basis on November 7th, 1972 and her services were regularized w.e.f. January 1st, 1979. It is obvious that her services could be counted from the date of regularization for the purposes of earning additional increments at the stage of 8/18 years or 10/20 years as the case may be. Similar would be the position in respect of other petitioners.

The prayer of the petitioner that no recovery should be made would also not require any detail consideration in view of the letter dated April 23rd, 2003 issued by the respondent department. The aforesaid letter in fact incorporate the principle laid down by the Hon'ble Supreme Court in Sahib Ram Vs. State of Haryana and Others (1995) Suppl. 1 SCC 18 wherein it has been held that if upgraded scale is given due to wrong construction of the relevant order by the authority concerned without any mis- representation by the employee, then the recovery of the payment already made would become irrecoverable."

iv) That the issue involved in the present case was already settled by this Hon'ble Court in the above mentioned cases. In para 12 of the writ petition it has been mentioned by the petitioners that "the petitioners were given the benefit by the respondents themselves. They concealed nothing while being granted the aforesaid benefit. In such circumstances, the orders of recovery is contravent to the principle laid down by the Hon'ble Apex Court vide order dated 19.9.94 (P-10) and 20.2.2001 (P-11). Whereas, it has already been decided vide clarificatory letter dated 23.4.03 that excess amount will not be recovered.

v) That present case was disposed of by this Hon'ble Court in terms of judgment in CWP No. 7862 of 2006. A bunch of writ petition in main CWP No. 7862 of 2006 Hanumant Singh Vs. State of Haryana was listed for hearing on 4th July, 2008. While disposing of the said bunch of the writ petition this Hon'ble Court was pleased to consider the facts and circumstances of CWP No. 7862 of 2006. In that case the prayer of the petitioner was to quash order dated 10.5.06 vide which the benefit of seniority, higher standard pay scale and ACP scale granted after completion of 8/18 years service had been withdrawn.

It was observed by this Hon'ble Court that the petitioners were appointed as Diesel Pump Attendants on 11.12.73, 20.5.1977 and 18.7.1974, respectively. Subsequently they were promoted to the posts of Assistant Cashier in the pay scale of Rs. 400-600. Even list of Diesel Pump Attendant was prepared and the names of the petitioners also figured in seniority list.

The first grievance of the petitioner in civil writ petition No. 7862 of 2006 was that initially they were appointed as Diesel Pump Attendants through proper channel and their appointment was made after following due procedure. As such, they were entitled to seniority from the dates of initial appointments as Diesel Pump Attendants. The second grievance of the petitioner was that from the date of regularization i.e. w.e.f. the grant of seniority they are also entitled to regular pay scale of Diesel Pump Attendants. Apart from this they were also entitled to the revision of pay scale as admissible to Haryana Government employees by introduction Haryana Revised Pay Scales Rules, 1998 which were made applicable w.e.f. 1.1.96. The petitioners had also averred that persons who are junior to them have already been granted pay scale of Rs. 5000-7800/-. Those junior persons were either appointed or promoted much after their dates of promotion as Assistant Cashiers. They also claim the higher standard pay scales after completion the 10/20 years service.

The case of the petitioner in CWP No. 7862 of 2006 was that in compliance with the orders passed in a petition filed by one Ishwar Singh, they

have been granted the benefits and their pay had been fixed and arrears have been paid to them. Their appointment in the year 1973, 1974 and 1977 is substantive and not adhoc and even the benefit of seniority had been given to them. They received notices dated 8.3.06 to which they reply but without considering their reply, their substantive claim have been declined and the benefit of pay and Assured Career Progression /Higher Standard Pay Scale had been withdrawn vide orders dated 10.5.2006 and even recovery from them had been ordered which could not be done.

As per the stand taken by the respondent in CWP No. 7862 of 2006 adhoc service is not to be counted for the benefit of higher standard pay scale/ Assured Career Progression on completion of 10/20 years service because the petitioners were appointed as Diesel Pump Attendants on temporary/adhoc basis. While disposing of the said case this Hon'ble Court considered all the incentives schemes issued by the State of Haryana vide which it was decided to grant some incentives in the absence of promotion with an object to remove stagnation. This Hon'ble Court also considered the Govt. instructions dated 15.3.02 which was based on the observations of Hon'ble Apex Court in some cases mentioned therein. Accordingly, it was held that :-

- (a) the adhoc/work-charged service shall not be counted for the purposes of grant of higher pay scales/benefit of Assured Career Progression Scheme on completion of 8/18 or 10/20 years service.
- (b) Adhoc/work-charged service followed by regular service shall be counted for the purposes of grant of additional increments in the running scale on completion of 10/20 or 8/18 years of service.
- (c) adhoc service s/followed by regular service shall be counted for the purposes of pension and seniority.

Whereas, the facts of the present case were not identical with the facts of CWP No. 7862 of 2006. Because in the present case the petitioners were not claiming the benefit of seniority by counting their adhoc service. Moreover, the issue with regard to counting of adhoc service for grant of additional increments had already been settled by this Hon'ble Court in CWP No. 15555 of 2003 (R-I) and CWP No. 15055 of 2003 (R-II) whereas, these judgments were not before this Hon'ble Court. Therefore, the orders dated 7.7.08 of this Hon'ble Court in CWP No. 11054 of 2008 requires to be reviewed by this Hon'ble Court.

In view of the above explained position, it is respectfully prayed that the orders dated 7.7.08 may kindly be reviewed in the interest of justice.

Place : Chandigarh
Dated :

Government Pleader Haryana