



MOST URGENT/

DATE BOUND/

COURT CASE

No. 6/77/2019-3PR(FD)

From

Additional Chief Secretary to Govt. Haryana,
Finance Department.

To

1. All of the Administrative Secretaries in Haryana State.
2. All of the Head of the Departments in Haryana State.
3. All of the Divisional Commissioners in Haryana State.
4. All of the Deputy Commissioners in Haryana State.
5. All of the SDOs in Haryana State.

Dated, Chandigarh the 02.05.2019

Subject:- Regarding counting of Adhoc/ Work Charge/ Temporary Service towards grant of additional increments/ HSS/ ACP pay scale - Civil Appeal No. 321 of 2015 State of Haryana & ors. Vs. Rajender Kumar & ors. With other connected Civil Appeals and SLP(C)s.

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I have been directed to invite your attention on the subject noted above and to state that this case is regarding counting of adhoc/ work charge/ temporary service towards grant to additional increments/ HSS/ACP pay scales. In this regard a bunch of Civil Appeal No. 321 of 2015 State of Haryana & ors. Vs. Rajender Kumar & ors. with Civil Appeals Nos.322, 328, 323, 330, 329, 344, 333, 334, 331, 335-336, 338, 337, 339, 340, 341, 342 & 343 of 2015 and Civil Appeals Nos. 4420-4424 & 2484 of 2016, SLP(c) Nos. 25967/2009, 14549,24308, 17929, 35367 & 30699 of 2015, SLP(c)..... . . . CC No. 14194/2016 came up for hearing before the Division Bench of Hon'ble Supreme Court of India on 10th May, 2018 and dismissed Civil Appeals/SLP(C)s.

However, earlier, similar case of State of Haryana Vs. Haryana Veterinary and AHTS Association & another, 2000 (4) SCT 664, in Civil Appeals Nos. 5740-5741 of 1997, State of Haryana Vs. Ravinder Kumar & other connected matters and in State of Haryana Vs. Sita Ram, 2014 (1) SCT 515 were allowed by Hon'ble Apex Court.

Recently, the Hon'ble High Court in CWP No. 6305 of 2009 and connected case, after careful reading of the Scheme of Additional Increments on 10th/20th years of service, Modified Schemes of Additional Increments on 8/18 years of service, Scheme of Higher Standard Scales & HCS (ACP) Rules, 1998 as well as Judgments of Hon'ble Apex Court in State of Haryana Vs. Haryana Veterinary and AHTS Association & another, 2000 (4) SCT 664, in Civil Appeals Nos. 5740-5741 of 1997, State of Haryana Vs. Ravinder Kumar & other connected matters, in State of Haryana Vs. Sita



Ram, 2014(1) SCT 515 and a series of judgments delivered by Hon'ble Supreme Court during the period between the law declared in Haryana Veterinary and AHTS Association and Hanumant Singh Cases etc in the preceding paragraphs of the judgment passed on 17.09.2018, found that **'the expression which is recurrent in these schemes/ Rules and the burden of the song played of minimum requirement of regular satisfactory service or regular service, the intention of the Government that the service to be reckoned for the purpose for grant of time bound promotional benefits such as Additional Increments/ ACP Scales is without doubt REGULAR SERVICE and not just service so as to be inclusive of temporary, adhoc or work charge service, and this plain meaning is clearly discernible through the thread of the concession of ameliorate stagnation in service which was accepted bane of efficiency in administration so that the will to work is not stifled. Once the Scheme or the Rules categorically provide the REGULAR SERVICE, the same is to be taken as such without making any further interpolations or introducing interpretative processes more than what is required in the text and context of how the benefit work. After collating and going through the various judgments of the Supreme Court as well as taking into account into consideration the law declared in Haryana Veterinary & AHTS Association, Punjab State Electricity Board, Vijay Singh and Sita Ram Cases, the law laid in Hanumant Singh's case by this court with respect has to be DISREGARDED AS NOT THE CORRECT LEGAL POSITION OR BINDING RATION ON SENIORITY, ADDITIONAL INCREMENTS, HIGHER STANDARD SCALE OR ANY OTHER TIME BOUND PROMOTIONAL INCENTIVES vis-a-vis its relationship with previous adhoc, temporary or work charged service do not contain binding ratio on legal issues involved w.r.t. aforesaid decision of Hon'ble Apex Court and ordered as under:-**

- (i) *The petitioners are not entitled to count their period of adhoc/work-charged/temporary service towards seniority in the cadre before the date they were regularized and became members of service for the first time in terms of the relevant policies of State Government.*
- (ii) *The petitioners are not entitled to benefit of Additional Increments for the period of their ad hoc/work-charged service on completion of 8/18 years of service as well as 10/20 years, since such period does not qualify as regular satisfactory service as per modified scheme dated August 7, 1992.*
- (iii) *Similarly, the petitioners are not entitled to the benefit of financial upgradations of Higher Standard Scale or to the Assured Career Progression Scales for the period of their adhoc/work charge/temporary service etc. Only regular service rendered satisfactorily counts for claiming rights to these monetary benefits strictly as per the provisions of these schemes.*

And therefore dismissed a bunch of 101 cases. "

Verdict



Moreover, the Ld. Advocate General, Haryana in Civil Appeal No. 322 of 2015 and other connected appeals which were dismissed on 10.05.2018 has opined on 12.02.2019 (**copy enclosed**) as under:-

“..... All the departments to file curative petition in the Hon'ble Supreme Court as the order dated 10.05.2018 is not laying down any proposition of law as the Hon'ble Judges has passed the order ignoring the earlier law laid down by this Hon'ble Court reported as 2012(8) SCC 633 titled as State of Haryana Vs. Vijay Singh and others, (1992) Suppl. I SCC 272 (1996) 10 SCC 444 titled as Y.H. Pawar Vs. State of Karnataka and others and subsequent law (2015) 11 SCC 30 Secretary, Minor and Irrigation Department and others Vs. Narender Kumar Tripathi and others are also contrary to settled by Hon'ble Division Bench in LPA No. 1743 of 2016 decided on 14.09.2016 against which SLP(c) No. 34042 of 2016 titled as Harpal Singh Vs. State of Haryana was dismissed on 28.11.2016. Similarly, RA filed as mentioned above that adhoc service can't be counted for seniority as held by Hon'ble Supreme Court in different judgments cited supra.....”

Therefore, it is advised that a Curative Petition may be filed in the Hon'ble Apex Court in the relevant case pertaining to respective department against the Judgment passed by the Hon'ble Apex Court on 10.05.2018 in the subject cited above to avoid any Contempt Petition at belated stage otherwise any adverse action, if any, is taken by the Hon'ble High Court, the complete onus thereof shall be upon Administrative Department.

Udram
Chief Accounts Officer,
for Additional Chief Secretary to Government Haryana,
Finance Department

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Sub Memo No. 17/169-2009 HRM-1(II) dated Panchkula 4.1.2018
from Director Elementary Education, Haryana.
Civil Appeal No. 321, 322, 323, 328, 329, 330, 331, 333, 334,
335, 336, 337, 338, 339, 340, 341, 342, 343, 344 of 2015 and
4420-4424 and 2484 of 2016

I have gone through the order dated 10.5.2018 passed in Civil Appeal No. 322 of 2015 and other connected appeals passed by Hon'ble Supreme Court and the other material tagged with the file by the office of Director Elementary Education, Haryana, this office already tendered the opinion and advised the counsel at Delhi to file Review Application which was filed and the same stands dismissed on 4.2.2019. Now the file has been put up before the undersigned to opine that the decision dated 10.5.2018 passed by the Hon'ble Supreme Court is contrary to the earlier law settled by the Hon'ble Supreme Court as per documents tagged with the above referred memo from the office of Director, Elementary Education, Haryana, Panchkula with the proposal to segregate the appeals of the Education Department, as the petitioners/employees are claiming the consequent benefits of ACP Scales and promotion retrospectively.

That after passing the order dated 10.5.2018 by the Hon'ble Supreme Court, this office tendered the opinion to the O/o Commissioner, Higher Education, Haryana in the month of July 2018 and department was advised to file RA. The counsel for State of Haryana namely Sh. Arun Bhardwaj filed RA and as per verbal information received from him, the RA was dismissed on 4.2.2019. Copy of the order is still awaited.

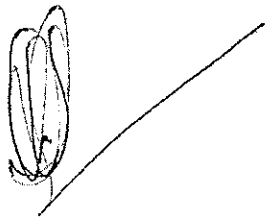
It is advised to all the departments to file a curative petition in the Hon'ble Supreme Court as the order dated 10.5.2018 is not laying down any proposition of law as the Hon'ble judges has passed the order ignoring the earlier law laid down by this Hon'ble Court reported as 2012(8) SCC 633 titled as State of Haryana and others Vs. Vijay Singh and others, (1992) Suppl. I SCC 272, (1996) 10 SCC 444 titled as Y.H.Pawar Vs. State of Karnataka and others and subsequent law (2015) 11 SCC 30 Secretary, Minor and Irrigation Department and others Vs. Narender Kumar Tripathi

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and others are also contrary to law settled by Hon'ble Division Bench in LPA No. 1743 of 2016 decided on 14.9.2016 against which SLP(C) No. 34042 of 2016 titled as Harpal Singh Vs. State of Haryana was dismissed on 28.11.2016. Similarly RA filed as mentioned above that adhoc service can't be counted for seniority as held by Hon'ble Supreme Court in different judgments cited supra.

Thus, taking into consideration the above stated facts, the undersigned is of the opinion that segregation of the appeals as proposed by the department it is not possible in view of the final decisions of all the Civil Appeals and all the departments are required to file curative petition in the Hon'ble Supreme Court against the order dated 10.5.2018 dismissing the above said Civil Appeals without laying down any proposition of law considering the earlier law laid down by the Hon'ble Supreme Court in plethora of judgments and also the Review Application decided on 4.2.2019. Copy of this opinion be sent to all the Administrative Secretaries as well as to Finance Department in pursuance to letter no. 165. Supreme Court Cell. D12 dated 1.9.2018, The Registrar General, Punjab and Haryana High Court, Chandigarh addressed to all the affected parties in all the Civil Appeal decided.

1. The Financial Commissioner and Principal Secretary to Govt. Haryana, Transport Department, Haryana, Chandigarh.
2. The Transport Commissioner, Haryana Chandigarh.
3. The General Manager, Haryana Roadways, Fatehabad.
4. The General Manager, Haryana Roadways, Hisar.
5. The General Manager, Haryana Roadways, Sonapat.
6. The Financial Commissioner and Principal Secretary to Govt. Haryana, Education Department, Haryana, Chandigarh.
7. Commissioner and Director General School Education, Haryana, Chandigarh.
8. Director, Elementary Education, Haryana, Panchkula.
9. Director, Secondary Education, Haryana, Panchkula.
10. Director, Primary Education, Haryana, Panchkula.
11. The Principal Secretary to Govt. Haryana, Finance Department, Haryana, Chandigarh.



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12. The Principal, Shaheed Atul Katria Govt. Girls Sr. Sec. School, Gurugram, Village Gurgaon.
13. The District Education Officer, Kurukshetra.
14. The Financial Commissioner and Principal Secretary to Govt. Haryana, Health Department, Haryana, Chandigarh.
16. The Director of Ayurveda, Haryana, Chandigarh.
17. The Ayurvedic Medical Officer, Government Ayurvedic Dispensary, Mahara-Tehsil, Gohana, Distt. Sonapat.
18. The Principal Secretary to Govt. Haryana, Technical Education Department, Haryana, Chandigarh.
19. The Director of Technical Education, Haryana, Panchkula.
20. The Principal, Kalpana Chawla Govt. Polytechnic for Women, Ambala City Haryana.
21. The Higher Education Commissioner, Haryana, Chandigarh.
22. The District Primary Education Officer, Gurgaon.
23. The Block Education Officer, Gurgaon.

(R.D.Sharma) 12/2/19
Dy. Advocate General, Haryana.
12.2.2019

Ld/A.G.

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15.2.2019
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Director,
Elementary Education
Haryana.

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