

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1) CWP No. 25680 of 2014
Date of decision: December 21, 2015

Ravinder Paul Malhi
..... Petitioner

Versus

**Punjab Water Resources Management & Development Corporation
Limited.**
..... Respondent

2) CWP No.18085 of 2014
Ram Piari
..... Petitioner

Versus

**Punjab Water Resources Management & Development Corporation
Limited and another**
..... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

**Present:- Mr. R.K. Arora, Advocate and
Mr. Anupam Singla, Advocate,
for the petitioners.**

**Mr. Manish Joshi, Advocate,
for respondents No.1 and 2.**

**Mr. P.S.Thiara, Advocate,
for the respondent.**

- 1. To be referred to the Reporter or not?**
- 2. Whether the judgment should be reported in the Digest?**

AMOL RATTAN SINGH, J.

1. The two petitioners in these two petitions seek quashing of the orders dated 21.07.2014 (Annexure P-11), 21.07.2014 (Annexure P-12), 28.08.2014 (Annexure P-13) and 22.10.2014 (Annexure P-14), passed by the respondents, vide which their pay scales and dates of annual increments have been re-fixed to their disadvantage. They have also challenged the seniority list, Annexure P-10, issued on 12.03.2014. Though these are two separate petitions, however the orders impugned in each petition are the same and have been annexed in the same sequence in each petition, i.e. Annexures P-10 to P-14.

The facts are first being taken, from **CWP No.25680 of 2014**.

2. The background of the matter is that the petitioner initially joined as a Clerk with the predecessor of the respondent Corporation, i.e. with the Punjab State Tubewell Corporation Limited (hereinafter to be referred to as the Corporation), on 05.12.1978. His services were first regularised vide order Annexure P-1, dated 16.07.1981 with immediate effect and thereafter, the date of regularisation was changed to 20.01.1979, vide order dated 20.09.1991 (Annexure P-2).

He was designated as a Senior Clerk in the pay scale of Rs.1200-2100, vide order dated 17.02.1992 (Annexure P-3) and thereafter, vide order, Annexure P-4, dated 21.06.2004, he was designated as a Junior Assistant in the pay scale of Rs.2500-2640. Vide the same order, the pay scale of Rs.1500-2640, stated to have been earlier given to him w.e.f. 01.01.1990, was given to him w.e.f. 20.01.1989.

3. On 07.02.1992, vide letter Annexure P-5, the respondent issued a tentative seniority list of Clerks, as on 30.09.1991, with the petitioner being assigned seniority at Sr.No.115, taking his date of

regularisation as the date of entry into service, i.e. 20.01.1979. In the same seniority list, one Darshana Kumari Sharma is stated, in the petition, to be shown at Sr. No.13, assigning her seniority from the date of her regular appointment, i.e. 06.01.1978. Though the seniority position of the said Darshana Kumar is not reflected in the abridged copy of the seniority list annexed as Annexure P-5 with this petition, however, it is borne out from the copy of the said letter dated 07.02.1992, as has been annexed, also as Annexure P-5, with the connected CWP No.18085 of 2014.

Subsequently, vide letter dated 14.01.1999 (Annexure P-6), the petitioner was, as stated in the petition, granted seniority w.e.f. 05.12.1978, i.e. the date on which he joined on *ad hoc* basis, as a result of which the petitioners' seniority was shown at Sr. No.69.

It is to be noticed that though, in paragraph 5 of the petition, it is stated that the petitioner was allowed the benefit of seniority with effect from the date of joining on *ad hoc* basis on 05.12.1978, the extract of the seniority list annexed with letter Annexure P-6, does not specifically state that seniority is being granted from that date. However, the respondent Corporation, in its reply to paragraph 5, has admitted the contention to be correct.

4. The aforesaid Darshana Kumari and 11 others filed CWP No.1267 of 1999, seeking quashing of the said seniority list dated 14.01.1999, on the ground that employees like the petitioner could not be given the benefit of service which they had rendered on *ad hoc* basis. However, as per the petitioner, there was no challenge to the order of regularisation w.e.f. 20.01.1979.

Another set of employees, i.e. one Amarjit Kaur and others,

including the petitioner in the connected petition (Ram Piari), filed CWP No.9718 of 2000 challenging the promotion of certain employees and prayed that they, the petitioners in CWP No.9718 of 2000, be promoted by granting them the benefit of *ad hoc* service, as reflected in the seniority list.

Thus, CWPs No.1267 of 1999 and 9718 of 2000, can actually be stated to be 'cross petitions'.

5. Both these petitions were disposed of on 26.09.2013, by a co-ordinate Bench, vide separate orders, taking into account the ratio of the judgments of a Full Bench of this Court in **Chambel Singh v. State of Haryana and another** (1995) 1 RSJ 382 and of the hon'ble Supreme Court in **Anuradha Mukherjee and others v. Union of India and others** (1996) 9 SCC 59. It was directed, in each of them, that the seniority of the employees be finalized, holding that only such *ad hoc* service can be counted towards reckoning seniority, where appointment in *ad hoc* capacity is made in accordance with rules and by mode of public appointment. It was held, in the order passed in CWP No.1267 of 1999, that the appointments of the respondents in that petition, were not made in accordance with rules.

6. In pursuance of the above directions, the Corporation issued another tentative seniority list on 29.11.2013, by which the benefit of *ad hoc* service, towards seniority, was withdrawn from the petitioner and, as per the petitioner, even the order of regularisation (w.e.f. 20.01.1979) was withdrawn and he was thereafter assigned seniority w.e.f. 20.07.1981, instead of 20.01.1979.

In the meanwhile, the petitioner had retired from service about a month earlier, on 31.10.2013.

It is contended in the petition that this change of seniority and

what is termed as, 'withdrawal of the order of regularisation', was without affording any opportunity of hearing to the petitioner.

7. The petitioner is stated to have raised his objections to the aforesaid seniority list, first on the ground that the orders by which he was regularised w.e.f. 20.01.1979 were not challenged and hence, there would be no question of withdrawing these orders, even pursuant to the directions of this Court vide its orders dated 26.09.2013, passed in CWPs No.1267 of 1999 and 9718 of 2000.

The other ground stated to have been raised, is that the petitioner had already retired and had been paid his gratuity on the basis of the last pay drawn by him and therefore, after retirement, the benefit of seniority and consequential benefits could not be withdrawn from him.

However, allegedly without deciding the objections filed by the petitioner, a final seniority list was issued on 12.03.2014 (Annexure P-10), by which the petitioner is shown to have been regularised w.e.f. 20.07.1981.

8. The letter with which the seniority list is annexed (Annexure P-10), however, states that when the tentative seniority list had been circulated on 29.11.2013, objections were invited from all concerned and after removal of all such objections, another tentative seniority list of Clerks was again circulated on 24.02.2014, yet again inviting objections thereto. No objections are stated to have been received to this seniority list and consequently, after the stipulated period of ten days had elapsed, the final seniority list was issued.

Consequent upon the finalization of the seniority list as above, the dates of placement of the petitioner as a Senior Clerk and as a Junior

Assistant have been changed to later dates and his pay also consequently reduced, after his retirement, from Rs.26030/- to 23790/- and payment of leave encashment to him has been withheld with a further direction for recovery from him of excess payment of salary and gratuity.

The order by which his placement in the scale of Rs.1200-2100 has been changed from 01.01.1986 to 20.07.1986 is dated 21.07.2014 (Annexure P-11); that by which his placement in the scale of Rs.1500-2640 has been changed from 20.01.1989 to 12.07.1995 is also dated 21.07.2014 (Annexure P-12) and the detailed order by which the dates of annual increments have been changed etc., consequent upon the change in his dates of placement in the aforesaid scales, is dated 28.08.2014 (Annexure P-13).

Vide order dated 22.10.2014 (Annexure P-14), leave encashment of Rs.4,52,010/- has been sanctioned and recovery of excess payment of salary to the tune of Rs.5,39,324/- and excess payment of gratuity of Rs.33,377/-, has been ordered. Thus, after off-setting payment of leave encashment against the recovery to be made, a total recovery of Rs.1,20,691/- has been ordered.

Hence it is all these orders, Annexures P-11, P-12, P-13 and P-14, that the petitioner is seeking quashment of, alongwith the letter/order dated 12.03.2014 (Annexure P-10), by which his seniority has been changed, by changing the date from which his seniority is to be counted, to be 20.07.1981, rather than 05.12.1978, i.e. the date on which he joined service on *ad hoc* basis.

The petitioner has also sought a writ of mandamus directing the respondent to release due payment of leave encashment on the basis of

the last pay actually drawn by him, without any reduction of pay and without any recovery to be made from him.

9. In its reply to the petition, at the outset, the Corporation has made a preliminary submission with regard to the refixation of pay etc. of the petitioner, being a result of the directions given by this Court vide order dated 26.09.2013, in CWPs No.1267 of 1999 and 9718 of 2000.

It is further submitted that the two writ petitions filed by Darshana Sharma and others and Amarjit Kaur and others, were admitted to regular hearing without any stay order and as such, an undertaking was obtained, by way of affidavits from employees initially appointed on *ad hoc* basis (including the petitioner), to the effect that the Corporation had issued placement orders of Clerks as Senior Clerks/Junior Assistants, with a clear stipulation that these orders would be subject to the final decision of this Court in those two petitions (CWPs No.1267 of 1999 and 9718 of 2000). A copy of the affidavit filed by the petitioner (in CWP No.25680 of 2014) Ravinder Paul Malhi, has been annexed as Annexure R-1 with the reply. However, there is no date shown on the copy annexed with the reply, though the original affidavit in the record of the respondents, is dated 19.12.2006.

10. It has further been stated in the reply, that this Court, in its aforesaid orders dated 26.09.2013, had directed that benefit of *ad hoc* service be not counted towards seniority and had further ordered that the seniority list be recast, consequent upon which the same has been done, as a result of which the seniority of the petitioner is based upon the date of his induction into regular service, thereby pushing down all other subsequent benefits granted while in service, i.e. higher designation and higher pay

scales.

It is further stated that a Letters Patent Appeal filed against one of the aforesaid judgments of this Court (in CWP No.9718 of 2000), by Amarjit Kaur and another, was also dismissed.

No replication has been filed to the written statement filed by the respondent.

CWP No.18085 of 2014

11. The facts of CWP No.18085 of 2014 are similar to those of CWP No.25680 of 2014, except for the dates of entry into service, regularisation and placement in different scales, in the case of this petitioner. The prayer made in this petition is also identical to the other one. However, a look at the said dates, would also be necessary.

The petitioner in this petition, Ram Piari, joined the Corporation as a Clerk, on *ad hoc* basis, on 31.10.1977. Her services were initially regularised from 16.07.1981, as in the case of the petitioner in the other petition, vide the same order, dated 16.07.1981 (Annexure P-1 with this petition also).

Thereafter, her services were regularised alongwith Amarjit Kaur and Jasbir Singh (non-petitioners here) vide order dated 20.09.1991 (Annexure P-2), w.e.f. 01.02.1978.

She was designated as a Senior Clerk also vide the same order as in the other case, dated 17.02.1992 (Annexure P-3), in the pay scale of Rs.1200-2100 w.e.f. 01.01.1986. Thereafter, she was designated as a Junior Assistant in the pay scale of Rs.2500-2640 also vide the same order dated 21.06.2004 (Annexure P-4 with this petition also), by which the date in which she had earlier been placed in the pay scale of Rs.1500-2640 was

changed from 01.01.1989 to 01.02.1988.

Vide letter Annexure P-5, dated 07.02.1992, she was shown to be at Sr. No.27 of the seniority list in which Darshana Kumari was shown at Sr. No.7, as already noticed in the facts of the other petition.

In this seniority list, seniority was assigned to her by showing her date of regularisation to be 01.02.1978, i.e. the revised date from which she was granted 'regularisation' vide the order dated 20.09.1991 (Annexure P-2).

As in the other case, vide seniority list Annexure P-6, dated 14.01.1999, she too was granted benefit of seniority from the date when she initially joined service on *ad hoc* basis, i.e. 31.01.1977.

11-A In this petition also, reference has been made to the cases filed by Smt. Darshana Sharma (CWP No.1267 of 1999) and Amarjit Kaur and others (CWP No.9718 of 2000). The petitioner in this case has stated that she too was a petitioner alongwith Amarjit Kaur and others, in CWP No.9718 of 2000.

As in the other petition, the petitioner in this case, Ram Piari, too has retired from service on 29.02.2012 upon attaining the age of superannuation. Thereafter, pursuant to directions issued by this Court on 26.09.2013 in the aforesaid two writ petitions, the new seniority list was issued on 29.11.2013, to which the petitioner filed objections, after which the final seniority list was issued vide letter dated 12.03.2014, whereby her seniority has been counted from the date on which her services were initially regularised, i.e. 16.07.1981. A copy of the said final seniority list has been annexed with this petition also as Annexure P-10. Subsequently, the consequent changes in the dates from which different pay scales were

given to her, as also the dates of her designation as a Senior Clerk and Junior Assistant, have been changed vide the orders Annexures P-11 to P-13, all of which she has challenged alongwith the seniority list, Annexure P10 and the orders, Annexure P-14, which are also the same as those in CWP No.25680 of 2014. The same direction, to grant her leave encashment on the basis of last pay actually drawn, without any deduction and without any recovery, has also been sought in this petition.

12. The reply filed by the respondent Corporation in CWP No.18085 of 2014, by moving Civil Miscellaneous Application No.11603 of 2015, was inadvertently not ordered to be taken on record and has consequently remained attached with the Civil Miscellaneous Application.

Be that as it may, the stand taken in the written statement, is the same as the one taken in reply to CWP No.25680 of 2014.

13. When these petitions came up for motion hearing, on different dates, though the operation of the impugned orders was not stayed in toto, however, recovery from the petitioners was stayed.

The respondent Corporation also filed applications in each of these two cases, for vacation of the stay orders, on the ground that the petitioners had both sworn affidavits in the years 2006 and 2007, to the effect that they may be allowed higher scales on account of their placement as Senior Clerks and Junior Assistants, and that they would have no objection if the Corporation were to make any change with regard to such placement and fixation of their pay scales, if the judgment in CWPs No.9718 of 2000 and 1267 of 1999 came against him.

Secondly, it was stated in the application seeking vacation of stay (accompanied by an affidavit of the Managing Director of the

Corporation), that the petitioners were in non-pensionable jobs and as such, if recovery is not allowed to be made from them, from their terminal/other retirement benefits, any recovery would become impossible (thereafter).

It needs further mention that in the two written statements filed also, it has been stated that since there is a reshuffling of seniority, pursuant to the orders of this Court dated 26.09.2013 (affirmed in LPA No.122 of 2014), financial benefits would accrue to those Clerks who were regularly appointed before the date of regularisation of the petitioners, but after the date of the petitioners' appointment on *ad hoc* basis. Hence, those who have now been placed senior to the petitioners, would be entitled to the benefits of higher scales which were earlier given to the petitioners (but have been withdrawn from them vide the impugned orders).

Therefore, it is stated on behalf of the Corporation, that if recoveries are not made from the petitioners, the Corporation would suffer a double financial loss, inasmuch as, it would have to pay such benefits to those who have become senior, whereas it had already paid the same benefits to the petitioners, who have now been rendered junior to them.

14. Mr. Anupam Singla and Mr. R.K.Arora, learned counsel for the two petitioners in these two cases and Mr. P.S.Thiara and Mr. Manish Joshi, learned counsel for the respondent Corporation, addressed arguments in terms of their pleadings.

15. Having considered the arguments raised on both sides and the pleadings before this Court, it is obvious that the change in seniority of the petitioners, vide the impugned letter/seniority list, Annexure P-10, is as a result of the directions given by this Court, vide two separate orders, dated 26.09.2013, passed in CWPs No.1267 of 1999 and 9718 of 2000.

The contents of the letter dated 12.03.2014 (Annexure P-10) are not as well worded as they should have been but that does not change the fact that the seniority of the petitioners, along with their colleagues, has been changed in view of the fact that their initial recruitment on *ad hoc* basis was not in conformity with the rules. This Court, vide its order dated 26.09.2013, passed in CWP No.1267 of 1999, had held as follows:-

“It is not in dispute that all the respondents were appointed on the recommendations of the Committee directly without throwing the issue of appointing to public. The committee does not enjoy a statutory status and therefore, by no stretch of imagination can it be said that the appointment by them directly without inviting applications would be in accordance with the rules or in accordance with the mode of public appointment. Clearly, all these appointments can be termed to be contrary to the rules.”

Thus, the respondents in CWP No.1267 of 1999, filed by Darshana Sharma and others, were held not to have been appointed as per rules.

After holding as above, the Court directed that the seniority of all employees be formulated afresh, keeping in view the above observations and keeping in view the ratio of the judgments in *Chambel Singhs' case* and *Anuradha Mukherjees' case* (supra).

As already noticed, in a connected petition ('cross petition'), i.e. CWP No.9718 of 2000, directions were given in the same terms as those in CWP No.1267 of 1999 and the appeal filed against that order, was also dismissed by a Division Bench, in LPA No.122 of 2014.

The ratio of these judgments would also be in terms of the judgment of the Supreme Court, in Direct Recruits Class II Engineering

Officers Association v. State of Maharashtra and others (1990) 2 SCC 715 and State of West Bengal v. Aghore Nath Dey (1993) 3 RSJ 333, wherein, in essence, it was held that the period of service rendered in an *ad hoc* capacity cannot be counted towards seniority, if recruitment was not made as per rules.

16. Thus, on principle, the respondent Corporation was correct in re-framing the seniority of the petitioners and other employees, after withdrawing the benefit of period of *ad hoc* service rendered by such employees as had not been inducted into service in accordance with the rules.

Before finalization of the seniority list on 12.03.2014, it is undisputed that objections were called for by the respondents, when they issued a tentative seniority list on 29.11.2013, to which the petitioners duly filed objections. Thereafter, another seniority list was circulated on 24.02.2014, again inviting further objections if any. No objections having been invited, the final seniority list, now impugned before this Court, was issued on 12.03.2014.

17. The contention of the petitioners that the directions of this Court given in CWP No.1267 of 1999 were only to formulate the seniority after 'discounting' the period of *ad hoc* service, and not to change the date of regularisation, is, on principle, an argument with no basis, in view of the fact that the entire question was whether the petitioners had been inducted into service on *ad hoc* basis as per rules or not. This Court having specifically held that the non-official respondents in CWP No.1267 of 1999 were recruited into *ad hoc* service without following the rules, the Corporation accepted that finding without further challenge and

consequently, reformulated the seniority list by withdrawing the benefit of *ad hoc* service and by taking the date of initial induction into regular service, as the date from which the seniority of each employee was to run. In that reformulation of the seniority list, even those employees who were not respondents in that writ petition, also, naturally, had to be treated in the same manner, if they too were not recruited as per Rules.

The flaws however, in this process, are contained in the letter by which the seniority list has been issued and circulated. The technical flaw is that it does not specifically state that the seniority of the petitioners, and others like them, has been altered in view of the fact that the earlier seniority list, dated 14.01.1999, was issued taking the date of induction into service on *ad hoc* basis as the date of regular service itself, thereby including the *ad hoc* period of service also as regular service, countable towards seniority. The impugned letter does not specifically give such reasoning, though that would be implicit in the letter, by referring to the directions given by this Court, in CWPs No.1267 of 1999 and 9718 of 2000.

The petitioners' substantial grievance, however, is that though the date of regularisation itself was changed from 16.07.1981, to 20.01.1979 in the case of petitioner Ravinder Paul Malhi and to 01.02.1978 in the case of petitioner Ram Piari, both vide separate orders dated 20.09.1991 (both annexed as Annexure P-2 with each petition), it should have been those dates (20.01.1979 and 01.02.1978), from which the seniority should have been assigned.

The dates now given in the impugned seniority list, (annexed with the letter, Annexure P-10), from which the seniority of the petitioners

has been calculated, i.e. 16.07.1981 in the case of petitioner Ram Piari and 20.07.1981 in the case of petitioner Ravinder Paul Malhi, are the original dates of regularisation in the case of Ram Piari (16.07.1981), and 4 days after the original date, in the case of petitioner Ravinder Paul Malhi. As to why petitioner Malhi has been given a date four days after his original date of regularisation in services, i.e. four days after 16.07.1981, is not shown in the impugned letter and seniority list, nor has any reason for that been given by the respondents in their reply. The replies in both these petitions simply state that the benefit of *ad hoc* service cannot be given to the employees, as has been held by this Court in its order passed in CWP No.1267 of 1999; therefore, such benefit has been withdrawn and the seniority recast.

18. Having noticed that, the question then is as to whether the impugned seniority list and consequent orders, deserve to be quashed on that ground alone.

Before determining that, it needs to be repeated that the dates of grant of different scales to the petitioners having been changed due to the change of dates of regularisation and seniority, obviously, their emoluments at the time of retirement would necessarily change.

Coming back to the question posed above, in my opinion, detailed reasoning should have been given in the letter accompanying the impugned seniority list, Annexure P-10, giving details of why the dates of assignment of seniority to the petitioners have been given as 16.07.1981 and 20.07.1981 instead of the dates from which they were given regularisation vide separate orders dated 20.09.1991 (Annexure P-2 with each petition).

19. The petitioners having initially been assigned dates of

regularisation w.e.f. 16.07.1981, vide orders of the same date (Annexure P-1 with each petition), they were subsequently assigned different dates of regularisation, i.e. 20.01.1979 in the case of Ravinder Paul Malhi and 01.02.1978 in the case of Ram Piari.

Thereafter, these were the dates by which they were assigned seniority in the tentative seniority list issued on 07.02.1992 (Annexure P-5) and thereafter, in the final seniority list issued on 14.01.1999 (Annexure P-6 with each petition), they were assigned seniority from their initial dates of joining service in an *ad hoc* capacity.

Undoubtedly, as already discussed, that benefit had to be taken away from them, as their initial induction into service on an *ad hoc* basis, was not as per rules. However, while issuing the fresh final seniority list, pursuant to directions issued by this Court in CWP No.1267 of 1999, vide the impugned order/letter dated 12.03.2014 (Annexure P-10), the respondents have assigned seniority to the petitioners from 16.07.1981 and 20.07.1981, without giving any reason as to why such date of regularisation should not be taken to be 20.01.1979 in the case of Malhi and 01.02.1978 in the case of Ram Piari. Hence, the petitioners' grievance to that extent is genuine and on that basis the impugned orders would need to be quashed, with a direction to the respondents to pass fresh, reasoned orders.

20. However, to try and avoid further litigation, the issue of recovery from the petitioners still needs to be settled. It needs to be clarified that even after fresh orders are passed by the respondents, giving reasons for assigning specific dates for regularisation of the petitioners, from which their seniority is to be counted, recovery of financial benefits already granted has to be restricted only to that period as is after the dates on which

each petitioner executed the undertakings given to the respondents, vide affidavits, Annexure R-1 with the written statement filed in each case.

Thus, whether, after considering the matter again, the respondents assign the same date of regularisation as has now been given to the petitioners, i.e. 16.07.1981, or whether they assign them the dates of regularisation given to them vide orders dated 20.09.1991, giving good reasons for either, obviously the dates in which the petitioners were placed in higher scales, would change, because in any case, they are not to be assigned seniority with effect from their initial date of entry into service in an *ad hoc* capacity, as was assigned to them vide the seniority list issued on 14.01.1999.

Yet, no financial benefits as were granted to the petitioners on the basis of the said seniority list or before that, can now be recovered from them, in view of the fact that such benefits were first granted vide the order dated 17.02.1992 (Annexure P-3) and thereafter vide the order dated 21.06.2004 (Annexure P-4 with each petition).

21. However, in view of the affidavits sworn by the petitioners on 19.12.2006 and 10.07.2007 in the case of each of the two petitioners, recovery can be made as regards financial benefits paid to them after these dates, over and above what is due to them on the basis of the re-assigned date of seniority, as would now be assigned by the respondent, in the orders to be passed afresh.

22. The hon'ble Supreme Court, in **State of Punjab v. Rafiq Masih (2015) 4 SCC 334** has laid down that recovery should not be made from retired employees, Class III and Class IV employees and employees to whom payment as is sought to be recovered, was made more than five years

before the recoveries were ordered. The petitioners obviously meet all three criteria in this regard, in respect of the benefits that were paid to them, vide orders dated 17.02.1992 and 21.06.2004 (Annexure P-3 and P4). However, the petitioners sought further benefits of placement in higher scales, upon their re-designation as Senior Clerks and Junior Assistants, as is obvious from their affidavits dated 19.12.2006 in the case of R.P.Malhi and 10.07.2007, in the case of Ram Piari. Malhis' affidavit states as follows:-

“I, Ravinder Paul Malhi S/o, D/o, W/o Sh. Piare Lal Do hereby solemnly affirm and declare as under:-

1. That I have requested the Corporation for my placement and subsequent release of financial benefits accruing therefrom.
2. That, I am in full knowledge that CWP No.1267 of 1999 & CWP No.9718 of 2000 are pending in the Hon'ble Punjab and Haryana High Court regarding the seniority/promotion of clerks/Sr. Clerks/J.As to the post of Senior Assistant.
3. That, I hereby undertake to abide by any decision/judgment passed by the Hon'ble High Court in these writ petitions and any decision of the Hon'ble High Court with regard to placement of clerks in the cadre of Sr. Clerks/J.As shall be fully binding upon me, and that the Corporation is hereby authorised to make any changes with regard to placement and fixation of pay scales accordingly in terms of the judgment so passed by the Hon'ble High court in these writ petitions and I shall have no objection to the same.
4. That, subsequent to the passing of the judgment by the Hon'ble Punjab & Haryana High Court, if it is found by the Corporation that the placement now being granted to me along with accruing financial benefits are not in consonance with the judgment of the Hon'ble High

Court the Corporation is hereby authorized to make recovery from my salary/retirement benefits, and I shall have no objection to such recovery.”

The above statement is duly verified on the affidavit, under the petitioners' signatures, as seen from the record produced by the respondents. A copy of an identical affidavit has been annexed with the written statement filed in reply to Ram Piaris' petition (CWP No.18085 of 2014).

Thus, these affidavits, in effect, state that the petitioners may be given financial benefits accruing to them in terms of their dates of placement as Senior Clerks and Junior Assistants, in higher scales, subject to the outcome of the then pending CWPs No.1267 of 1999 and 9718 of 2000.

The petitioners also agreed that if the judgments in the aforesaid two writ petitions came against them, the Corporation would be authorized to make any change with regard to placement and fixation of pay scales and also to make recoveries of any salary/retirement benefits as a consequence of the change in dates of placement and grant of scales.

Thus, in the opinion of this Court, the present petitions are distinguishable on that basis, from the ratio of the law laid down in *Rafiq Masihs' case* (supra). This would be so because the grant of further benefits, after the dates of their respective affidavits, were accepted to be conditional benefits, by the petitioners themselves, knowing fully well that the grant of seniority to them, from the date of induction into 'ad hoc service' was under challenge, by way of CWPs No.1267 of 1999 and 9718 of 2000; hence, they sought further financial benefits, with an undertaking

that if the judgment came against them, they would be prepared for any recovery to be made as a consequence thereof.

All in all, the petitioners being Class III and Class IV employees who have now retired, even before the final seniority list (Annexure P-10) was issued, cannot be asked to refund such financial benefits as were given to them by the Corporation upto the date that the petitioners furnished their respective undertakings, agreeing to grant of further financial benefits conditionally.

23. Consequently, these writ petitions are partly allowed. The impugned orders, Annexures P-10, P-11, P-12, P-13 and P-14 are all quashed qua the petitioners, with liberty to the respondents to pass fresh orders, giving therein reasons for assignment of seniority to the petitioners from a particular date from which their regular service is to be counted and thereafter, assigning placements to them in different posts/designations, in different pay scales. However, even after such assignment of seniority with effect from any particular date for which reasoning would be given by the respondents, recoveries shall not be made from the petitioners with regard to financial benefits that have been paid to them on account of wrongful grant of seniority (from their initial dates of induction into '*ad hoc* service'), for any period before the date of execution of their affidavits dated 19.12.2006 and 10.07.2007, respectively.

Fresh orders be passed by the respondent within a period of one month from the date of receipt of a certified copy of this order and the retirement benefits accruing to the petitioners thereafter, be released to them within another one month after that, making any lawful deductions, only in terms of what has been stated in this order.

No order as to costs.

December 21, 2015
dinesh

[AMOL RATTAN SINGH]
JUDGE