IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision:5.2.2016

CWP No.23968 of 2013

Inderjit Singh Gill & ors. … Petitioners

Versus

State of Punjab & ors. ... Respondents

CWP No.12177 of 2014

Sukhwinder Singh & ors. … Petitioners

Versus

The State of Punjab & ors. ... Respondents

CWP No.14352 of 2014

Vir Bhan & ors. … Petitioners

Versus

State of Punjab & ors. ... Respondents

CWP No.17368 of 2014

Jaswinder Singh & ors. … Petitioners

Versus

State of Punjab & ors. ... Respondents

CWP No.10184 of 2014

Jagmohan Singh & ors. … Petitioners

Versus

State of Punjab & ors. ... Respondents

CWP No.11440 of 2014

Chamkaur Singh & ors. … Petitioners

Versus

State of Punjab & ors. ... Respondents

CWP No.21880 of 2014

Amarjit Singh & ors. … Petitioners

Versus

State of Punjab & ors. ... Respondents

CWP No.8238 of 2015

Raman Kumar & ors. … Petitioners

Versus

State of Punjab & ors. ... Respondents

CWP No.8810 of 2015

Karam Chand & ors. … Petitioners

Versus

State of Punjab & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. RK Arora, Advocate,
(in CWPs No.23968, 11440, 10184, 17368, 14352 and 12177 of 2014)
Mr. RD Sharma, Advocate (in CWPs No.8810, 8238 of 2015)
Mr. Sumeet Jain, Advocate (in CWP No.21880 of 2014)
for the petitioners.

Mr. Vaibhav Sharma, D.A.G., Punjab.

Mr. HS Sethi, Advocate, for
Mr. Jaspreet Singh, Advocate,
for respondent No.3 (in CWP No.23968 of 2013).

Mr. Praveen Chander Goyal, Advocate,
for respondent No.4(in CWP No.14352 of 2014).
Mr. Vijay Kumar Kaushal, Advocate,
for respondent No.4 (in CWPs No.23968 of 2013, 21880 of 2014 and 8238 of 2015)
for respondent No.5(in CWP No.12177, 17368 of 2014)
for respondent No.6 (in CWP No.14352 of 2014
for respondent No.7 (in CWP No.11440 of 2014).

Mr. SC Pathela, Advocate,
for respondent No.3 (in CWPs No.8238 and 8810 of 2015).

Mr. Sanjeev Soni, Advocate,
for respondents No. 3 & 4 (In CWP No.12177 of 2014).

Mr. MS Virdi, Advocate,
for respondent No.4 (in CWP No.17368 of 2014).

Mr. GS Attariwala, Advocate,
for respondents No.3 to 6 (In CWP No.11440 of 2014).

Mr. NK Banka, Advocate,

for respondent No.3 (in CWP No.21880 of 2014).

Mr. Nitin Kaushal, Advocate,
for respondent No.5 (in CWP No.14352 of 2014).

Mr. Karanjit Singh, Advocate,
for respondent-Taran Tarn Central Coop. Bank
(in CWPs No.23968 of 2013 & 14352 of 2014).

Mr. Sanjeev Kumar Arora, Advocate,
for respondent No.3 (in CWP No.10184 of 2014).

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

RAJIV NARAIN RAINA, J.(Oral)

1. This order will dispose of the above cases bearing CWPs No. 23968 of 2013, 12177, 14352, 17368, 10184, 11440, 21880 of 2014, 8238 and 8810 of 2015 as common questions of law and fact are involved in them which can conveniently be decided by a common order. The facts are taken from CWP No.23968 of 2015 for the sake of convenience.

2. Heard respective counsel for the petitioners and the learned counsel for the respondents including learned counsel for the Municipal Corporation/Council, and the Punjab Water Supply & Sewerage Board.

3. The sole issue raised in these petitions is whether the petitioners are entitled to benefit of deputation allowance from the Punjab Water Supply and Sewerage Board [Board" for brevity]. The issue has to be decided in the background of a few relevant facts which are: the petitioners were in the services of the Municipal Corporations/Councils, on posts which were transferred to the Board. Consequently, they were redeployed. Had they not been employed elsewhere they would have in all probability lost their jobs when rendered as surplus employees. The

transition of the petitioners from Councils/Corporations to Board is not in the nature of a borrowing and lending arrangement and therefore, not entitled to be treated as deputationists for the reason that their parent department remains the Councils/Corporations since it did not pass an order retrenching the services of the petitioners. Their thread of employment continues but in a different relationship involving the Board where their services were continued due scales acquired while they were working in the Councils/ Corporations or Boards.

4. It is common ground that the rules governing deputation allowance fall within the purview of the Punjab Civil Services Rules, Part I, Vol. I, and more particularly in Sub Rule 2 of Rule 10.21 which provision reads as follows:-

> "10.21(2) The grant of deputation allowance to Public Government employees who are transferred on deputation or to foreign service to other State Government or the Central Government or bodies (incorporated or not), wholly or substantially owned or controlled by Government, provided the transfer is outside the regular line and is in the public interest shall be regulated as under:-
>
> (1) The deputation allowance shall be at the uniform rate of ten per cent of the employees basic pay and shall be subject to a maximum of three hundred rupees per mensem:
>
> Provided that a Government employee on deputation or on foreign service on or after the first day of January, 1978 but before the

publication of the Punjab Civil Services Volume I (3rd Amendment) Rules, 1982, may, at his option to be exercised within a period of sixty days of such publication draw deputation allowance at the uniform rate of twenty per cent of his unrevised pay till the expiry of the existing term of his deputation.

Provided further that the basic pay plus the deputation allowance shall in no case exceed three thousand rupees per mensem.

(2) The deputationist shall either be allowed special pay or deputation allowance on his basic pay and not both, irrespective of the fact whether the special pay has been sanctioned for the parent post in lieu of higher time scale or otherwise, Similarly special pay, if any, attached to a deputation post shall also not be admissible along with deputation allowance.

(3) Any project allowance admissible in a project area may be drawn in addition to the deputation allowance.

(4) Where a special rate of deputation allowance is admissible in any area on account of conditions of living there being particularly arduous or unattractive, such special rate being more favourable than that admissible under these rules, the Government employees deputed to such area will be given the benefit of the special rate.

(5) The deputation of an employee to the Union Territory of Chandigarh or transfer

> of an employee to foreign service under the Bhakra Beas Management Board or the Beas Construction Board, shall be treated as service in the interest of the State of Punjab and no deputation allowance shall be admissible."

5. Rule 10.21(2) (1) provides that deputation allowance is payable to an employee who is on deputation or on foreign service and in case, this is so, then a uniform rate of deputation allowance is prescribed till the expiry of the existing term of deputation. A distinction has to be kept in mind between the deputation and foreign service while dealing with the subject. If an employee is on foreign service one would have to refer to Rule 10.21(2) where foreign service means service of other State Government or the Central Government or bodies (incorporated or not), wholly or substantially owned or controlled by the Government. As a matter of law the petitioners have in fact been transferred from Corporation to Board.

6. It is pointed out by Mr. RK Arora, learned counsel appearing in the lead case i.e. CWP No.23968 of 2013 that in the orders the word 'transfer' has been used which will not materially affect the law in Rule 10.21 when read as a whole. Loosely speaking the words appear to be inter-changeable i.e. transfer, deputation, deployment, foreign service etc. but the Court has been called upon to examine whether the relationship between the parties i.e. the petitioners and the Councils/Corporations and the petitioners viv-a-vis the Board and the threads which might connect or disconnect them in the peculiar trifold arrangement. When I look at

the issue from this angle, the Court is of opinion that the Board cannot be saddled with deputation allowance for those who came from Councils/Corporations to the Board on account of a severable part of activities of the Corporations/Councils closing down which occasioned the wholesale transfers of the petitioners to the Board to save them from dreaded unemployment. Before parting, an argument raised by Mr. RK Arora deserves to be noticed and dealt with. He refers to the memo dated November 19, 2015 addressed by the Under Secretary to the Government to the Advocate General of Punjab, Chandigarh (produced by the respondent-State) prescribing the service conditions of the transferred staff will not change which cannot be said to be a statement of law but merely an opinion expressed by the Under Secretary to Government. The memo is at best a response made to the Advocate General upon a query of this Court arising from the present proceedings. In para. 2, it is also said that the transfer of the staff will continue to be governed by the terms and conditions of their appointment in the municipalities concerned including grant of due promotions etc. in municipal cadre according to their erstwhile seniority and service rules. This confirms the belief that the relationship between the Municipal Councils/Corporations and their staff has not been separated altogether and the link continues. Neither have the terms and conditions of appointment nor their chances of promotion been affected and their seniority will operate in the Municipal Councils/Corporations and the Board would make promotions accordingly. However, so far as right to pension is concerned, Mr. Arora's apprehension is misplaced that his clients will be deprived of pension coming from pensionable to non-pensionable service. That right subsists and is duly protected. Hence, this part of his anxiety has been allayed by the notification dated November 22, 2013 appended with the reply of respondent No.5 placed as Annexure R-1.

7. The petitioners are held not legally entitled to deputation allowance.

8. The petitions are, therefore, found misconceived and are disposed of as above.

5.2.2016 **(RAJIV NARAIN RAINA)**
monika **JUDGE**