

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-22289-2014 (O&M)
Date of decision: 16.08.2016

Darshana Sharma and others

.....Petitioners

versus

Punjab Water Resources Management and Development Corporation

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Ms.Divya Sharma, Advocate for the petitioner
Mr.Amit Singh Sethi, Advocate for the respondent

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? **Yes***
- 2. To be referred to the Reporters or not ?**Yes***
- 3. Whether the judgment should be reported in the Digest?**Yes***

Kuldip Singh, J.

The present petitioners retired as Senior Assistants between the years 2010, 2011 and 2012 from the respondent Punjab Water Resources Management and Development Corporation (in short, 'the Corporation'), earlier known as Punjab State Tubewell Corporation). They had joined on different dates in the year 1978. The petitioners were not paid their leave encashment on the ground that two writ petitions bearing CWP No.1267 of 1999 and CWP No.9718 of 2000 were pending. The controversy in both the writ petitions was as to whether the ad hoc service is to be counted for the purpose of seniority or not? Respondent Corporation while fixing the seniority of some of the officials of the respondent corporation gave them benefit of ad hoc service, which was challenged by the present petitioners. During the pendency of the writ petitions, the Corporation considered the matter and decided not to count ad hoc service for the purpose of seniority.

All the petitioners were initially appointed on regular basis and none of them had availed any benefit of ad hoc service either towards seniority or promotion. As leave encashment payment was not released, the petitioners filed CWP No.17652 of 2012, seeking release of their leave encashment. The writ petition was disposed of by this Court vide order dated 30.7.2014. It was noticed by the Court that during pendency of the writ petition, the retiral benefits have been released to the petitioners, however, some recoveries have been made from the retiral benefits. Therefore, the petition was disposed of as infructuous with liberty to the petitioners to file a fresh petition, seeking interest on account of delay in payment of pension and challenge the recovery effected from their retiral benefits on account of excess payment of salary. It is stated that no notice was given to the petitioners before effecting the recovery. The recoveries have been illegally effected. According to the petitioners, following is the chart of the recoveries effected from them:-

<i>S.No.</i>	<i>Name</i>	<i>Leave Encashment due (in Rs)</i>	<i>Amount paid on 22.04.2014 (in Rs.)</i>	<i>Amount illegally recovered (in Rs.)</i>
<i>1.</i>	<i>Darshana Sharma</i>	<i>3,93,100</i>	<i>3,48,555</i>	<i>44,545</i>
<i>2.</i>	<i>Anita Kundra</i>	<i>3,93,100</i>	<i>3,44,201</i>	<i>48,899</i>
<i>3.</i>	<i>Usha Rani</i>	<i>3,93,100</i>	<i>3,44,823</i>	<i>48,277</i>
<i>4.</i>	<i>Dropti</i>	<i>2,79,852</i>	<i>1,12,000(paid in 2011) + 54,000 (paid on 26.09.2014)</i>	<i>1,13,852</i>

<i>S.No.</i>	<i>Name</i>	<i>Leave Encashment due (in Rs)</i>	<i>Amount paid on 22.04.2014 (in Rs.)</i>	<i>Amount illegally recovered (in Rs.)</i>
5.	<i>Shashi Prabha</i>	<i>3,50,180</i>	<i>2,90,986</i>	<i>59,194</i>
6.	<i>Savita Kumari</i>	<i>4,22,900</i>	<i>3,81,421</i>	<i>41,479</i>

Following is the chart of date of joining and date of retirement of the petitioners:-

<i>S.No</i>	<i>Name of Petitioner</i>	<i>Date of Joining</i>	<i>Date of Retirement</i>
1.	<i>Darshana Sharma</i>	<i>06.01.1978</i>	<i>31.12.2011</i>
2.	<i>Anita Kundra</i>	<i>01.02.1978</i>	<i>30.11.2011</i>
3.	<i>Usha Rani</i>	<i>16.01.1978</i>	<i>31.10.2011</i>
4.	<i>Dropti</i>	<i>28.02.1978</i>	<i>31.05.2010</i>
5.	<i>Shashi Prabha</i>	<i>16.02.1978</i>	<i>31.10.2010</i>
6.	<i>Savita Kumari</i>	<i>09.01.1978</i>	<i>31.01.2012</i>

Hence, the petitioners seek the quashing of order dated 17.4.2014 (Annexure P2) (Colly), issued to petitioner Nos.1, 2, 3, 5 and 6 and order dated 5.5.2011 (Annexure P4), issued to petitioner No.4, vide which, the recoveries were effected illegally. Petitioners seek further prayer for refund of the amount so recovered illegally and pay interest @ 12% per annum on the delayed payment of leave encashment.

In the written statement, the respondent Corporation took the

stand that in CWP No.1267 of 1999, the petitioners had challenged seniority list circulated by the respondent Corporation, which was then known as Punjab State Tubewell Corporation on the ground that benefit of ad hoc service could not be given to some of the employees. During pendency of the said CWP No.1267 of 1999 and another connected CWP No.9718 of 2000, certain benefits were released to the petitioners on tentative basis on the firm assurance given by the petitioners in the form of sworn affidavits that they have no objection to the adjustment of recovery of overpaid dues in case it is found so after the decision of the said pending writ petitions. It is stated that after the decision of the writ petitions, the excess amount found to be drawn by the petitioners on account of stepping up of their pay on account of equation of their pay with another employee Roshan Lal, who had been given higher seniority and higher pay after counting of ad hoc service, and same was deducted from the leave encashment. It was so done as per the undertaking of the petitioners. There is no illegality in the said order.

I have heard learned counsel for the parties and have also carefully gone through the file.

It comes out that one Roshan Lal co-employee of the petitioners had joined on ad hoc basis on 7.11.1977, whereas the petitioners had joined on regular basis on 6.1.1978. The said Roshan Lal was given benefit of ad hoc service and was given proficiency step up after completion of 8 years service on 1.2.1996, whereby his pay was enhanced from Rs.6000/- to Rs.6200/-. This proficiency step up was not availed by Darshana Sharma petitioner, since she already stood promoted to the higher post of Senior Assistant. Since, the pay of said Roshan Lal was higher than the petitioners, the petitioners made the representation stating that Roshan Lal is their junior

and is drawing higher pay than them on account of counting of the ad hoc service. Therefore, vide order dated 3.6.2008, pay of the petitioners was equated with the said Roshan Lal on the condition that the Corporation would be entitled to make recovery in suitable manner after the decision of the pending writ petition. All the petitioners accordingly furnished a similar affidavit. The contents of the affidavit are reproduced 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 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 and Haryana High Court, if it is found by the Corporation that the placement now being granted to me alongwith 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 said affidavits were furnished on 4.1.2007 and some other dates. Accordingly, on the said undertaking, the leave encashment was released to the petitioners. Undoubtedly, the said civil writ petition No.1267 of 1999 and other connected writ petition were decided by this Court in favour of the petitioners, whereby it was held that ad hoc service could not be counted for the purpose of fixation of seniority. The net result was that said Roshan Lal was deprived of the said seniority and the enhanced pay. Accordingly, respondent while releasing the leave encashment, to petitioner Nos.1, 2, 3, 5 and 6 vide order dated 17.4.2014 (Annexure P2) (Colly) and to petitioner No.4 vide order dated 5.4.2011 (Annexure P4), deducted the excess payment made to the petitioners on account of stepping up of their pay equal to Roshan Lal. The said deductions have been made as per undertaking given by the petitioners in the affidavit on 4.1.2007 and some other dates during the pendency of the said civil writ petition No.1267 of 1999 and CWP No.9718 of 2000.

Learned counsel for the petitioners has argued that in view of judgment of the Hon'ble Supreme Court in the case of State of Punjab vs. Rafiq Masih (2015) 4 SCC 334, after retirement, no recovery could be effected from the leave encashment even if it is wrongly paid.

I am of the view that the present case is distinguishable, as in the present case, the petitioners themselves had filed affidavit bearing undertaking to refund the excess amount, if found due on 4.1.2007 and on some other dates in the year 2007 itself. The copies of the affidavit are on

record as Annexure R1/1 to R1/6. Therefore, excess payment, which was made on account of stepping up of their pay equal to Roshan Lal, junior employee, has been withdrawn after the decision of the writ petitions and there is no illegality or infirmity in the same. Hence, I hold that the petitioners are not entitled to refund of the said amount, which was deducted from the leave encashment.

Now, coming to the next question regarding payment of interest on the delayed payment of leave encashment. The chart reproduced above clearly shows that the petitioners had retired on different dates between the years 2010 and 2012. Payments of leave encashment were released to them in the year 2014. If some controversy was there and the respondent Corporation claims that they could withhold some amount then only that much amount which the respondent claims to have been paid in excess to the petitioners and which was later on deducted vide the impugned orders could be withheld. However, they could not retain the entire amount of the leave encashment. As such, the petitioners are held entitled to interest @ 9% per annum on the delayed payment of leave encashment.

In view of the foregoing discussion, the present petition is partly allowed and partly dismissed. The petition qua the setting aside of the impugned orders (Annexure P2) (Colly) and order dated 5.4.2011 (Annexure P4) stands dismissed. However, writ of mandamus is allowed directing the respondent Corporation to pay interest @ 9% per annum on the delayed payment of leave encashment, starting three months from the date of retirement of the petitioners till its actual payment.

16.08.2016

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes/ No
Whether Reportable:	Yes/No