

**CM No.8540 of 2016 in
RA No.220 of 2016 in
CWP No.17709 of 2015**

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM No.8540 of 2016 in
RA No.220 of 2016 in
CWP No.17709 of 2015
Date of Decision: 17.08.2016**

Subhash Chand and others

... Petitioners

Versus

Punjab Water Resources Management
& Development Corporation Limited

... Respondent

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

Present: Mr. Amit Singh Sethi, Advocate,
for the applicant-respondent.

Mr. Anupam Singla, Advocate,
for the non/applicant-petitioners.

RAJIV NARAIN RAINA, J.

CM No.8540 of 2016

This is an application for condonation of delay of 8 days in re-filing the review application.

For the reasons mentioned in the application, the same is allowed and the delay of 8 days in re-filing the review application is condoned.

RA No.220 of 2016

1. This is an application for review of the order dated May 06, 2016. The issue raised is whether an affidavit of an employee given at the relevant time deposing that in case, higher pay scales are given then

recovery may be made, can be used against the petitioners to deduct or retain money, has been settled by the Division Bench of this Court in LPA No.1361 of 2010 titled *Surinder Kaur v. State of Punjab and others* decided on December 09, 2010. One of the questions which fell for consideration before the Appellate Bench was whether recovery which could not be legally effected would become available merely because the appellants filed an affidavit agreeing to the deduction. This issue was decided in favour of the petitioners therein and against the appellant Corporation that it is not open to citizens to waive their fundamental rights acquired by Part-III of our Constitution. The affidavit filed by the employees would not constitute a basis for depriving them the benefits already paid, enjoyed and consumed. Besides, a similar matter this Court while relying on the ruling in *Surinder Kaur* case, which decision has been cited by the petitioner – non/applicant in CWP No.21210 of 2013, titled *Jarnail Singh v. Punjab Road Transport Corporation and others* decided on April 11, 2016 by a Coordinate Bench applying the law in *Surinder Kaur* and the decision of the Supreme Court in State of Punjab and others v. Rafiq Masih (White Washer) etc., AIR 2015 SC 696. In this case also it is not disputed that recovery has been effected after retirement.

2. It is also not disputed that in this case, like the other identical one, affidavits were taken from the employees calling upon them to undertake to abide by the judgment of this Court in the writ petitions then pending with regard to placement of Clerks in the cadre of Senior Clerks/Junior Assistant, and any final decision would be binding on them.

This was with reference to CWP No.1267 of 1999 and CWP No.9718 of 2000. The petitions were later on disposed of by order dated September 26, 2013 by the learned Single Judge with a direction to the Corporation to formulate the seniority of employees afresh keeping in view the observations made in the judgment and also keeping in view the decision of the applicant-Corporation which they have taken, but had not cared to implement. There was no direction that the applicant-respondents were competent to change dates of placement and promotions wholesale. This re-enforces the position already expressed in the main order under review, but which requires an additional input which was not given by either of the learned counsel at the time of final disposal of the case by me on May 06, 2016 [the order in review] that there was a direct judgment on the point handed down by the Division Bench in *Surinder Kaur's* case dealing with the moot issue of submissions of affidavits. The judgment relied upon by Mr. Amit Sethi for the applicant passed by the learned Single Judge on December 21, 2015 in CWP No.25680 of 2014 titled *Ravinder Paul Malhi v. Punjab Water Resources Management & Development Corporation Limited* and CWP No.18085 of 2014 titled *Ram Piari v. Punjab Water Resources Management & Development Corporation Limited* and another is of no avail as neither of the counsel is able to point out from the judgment that *Surinder Kaur's* case was considered and, therefore, the learned Single Judge was not placed in a position to deal with *Surinder Kaur's* case (supra).

3. I would, therefore, find no ground to review the order also for

the additional ground in the presence of the law laid down in *Surinder Kaur* which was also was not brought to my notice when I passed the order in the main writ petition. However, I may say, that it would have made no difference to the final outcome of the case, that it deserved to be allowed after having heard Mr. Sethi in the main case. There is another reason why the application deserves to be dismissed as misconceived, is that this defence plea taken for the first time in review was not taken in the written statement and, therefore, there was no occasion for this Court to have addressed itself to the issue of affidavits. Even the moot affidavit has been placed for the first time in the present application. I would thus dismiss this application as being wholly devoid of merit and the same ought never to have been filed in view of the settled position in law on the point.

4. Accordingly, the review application has no legs to stand on and is ordered to stand dismissed with costs of ₹ 20,000/- to be paid to the petitioners-non/applicants despite brave efforts of Mr. Sethi to retrieve the position.

(RAJIV NARAIN RAINA)
JUDGE

17.08.2016
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Whether speaking/reasoned	Yes
Whether reportable	No