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

LPA No. 2230 of 2016 (O&M)
In CWP No. 17709 of 2015

Date of decision: 10.1.2018

Punjab Water Resources Management
& Development Corporation Limited .. Appellant

vs

Subhash Chand and others .. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice B. S. Walia**

Present: Mr. Amit Singh Sethi, Advocate, for the appellant.
Mr. Anupam Singla, Advocate, for the respondents.

Rajesh Bindal, J.

1. By filing the present intra-court Appeal, the challenge has been made to the order dated 6.5.2016 passed by the learned Single Judge in the writ petition and order dated 17.8.2016 passed in RA No. 220-CWP of 2016 in the aforesaid writ petition.

2. The Review Application was filed by the appellant.

3. The learned Single Judge while relying upon judgment of Hon'ble the Supreme Court in *State of Punjab vs Rafiq Masih* (2015) 4 SCC 334, accepted the plea raised by the respondents/ writ petitioners, where they claimed that amount already paid to them as salary, emoluments and retiral benefits, should not be recovered as they were class-III employees and had retired from service.

4. Learned counsel for the appellant submitted that the writ

petitioners had joined service on adhoc basis on different dates, hence, were being paid emoluments, as were fixed at that time. Later in time certain other persons were appointed on regular basis. The services of the employees, who were initially appointed on adhoc basis were regularised later on. Subsequently, they claimed that the benefit of adhoc service rendered by them be granted for the purpose of seniority and other consequential benefits. The same was granted. Seniority list was circulated on 14.1.1999. The same was challenged by the affected persons by filing CWP No. 1267 of 1999 *Darshana Sharma and others vs Punjab State Tubewell Corporation and others.* During the pendency thereof, adhoc employees, whose services were regularised and were granted benefits for the purpose of seniority and other consequential benefits, pressed for grant of consequential benefits. As the challenge to the seniority list was pending in this Court, they were asked to furnish affidavits stating that in case the decision in *Darshana Sharma*'s case (supra) goes against them, they will return the entire amount received by them. It was thereafter that the amount of consequential benefits, in view of their placement in the seniority list, was paid to them.

5. CWP No. 1267 of 1999 was allowed vide order dated 26.9.2013 and the appellant was directed to re-frame the seniority list. The aforesaid order was impugned by filing LPA No. 122 of 2014 – *Amarjit Kaur and another vs Punjab State Tubewell Corporation and others*, which was dismissed on 31.1.2014. Thereafter, fresh tentative seniority list was circulated to which the writ petitioners filed objections. After considering the objections, the final seniority list was circulated on 12.3.2014.

Subsequent thereto, as the placement of the respondents/ writ petitioners in the seniority list was changed and as a consequence thereof, it was found that they had been paid excess amount of salary, emoluments and retiral benefits, notices were issued to them for recovery thereof. Those notices had been impugned by them in Civil Writ Petition No. 17709 of 2015 – *Subhash Chand and others vs Punjab Water Resources Management & Development Corporation Limited,* which was allowed vide impugned order dated 6.5.2016.

6. While referring to judgment of Hon'ble the Supreme Court in *High Court of Punjab & Haryana and others vs Jagdev Singh* 2016(7) JT 409, learned counsel for the appellant submitted that the law laid down in *Rafiq Masih*'s case (supra), will not be applicable in the case in hand for the reason that the employees, who had drawn extra emoluments after furnishing affidavits before the amount was paid to them undertaking that in case finally it is found that they are not entitled to the amount, they will return the same. Identical issue was considered in the aforesaid judgment by Hon'ble the Supreme Court. Hence, the view expressed by the learned Single Judge is erroneous and the order deserves to be set aside.

7. On the other hand, learned counsel for the respondents/ writ petitioners while not disputing the law laid down in *Jagdev Singh*'s case (supra), submitted that a distinction was carved out by a learned Single Judge of this Court in CWP No. 25680 of 2014 - *Ravinder Paul Malhi vs Punjab Water Resources Management & Development Corporation Limited,* decided on 21.12.2015, where emoluments, which were paid before the undertaking was furnished, were directed not to be recovered and the

authority was held entitled to recover the emoluments which were paid after the undertaking was furnished by the employees. He further submitted that undertaking was given by the writ petitioners under compelling circumstances. They are low paid employees, who have now retired from service. It will be too harsh to impose the burden of repayment of the amount already paid to them.

8. Heard learned counsel for the parties and perused the paper book.

9. The facts of the case in hand are not in dispute. The respondents/ writ petitioners had been granted the benefits of adhoc service for the purpose of seniority and during the pendency of the writ petition challenging the seniority list, on the basis of affidavits filed by them, the consequential benefits in view of the seniority list, which was under challenge, were granted to them, which were in the form of salary, emoluments and retiral benefits. The seniority list dated 14.1.1999 granting benefits of adhoc service was set aside by this Court vide order dated 26.9.2013 passed in *Darshana Sharma*'s case (supra) and the appellant -corporation was directed to reformulate the seniority list afresh in terms of the observations made in the order. Thereafter, tentative seniority list was circulated on 29.11.2013 and after considering the objections, if any filed by the employees, the final seniority list was circulated on 12.3.2014.

10. During the pendency of CWP No. 1267 of 1999 challenging the seniority list granting benefits of adhoc service to the respondents/ writ petitioners for the purpose of seniority on affidavits furnished by them, the benefits in the form of salary, emoluments and retiral benefits were released to the respondents/ writ petitioners subject to their furnishing undertaking

that in case the emoluments being paid to them are not in consonance with the judgment in *Darshana Sharma*'s case (supra), the appellant- corporation shall be authorised to make recovery from their salary/ retiral benefits. Relevant para from one of the affidavit is extracted below:-

> "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."

11. It was after the circulation of the seniority list in terms of the order passed by this Court in *Darshana Sharma*'s case (supra) that the Corporation found that certain benefits had been granted to the respondents/ writ petitioners, which were not in consonance with the placement of the respondents/ writ petitioners in the seniority list. Hence, those were required to be recovered. Thereafter, notices were issued to the respondents/ writ petitioners on various dates in the year 2015, specifying the amount which was to be recovered from them, as a consequence of decision in *Darshana Sharma*'s case (supra). The aforesaid orders were challenged by the respondents by filing CWP No. 17709 of 2015 relying upon judgment of Hon'ble the Supreme Court in *Rafiq Masih*'s case (supra), as the respondents had retired from service by that time and found to be employees of Group-C service. The writ petition was allowed on 6.5.2016. Even the Review Application filed by the appellant-corporation bearing RA No. 220-CWP of 2016 was also dismissed on 17.8.2016.

12. The issue regarding recovery of the emoluments paid in excess of entitlement, especially in the cases where an employee furnished an undertaking/ affidavit to return the same in case emoluments are not found to be payable, has been gone into by Hon'ble the Supreme Court in *Jagdev Singh*'s case (supra), wherein considering the earlier judgment in *Rafiq Masih's* case (supra), it has been opined that the principles laid down therein cannot apply in a situation where an officer to whom the payment is made at the first instance is clearly placed on notice that any payment found to have been made in excess will be required to be refunded and undertaking to that effect had been given by that employee, in that situation he will be bound by the undertaking. Relevant paras from the aforesaid judgment are extracted below:-

> "10 In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc1. this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:
>
> > "(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
> >
> > (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
> >
> > (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
> >
> > (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even

> though he should have rightfully been required to work against an inferior post.
>
> (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover." (emphasis supplied).
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> 11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.
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> 12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years. "

13. Considering the aforesaid enunciation of law laid down by Hon'ble the Supreme Court, in our view, the order passed by this Court in *Ravinder Paul Malhi*'s case (supra), which was decided on 21.12.2015, will not come to the rescue of the respondents/ writ petitioners, where a distinction was carved out regarding payment of emolument before the undertaking was furnished and subsequent thereto. In the case in hand, definite stand taken by the appellant is that entire amount, which is sought to be recovered from the respondents/ writ petitioners was paid to them only after they had furnished the undertaking.

14. For the reasons mentioned above, the present appeal is allowed. The order dated 6.5.2016 passed in the writ petition and the order dated 17.8.2016 passed in Review Application are set aside. As a consequence thereof, the writ petition stands dismissed.

(Rajesh Bindal)
Judge

10.1.2018
vs

(B. S. Walia)
Judge

Whether speaking/ reasoned Yes/No

Whether Reportable Yes/No