

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

**1. CWP No.2526 of 2011 (O&M)
Date of decision : January 25, 2021**

Amrik Singh Petitioner

Versus

State of Punjab and another Respondents

2. CWP No.10074 of 2011

Amrik Singh Petitioner

Versus

State of Punjab and another Respondents

3. CWP No.7217 of 2016 (O&M)

Amrit Singh Petitioner

Versus

State of Punjab and another Respondents

4. CWP No.10103 of 2000 (O&M)

Karamjit Singh Brar Petitioner

Versus

State of Punjab and others Respondents

(IN VIRTUAL COURT)

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Vijay Pal, Advocate for the petitioner
in CWP Nos.2526, 10074 of 2011 and 7217 of 2016
and for respondent No.4 in CWP No.10103 of 2000.

Mr. Ashwani Bakshi, Advocate for the petitioner
in CWP No.10103 of 2020.

Ms. Ambika Bedi, AAG, Punjab.

RAJBIR SEHRAWAT, J. (ORAL)

This order will dispose of four writ petitions, CWP No.2526 of 2011 wherein the petitioner has challenged the order dated 13.12.2010 whereby the earlier order dated 21.05.1992, granting retrospective service benefits to the petitioner have been withdrawn, CWP No.10074 of 2011 wherein the petitioner has challenged the order dated 04.05.2011 ordering recovery from him, CWP No.7217 of 2016 wherein the petitioner has sought release of retiral/pensionary benefits as per his full entitlement, and the CWP No.10103 of 2000 wherein a different petitioner has challenged the grant of retrospective benefits to the petitioner of abovementioned three petitions vide order dated 21.05.1992. For reference the main facts, as are involved in all these petitions, are taken from CWP No.2526 of 2011.

The undisputed facts involved in these cases are that the petitioner was appointed as Clerk with respondent-Department on contract basis vide order dated 26.04.1973. Accordingly, he had submitted his joining on the same date. Subsequently, the applications were invited for filling up the posts of Clerk on regular basis, vide advertisement issued in April, 1974. The petitioner had also applied for the said post for his consideration for appointment on regular basis. Pursuant to that selection, the candidates were selected and appointed upon the said posts on regular basis. However, the petitioner could not get selected in the said recruitment

for the post of Clerk. Accordingly, the service of the petitioner was dispensed with on 29.10.1974. Challenging the order of dispensing with the service and challenging the selection made for filling up the post on regular basis, the petitioner filed CWP No.5895 of 1974 before this Court. In that writ petition it was asserted by the petitioner that the petitioner could not be appointed on regular basis because a factual wrong information qua typing test was furnished by office. The writ petition came up for hearing before this Court after notice. During the hearing, the respondent-department had sent a letter to the Advocate General office which conveyed that since the information qua typing test of the petitioner was factually incorrect, therefore, instead of getting the entire selection set aside, the petitioner could be offered appointment on regular basis. Accordingly the statement was made before this Court by the Assistant Advocate General appearing on behalf of the State and vide order dated 04.10.1982 this Court disposed of the abovesaid writ petition recording therein that as per the statement made by the Assistant Advocate General, the petitioner would be accommodated on the post of Clerk forthwith and his appointment shall be treated as a fresh appointment as per the statement made by the Assistant Advocate General.

In compliance of the abovesaid order of High Court, the petitioner was appointed as Clerk on regular basis vide letter dated 12.10.1982 with a condition that it shall be the fresh appointment of the petitioner. The petitioner accepted that fresh appointment and joined as such. However, after about 10 years the petitioner made a representation to the Government asserting that he was wrongly terminated initially in the year 1974, therefore, he should be given the benefit of continuity of service

for the entire intervening duration. That representation was directly made to the office of Secretary, Social Welfare Department, without being routed through the Director. Upon this representation, the then Secretary, Social Welfare Department passed the order dated 15.05.1992, whereby the petitioner was granted benefits of service from the date of original appointment, i.e. 26.04.1973. Accordingly, the necessary order dated 21.05.1992 was passed by granting all benefits of his past service, w.e.f. 26.04.1973 for all purposes, including seniority. As a result, seniority of the petitioner was re-fixed by counting his service from 27.04.1973 and by also granting him the benefit of the period from 29.10.1974 till 12.10.1982. He was also given financial benefits as per that order. Still further, on the basis of re-fixed seniority, the petitioner was also granted promotion as Senior Assistant w.e.f. 30.09.1983. Thereafter, a process was initiated for determining of seniority of Senior Assistants for further promotion to the post of Superintendent Grade-II. The petitioner was also promoted as Superintendent Grade-II later on.

Since, on the basis of the above orders, the petitioner had become senior to the persons, who were otherwise senior to him as per their date of appointment on regular basis, therefore, one Karamjit Singh Brar filed CWP No.10103 of 2000 challenging the above said order dated 15.05.1992 as well as the seniority list of Senior Assistants issued on 05.08.1999 wherein the petitioner, Amrik Singh was shown over and above the said Karamjit Singh Brar. Since, the matter of grant of benefits of previous service to the petitioner had come up before this Court by way of writ petition challenging the same, therefore, respondent No.1 passed an

order dated 20.04.2001, whereby it was ordered that the appointment of the petitioner will be treated as fresh, as was mentioned in the order of the High Court dated 04.10.1982, the arrears given to the petitioner shall be recovered and his seniority shall be re-adjusted; for which the notice be issued on the petitioner. Still further, it was ordered that the action be taken against the officials concerned for giving arrears to the petitioner without approval of the Finance Department. However, the matter again remained pending in the office of respondents for a long time. Ultimately, respondent No.2 passed the consequential order dated 26.05.2009; endorsed on 19.06.2009; withdrawing the earlier order dated 28.05.1992 and withdrawing the post service benefits granted to the petitioner. Still further, the promotion and seniority of the petitioner on the post of Senior Assistant was re-fixed w.e.f. 28.06.2004, i.e., from the date one junior, namely, Usha Rani was promoted. The petitioner challenged the said order in another writ petition No.10164 of 2009; asserting therein that the said order had been passed without granting any opportunity of hearing to the petitioner. This Court disposed of the said writ petition vide order dated 12.05.2010, whereby the order dated 26.05.2009 was set aside. However, the respondents were granted liberty to pass a fresh order after hearing the petitioner. As a result, a fresh notice was issued to the petitioner to grant him an opportunity of hearing. The petitioner availed that opportunity and appeared before the authority on 29.11.2010. After considering the submissions made by the petitioner, respondent No.2 has passed the impugned order. Hence, the present petition. As a result of the abovesaid re-fixation of the seniority and the promotion of the petitioner, respondent

No.2 had passed an order dated 04.05.2011 for recovery of the excess payment to the petitioner. The petitioner filed CWP No.10074 of 2011 challenging the said recovery. In the meantime, the petitioner was retired from the post of Superintendent Grade-II on 30.11.2008. However, as per the petitioner, he was not being paid the full retiral benefits of the post, rather, he was being paid only ₹7,000/- per month as pension, therefore, the petitioner filed CWP No.7217 of 2016 praying for directions to the respondents to grant him the full pensionary benefits because there was no charge-sheet or departmental inquiry pending against him on the date of retirement. All these writ petitions filed by the petitioner, Amrik Singh and the abovesaid Karamjit Singh have been heard today.

While arguing the case, counsel for the petitioner submits that the petitioner was wrongly removed from his service by denying him the selection and appointment on regular basis merely because of factually incorrect information. Hence there was nothing wrong in the order dated 15.05.1992 passed by the Secretary to the Government, whereby the petitioner was granted benefits of past service by setting aside his termination order. Now, the impugned order has wrongly been passed against the petitioner. It is further submitted that the order dated 15.05.1992 granting benefit to the petitioner was passed by the Secretary to the Government of Punjab, however, the impugned order has been passed by the Director of the Department, who is an authority lower than the Secretary to the Government. Hence, the impugned order has been passed without any authority. Counsel has further submitted that the impugned order withdrawing the benefits granted to the petitioner 17 years earlier have

been passed. The petitioner was not at fault either in grant of the benefits; nor was he responsible for any delay. Therefore, the department was estopped from taking any action against the petitioner at such a belated stage. Counsel has further submitted that in the written statement filed in the earlier writ petition, the department itself had taken a stand supporting the case of the petitioner. Still further, it is submitted by the counsel that since the order was passed by the then Secretary to the Government, therefore, the successor in office could not have reviewed the order passed by the earlier incumbent of the post. Hence, the order deserves to be set aside on this score alone. In the end, it is submitted by the counsel for the petitioner that even if, the petitioner is granted the re-fixed date of appointment to the post of Clerk, then also, no reversion of the petitioner from the post of Superintendent Grade-II is required at this stage; because posts were lying vacant on the date when the impugned order was passed. Hence, neither the petitioner was required to be reverted nor any recovery was required to be effected from him.

On the other hand, counsel for the State, referring to the written statement filed by the respondents has submitted that the petitioner was having a long stay in the Branch in which this matter was being dealt with. The petitioner had colluded with the dealing hand and ensured that correct facts are not placed before the competent authorities. Hence, earlier the wrong order was passed, by going against the record. Concealing of the facts on the part of the dealing hand; in collusion with the petitioner; came to the knowledge of the department when another writ petition was filed by another employee questioning this entire course of action. Hence, the

Secretary to the Government in the department had ordered taking action against the petitioner by passing necessary orders for treating the appointment of the petitioner as fresh appointment, re-fixing his seniority and also qua effecting recovery from the petitioner as a consequence of reversion emerging from re-fixation of the seniority. Accordingly, the impugned order has been passed; after granting hearing to the petitioner. No fault could be found with the order as such. It is further submitted by the counsel for the State that the order granting benefit of continuity of service and payment of arrears to the petitioner earlier stands exposed by the very fact that the petitioner was not even in service in the department for a long duration from 1974 to 1982. Since he was not even in service in the department, therefore, he could not have been granted any benefit of this service for this period, particularly; in view of the fact that even as per the Court order he was required to be appointed by way of fresh recruitment but not in continuity of his previous employment. Otherwise also, since earlier the petitioner was working on contract basis and having participated in the process of selection, he could not get selected, therefore, his previous service had no connection with the regular recruitment. Hence the earlier order was passed totally against the office records and on account of concealment of facts and manipulation practised by the petitioner. The counsel has further submitted that since the promotion of the petitioner on the post of Senior Assistant has been readjusted and he has not been found entitled to promotion to the post of Superintendent Grade-II as per his re-fixed seniority, therefore, he has rightly been reverted and recovery has been ordered against him. Since the petitioner has actually received the

financial benefits and arrears thereof; by wrong grant of continuity of service and financial benefits, therefore, the petitioner is liable to return the amount received by him in excess of his entitlement.

Heard the counsels for the respective parties. Having considered the arguments and after perusing the record, this Court does not find substance in the argument of the counsel for the petitioner. A bare perusal of the record shows that the petitioner was appointed on contract/adhoc basis in the first instance and thereafter the said post was advertised for being filled up on regular basis. The petitioner participated in that process of selection. However, he could not get selected. Thereafter, although the petitioner had filed writ petition before this Court challenging his termination and the regular selection in question, however, even this Court while deciding the writ petition filed by the petitioner had observed that the petitioner would be appointed on regular basis on the post of Clerk by way of fresh recruitment. Accordingly, the petitioner was even issued the order of fresh appointment on the post of Clerk on 12.10.1982. He had accepted the same and joined on the said post as fresh appointee. Therefore, the order dated 15.05.1992 passed by the then Secretary after about 10 years and granting him the benefits of past service and arrears, which were beyond the order passed by this Court; was totally arbitrary. This Court finds substance in the argument of counsel for the State that this entire exercise was manipulated by concealing the relevant facts. The respondents have asserted and established that the file pertaining to the grant of benefits to the petitioner was directly dealt with by the Secretary to the Government; even without getting comments from the Directorate. Even before payment

of the arrears consequent upon the abovesaid order 15.05.1992, no approval from Finance Department was taken. Entire proceedings in that regard were carried out in a hushed-up manner. Hence the order dated 15.05.1992 and consequent order dated 21.05.1992 have rightly been revoked by the respondents vide the impugned order. This Court does not find any fault in the course of the action adopted by the respondents.

Although the counsel for the petitioner has submitted that the order dated 15.05.1992 was passed by the Secretary to the Government; who is the authority higher than the Director, therefore, the Director could not have passed the impugned order, however, this Court does not find any substance in this argument as well. The Director has passed the impugned order after the order dated 12.05.2010 passed by this Court; whereby the respondents were directed to pass a fresh order after granting opportunity of hearing to the petitioner. In that order, the High Court had set aside the order dated 26.05.2009. The order dated 26.05.2009 was passed only pursuant to the directions issued by the Secretary to the Government, vide letter dated 20.04.2001. Hence even the impugned order has been passed only under and with the authority of the Secretary to the Government and under specific instructions issued by the Secretary, vide his letter dated 20.04.2001. Hence the order, though expressed to be passed by the Director, in fact, is carrying out the instructions issued by the Secretary to the Government only. Otherwise also, the dispute is relating to the post of Clerk in the first instance. The Director is the appointing authority for the post of Clerk. Hence there was nothing wrong if the Director passes an order regarding grant or withdrawal of the benefits of the past service qua the post

of Clerk. Any subsequent action is pursuant to the change of the date of appointment on the post of Clerk only.

This Court does not find any substance in the argument of the counsel even on the point of delayed action against the petitioner. It is the positive case of the respondents that the petitioner had remained posted in the concerned branch for a long time and he had concealed the relevant record from the authorities concerned at the time when initial order in favour of the petitioner was passed. Even thereafter, although the Secretary to the Government had issued instructions for withdrawal of the benefits from the petitioner in the year 2001, however, the actual action against him could be taken in the year 2009. This kind of the delay, in the case could not have been possible but for some lapse on the part of some officials and but for the manipulation on the part of the petitioner. None other than the petitioner was interested in delay of the disposal of the matter. Hence continuing any benefit to the petitioner on the basis of this argument would be granting premium to the petitioner on his own wrong-doings. Even the argument of counsel for the petitioner that the successor in office could not have withdrawn the order passed by the predecessor in the office; does not help the petitioner. In the present case ,only a mistake of law and fact committed by the predecessor in office; by going against the record of the office and against the order of the High Court, has been sought to be corrected by the present incumbent in the office. Moreover, the authority in the office is not reviewing the order on its own, rather, the same was necessitated on account of the writ petition filed by the another petitioner, namely, Karamjit Singh Brar, in which the earlier order passed by the then

Secretary to the Government was questioned being illegal and totally arbitrary. Hence, it was a bounded duty of the authority to look into the matter afresh and to pass fresh orders.

Although, the counsel for the petitioner has submitted that since posts of Senior Assistant and Superintendent Grade-II were available even on the date when the petitioner retired; and also on the date when the impugned order was passed, therefore, even if the seniority of the petitioner in the cadre of Clerk was to be re-fixed, there was no requirement of reversion of the petitioner from the post of Superintendent Grade-II. However, even this argument of the counsel for the petitioner carries no weight. Mere availability of the posts in the cadre of Superintendent Grade-II would not be sufficient to save the petitioner from being reverted as per his re-fixed seniority. Since the petitioner was not originally selected in the regular selection and he was offered appointment by the respondents because of pendency of the court case and that appointment was also given by way of fresh recruitment, therefore, the petitioner, in normal course, would be at the tail of the seniority of the persons appointed by way of direct recruitment on the post of Clerk in the said selection. It is not the case of the petitioner that all the persons senior to him already stood promoted up to the post of Superintendent Grade-II on the date of his retirement or on the date of passing of the impugned order. Accordingly, even if some posts of Superintendent Grade-II were vacant and available on these two dates, those would go to the persons senior to the petitioner in accordance with their seniority, and not to the petitioner. Hence, by any means, the petitioner would be required to be reverted from the post of Superintendent Grade-II.

Hence, this Court does not find any illegality in the action of the respondents qua this aspect as well. Therefore, the petitioner would be entitled to the benefits and pensionary benefits only for the post of Senior Assistant upon which he was granted promotion after re-fixation of the seniority.

Qua the question of recovery from the petitioner, the record shows that although the order of recovery was passed by the respondents against the petitioner, however, the recovery was stayed by this Court by the interim order. Hence, no actual recovery could be effected from him. Since the petitioner had actually worked on the post on which he was appointed and promoted, therefore, there cannot be any recovery of amount of any excess payment of salary to the petitioner on account of his wrong promotions on the higher post, which now stands withdrawn. Moreover, the petitioner stands retired long back, therefore, it would not be in the interest of justice to permit any recovery from the petitioner on any account at this belated stage. Hence, the order passed by the respondents for effecting recovery against the petitioner is set aside.

In CWP No.7217 of 2016, the petitioner has prayed for release of his full retiral/pensionary benefits after he retired from the service on 30.11.2008. Since the promotion of the petitioner on the post of Superintendent Grade-II has been withdrawn consequent to the abovesaid readjustment of his seniority, therefore, although he would not be entitled pensionary benefits for the post of Superintendent Grade-II, however, he would be released the pensionary benefits for the post of Senior Assistant within a period of eight weeks from the date of receipt of certified copy of

this order.

Since, the order challenged by Karamjit Singh Brar in CWP No.10103 of 2000 has been withdrawn by the respondents, therefore, the said petition has been rendered infructuous and is liable to be disposed of as such. However, he would be at liberty to claim any benefit to which he becomes entitled on account of re-fixation of seniority, but in accordance with law.

In view of the above, CWP No.2526 of 2011 is dismissed.

CWP Nos.10074 of 2011 and 7217 of 2016 are disposed of in abovesaid terms.

CWP No.10103 of 2000 is rendered infructuous in view of the above orders passed by the respondents, which have been upheld by this Court hereinabove, and the same is disposed of with liberty aforesaid.

All the pending applications, if any, shall stand disposed of accordingly.

(RAJBIR SEHRAWAT)
JUDGE

January 25, 2021

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

Yes