In the High Court of Punjab and Haryana, at Chandigarh

1. **Civil Writ Petition No. 10694 of 2022**

Daljit Singh

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

2. **Civil Writ Petition No. 12747 of 2022**

Mahabir Singh

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

3. **Civil Writ Petition No. 14206 of 2022**

Paramjit Singh Virk

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

4. **Civil Writ Petition No. 14241 of 2022**

Sanjeev Sharma and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

5. **Civil Writ Petition No. 16442 of 2022**

Naresh Kumar Aggarwal

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

6. **Civil Writ Petition No. 18567 of 2022**

Rajiv Kumar Devgun

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

7. **Civil Writ Petition No. 20385 of 2022**

Sucheta Pahuja

... Petitioner(s)

Versus

The State of Punjab and Others

... Respondent(s)

AND

8. **Civil Writ Petition No. 20850 of 2022**

Abnash Singh Sodhi

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

RESERVED ON: 13.02.2023
DATE OF DECISION: 17.02.2023

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. R.K.Arora, Advocate
for the petitioner(s) (In CWP-10694-2022).

Mr. Raghuvinder Singh, Advocate
for the petitioner(s) (In CWP-14206-2022. CWP-14241-2022, and CWP-12747-2022).

Mr. Raghav Dayal Gupta, Advocate
for the petitioner(s) (In CWP-16442-2022, CWP-18567-2022, CWP-20385-2022 and CWP-20850-2022).

Mr. Vikas Arora, Assistant Advocate General, Punjab, for the respondents.

<u>Anil Kshetarpal, J.</u>

1. These eight connected writ petitions have come up for final disposal. The learned counsel representing the parties have consented to treat the Civil Writ Petition No. 10694 of 2022 titled as "Daljit Singh v. State of Punjab and Others" as the lead case because the issue which arises for consideration is common.

2. After having heard the learned counsel representing the parties, the identical issue which arises for consideration in all the writ petitions is "If, on the application of catch-up rule as explained in ***Ajit Singh -II and Others v. State of Punjab and Others (1999) 7 SCC 209***, the general category employees, too, are granted the pay scale and pay band equivalent to that of their juniors belonging to reserved category, who were granted promotion prior to their seniors on account of reservation, then, whether such general category candidates are also entitled to the benefit of Assured Career Progression Scheme, 2006 (hereinafter referred to as "the 2006 Scheme"), thereby stepping up their pay?"

3. On 05.08.1986, the petitioner, who belongs to the general category, joined as Junior Engineer in the Department of Punjab Public Works (B&R) Branch. On 01.01.1998, Sh.Tek Singh, who belongs to the reserved category of scheduled caste was promoted to the post of Sub Divisional Engineer, prior to the petitioner, by applying roster point reservation. Consequently, he started getting more pay in the higher pay scale. The petitioner was promoted as Sub Divisional Engineer on 11.06.2014. On the promoted post, Sh.Tek Singh was junior to the petitioner in the cadre of Junior Engineer. In accordance with the judgment passed in

Ajit Singh-II's case *(supra)*, the petitioner, on application of catch up rule, regained his seniority over and above Sh.Tek Singh. As per the instructions issued by the Government, the pay of the petitioner was also stepped up to bring it at par with Sh.Tek Singh in compliance with the judgment rendered in Civil Writ Petition No. 18367 of 2019 which was filed by the petitioner. The petitioner retired as Sub Divisional Engineer on 28.02.2021. He prays for quashing of the notice dated 04.03.2022 (Annexure P8) and the impugned order dated 04.04.2022 (Annexure P10), respectively. A detailed reply to the writ petition has been filed.

4. Heard the learned counsels representing the parties at length and with their able assistance, perused the paper-book.

5. The learned counsels representing the petitioners, in the various writ petitions have contended that the petitioners are entitled to all types of benefits including the benefit under the 2006 Scheme, as a consequence of their subsequent promotion under the catch-up rule. They submit that once a decision has been taken to step up the pay of the general category employees equivalent to their juniors in the previous cadre, then, the petitioner shall also be entitled to the benefit earned by their juniors under the 2006 Scheme. They have drawn the attention of the Court to the instructions dated 28.10.1992, 29.03.2017 and 10.10.2019. They also rely upon the definition of basic pay in Punjab Civil Service (Revised Pay) Rules, 2009 (hereinafter referred to as "the 2009 Rules"). The learned counsels have also placed reliance upon the following judgments:-

"(i) **Charan Dass v. State of Haryana (Civil Writ Petition No. 5956 of 2008, decided on 18.11.2008)**;

(ii) **Gurmeet Singh v. Punjab School Education Board and Others (Civil Writ Petition No. 18307 of 2011, decided on 06.12.2012)**;

(iii) **State of Punjab v. Gurmeet Singh and Others (Letters Patent Appeal No. 296 of 2015, decided on 24.02.2015)**; and

(iv) **Khushdeep Kaur v. State of Punjab and Others (Civil Writ Petition No. 19636 of 2014, decided on 05.10.2018)**.

6. On the other hand, the learned State counsel has contended that the benefit of the 2006 Scheme is personal, therefore, the petitioners cannot claim that they are automatically entitled to the benefit of 4/9/14 years of completion of service to upgrade their pay.

7. It would be noted here that in ***Ajit Singh-II's case*** *(supra)*, a five Judges Bench of the Supreme Court has held that if an employee belonging to the general category is promoted to the next level subsequent to the accelerated promotion granted to his junior, at that level, then, the general category candidate shall be entitled to regain his seniority on the basis of catch-up rule. By the application of the aforesaid principle, the petitioners have been placed over and above the reserved category promotees in the seniority list, on the post of Sub Divisional Engineer. The pay of the petitioners has been made equivalent to the pay of their junior employees of the reserved category in accordance with the instructions dated 14.03.2017. Clause (3) (a) of the instructions reads as under:

"3. On thorough consideration of the matter, keeping in view

the abovementioned Personnel Department letter dated 10.10.2014 (whereby it was clarified not to consider roster point as seniority point), the Govt. has decided that as per seniority lists prepared by the departments on the basis of the above letter, the junior employees belonging to reserved category have been promoted prior to the senior employees of general category, then the pay of senior employees of general category will be stepped up equivalent to those junior employees of reserved category, subject to the following conditions:-

a) The General category employees will be entitled to grant of pay and allowances from the date of promotion of their concerned junior reserve category employees on notional basis, whereas, the actual benefit of stepped up pay will be admissible to them from the date of their actual promotion in the concerned cadre."

8. Inadvertently, the pay of the petitioners was also stepped up while including the benefits earned by Sh.Tek Singh under the 2006 Scheme and the additional amount has already been paid to them. Subsequently, on the audit objection, the matter came to the notice of the department and the amount of ₹ 23,98,568/- (approximately) is sought to be recovered. Aggrieved by the aforesaid action, the petitioners have filed these writ petitions.

9. The Government of Punjab took a policy decision to introduce the 2006 Scheme vide notification dated 03.11.2006. It was decided that

after the completion of service of 4, 9 and 14 years in the post or posts in the same cadre or on the same post, the employees who have not been promoted to a higher level on account of non-availability of vacancy or non-existence of promotional avenues in the cadre shall be granted the pay scale which is next higher to their existing pay scale in the hierarchy of pay scale in column 3 of the first Schedule annexed to the Punjab Civil Service (Revised Pay) Rules, 1998. Clause 3(a) and 4(b) of the Scheme are extracted as under:-

> *"3(a) After a service of 4.9 and 14 years in a post or posts in the same cadre (herein after referred to as the same post) and service rendered in the same post in different Government Departments who is not promoted to a higher level on account of non availability of a vacancy or non existence of a promotional avenue in the cadre shall be granted the pay scale which is next higher in the hierarchy of pay scales given in the column 3 of the first schedule annexed to Revised Pay Rules, 1998. On placement in the next higher scale in the hierarchy of pay scales after a service 4, 9 and 14 years, the pay of an employee shall be fixed at the next higher stage in the pay scale and he shall be allowed next increment from the date he would have earned his next increment had he continued in the lower pay scale. If the minimum of higher scale is higher than the stage arrived at, his pay shall be fixed at such minimum and next increment shad be allowed after qualifying service of 12 months in higher scale.*

XXXX XXXX XXXX XXXX XXXX

4(b) The procedure for assessing the work and conduct for placement in the higher scale shall be the same as applicable to the case of promotion. The placement in higher scale shall be allowed only to those employees whose overall service record during the span of satisfactory service, is adjudged as 'Good' and the employee is otherwise suitable for promotion. 'Good' record shall means that more than 50% Annual Confidential Reports are good and out of last three years report at least two should be 'Good'. For all the remaining years the bench mark may be "Average".

10. Thus, it is evident that the benefit of the 2006 Scheme is granted if an employee has not been promoted on a higher level on account of the non-availability of a vacancy or non-existence of the promotional avenue in the cadre, after the completion of 4, 9 and 14 years of service. Further, the employee is placed in the next higher scale of service to avoid stagnation. For granting the benefit under the 2006 Scheme, the procedure for assessing the work and conduct of the employee is the same as applicable in the case of promotion. As already noticed, the petitioner was promoted as a Sub Divisional Engineer on 11.06.2014. He will be entitled to the benefit of 2006 Scheme, for the first time, after the completion of four years of service on the post of Sub Divisional Engineer, if he fulfills the criteria.

11. Further, reliance has been placed upon the instructions dated 28.10.1992, which in the opinion of this Court are not applicable as the same have limited scope of application. A copy of the instructions dated

28.10.1992 has been placed on the file as Annexure P1. These instructions were issued in response to the clarification sought by various departments that when an employee is promoted from back date on notional basis, whether the period of notional promotion can be counted towards the approval/grant of proficiency step up. Hence, the aforesaid instructions are not applicable in the facts of the present case.

12. With regard to the reliance placed on the instructions dated 29.03.2017, it is evident that the government has only decided that the general category employees shall be entitled to grant of pay and allowances from the date of promotion of their concerned junior, belonging to reserved category, on notional basis. However, there is no decision to extend the benefit of 2006 Scheme, earned by the concerned junior employee belonging to reserved category who got accelerated promotion, to the promoted candidate of general category. This position was clarified in the clarification dated 10.10.2019. The relevant extract thereof reads as under:-

Sr. No.	***Point raised by the Personnel Department***	***Clarification given by the Finance Department***
1.	*At the time of stepping-up of pay of the Senior Officers/officials of the Officers/ Officials of the reserved category in accordance with the letter 14.03.2017 of the Personnel Department if any junior official has taken be benefit of A.C.P., is the benefit of ACP given to the junior official, to be included at the time of fixing the salary of senior official equivalent to his junior official.*	*Only benefit of increase in normal pay shall be payable to the employees of genera category on account pf promotion of the junior employees of reserved category prior to him. Meaning thereby, the benefit on account of A.C.P. or any other benefit due to passing of any dated departmental examination, granted to the employees of reserved categories, shall not be given to the employees of general categories.*

2.	*Condition of 38 months arrears vide letter dated13.10.2014 of the Finance Department while step-up salary of senior/junior has been imposed. It has been mentioned in para 30 of letter dated 14.03.2017 of the Personnel Department that the pay and allowances to the employees of general category shall be admissible only on notional basis from the date of promotion of the employees concerned with the reserved category, whereas benefit of step-up shall be admissible to these employees from the actual date of promotion in the concerned cadre. Does the condition of 38 months arrear shall also be applicable, while making step-up in salary of the senior/junior employees in these cases as per letter dated 13.10.2014 of the Finance Department?*	*As per instructions issued by the Personnel Department vide letter No. 3/34/99-3PP1/12565 dated 22.10.1999, in accordance with the catch up principle, the salary is to be made equal on notional basis on each stage automatically. But on each stage arrear is not to be paid. In this regard only at the stage of first step-up, arrear for maximum of 38 months is to be paid to the employees of general category during the entire service.*

13. The learned counsel representing the petitioner relies upon the following para of the clarification dated 10.10.2019:-

> *"It is also made clear that the cases in which the approval with regard to the benefit has been accorded by the competent authority, before the issuance of this letter or in accordance with the instructions dated 14.02.2017 of the Personnel Department, in all such case no recovery shall be*

made, but in such cases the pay/pension shall be re-fixed from the date of issuance of this letter as per current instructions."

14. From a careful reading of the aforesaid extracted part of the clarification, it is evident that it is merely a saving clause which is applicable only in those cases in which the approval with regard to the benefit has already been accorded by the competent authority before the issuance of the clarification letter or in accordance with the instructions dated 14.02.2017. In the present case, the petitioner was wrongly paid the arrears vide office order dated 30.03.2021. Hence, the part of the instructions extracted above shall not be applicable because this clarification was issued on 10.10.2019 i.e. prior to the order of such payment/grant. Sh.Raghav Dayal Gupta, the learned counsel representing the petitioners in Civil Writ Petition No.14241 of 2022 titled as "Sanjeev Sharma and Others v. State of Punjab and Others" contends that the petitioners' pay was re-fixed on 13.06.2018, hence, no recovery from the petitioners pursuant to the clarification dated 10.10.2019 can be made. From a careful reading of the para extracted above, it is evident that the recovery is not to be made if the approval with regard to the benefit has been accorded by the competent authority prior to the issuance of the clarification letter. However, in this case, the petitioners have not pleaded this fact. Moreover, the aforesaid para is based on the judgment passed in ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others (2015) 4 SCC 334***. The same shall be examined, in detail, in the later part of the judgment because if the employees at senior posts like the Sub Divisional Engineer are allowed to retain payment in excess of their entitlement, it shall not be in the public

interest or set a good precedent. If unjust enrichment is allowed in the absence of any statutory protection, then, it would not serve the interest of justice and fairness.

15. As regards the argument of the learned counsel with reference to the revised Pay Rules, 2009, it has been noticed that the 2006 Scheme is a personal benefit earned by the employee on account of non-availability of the promotional avenue. The petitioners have not worked on the post of Sub Divisional Engineer for a period of four years prior to the date on which their juniors had completed four years in service. Hence, the petitioner cannot claim that the expression used in the instructions that their pay shall be equated includes the benefit of the 2006 Scheme when the petitioners otherwise fail to fulfill the criteria laid down to claim such benefit.

16. This Court has gone through the judgment passed in ***Charan Dass's case*** *(supra)*. The aforesaid case relates to the State of Haryana. The Division Bench had only directed that the petitioner is entitled to be stepped up in his scale of pay at par with his junior. This judgment does not relate to the extension of benefit under the 2006 Scheme. Similar is the view expressed in ***Gurmeet Singh's case*** *(supra)*. The said judgment of the Division Bench is a result of appeal filed by the State in a previous case. In ***Khushdeep Kaur's case*** *(supra)*, the writ petition was allowed on account of violation of the principles of natural justice. Hence, the afore-discussed judgments do not help the case of the petitioner.

17. In the end, the learned counsels representing the petitioners submit that since the petitioners have already retired, hence, no recovery should be permitted.

18. Whereas, the learned State counsel has submitted that the petitioners are being paid the provisional pension and they have retired from the post of Sub Divisional Engineer, hence, they are not entitled to the benefit of the ***Rafiq Masih (White Washer)'s case*** *(supra)*. This Court has considered the submissions.

19. From the written statement, it is evident that the balance leave encashment and gratuity amount to the extent of ₹23,98,568/- has been withheld. The petitioners have retired from the post of Sub Divisional Engineer from the Punjab Public Works Department (B&R). Even the amount of monthly provisional pension of the petitioners is more than ₹50,000/-. In these circumstances, the petitioners are not entitled to claim the benefit of ***Rafiq Masih*** *(supra)* which was delivered in the case of a person holding the post of a washerman. The State of Punjab is making these payments out of the public money. The petitioners who have wrongly been paid the public money have no right to retain the same, thereby, causing wrongful loss to the State exchequer. Moreover, the precedential value of the judgment passed by the Supreme Court, in the exercise of the powers under Article 142 of the Constitution of India, has been discussed, in detail, by this Court in ***Prabhu Kumar Rawat and others v. National Hydroelectric Power Corporation Ltd. & Others (Civil Writ Petition No.14979 of 2020, decided on 10.08.2021)***, the relevant part whereof is extracted as under:-

> *"The next issue which requires attention is the argument of learned counsel representing the petitioners that in view of the judgment passed by the Supreme Court in* ***Rafiq Masih*** *(supra), no recovery can be made from the employees,*

particularly after a long passage of time and after some of the petitioners have already retired.

*It may be noted here that the judgment passed by the Supreme Court in **Rafiq Masih** (supra) is an exercise of powers under Article 142 of the Constitution of India which concerns its equitable jurisdiction. Therefore, such judgment, with greatest respect, cannot be applied without examining the facts. At one stage, the case of **Rafiq Masih** (supra) was referred to a Larger Bench of the Supreme Court. When the matter was placed before the Larger Bench, it was held that such judgments are in exercise of powers under Article 142 of the Constitution of India and therefore, are not binding precedents. Reliance in this regard can be placed on the judgment of the Larger Bench in **State of Punjab and another vs. Rafiq Masih and others (2014) 8 SCC 883**. Still further, the judgment passed in **Rafiq Masih** (supra) does not apply to the facts of the present case; particularly when the amount is sought to be recovered as per the interim order passed by the Court. The petitioners, after having received the payment under the interim directions of the court, cannot now resist the recovery as per the same order dated 08.07.1994. Still further, it has come on the record that the payment made to the petitioners is much more than the amount sought to be recovered. Moreover, it is imperative to apply the test of hardship before following the judgment passed in **Rafiq Masih** (supra), particularly when in paragraph 7 and 8 of the judgment, the Hon'ble Supreme Court has held that the right to recover against the employee shall only be resorted to when it would not cause hardship. Still further, as noticed above, the petitioners are the highest paid employees. Recently, they have also been paid a substantial amount on account of revision of the salary. The dues are being adjusted in 24 installments. The petitioners have failed to show equity in their favour."*

20. Keeping in view the aforesaid facts, finding no merit, the writ petitions are dismissed.

(Anil Kshetarpal)
Judge

February 17, 2023
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No