

CWP-19515 of 2022

2025 PHHC:001279



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

CWP-19515 of 2022
Reserved on: 18.12.2024
Pronounced on: 08.01.2025

Joginder Singh

.....Petitioner

Versus

Pepsu Road Transport Corporation and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Satwant Singh Ranghi, Advocate, and
Mr. Y.P. Singla, Advocate,
for the petitioner.

Mr. Hitesh Sood, Advocate,
for Mr. Harsh Aggarwal, Advocate,
for the respondents.

NAMIT KUMAR, J.

1. The petitioner has filed the instant petition claiming the following reliefs: -

(i) Writ in the nature of certiorari for quashing impugned part of recommendations of the Dispute Committee dated nil (Annexure P-9) recommending to treat the promotion of petitioner to the post of Steno Typist made on 28.02.1994 as new appointment and consequential impugned order dated 12.03.2021 (Annexure P-11) passed by respondent No.2 ordering to treat the promotion of petitioner to the post of Steno Typist as new appointment after expiry of more than 26 years from the date of his promotion made on 28.02.1994; impugned order dated 24.05.2021 (Annexure P-12),



thereby refixing the pay of the petitioner w.e.f. 28.02.1994 in terms of impugned order dated 12.03.2021; impugned order dated 18.06.2021 (Annexure P-13), thereby illegally deducting/effecting the recovery of Rs.50,240/- out of total admissible leave encashment amount of Rs.6,85,890/-; impugned order dated 10.08.2021 (Annexure P-14) thereby illegally deducting/effecting the recovery of Rs.6,02,528/- out of total admissible gratuity amount of Rs.8,26,345/-; and further impugned order dated 14.07.2022 (Annexure P-17) passed by respondent No.1 vide which the appeal of the petitioner filed against impugned order dated 12.03.2021 has been dismissed; being illegal, arbitrary, nullity being without jurisdiction, unjust, unwarranted, unconstitutional and violative of Article 14 of the Constitution of India.

(ii) Writ in the nature of Mandamus directing the respondents to restore all the service benefits having been drawn by the petitioner w.e.f. 28.02.1994 on account of his legal and valid promotion on the post of Steno Typist and to release the illegally deducted/recovered leave encashment amount of Rs.50,240/- and gratuity amount of Rs.6,02,528/- along with interest @ 18% per annum w.e.f. 01.05.2020 till actual payment of the same and further to grant interest @ 18% per annum w.e.f. 01.05.2020 till 07.10.2021 on the delayed payment of remaining pensionary benefits which were released to the petitioner on 07.10.2021 after the delay of about one and half year from the date of his superannuation on 30.04.2020.

2. The brief facts of the case, as have been pleaded in the petition, are that the petitioner, who is a matriculate, was appointed as work charge Motor Mate in the Pepsu Road Transport Corporation (for short 'PRTC') in December, 1982 and joined as such on 01.01.1983.



Thereafter, he was adjusted as work charge Plumber w.e.f. 01.03.1988 in the same pay scale of work charge Motor Mate. The service conditions of the employees of the PRTC are governed by the Regulations known as “Pepsu Road Transport Corporation (Conditions of Appointment and Service Rules), 1981. In the year 1991-92, three posts of Steno Typist under promotion quota were lying vacant, out of which two posts were meant for general category and one for Scheduled Caste category and in order to fill up these three posts, various circulars were issued by the PRTC on 29.08.1991, 28.01.1992 and 07.07.1992, inviting applications from amongst the working employees of any cadre of the PRTC who were possessing the qualification of matriculation or equivalent with speed of 80/40 words per minute in shorthand and typing, respectively with two years experience in PRTC. The petitioner being eligible in all respects, applied for one of the said posts and he was called for shorthand/typing test conducted on 05.08.1993. The petitioner appeared and cleared the said test at the requisite speed and the result of the same was declared on 11.08.1993 and thereafter on the approval of respondent No.2, the Departmental Promotion Committee examined the promotion case of the petitioner and recommended to promote him to the post of Steno Typist on regular basis after considering his satisfactory work and conduct during the entire tenure of service and his successfully passing the stenography/typing test. It was also observed that the petitioner is performing the duties of Steno Typist since 1983. However, before issuance of formal order of promotion of the petitioner in terms of the



recommendations of the DPC, legal opinion from Senior Legal Advisor of the PRTC was also sought as to whether a work charge employee can be promoted. The Senior Legal Advisor opined that it is a case of promotion and the petitioner fulfils the requisite qualification and experience required for the post of Steno Typist as prescribed at serial No.9 of Appendix 'A' of the PRTC Service Rules, 1981 and has also qualified the typing speed test, therefore, he can be promoted to the post of Steno Typist against a vacancy under the promotion quota. Thereafter, the petitioner was promoted to the post of Steno Typist vide order dated 28.02.1994 (Annexure P-6). Thereafter, he was further promoted to the post of Senior Assistant in December, 2016 and on attaining the age of superannuation, he retired as such on 30.04.2020. Thereafter, while considering the case of the petitioner for release of pensionary benefits under the Pension Regulations, 1992, the pension branch of the PRTC, vide its office note dated 19.06.2020, sent the case of the petitioner to the committee constituted under office order No.652 dated 30.01.2015 for disposal of disputed cases of pension of PRTC employees on the ground that under PRTC Pension Regulations, 1992, petitioner was required to fill up his option form but his option is not available in the pension branch. Thereafter, the case of the petitioner was considered by the said committee in its meeting held on 25.08.2020 and while making reference to earlier similar nature of cases, wherein also options were not exercised by the employees of the PRTC Pension Regulations, 1992 and still they were made its members, and concluded that there was no need to fill up option form



of pension scheme by the employees who were appointed on regular posts after implementation of pension scheme on 15.06.1992 as per item 3(1) of Chapter II of the PRTC Pension Regulations, 1992. Further, it was recommended by the said committee that appointment of the petitioner to the post of Steno Typist can be treated as new appointment from 28.02.1994 itself because there was no provision in the PRTC Service Regulations of 1981 for promotion of Plumber to the post of Steno Typist and as such order of promotion of the petitioner as Steno Typist was not correct under the Rules and he is required to be treated as member of GPF after treating his appointment on the post of Steno Typist as new appointment on 28.02.1994 and pay/allowances will also be admissible to him accordingly w.e.f. 28.02.1994 after treating it as a new appointment at that stage. Thereafter, the admin branch referred the draft of order of partial amendment in order No.1808 dated 28.02.1994 to the Senior Legal Advisor for vetting before issuing the formal modified orders to the petitioner. The Senior Legal Advisor on 14.12.2020 opined that treating an employee/retiree as fresh appointee after so many years of appointment and not to grant benefit of service rendered as Plumber may create legal implications in future, however, keeping in view the recommendations of the Dispute Committee and acceptance thereof by the competent authority, the draft order was vetted by the Senior Legal Advisor. Consequently, vide order dated 12.03.2021, the promotion order dated 28.02.1994 was modified by treating the petitioner as newly appointed Steno Typist on 28.02.1994 instead of promotion. Thereafter, the pay of the petitioner

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was refixed w.e.f. 28.02.1994 vide order dated 24.05.2021 and consequently, vide order dated 28.06.2021 excess payment of Rs.50,240/- on account of leave encashment and vide order dated 10.08.2021, recovery of Rs.6,02,528/- already drawn by the petitioner as salary on account of his promotion w.e.f. 28.02.1994 was also ordered to be deducted from his outstanding gratuity amount of Rs.8,26,345/-. Thereafter, the petitioner submitted appeal dated 12.10.2021 against the order dated 12.03.2021, raising his grievance against treating him as newly appointed Steno Typist instead of promotion w.e.f. 28.02.1994. The petitioner was called for personal hearing on 04.07.2022 and he submitted written submissions, however, without appreciating the said contentions raised in the appeal as well as in the written submissions, his appeal has been rejected vide order dated 14.07.2022 (Annexure P-17) by upholding the order dated 12.03.2021. The said orders dated 12.03.2021 (Annexure P-11), 24.05.2021 (Annexure P-12), 18.06.2021 (Annexure P-13), 10.08.2021 (Annexure P-14) and 14.07.2022 (Annexure P-17) have been impugned in the present petition.

3. Written statement on behalf of the respondents/PRTC has been filed wherein the petition has been opposed by stating that since there is no provision to give promotion to a work charge (Plumber) to a regular post of Steno Typist, therefore, promotion of the petitioner dated 28.02.1994 has been treated as a fresh appointment and, therefore, his earlier service rendered on work charge basis from 01.01.1983 to 27.03.1994 cannot be counted.



4. Learned counsel for the petitioner has submitted that before passing the impugned orders dated 12.03.2021 (Annexure P-11), 24.05.2021 (Annexure P-12), 18.06.2021 (Annexure P-13) and 10.08.2021 (Annexure P-14) neither any show cause notice was issued to the petitioner nor an opportunity of personal hearing was granted which is in violation of principles of natural justice and the action of the respondents in making recovery of Rs.50,240/- vide order dated 28.06.2021 and Rs.6,02,528/- vide order dated 10.08.2021 is also in violation of the law laid down by the Hon'ble Supreme Court in ***State of Punjab and others v. Rafiq Masih (White Washer) and others, 2015(1) SCT 195***. He further submitted that the promotion of the petitioner made by the PRTC on 28.02.1994 to the post of Steno Typist has wrongly been treated as a fresh appointment after a period of about 27 years and that too after his retirement, which is totally illegal. In support of this contention, learned counsel has also placed reliance upon the judgment of the Jharkhand High Court in ***W.P.(S) No.5240 of 2021 – Phul Chandra Thakur v. The State of Jharkhand and others decided on 12.09.2024***.

5. Per contra, learned counsel for the respondents, while referring to the averments made in the written statement, has opposed the claim of the petitioner.

6. I have heard learned counsel for the parties and perused the record with their able-assistance.

7. The facts are not in dispute that petitioner initially joined the PRTC as work charge Motor Mate on 01.01.1983 and thereafter he



was adjusted as work charge Plumber on 01.03.1988. Three posts of Steno Typist became vacant in the year 1991-92 and various circulars were issued by the respondents/PRTC such as dated 29.08.1991, 28.01.1992 and 07.07.1992 for filling up the said posts and the petitioner, being fully eligible, also applied in pursuance to the said circular dated 07.07.1992 and appeared in the stenography/typing test and successfully passed the same and his case for promotion was recommended by the PRTC and after taking legal opinion from the Senior Legal Advisor, he was promoted as Steno Typist vide order dated 28.02.1994 and thereafter he was further promoted to the post of Senior Assistant in December, 2016 and retired as such on 30.04.2020. Vide order dated 12.03.2021, the promotion of the petitioner made to the post of Steno Typist on 28.02.1994, has been treated as a fresh appointment on the post of Steno Typist w.e.f. 28.02.1994 instead of promotion and consequently his pay has been revised w.e.f. 28.02.1994 and recovery of Rs.50,240/- and Rs.6,02,528/- has been made from the petitioner. All this has been done in violation of the principles of natural justice as neither any show cause notice was issued to the petitioner nor an opportunity of hearing was afforded to him. Further, the promotion made to the post of Steno Typist on 28.02.1994 has been treated as fresh appointment on 12.03.2021 after a period of 27 years and that too after retirement of the petitioner and while ignoring the fact that in December, 2016 he was further promoted to the post of Senior Assistant.

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7-A Further, the petitioner was promoted to the post of Steno Typist on the basis of Circular dated 07.07.1992, which reads as under:-

“No.7783/PRTC/Admn.2 Dated 7.7.92

To

*The Depot Manager,
Pepsu Road Transport Corporation,
Patiala-1/2, Bathinda-1/2, Barnala, Budhlada, Faridkot
Sangrur, Kapurthala, Ludhiana and Chandigarh*

Sub: Filling up of vacant posts of Steno Typists through promotion

Ref:

*With reference to this office letter No.26869 dated 28.1.1992, it is again intimated that in order to fill up three vacant posts of steno typist lying vacant under promotion quota out of which 2 posts are of general category and one is for schedule caste, test is to be conducted **from any cadre of P.R.T.C.***

You are requested that employees working under your control specially of scheduled caste who are fulfilling requisite qualifications under rules should send their applications by 24.7.1992 through proper channel:

“Matriculate or equivalent qualification, speed of 80 and 40 WPM in shorthand and type respectively with two years experience in P.R.T.C.”

Sd/-

*Administrative Officer
Pepsu Road Transport Corporation*

Copy: 7784 Dt. 7.7.92

All officers and Branch Incharge in Head Office, Notice Board HO, Steno/M.D. Upper M.D. and Administrative Officer.”

Perusal of the above Circular would show that the applications were invited from the employees of the PRTC who were



having the qualification of matriculation or equivalent with speed of 80 and 40 WPM in shorthand and typing, respectively, with two years experience in PRTC. Since the petitioner was fulfilling the abovesaid essential qualifications, he was considered for the said post and after passing shorthand/typing test, his name was recommended for promotion by the Departmental Promotion Committee. Legal opinion of the Senior Legal Advisor was also sought before promoting the petitioner to the said post, meaning thereby proper procedure was followed before promoting the petitioner to the post of Steno Typist. The said promotion cannot be set aside after 27 years by treating the same as a fresh appointment.

8. The Jharkhand High Court in ***Phul Chandra Thakur's*** case (supra), while considering the somewhat similar issue has held as under:-

“7. Having heard learned counsel for the parties and after going through the documents available on records it appears that the case of the petitioner has been rejected on the ground that since there was no sanctioned post of typist in S.P. College Dumka thereby the adjustment of the petitioner could not have been done on the post of Library Assistant in view of the report of Justice S.B. Sinha Commission.

As a matter of fact, the University in its pay fixation charge has already mentioned about the fact that since no post of typist was available in the said college therefore, the petitioner was adjusted on a sanctioned vacant post of Library Assistant through a resolution in the same college wherein the petitioner was working and therefore, the action of the respondent state in rejecting the claim of the



petitioner is not tenable as it does not comes under the ambit of the report of Justice S.B. Sinha Commission as it is not the case where an employee has been adjusted in a different college in a different subject; rather in the present case the petitioner has been adjusted in the same college and on a sanctioned vacant post.

8. *Moreover during the entire service period of the petitioner, the respondent state has never raised any objection with regard to the appointment of the petitioner and it was only raised at the time of approval of pay fixation of the petitioner which is after a lapse of almost 13 years of his retirement which is not justified in the eyes of law and also the same issue has been set at rest by a Co-ordinate bench of this Court in the case of **Ratni Oraon (supra)** which has been upheld up to the Hon'ble Apex Court in S.L.P.(C) No.24661 of 2016, wherein it has been held that when during the entire service period of an employee no objection with regard to the appointment was raised then it is not open for the respondent to raise the issue of appointment after his retirement/death."*

9. The action of the respondents in making recovery from the petitioner is also totally contrary to the law laid down by the Hon'ble Supreme Court in **Rafiq Masih (White Washer) and others case (Supra)**. The relevant portion of the aforesaid judgment is reads as under:-

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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.

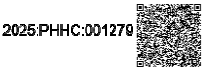
(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(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."

10. Keeping in view the above, the present petition is allowed.

The action of the respondents in treating the promotion of the petitioner as Steno Typist as fresh appointment after 27 years, is held to be illegal and hereby quashed and set aside; order dated 24.05.2021 whereby pay of the petitioner was refixed is also quashed and consequently orders dated 18.06.2021 and 10.08.2021 whereby recovery of Rs.50,240/- and 6,02,528/-, respectively has been made from the petitioner are also held to be illegal and are set aside. In view of Full Bench judgment in **A.S. Randhawa v. State of Punjab and others, 1997(3) S.C.T. 468** and Coordinate Bench judgment in **J.S. Cheema v. State of Haryana, 2014(13) RCR (Civil) 355**, the respondents are directed to refund the said amount to the petitioner along with interest @ 6% per annum from the date of deduction till the date of payment. Respondents are also directed to restore the pay of the petitioner as he was getting at the time

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of his retirement and release the consequential benefits, within a period of three months, from the date of receipt of certified copy of this order.

08.01.2025
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No