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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Dated: 21.01.2025

1.

CWP-35184-2019 (O&M)

RAM MEHAR SINGH AND ANR.

.....Petitioner(s)
- VERSUS
- STATE OF PUNJAB AND OTHERS

.....Respondent(s)
2.

CWP-6774-2020 (O&M)

KULVINDER KUMAR AND ORS.

.....Petitioner(s)
- VERSUS
- THE PUNJAB AND HARYANA HIGH COURT, CHANDIGARH
AND ORS.

.....Respondent(s)
3.

CWP-10610-2020 (O&M)

SUNIL KUMAR

.....Petitioner
- VERSUS
- STATE OF PUNJAB AND OTHERS

.....Respondent(s)
4.

CWP-7129-2020 (O&M)

AMRINDER SINGH

.....Petitioner
- VERSUS
- PUNJAB AND HARYANA HIGH COURT, CHANDIGARH

.....Respondent(s)

5. CWP-9566-2020 (O&M)
GURWINDER SINGHPetitioner
VERSUS
STATE OF PUNJAB AND OTHERSRespondent(s)

6. CWP-9568-2020 (O&M)
IQBAL SINGHPetitioner
VERSUS
STATE OF PUNJAB AND OTHERSRespondent(s)

7. CWP-12900-2020 (O&M)
MOHINDER PALPetitioner
VERSUS
PUNJAB AND HARYANA HIGH COURT AND ORS.Respondent(s)

8. CWP-6378-2021 (O&M)
IVNEET SINGHPetitioner
VERSUS
STATE OF PUNJAB AND OTHERSRespondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shadab Ahmad, Advocate for
Mr. Pankaj Garg, Advocate
for the petitioners in CWP No.35184 of 2019.

Mr. B.S Patwalia, Advocate for the petitioner in
CWP No.6774 of 2020 and CWP No.10610 of 2020.

Mr. Hitesh Pandit, Advocate
For the petitioners in CWP No.7129 of 2020.

Mr. R.K Arora, Advocate and Mr. Jugam Arora, Advocate
For the petitioners in CWP Nos.9566, 12900, 6378 and 9568 of 2020.

Ms. Akshita Chauhan, DAG Punjab.

Ms. Divya Sharma, Advocate
For respondent Nos.2 to 4 in CWP No.35184 of 2019.

None for respondent Nos.5 to 7 in CWP No.35184 of 2019.

Mr. Ranjit Singh Kalra, Advocate for respondent-Court
In CWP No.10610 of 2020 and CWP No.12900 of 2020.

Ms. Puja Chopra, Advocate
For respondent Nos.3 and 4 in CWP No.6378 of 2021
And for respondent No.5 in CWP No.9566 of 2020.

Ms. Sangita Dhanda, Advocate
For respondent Nos.1 and 2 in CWP No.6774 of 2020 and
CWP No.7129 of 2020.

Mr. Shreenath A. Khemka, Advocate
For the respondent-Court in CWP No.9568 of 2020.

HARSIMRAN SINGH SETHI, J. (Oral)

1. Present bunch of writ petitions involve common question of law in the background of common set of facts and thus they are being decided by a common order.
2. In the present bunch of petitions, the grievance of the petitioners is that the resignation submitted by the petitioner(s) in order to join the State of Punjab on the post of Clerk while working on the post of Clerk in various Respective Session Divisions in pursuance to Advertisement dated 24.09.2016 has not been treated as a technical resignation and rather, it has been treated as a simple resignation so as to cause prejudice to the petitioner(s) so that, they are not able to plead to the

new department in the State of Punjab for the benefit of continuity of service and protection of the pay as admissible under the Punjab Civil Services Rules.

3. Certain facts may be noticed for the correct appreciation of the issue in hand.

4. The petitioner(s) applied for the post of Clerk in pursuance to an advertisement No.4/2016 issued by the State of Punjab on 01.09.2016, as well as for the post of Clerks in pursuance to Advertisement dated 24.09.2016 advertised by the Punjab and Haryana High Court to be filled in various respective Session Divisions in the State of Punjab and Haryana.

5. The selection process with regard to the advertisement dated 24.09.2016 issued by the Punjab and Haryana High Court was completed and the petitioner(s), upon being selected were appointed in various Sessions Divisions starting from the year 2016 onwards till 2019.

6. While working on the said posts of Clerk, as the petitioners had already applied for the post of Clerk qua the advertisement dated 01.09.2016 issued by the State of Punjab, they were called for participation so as to appear in the counselling/written examination. Before appearing in the counselling/written examination, the petitioner(s) sought permission, which permission was granted to all the petitioner(s) except two petitioners in CWP No.10610 of 2020 and CWP No.12900 of 2020.

7. In fact, all the petitioner(s) appeared in the written examination/counselling and ultimately cleared the selection process and were also selected by the State of Punjab against the post of Clerk in pursuance to the advertisement dated 01.09.2016.

8. Thereafter, in order to join the post of Clerk with the new department i.e. State of Punjab, the petitioners sought the grant of technical resignation so that, there is a continuity in service and the petitioner(s) could get the benefit of protection of the pay scale which they were getting while working with the respective Session Divisions of the State of Punjab upon joining the new post of Clerk with the State of Punjab.

9. The said permission to grant the technical resignation has been denied to the petitioner(s) and their resignations have been treated as a normal resignation from the service, which is causing prejudice to the petitioner(s), which grievance has been raised before this Court in the present petition.

10. It may be noticed that by the time petitioner(s) got selection against the Advertisement dated 01.09.2016, most of the petitioners had already cleared the period of probation and were confirmed against their respective posts of Clerk in the various Session Divisions.

11. The prayer of the petitioner(s) in the present bunch of petitions is that the resignation which they have submitted so as to join the new post of Clerk with the State of Punjab be treated as a technical resignation so that the petitioner(s) can claim the benefit of continuity in service as well as protection of pay upon joining the new post with the State of Punjab keeping in view the Punjab Civil Services Rules, which will govern their services.

12. Upon notice of motion, the respondent-State as well as the Punjab and Haryana High Court have filed the reply.

13. Learned counsel for the State of Punjab submits that as of now, none of the petitioner(s) have been extended the benefit of technical

resignation, which is the requirement under the Punjab Civil Services Rules, so as to claim the benefit of continuity and protection of pay hence in case, the petitioner(s) are not able to secure technical resignation and any request is made by the petitioner(s) on the ground of benefit of said resignation, the same will be considered and decided accordingly.

14. Learned counsel appearing on behalf of the Punjab and Haryana High Court submits that keeping in view the various facts as well as the instructions issued by the Government of Punjab dated 19.02.2016, which have already been adopted by Punjab and Haryana High Court, upon joining the post with the Punjab and Haryana High Court, the petitioner(s) were required to give the information that they have already applied for the post of Clerk with the State of Punjab and want to compete for the same but as the said information was not given, the claim of the petitioner(s) qua grant of technical resignation has been declined as the said information was received from the petitioner(s) much after the joining of the post of the Clerk in the various Respective Session Divisions, where they were appointed and had joined in pursuance to the advertisement dated 24.09.2016.

15. Learned counsel for the respondent High Court further submits that in some of the cases after joining the post in various respective Session Divisions in the cadre of Clerk, permission to compete for the post of Clerk in pursuance to the Advertisement dated 01.09.2016 were sought, which was declined but still, the petitioner(s) competed for the post by appearing in the written examination and counselling thereafter so as to get selected hence, in their cases, it cannot be said that they had the valid permission to compete

for the post in pursuance to the Advertisement dated 01.09.2016 so as to claim the benefit of technical resignation.

16. Learned counsel for the respondent-High Court further submits that in some of the cases, the permission was not sought even after joining but the candidate still competed and got selected hence, permission to compete for the post of Clerk was not sought from the competent authority while working with the various respective Session Divisions.

17. Learned counsel for the respondent-High Court further submits that in some of the cases, the resignation have been accepted as a normal resignation and the petitioners have joined as such with the State of Punjab but thereafter they have approached this Court to treat the said resignation as a technical resignation, which benefit may kindly be declined to them.

18. At this stage, learned counsel for the petitioner(s) submits that in some of the cases where no permission was sought by the candidates who were similarly situated as petitioners and wanted to compete for the post in question qua the advertisement dated 01.09.2016 issued by the State of Punjab, the permission has been given subsequent to their selection by the respective Session Divisions on the basis of which, even the benefit such as protection of pay has also been given by the State of Punjab upon their joining hence, the petitioner(s) who were given permission to compete, cannot be treated at a lower pedestal so as to deny the benefit of technical resignation to the petitioner(s) who competed for the post of Clerk in pursuance to the advertisement dated 01.09.2016 with permission.

19. Learned counsel for the petitioner(s) further submits that some of the candidates who were not granted the benefit of technical resignation

joined the State of Punjab still they were also granted the benefit of protection of pay hence, the petitioner(s) are being discriminated not only by the Punjab and Haryana High Court but also by the State of Punjab for the grant of the same benefit, which is arbitrary and illegal.

20. I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

21. It is a conceded fact that the petitioner(s) applied for the post of Clerk in pursuance to the advertisement dated 01.09.2016 prior to the selection of the petitioner(s) with the various Respective Session Divisions of the State of Punjab in pursuance to the Advertisement dated 24.09.2016. It is also a conceded fact that under such circumstances, the State of Punjab has already issued instructions dated 19.02.2016 wherein, the only requisite is that upon joining of the post, the information qua the application already submitted for another post is to be given so as to get the benefit of technical resignation.

22. In the present bunch of petitions, the petitioner(s) gave the said information before participating in the selection process in pursuance to the advertisement dated 01.09.2016. It is also a conceded fact that the competent authority in the Respective Session Divisions, allowed most of the petitioner(s) to participate in the written examination/ counselling with the condition that they will have to submit the technical resignation in case they are selected in pursuance to the advertisement dated 01.09.2016 issued by the State of Punjab.

23. The objection taken by the respondents to deny the benefit of technical resignation is that rather than giving the information immediately

after joining with the various Session Divisions, the said information was delayed which will extinguish the rights of the petitioner(s) to claim the benefit of technical resignation.

24. It may be noticed that the benefit of technical resignation is to be extended where an employee seeks to join another post with another employer after the permission of the present department. Whether the said permission to participate was given immediately or when needed, does not make much of the difference. Once, it was to the knowledge of the competent authority in the Respective Session Divisions that the petitioner(s) are participating in the selection process in pursuance to the advertisement dated 01.09.2016, after their selection, the objection should not have been raised so as to deny the claim to the petitioner(s).

25. Everyone has a right to plan his/her future as one feels. Unless and until there is a prejudice being caused to the particular department, the permission of technical resignation should have been granted.

26. On being asked, as to whether, by the grant of technical resignation, any prejudice will be caused to the Punjab and Haryana High Court or to any of the Respective Session Divisions, learned counsel appearing on behalf of the High Court has not been able to enumerate even one valid reason so as to deny, the benefit of technical resignation to the petitioners.

27. Once, the Respective Session Divisions are not prejudiced even if, the resignation submitted by the petitioners is treated as a technical resignation, question of denying the same only on the ground that the candidates should have informed the said fact immediately upon joining

various Respective Session Divisions, needs to be rejected and is accordingly rejected.

28. Further, the technical resignation is to be submitted so that an employee can claim the benefit of continuity in service and benefit of protection of pay in their new Department, which benefit is not to be given by the Punjab and Haryana High Court or the Respective Session Divisions but is to be given by the State of Punjab, where the petitioner(s) intended to join after being selected. Once, the State of Punjab is not raising any objection qua the grant of the said benefit subject to the technical resignation being accepted, the Sessions Divisions should have been gracious enough to grant the said benefit to the petitioner(s) rather forcing them to litigate before the court of law.

29. Further, it has also come on record that certain candidates participated in pursuance to the advertisement dated 01.09.2016 even without informing various Respective Session Divisions rather the said information was given after their selection and the Respective Session Divisions has already been given them the ex-post facto permission to participate. Once, the ex-post facto permission has been given to such candidates, which ultimately results in technical resignation so as to join the newly selected posts with the department, denying the benefit to the petitioner(s) only on the basis of a technicality despite the fact that almost all the petitioner(s) participated in the selection process by getting the permission either before appearing for the counselling/written examination or after getting selected in pursuance to the advertisement dated 01.09.2016. Hence, the rejection of the claim of the petitioner(s) for the grant of

technical resignation by the respective Session Divisions, cannot be sustained and the impugned orders declining the same are accordingly set aside.

30. With regard to the assertion of the respondent counsel appearing on behalf of the Respective Session Divisions in CWP No.10610 of 2020 and CWP No.12900 of 2020, where it has been mentioned that the prayer for the appearing in the written examination/counselling was denied to the petitioners therein but they still appeared for the written examination/counselling hence, they cannot claim the benefit of technical resignation, it may be noticed that in CWP No.10610 of 2020, the petitioner therein sought permission to appear in the counselling/written examination on 01.06.2019 which was scheduled to be held on 10.06.2019. The declining of the permission to appear was never brought to his notice upto the date of the examination and the same was brought to his notice after the examination was held. Hence, in the said case also, once the petitioner in CWP No.10610 of 2020 never knew that his request to appear in the examination has been declined and he appeared in good faith, it cannot be said that the petitioner appeared despite rejection of his claim. It can be said that the candidate appeared without the permission of the same hence, he is to be treated similar to the candidates, who appeared in the examination without permission but were later on granted the ex-post facto permission so as to appear and compete for the post of Clerk in pursuance to advertisement dated 01.09.2016..

31. Further, the said issue qua the grant of technical resignation is no longer res integra, the same has already been decided by this Court more

than once. While deciding CWP No.11810 of 2019 titled “**Ankur Sharma Vs. State of Punjab and ors.**”, dated 30.09.2024, the similar issue arose, which has been decided in the favour of the candidate so as to treat his resignation as technical resignation.

32. Learned counsel for the respondents have not been able to rebut the said fact that the claim of the petitioner(s) is similar to that of **Ankur Sharma’s case (supra)** hence, the said judgment applies upon the claim of the petitioner(s) to their benefit.

33. Further, the similar issue arose qua the denial of the technical resignation by the respective Session Divisions, which issue was decided by this Court while deciding CWP No.21498 of 2024 titled “**Vikas Sandhu Vs. Punjab and Haryana High Court, Chandigarh and ors.**”, dated 09.01.2025, wherein also, on the similar issue, where the benefit of technical resignation was being denied only on the ground that the candidate never competed with the permission of District and Sessions Judge, Karnal, the benefit was allowed in favour of the employee concerned wherein, the said employee was given permission to participate in the subsequent selection process by the District and Sessions Judge, Karnal. There also, before selection, the said benefit to participate in the selection process had been given to almost all the petitioner(s). That being so, the claim of the petitioner(s) is also covered by the judgment in **Vikas Sandhu’s case (supra)**.

34. Keeping in view the above, the impugned orders of denying the benefit of technical resignation to the petitioner(s) by various respective Session Divisions are accordingly set aside.

35. The resignation submitted by the petitioner(s) will be treated as technical resignation for all intents and purposes. The State of Punjab will be free to decide the claim of the petitioner(s) in accordance with the law keeping in view the fact that the resignation submitted by the petitioner(s) are technical resignations.

36. The present bunch of petitions are allowed in above terms.

37. Any claim raised by the petitioner(s) with the State of Punjab for the grant of any benefit keeping in view the fact that their resignations should be treated as a technical resignation, be decided by the State of Punjab as expeditiously as possible preferably within a period of 3 months from the receipt of copy of this order.

38. Pending application, if any, also stands disposed of.

39. Photocopy of this order be placed on the files of other connected cases.

21-01-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO