IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 10.03.2026

1. CWP-18410-2015 (O&M)

Baljeet Singh

....Petitioner

Versus

The State of Punjab and others

....Respondents

2. CWP-7381-2019 (O&M)

Ashok Kumar Sharma

....Petitioner

Versus

State of Punjab and others

....Respondents

3. CWP-11319-2016 (O&M)

Narinder Pal Chopra

....Petitioner

Versus

Punjab Water Resources Management and Development Corporation

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Padamkant Dwivedi, Advocate
for Mr. Vishal Aggarwal, Advocate
for the petitioner(s)
in CWP-18410-2015 and CWP-11319-2016.

Mr. Sandeep Siwatch, Advocate
for the petitioner in CWP-7381-2019.
(through video conferencing)

Mr. Vikas Sonak, AAG, Punjab.

Mr. Amit Singh Sethi, Sr. Advocate
with Mr. Parminder S. Kaul, Advocate

for respondents No.2 and 3 in CWP-18410-2015
for respondent No.2 in CWP-7381-2019
and for the respondent in CWP-11319-2016.

HARPREET SINGH BRAR J. (Oral)

1. Vide this common order, I intend to dispose of CWP Nos.CWP-18410-2015, CWP-7381-2018 and CWP-11319-2016, as common questions of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CWP-18410-2015.

2. PRAYER

2.1. Prayer in the writ petition (CWP-18410-2015) filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of *certiorari*, for quashing the impugned order dated 26.6.2015 (Annexure P-20), whereby the recovery of Rs.8,21,263/- has been ordered to be recovered from the salary of the petitioner and for quashing the impugned orders dated 22.7.2014 (Annexures P-12 and P-13 respectively) whereby the pay-scale of the petitioner has been re-fixed/reduced w.e.f. 1987 and 1996 respectively, on the false ground that in separate CWPs No.1267 of 1999 and CWP No.9718 of 2000, this Court has passed orders for re-fixing the seniority even when no order of recovery was ever passed by this Court. Another prayer has been made to issue interim direction for staying the operation and effect of the impugned order dated 26.06.2015 (Annexure P-20), whereby the recovery of Rs.8,21,263/- has been ordered to be recovered from the salary of the petitioner, during the pendency of the present writ petition.

3. FACTS OF THE CASE

3.1. The brief facts of the case are that the petitioner was initially appointed as a Clerk in the Punjab Water Resources and Development Corporation (formerly Punjab State Tubewell Corporation) on 20.01.1979 against a regular vacant post through the process of selection undertaken by the competent authority. The name of the petitioner had been sponsored by the Employment Exchange and he was selected by the Departmental Selection Committee headed by the Superintending Engineer. The services of the petitioner were regularized in the year 1983 w.e.f. 26.10.1982 vide order dated 19.04.1983 (Annexure P-2). Thereafter, the Hon'ble Supreme Court, for the first time, made it mandatory for advertising all posts and the earlier practice of calling/requisitioning from Employment Exchanges on the basis of enrollment was stopped. The petitioner was appointed prior to the direction issued by the Hon'ble Supreme Court on the basis of his name being sponsored by the Employment Exchange. Subsequently, on 17.02.1992, the petitioner was appointed/promoted and posted as Senior Clerk and placed in the pay scale of Rs.1200-2100/- w.e.f. 01.01.1986 vide order dated 17.02.1992 (Annexure P-3). Later, the Standing Committee of the respondent/Corporation in its meeting held on 25.06.1996 decided to re-regularize the services of the petitioner and other Clerks from the initial date of their appointment and accordingly, the petitioner was re-regularized w.e.f. 20.1.1979 as discernible from

Annexures P-4 and P-5, respectively. In the year 2004, the petitioner was further promoted to the post of Junior Assistant in the pay scale of Rs.1560-2640/- w.e.f. 20.01.1989 and the office order dated 21.06.2004 (Annexure P-6) also reflected that the petitioner stood regularized w.e.f. from 20.01.1979. In the year 1999, one Darshana Sharma, who was senior to the petitioner in the cadre of Clerks had filed CWP-1267-1999, seeking correction of her seniority viz-a-viz other senior Clerks to her. Similarly, another Clerk namely Amarjit Kaur filed CWP-9718-2000, for correction of her seniority by claiming that her seniority had been wrongly fixed as compared to other Clerks, who were shown as senior to them. During the proceedings in those writ petitions, the respondent Corporation altered its stand and initiated an exercise for refixation of seniority of certain employees including the petitioner. Pursuant to the said exercise, the respondent/Corporation passed the orders dated 22.07.2014 (Annexures P-12 and P-13, respectively) whereby the pay scale of the petitioner was re-fixed with retrospective effect on the basis of re-determination of seniority. At the time of grant of revised benefits, the petitioner was required to submit an undertaking to the effect that in the event of any excess payment being detected later on, the same would be liable to be recovered from him. Subsequently, a show cause notice dated 18.05.2015 was issued to the petitioner proposing recovery of Rs.8,21,263/- on account of alleged excess salary paid to him. In response thereto, the petitioner submitted the reply asserting that he had actually discharged duties on the higher posts and recovery was impermissible in law. Despite the reply submitted by the petitioner, the respondents passed the impugned order dated 26.06.2015 (Annexure P-20) directing recovery from the salary of the petitioner. Aggrieved against the orders of refixation of pay and the consequential recovery, the petitioner has approached this Court by way of the present writ petition.

4. SUBMISSIONS ON BEHALF OF THE PETITIONER

4.1. Learned counsel for the petitioner has contended that the impugned orders are illegal, arbitrary and violative of the settled principles of law. It has been argued that the petitioner had been duly appointed against a regular post through a selection process and his services had been regularized long back with effect from the initial date of appointment. It is further submitted that the petitioner had actually worked on the higher posts and had discharged duties attached to those posts for several years and therefore, the salary drawn by him cannot be termed as excess payment warranting recovery.

4.2. Learned counsel for the petitioner has further drawn the attention of this Court to the written statement filed by the respondent-Corporation in **CWP-1267-1999** i.e. ***Darshana Sharma's case*** and submitted that the respondents had themselves taken a categorical stand that the initial appointments of the Clerks were made against substantive posts available with the Corporation. It is contended that once the appointment was made against a substantive vacancy, the service rendered from the date of initial appointment is liable to be counted for the purpose of seniority. Learned counsel for the petitioner has further submitted that during the course of the said proceedings, the respondent/Corporation changed its stand and placed on record a fresh decision through **C.M. No.5611/12 of 2006**, wherein it was stated that the earlier seniority lists dated 27.09.1991 and 14.01.1999 were defective as the *ad hoc* service of certain Clerks had been wrongly taken into account for the purpose of determining seniority. It is argued that the said proceedings were undertaken without affording any opportunity of hearing to the present petitioner, yet the respondents subsequently proceeded to re-fix his seniority and pay with retrospective effect. In support of his submissions, learned counsel for the petitioner has placed reliance upon the judgment rendered by the Hon'ble Supreme Court in ***Direct Recruit Class II Engg. Officers' Association vs State of Maharashtra and others, 1990(2) SCC 715***, to contend that where an appointment is made against a substantive vacancy in accordance with the rules, the service rendered from the date of initial appointment is liable to be counted for the purpose of seniority.

4.3. Learned counsel for the petitioner further contends that the recovery sought to be effected from the petitioner is contrary to the law laid down by the Hon'ble Supreme Court in ***State of Punjab vs. Rafiq Masih and others*, *2015(1) SCT 195*** wherein it has been held that recovery from employees belonging to Class-III and Class-IV categories, or where the excess payment has been made for a long period without any fault of the employee, is impermissible in law. Reliance is also placed on the judgements of the Hon'ble Supreme Court in ***Jagdish Prasad Singh v. State of Bihar 2024 AIR Supreme Court 3950*** and ***Thomas Daniel v. State of Kerala 2022 SCC OnLine SC 536***.

4.4. Learned counsel for the petitioner has further argued that the petitioner was never a party to the earlier writ petitions relating to seniority and therefore any decision taken in those proceedings cannot adversely affect the rights of the petitioner. He has further submitted that the undertaking allegedly obtained from the petitioner was procured without disclosing the changed stand of the respondents and, therefore, the same cannot form the basis for recovery.

4.5. Learned counsel for the petitioner has further contended that there is no fraud or misrepresentation on the part of the petitioner. He has further highlighted that it is not a case that some excess payment has been paid on account of some increment. The recovery is sought to be effected from the salary paid to the petitioner. Further, the petitioner was misrepresented by the respondent/Corporation in furnishing the undertaking on the pretext that a written statement supporting the cause of the petitioner has already been filed before this Court.

5. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

5.1. *Per contra*, learned Senior counsel for the respondent/Corporation has submitted that the controversy involved in the present writ petition stands settled in view of the earlier litigation pertaining to fixation of seniority in the cadre of Clerks of the respondent/Corporation. It is contended that in ***Darshana Sharma's case (supra)*** the issue before this Court was whether the service rendered on *ad hoc* basis could be counted for the purpose of seniority and consequential promotion. However, in compliance with the directions issued by this Court in ***Darshana Sharma's case (supra)*** as well as in ***Amarjit Kaur's case (supra)*** (CWP-9718-2000), the respondent/Corporation undertook the exercise of recasting the seniority list of the concerned employees. Consequent upon the refixation of seniority, the pay scale and promotional benefits earlier granted to certain employees, including the petitioner, required re-determination and therefore, the impugned orders of refixation of pay and recovery have been passed. Learned Senior counsel for the respondents/Corporation has submitted that the issue involved in the present petition is no longer *res integra*. In support of the arguments, he has placed reliance upon the judgment rendered by the Division Bench of this Court in **LPA-1176-2021** titled as ***Raghbir Kaur vs. Punjab Water Resources Management and Development Corporation Limited and others***, decided on **18.11.2024**, wherein while considering a similar controversy, this Court upheld the action of the respondent/Corporation in effecting recovery on the basis of an undertaking furnished by the employee concerned. He has further relied upon the Full Bench judgment of this Court in ***Chamel Singh vs State of Haryana and another, 1995(1) RSJ 382***, wherein it has been categorically held that ad hoc service *per se* cannot be counted to determine an appointee's seniority in the cadre.

5.2. Learned Senior counsel for the respondents/Corporation has further submitted that the recovery is legal and justified as the petitioner himself had furnished a specific undertaking by way of an affidavit dated 18.12.2006 (Annexure R-2/1). In the said undertaking, the petitioner explicitly agreed that if the decision in the pending writ petitions regarding seniority went against him, the respondent/Corporation would be entitled to recover any excess amount. He has further argued that since the benefit was "conditional," the protection of ***Rafiq Masih's case (supra)*** does not apply.

5.3. At this stage, learned counsel for the respondents/Corporation submits that he is not in a position to controvert the fact that after recasting the seniority of the petitioner, he was reverted to lower post.

<u>6. CONSIDERATION</u>

6.1. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

7. FINDINGS OF THE COURT

7.1. The primary question which arises for consideration in the present case is whether recovery of alleged excess salary can be effected from the petitioner on the basis of refixation of seniority and pay scale, particularly when the petitioner had actually discharged duties on the higher posts.

7.2. It is not in dispute that the petitioner was initially appointed in the year 1979 through a selection process and his services were regularized in the year 1983. It is also an admitted position that the petitioner had worked on the promoted posts and had discharged the functions related to those posts for several years.

7.3. There is nothing on record to suggest that the petitioner had played any fraud or misrepresentation in the alleged wrong fixation of seniority or pay.

7.4. The Hon'ble Supreme Court in ***Rafiq Masih's case (supra)*** has clearly held that recovery of excess payment from employees belonging to lower cadres, or recovery relating to payments made for a long period of time without any fault of the employee, would be impermissible in law. The relevant extract of the said judgment, reads as follows:

> *12. "....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.*

7.5. Further, a Full Bench of this Court in ***Budh Ram and others vs. State of Haryana and others*** in ***CWP No.2799 of 2008*** decided on **22.05.2009** dealt with the issue of recovery of excess payment made to an employee *in extenso.* It was held that while the same can be allowed in case of fraud or misrepresentation resulting in disbursement of more than the deserved amount, however, when there is no element of deception on part of the employee, it would be inequitable to effect recovery. Speaking through Justice T.S. Thakur, the following was held:

> "*Cases involving recovery of benefits received by the employees on account of misrepresentation or erroneous application of rules, regulations, circulars or instructions issued by the Government have often come up before the Courts including the Apex Court.* ***The consistent view taken***

as regards the recovery of such benefits erroneously extended to the employees without the employee being, in any way, guilty of any fraud, misrepresentation or deception is that such recovery would be unfair inequitable and against justice and good conscience. *In* ***Bihar State Electricity Board and another Vs. Bijay Bahadur and another, 2000 (10) SCC 99****, even when their Lordships recorded a finding that the employee did not possess the requisite qualification for the benefit granted to him and was not, therefore, entitled to any relaxation of the Rules held that it would be against the concept of fairness, equity, justice and good conscience to recover the amount received by him in consequence of the benefit granted to him. Concurring with the observations made by their Lordships' in* ***Sahib Ram's case (supra),*** *the Court observed:-*

> "*We do record our concurrence with the observations of this Court in Sahib Ram case (supra) and come to the of conclusion* ***that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances.****"*

> *In Sahib Ram's case (supra), referred to earlier, also the employee did not possess the requisite qualification but had received the salary on revised scales. Their Lordships however, held that the benefit flowing to the employee was not on account of any misrepresentation but on account of legal construction made for which the employee cannot be found fault with. The Court observed :-*

>> *"Admittedly* ***the appellant does not possess the required educational qualifications****. Under the circumstances, the appellant would not be entitled to the relaxation. The Principal erred in granting him*

> *the relaxation. Since the date of relaxation the appellant had been paid his salary on revised scale.* ***However, it is not on account of any misrepresentation made by the appellant that the benefit of higher pay-scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault****. Under the circumstances, the amount paid till the date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."*

(emphasis added)

7.6. A three-Judge Bench of the Hon'ble Supreme Court in ***Syed Abdul Qadir and others vs. State of Bihar and others (2009) 3 SCC 475,*** speaking through Justice B.N. Agrawal, opined as follows:

> "*27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.* ***The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or***

> ***wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.*** *See Sahib Ram v. State of Haryana, 1995(1) SCT 668 : 1995 Supp. (1) SCC 18, Shyam Babu Verma v. Union of India, 1994(2) SCT 296 : [1994]2 SCC 521; Union of India v. M. Bhaskar, 1996(4) SCT 57 : [1996]4 SCC 416; V. Ganga Ram v. Regional Jt., Director, 1997(3) SCT 72 : [1997]6 SCC 139; Col. B.J. Akkara [Retd.] v. Government of India & Ors., (2006) 11 SCC 709; Purshottam Lal Das & Ors. v. State of Bihar, 2006(4) SCT 537 : [2006]11 SCC 492; Punjab National Bank & Ors. v. Manjeet Singh & Anr., 2006(4) SCT 570 : [2006]8 SCC 647 and Bihar State Electricity Board & Anr. v. Bijay Bahadur & Anr., [2000] 10 SCC 99."*
>
> *(emphasis added)*

7.7. The ratio culled out in ***Syed Abdul Qadri's case (supra)*** has also been reiterated by the Hon'ble Supreme Court in ***Jagdish Prasad Singh's case (supra).***

7.8. In ***Thomas Daniel v. State of Kerala and others, 2022 (2) SCT 722***, a two-Judge Bench of the Hon'ble Supreme Court observed that no recovery of the excess amount paid to an employee can be effected especially when there was no misrepresentation on the part of the employee concerned. Speaking through Justice S. Abdul Nazeer, the following was held:

> "*9.* ***This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable.*** *This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess."*
>
> *(emphasis added)*

7.9. In the present case, the petitioner had rendered service on the higher posts and had drawn salary accordingly. It is a settled law laid down by the Hon'ble Supreme Court in ***Smt. P. Grover v. State of Haryana, 1983 AIR SC 1060*** and ***Arindam Chattopadhyay and others v. State of West Bengal and others, Civil Appeal No.25021 of 2013***, that an employee working on a higher post cannot be denied the salary attached thereto. It is not a case where excess payment is made on account of some wrongly applied increment, therefore, the salary paid and utilized by an employee for discharging duties on a higher post, cannot be, under any circumstance, be recovered. The alleged excess payment, if any, was the result of administrative decisions taken by the respondents themselves and not on account of any misrepresentation or fraud committed by the petitioner.

7.10. The impugned action of the respondents in directing recovery after several years of service is clearly contrary to the principles laid down by the Hon'ble Supreme Court and is also violative of the principles of fairness and equity. Consequently, the impugned orders dated 22.07.2014 (Annexures P-12 and P-13, respectively) whereby the pay scale of the petitioner was re-fixed and the impugned order dated 26.06.2015 (Annexure P-20) directing recovery of Rs.8,21,263/- from the salary of the petitioner cannot be sustained in the eyes of law.

8. ORDER

8.1. Accordingly, all the captioned writ petitions are allowed. The impugned orders dated 22.07.2014 (Annexures P-12 and P-13, respectively) and 26.06.2015 (Annexure P-20) are hereby quashed.

8.2. The respondents are restrained from effecting any recovery from the petitioner(s). If any amount has already been recovered either from the salary or from the retiral dues of the petitioner(s), the same shall be refunded to them along with interest @ 6% per annum from the date of such recovery till its actual realization, within a period of three months from the date of receipt of a certified copy of this judgment.

8.3. The respondents are further directed to release all pending admissible dues of the petitioner(s), if any, within a period of three months along with interest @ 6% per annum to be calculated from the date the said amount became due till its actual realization.

8.4. Pending miscellaneous application(s), if any, also stands disposed of.

8.5. A photocopy of this order be placed on the file of other connected cases.

(HARPREET SINGH BRAR)
JUDGE

10.03.2026
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No