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

216 CWP-18069-2014 (O&M)
Date of Decision: 20.04.2026

Vijay Kumari
.....Petitioner

VERSUS

Punjab Water Resources Management & Anr.
...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present:- Mr. R.K. Arora, Advocate with
Mr. Prabhat, Advocate
for the petitioner.

Mr. Parminder S. Kaul, Advocate for
Mr. Amit Singh Sethi, Senior Advocate
for the respondents.
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<u>HARPREET SINGH BRAR, J. (Oral)</u>

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of *Certiorari*/*Mandamus*, or any other appropriate writ, order or direction, for quashing office order No. 5693 dated 21.07.2014 (Annexure P-12) and order No. 5721 dated 21.07.2014 (Annexure P-13), *qua* the petitioner, whereby the dates of grant of placements to the petitioner in the higher pay scale of Senior Clerk/Junior Assistant have been altered after her retirement and recovery has been ordered from her leave encashment; and also for quashing

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memo dated 12.03.2014 (Annexure P-11), whereby the seniority of the petitioner has been changed after her retirement on account of misinterpretation of the judgments dated 26.09.2013 passed in CWP-1267-1999 and CWP-9718-2000 (Annexures P-7 and P-8), being patently illegal, arbitrary, mala fide and unconstitutional, and contrary to the law laid down by the Hon'ble Supreme Court in ***Sushil Kumar Singhal vs. Pramukh Sachiv, Irrigation Department & Ors., reported as 2014 (3) SCT 98*** (Annexure P-16) and further directing the respondents to release all retiral benefits of the petitioner, including gratuity, leave encashment forthwith on the basis of the last pay actually drawn by the petitioner, without any reduction or recovery, along with interest @ 18% per annum.

PETITIONER'S CONTENTIONS

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner was initially appointed as a Clerk on 23.12.1977 on ad hoc basis in the erstwhile Punjab State Tubewell Corporation Limited (now *Punjab Water Resources Management & Development Corporation Limited*). Her services were regularized w.e.f. 26.10.1982 vide order dated 19.04.1983 (Annexure P-1), which was subsequently modified, and she was granted regularization w.e.f. 01.02.1978 vide order dated 20.09.1991 (Annexure P-2) in public interest. Petitioner earned promotion and placement on various posts from time to time. The petitioner was granted placement as Senior Clerk in the pay scale of Rs.1200–2100 vide order dated 17.02.1992

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(Annexure P-3) and thereafter as Junior Assistant vide orders dated 21.02.1992, read with order dated 19.03.1993, which was further modified vide order dated 21.06.2004 (Annexure P-4). The respondent-Corporation issued tentative seniority list as on 30.09.1991 vide letter dated 07.02.1992 as discernible from (Annexure P-5) and petitioner was placed at Sr. No.82 whereas one Smt. Darshana Kumari Sharma was placed at Sr. No.13 by assigning her seniority from the date of her regular appointment i.e. 06.01.1978. There was no objection from any quarters with regard to the proposed seniority list (Annexure P-5). The Board of Directors of the respondent-Corporation, vide agenda item No.139.8 approved the seniority list of Clerks/Senior Clerks/Junior Assistants, which was issued vide letter No.14456 of 04.07.1996 by relying upon the judgment of Hon'ble Supreme Court, whereby the petitioner and certain other employees were granted benefit of seniority from the date of their initial ad hoc appointment. The petitioner was allowed benefit of seniority from i.e. 23.12.1977, and was placed at Sr. No. 29 and one Smt. Darshana Kumari Sharma was placed at Sr. No.31. The said seniority list was finalized and circulated vide letter dated 14.01.1999 (Annexure P-6). Aggrieved by the same, Smt. Darshana Kumari and other employees filed CWP-1267-1999 before this Court, seeking quashing of the seniority list dated 14.01.1999 (Annexure P-6). The aforesaid writ petition was partially allowed after relying upon the judgment passed by this Court in ***Chambel Singh v. State of Haryana and another***

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1995(1) R.S.J. 382, wherein it was held that ad hoc service *per se* cannot be counted to determine an appointee's seniority in the cadre. Reliance was also placed upon the judgment rendered by the Apex Court in ***State of Punjab and another v. Ashwani Kumar and others 2008(4) S.C.T. 269***. The writ petition filed by Smt. Darshana Kumari Sharma was disposed of accordingly in terms of the settled law and respondent-Corporation was directed to formulate the seniority of the employees afresh keeping in view the observations made by this Court therein. Accordingly, six month's time was granted to the respondent-Corporation to do the needful by this Court while disposing of the writ petition CWP-1267-1999 and CWP-9718-2000 on 26.09.2013 (Annexures P-7 and P-8), filed by the petitioner and others. The petitioner retired from service on 31.12.2013 upon attaining the age of superannuation (Annexure P-9).

2.2 Admittedly, there was no challenge made in CWP-1267-1999 with regard to the order of regularization of the petitioner. Even the Darshana Kumari Sharma and others have never raised any grievance by making any representation regarding the regularization of the petitioner. By misinterpreting the aforesaid judgments, the respondents not only withdrew the benefit of ad hoc service but also effectively nullified the petitioner's regularization from 01.02.1978 granted vide order dated 20.09.1991, although the said order was never under challenge. The petitioner was wrongly assigned seniority w.e.f. 26.10.1982 in the tentative seniority list

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instead of 01.02.1978, without affording any notice or opportunity of hearing. The petitioner submitted objections dated 09.12.2013 to the aforesaid tentative seniority list. The respondent-Corporation in terms of the directions issued by this Court in ***Darshana Kumari and others CWP-1267-1999 (supra)***, has issued direction to reformulate the seniority list dated 14.01.1999, in which the petitioner was placed at Sr. No.29 and Darshana Kumari Sharma was placed at Sr. No.31, whereas there was no dispute regarding the tentative seniority list prepared on 07.02.1992, which was never objected by any of the employees. The petitioner was placed at Sr. No.82 from counting her service from the date of regularization i.e. 01.02.1978. As such, without issuing any show cause notice or providing any opportunity of hearing, the impugned action changing the petitioner's regularization w.e.f. 01.02.1978, is not sustainable in the eyes of law. The petitioner in this regard has submitted a detailed representation. Further, after the retirement of the petitioner without deciding the representation of the objections filed by the petitioner, respondent No.2 have now issued the final seniority list vide impugned order dated 12.03.2014 (Annexure P-11), whereby the petitioner has been assigned seniority w.e.f. 26.10.1982 at Sr. No.120. On the basis of the change in the seniority list, the respondent-Corporation have also passed the impugned order dated 21.07.2014, whereby the dates of grant of benefit of placement as Senior Clerk and Junior Assistant has also been postponed and the same has been granted to

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the petition by reckoning/counting her service from 26.10.1982 instead of 01.02.1978. Consequently, the pay of the petitioner has been reduced after her retirement and recovery has been ordered from the payment of her leave encashment as discernible from impugned order dated 21.07.2014 (Annexures P-12 and P-13). The impugned action of the respondent-Corporation in changing the seniority of the petitioner after her retirement by misinterpreting the judgment rendered by this Court in ***Darshana Kumari and others CWP-1267-1999 (supra)***, is patently illegal and arbitrary. Once the service of the petitioner is regularized w.e.f. 01.02.1978 vide order dated 20.09.1991, which was never challenged by any of the employee, the same could have not been modified in the garb of implementing the order issued by this Court in ***Darshana Kumari and others CWP-1267-1999 (supra)***.

2.3 The learned counsel for the petitioner further relied upon Rule 9.4, Chapter IX of the Punjab Civil Services Rules, Volume-II and submits that for the purpose of calculation of every emoluments for the period of 24 months preceding the date of retirement of the Govt. Employee, the petitioner had admittedly retired on 31.12.2013, as such, in the light of Rule 9.4 *ibid*, the pay for the last 24 months constituted the relevant benchmark for determining the correctness of the pay. The respondents have not only travelled beyond the scope of Rule 9.4 but has also violated the law laid down in ***Sushil Kumar Singhal v. Pramukh Sachiv Irrigation Department***

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and Ors., 2014 (3) S.C.T. 98 (Annexure P-16) wherein, *pari materia*, rules regarding the correctness of the emoluments for the last ten months prior to the retirement was relied upon and further relied upon the judgments of the Co-ordinate Bench in ***Sarabjit Kaur v. State of Punjab and others, CWP-881-2025 decided on 02.05.2017*** and ***Sampuran Singh v. State of Punjab and others, CWP-27859-2017 decided on 20.01.2025.***

RESPONDENTS' CONTENTION

3. *Per contra*, learned counsel for the respondent-Corporation submits that recovery of excess payment has been made from the petitioner in terms of the instructions issued by the Department of Finance on 05.10.2012, which provides for recovery, if any, due to wrong fixation of pay and wrongly paid benefits can be recovered in terms of the aforesaid instructions. Further, the petitioner was fully aware of the writ petition filed by Darshana Kumari Sharma and she was a contesting party in CWP-9718-2000. The Letters Patent Appeal filed by the petitioners against the order passed by the Co-ordinate Bench was dismissed by the Division Bench on 31.01.2014 passed in LPA-122-2014 (Annexure R-2/1). As such, there is no dispute to the proposition that in determining seniority only the regular appointment has to be taken into consideration and not the period of ad hoc appointment prior to the regular appointment. The respondent-Corporation was bound to implement the ***Darshana Kumari (supra)*** judgment and the impugned action is only a necessary consequence of the said decision. The

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said decision had a direct nexus with the petitioner's seniority as Clerk and also any further placement as Senior Clerk/Junior Assistant as the judgment of this Court in ***Darshana Kumari (supra)***, has specifically denied the grant of benefit of ad hoc service towards seniority to the petitioner, as such in compliance thereto, after re-fixation of seniority as Clerk and further placement as Senior Clerk/Junior Assistant, the excess payment earlier paid to the petitioner has to be recovered from the retirement dues, i.e. leave encashment and that the present petition is liable to be dismissed. Once the petitioner has accepted the decision rendered in ***CWP-1267-1999 and CWP-9718-2000*** and has also not challenged the judgment rendered by Division Bench in ***LPA-122-2014***, she cannot be allowed to challenge the withdrawal of the financial benefits on the basis of these judgment(s). Moreover, the petitioner has also submitted an affidavit to the effect that respondent-Corporation would be fully entitled to effect any such recoveries from her retirement dues, in case, the aforesaid writ petition(s) are decided against her, as such the impugned orders are valid in law and there exists no ground for the petitioner to challenge the same.

OBSERVATIONS AND ANALYSIS

4. I have heard learned counsel for the parties and have perused the record with their able assistance. It transpires that the petitioner had initially joined as a Clerk on 23.12.1977 on ad hoc basis in the erstwhile Punjab State Tubewell Corporation Limited (now *Punjab Water Resources*

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Management & Development Corporation Limited). Her services were regularized on 26.10.1982 vide order dated 19.04.1983. Thereafter, in partial modification of the said order, the petitioner was allowed regularization w.e.f. 01.02.1978 vide order dated 20.09.1991. Admittedly, the aforesaid order of her regularization was never assailed either by Darshana Kumari Sharma or any other employee by filing any representation. Further, the aforementioned order was not the subject matter of the writ petition filed by Darshana Kumari Sharma. She along with eleven other employees had filed CWP-1267-1999 before this Court seeking quashing of the seniority list issued by the respondent-Corporation on 14.01.1999 (Annexure P-6).

5. Perusal of the judgments in CWP-1267-1999 and CWP-9718-2000 dated 26.09.2013 (Annexures P-7 and P-8) clearly indicates that this Court has specifically observed that once the respondent has determined the seniority, and in case the petitioner has any claim for promotion prior to the private respondent, the respondents would naturally pass an order to that effect. Further, directions were issued to the respondent-Corporation to formulate the seniority of the employees afresh, keeping in view the observations made by this Court. As such, there is no occasion for the respondent-Corporation to have revisited the order dated 20.09.1991 (Annexure P-2), vide which the regularization of the petitioner was made w.e.f. 01.02.1978. The issue before this Court in ***Darshana Kumari CWP-1267-1999 (supra)*** was whether the ad hoc service rendered by an

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employee can be taken into consideration for the purpose of seniority. Moreover, the respondent-Corporation is bound to follow the mandate of Rule 9.4, Chapter IX of the Punjab Civil Services Rules, Volume-II, which is reproduced as under:-

"*...**9.4. Stages for the completion of pension papers:–**(1) The Head of Office shall divide the period of preparatory work of two years referred to in rule 9.3 in the following three stages:–*

(a) First Stage–Verification of service:–

(i) The Head of Office shall go through the service book of the Government employee and satisfy himself as to whether the certificates of verification for the entire service are recorded therein.

(ii) In respect of the unverified portion or portions of service, he shall arrange to verify the portion or portions of such service, as the case may be, with reference to pay bills, acquittance rolls or other relevant records and shall record necessary certificates in the service book.

(iii) If the service for any period is not capable of being verified in the manner specified in sub-clauses (i) and (ii), that period of service having been rendered by the Government employee in another office or Department, a reference shall be made to the Head of Office in which the Government employee is shown to have served during that period for the purpose of verification.

(iv) If any portion of service rendered by a Government employee is not capable of being verified in the manner specified in sub-clauses (i) and (iii), the Government employee shall be asked to file an affidavit on a plain paper to the effect that he had actually rendered service during that period. He shall also be asked to produce all relevant

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documents and furnish all information which is in his power to produce or furnish in support of such declaration.

(v) The Head of Office shall after taking into consideration the facts mentioned in the affidavit and the documents produced and the information furnished in support thereof, admit the portion of service referred to in sub-clause (iv) having been rendered for the purpose of calculating the pension of the Government employee.

(b) Second stage–Making good omissions in the service book:–

(i) The Head of Office while scrutinising the certificates of verification of service, shall also identify if there are any other omissions, imperfections or deficiencies which have a direct bearing on the determination of emoluments and the service qualifying for pension.

(ii) Every effort shall be made to complete the verification of service in the manner specified in clause (a) and to make good omissions, imperfections or deficiencies referred to in sub-clause (i). Any omission, imperfection or deficiency including the portion of service shown as unverified in the service book which it has not been possible to verify in the manner specified in clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the service book.

(iii) Calculation of Average emoluments.–For the purpose of calculation of average emoluments, the Head of Office shall verify from the service book, the correctness of the emoluments drawn during the last ten months of service. In order to ensure that the emoluments during the last ten months of service have been correctly shown in the service book, the Head of Office may verify the correctness of emoluments for the period of twenty-four months preceding the date of retirement of a Government employee, and not for any period prior to that date.

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(c) Third Stage–Obtaining of Form Pen. 15 by the Head of Office:–

The Head of Office shall obtain the necessary particulars in Form Pen. 15 from the Government employee eight months before the date of his retirement.

(2) Action under clauses (a), (b) and (c) of sub-rule (1) shall be completed eight months prior to the date of retirement of the Government employee."

5.2 Further, the Hon'ble Apex Court in ***Sushil Kumar Singhal vs. Prmukh Sachiv, Irrigation Department & Ors., reported as 2014 (3) SCT 98***, has observed as under:-

".....5. It had been submitted by the learned counsel appearing for the appellant employee that the impugned judgment delivered by the High Court is incorrect for the reason that the High Court did not consider the G.O. dated 16.1.2007 bearing No.S-3-35/10-07- 101(6)/2005 which reads as under:

"[1]. Pension Fixation Authority shall inquire into emoluments of only last 10 months prior to retirement and for that examine the records of only two years prior thereto i.e. only the records of 34 months would be examined for the purpose of grant of pension, as has been provided in the aforesaid Government order dated 13.12.1977.

[2]. Pension Allowing Authority shall not be entitled to correct the mistake in determining the pay during service tenure beyond the period prescribed in para (1) above. Mistakes in pay determination of an employee can be effectively removed through the process of general inquiry/audit only when the employee is still in service."

6. It had been submitted by the learned counsel that the appellant had retired on 31st December, 2003 and

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somewhere in the month of March, 2005 it was revealed that a mistake had been committed while fixing pay of the appellant in 1986. It had been further submitted that by virtue of the aforestated G.O. dated 16th January, 2007, the mistake committed in pay fixation beyond period of 34 months prior to retirement of the appellant could not have been taken into account by the respondent employer and therefore, neither any recovery could have been sought by the respondents nor there could have been any reduction in the pension on the basis of reduction of salary.

7. Upon perusal of the aforestated G.O. and the submission made by the learned counsel appearing for the appellant, it is not in dispute that the appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs.11,625/- and on the basis of the said salary his pension had been fixed as Rs.9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced.

8. The learned counsel appearing for the respondent employer could not deny any of the facts stated hereinabove.

9. In the aforestated circumstances, the High Court was not correct while permitting the respondent authorities to reduce the pension payable to the appellant by not setting aside the order whereby excess amount of salary paid to the appellant was sought to be recovered.

10. For the aforestated reasons, we quash the impugned judgment delivered by the High Court and direct the respondents not to recover any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. The amount of pension shall also not be reduced and the appellant shall be paid

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pension as fixed earlier at the time of his retirement. It is pertinent to note that the Government had framed such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of re-fixing pension of the appellant.

11. The submission made on behalf of the learned counsel appearing for the respondent that the appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the respondent-employer could not have passed any order for recovery of the excess salary paid to the appellant or for reducing pension of the appellant.

12. For the reasons recorded hereinabove, we quash and set aside the impugned judgment as well as the order dated 23.03.2005 whereby salary of the appellant was re-fixed and order dated 23.04.2005 whereby recovery of excess amount of Rs.99,522/- was ordered to be recovered from the appellant. The appellant shall be paid pension which had been determined at the time of his retirement, i.e. immediately after 31st December, 2003. The appeal is disposed of as allowed with no order as to costs."

6. As such, this Court has no hesitation to hold that the respondent-Corporation has travelled beyond the directions issued by this Court in ***Darshana Kumari and others CWP-1267-1999 (supra)***, and also beyond the provisions contained in Rule 9.4. The case of the petitioner is squarely covered by the judgments rendered by this Court in ***Sarabjit Kaur (supra)*** and ***Sampuran Singh (supra)***. As such, the recovery of excess

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salary paid due to petitioner, after her retirement is impermissible as such action violates the mandate of the Rule 9.4(iii) of the Punjab Civil Services Rules, Volume-II.

7. In view of the above, the present petition is allowed and impugned orders dated 21.07.2014 (Annexure P-12 and P-13) are quashed and set aside. Further, the respondents are directed to re-fix the retiral dues of the plaintiff accordingly by reckoning the date of regularization 01.02.1978 with all consequential benefits and refund the recovered amount along with an interest @ 6% per annum from the date of recovery, till its actual realization. The entire exercise shall be completed expeditiously within a period of three months from the date of receipt of a certified copy of this order.

8. Pending application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

20.04.2026
Parul Verma

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No