

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

CWP No. 8924 of 2001 (O&M)

Date of decision: 13.05.2015

Kamla Bajaj

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. S.C. Pathela, Advocate for the petitioner.

Mr. Mehardeep Singh, DAG, Punjab
for the State.

Jitendra Chauhan, J. (Oral)

By way of instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of para 4.1 of the Executive instructions dated 16.07.1998 (Annexure P-4), vide which the payment of enhanced family pension restricts only upto the age of superannuation being in conflict with the statutory provisions of Rule 6.18(1) of the Punjab Civil Service Rules, Vol.2, Part-I, the Pension Payment Order (Annexure P-2), whereby the family pension was fixed @ Rs. 2075/- instead of Rs. 3458/- w.e.f. 30.06.1996 and further the quashing of recovery orders passed by the respondents.

2. It is contended that Sh. Nirmal Kumar Bajaj, the husband of the petitioner joined as Instructor, Govt. Polytechnic, Amritsar on

03.11.1962. He was due to retire on 30.06.1996, however, he died during service on 26.06.1996. The main grouse of the petitioner is that the respondents had illegally passed the impugned order(s) of recovery after the death of her husband, Sh. Nirmal Kumar Bajaj. The learned counsel submits that once the petitioner had been getting the family pension, the Department had no right to recover the amount from the same after the retirement of her spouse.

3. On the other hand, the learned State counsel submits that the benefits released in favour of the petitioner is based on the Govt. instructions issued from time to time and the recovery thereto is also a part of the same. The recovery proceedings were initiated on the basis of audit objection raised by the competent authority.

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

5. In **State of Punjab and others** Vs. **Rafiq Masih**, 2015 (1) SCT 195, the Hon'ble Apex Court has held as under:-

“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.

6. In the present case, the petitioner had been getting the family pension as per her entitlement. Once the family pension and other retiral benefits had been released in favour of the petitioner by the competent authority, the recovery is not permissible. The impugned orders of recovery were passed, after the death of Sh. Nirmal Kumar Bajaj, husband of the petitioner. The amount, if paid, in excess, is not on account of any lapse or misrepresentation on the part of the petitioner; it is the respondents/department which granted him such a payment, believing that the petitioner is entitled to it.

7. Therefore, keeping in view the above, the instant petition is allowed in terms of **Rafiq Mashi's** case (supra). The impugned orders of recovery are set aside. The respondents are directed not to make any recovery and further to refund the recovered amount and release other benefits admissible to the petitioner, if any, within a period of four months from the date of receipt of certified copy of this order.

13.05.2015

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(JITENDRA CHAUHAN)
JUDGE