

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CWP No.15722 of 2011

Date of Decision:03/09/2015

Nanhi Devi

...Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ram Niwas Sharma, Advocate
for the petitioner.
Mr. Harish Rathee, Sr. D.A.G. Haryana.

1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest?

DEEPAK SIBAL, J. (Oral)

The petitioner's late husband Shri Mange Ram served the cause of the nation as a member of the Armed Forces from 14.2.1966 to 28.2.1981 on which date he was honourably discharged. After leaving the Army, on 28.2.1981, he joined the State of Haryana in the Department of Education as a Peon-cum-Chowkidar and while in service he expired on 8.11.2003.

Having put in the required number of years of service, qualifying him for pension, the late husband of the petitioner was getting pension from the Indian Army and that being so on his death the petitioner, being his widow was granted family pension by the Indian Army.

The petitioner's late husband had also put in the required number of years of service under the respondent-State of Haryana making him eligible for the grant of pension as an employee of the State of Haryana as well and resultantly the petitioner was allowed family pension by the State of Haryana also.

Both the abovesaid family pensions from the Indian Army as well as from the State of Haryana continued to be granted to the petitioner from 9.11.2003 till 1.2.2007. However, thereafter the family pension being granted by State of Haryana was abruptly and without any notice stopped. In fact, vide order dated 3.5.2007, the State of Haryana ordered recovery of Rs.100173/- from the account of the petitioner on account of family pension received by her from 9.11.2003 till 1.2.2007. The Court is informed that this

recovery has actually been made.

The issue whether dual pensions could be granted to the employees, who put in the requisite number of years of service as members of the Armed Forces and then after leaving the Armed Forces, while holding a civil post was considered by both the Government of India as also the Government of Haryana. Through circular dated 4.3.2013 (Annexure P-12), the Government of India made a specific provision that members of the Armed Forces who got discharged from military service and then served on civil posts would be entitled to the benefit of dual pensions in case they had rendered pensionable service in both in the armed forces as also while serving against a civil post. However, financial benefits were to be granted only w.e.f. 24.9.2012. The relevant portion of the circular issued in this regard is reproduced below:

“Consequent upon issue of GOI, MOD No.01(05)/2010-D(pen/Pol) dated 17.01.2013 (copy enclosed as Annexure) family of Armed forces officers who got re-employed in Civil Dept/PSUs/Autonomous bodies/Local funds of central/state govt. after getting retired from military service and were in receipt of military pension till death, shall be allowed to draw family pension from military service in addition to the family pension, if any, authorized from the re-employed civil Dept. subject to fulfillment of other prescribed conditions as hitherto fore.

The provision of above letter are applicable to the Armed Forces Personnel who got discharged/retired/invalided out from service w.e.f. 24.09.2012 or thereafter. Benefit of this provision has also been allowed in past cases. However, the financial benefits shall be granted from 24.09.2012 only.”

The State of Haryana also through notification dated 7.2.2014 (Annexure P-14) while amending the Punjab Civil Services Rules, Volume-II through the Punjab Civil Services Volume-II (Haryana Amendment) Rules, 2014 permitted drawl of dual family pensions. These rules were also ordered to become effective from 24.9.2012.

In view of the above circular dated 4.3.2013 issued by the Central Government and notification dated 7.2.2014 issued by the State of Haryana, I have no hesitation in holding that the petitioner would be entitled to the grant of dual family pension with effect from 24.9.2012.

So far as the claim with regard to family pension from 9.11.2003 till 23.9.2012 is concerned, learned counsel for the petitioner states that he restricts his claim qua the grant of dual pension for the period for which the petitioner had been actually granted dual pension i.e. 9.11.2003 till 1.2.2007 and gives up the claim for the remaining period till 23.9.2012.

It is the admitted case between the parties that from 9.11.2003 till 1.2.2007, the State of Haryana had granted the benefit of dual family pension to the petitioner, however, the same was ordered and actually recovered through order dated 3.5.2007.

Whether the above-said recovery like in the case in hand could be made from a widow of a Class-IV employee especially the one who had served the cause of the nation as a member of the armed forces for over 15 years, is no longer *res integra* as in '***State of Punjab and others versus Rafiq Masih (White Washer) etc.***, 2015(2) SCC 608, the Apex Court has authoritatively held as under:-

“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."

The case of the petitioner is fully covered under the above quoted directions of the Apex Court in *Rafiq Masih's* case (supra).

In view of the above, the petitioner is held entitled to the grant of family pension from the respondent-State of Haryana w.e.f. 24.9.2012. The recovery which has been effected from the family pension given to the petitioner from 9.11.2013 till 1.2.2007 being impermissible is ordered to be refunded to her alongwith simple interest at the rate of 6% per annum. No orders are being passed qua the period i.e. 2.2.2007 till 23.9.2012 as the counsel for the petitioner has given up his claim qua the same.

The needful be done by the respondent-State of Haryana within two months from the date of receipt of a certified copy of this order.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

03.09.2015
rajeev