

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

CWP No. 12395 of 2013 (O&M)

Date of decision: 27.05.2015

Gagandeep Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. S.K. Sharma Budhladawale, Advocate
for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab.

Mr. V.K. Sandhir, Advocate for respondent No.4.

Jitendra Chauhan, J. (Oral)

The dual prayer in the instant petition is for quashing the impugned order dated 02.08.2011 (Annexure P-8), whereby the recovery of Rs. 33378/- has been ordered from the petitioner and for issuance of directions to the respondents to pay minimum amount of Rs. 2700/- as family pension to the petitioner.

It is contended that Sat Pal Singh, husband of the petitioner joined as Elementary Training Teacher (for short 'ETT') on 01.07.2006. Unfortunately, he suffered a road accident and died on 29.08.2006. The learned counsel lays his claim on the basis of Rule 13 of the Punjab Panchayati Raj Primary Teachers (Recruitment and Conditions of Service) Rules, 2006 pertaining to the Contributory

Provident Fund and Rule 6 of the Punjab Civil Services (Revised Pay) Rules, 1998 pertaining to Ex-gratia grant and states that the petitioner had become entitled for family pension and death cum retirement gratuity under the para 2.1, 4.1, 5.2 and 6 of the recommendations of the 4th Punjab Pay Commission as accepted by the Govt., of Punjab with Rule 2.7 of the Punjab Civil Service Rules, Vol.II. The service rendered by the husband of the petitioner was less than one year, therefore, the petitioner and the mother of the deceased husband of the petitioner were entitled to equal share in the total amount of death cum retirement gratuity.

On the other hand, the learned counsel for respondent No.4 states that the petitioner joined the service of the respondents as ETT on 01.07.2006. He refers to the notification dated 25.05.2006 of the Govt., of Punjab (Annexure P-3/A) and states that as per the notification, the petitioner is not entitled to the relief claimed by her. The notification came into force much prior to the joining of the petitioner in service.

I have heard the rival contentions of learned counsel for the parties.

Admittedly, the notification dated 25.05.2006 (Annexure P-3/A) came into being much prior to the appointment of the husband of the petitioner as ETT. As per the notification, the husband of the petitioner was entitled to Contributory Provident

Fund. Even if the husband of the petitioner had continued in service, he would not have been entitled to the relief i.e. Pension as claimed by the petitioner. The petitioner has already been given the appointment on compassionate basis. The benefit which would have been available to the deceased-husband of the petitioner, only that could be passed to the petitioner. Therefore, the petitioner is not entitled to the family pension.

So far as the recovery order dated 02.08.2011 (Annexure P-8) is concerned, the same is not justified being an excess amount of Rs. 25,000/- has been paid towards ex gratia grant and Rs.33378/- has been paid towards death cum retirement gratuity to the petitioner, which amount was not to be paid as per directions of the Scheme.

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.

There is no misrepresentation or concealment of any material fact by the petitioner for receiving the alleged excess amount. The Department voluntarily paid the amount believing that the mother of the deceased employee and the petitioner was entitled to it. The Department could not plead any undertaking given by the mother or by the widow-petitioner that, if any, excess payment is made, that would be refunded back. The impugned order dated 2.08.2011 (Annexure P-8), was passed after the death of husband of the petitioner, which is not justified, in view of the ratio of law laid down in case of **Rafiq Masih** (supra).

Therefore, keeping in view the above law, the impugned order dated 02.08.2011 (Annexure P-8) is set aside. The respondents are directed to refund the recovered amount, within a period of three months from the date of receipt of a certified copy of this order.

27.05.2015

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(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to reporter: Yes / No