

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

CWP No.20564 of 2012
Date of decision : 07.04.2015

Paramjit Kaur

...Petitioner

V/S

State of Punjab and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present:- Mr. Jasleen Singh, Advocate for the petitioners.

Ms. Harsimrat Rai, DAG, Punjab

Mr. Deepak Thapar, Advocate for respondent No.3

JITENDRA CHAUHAN, J. (Oral)

This writ petition has been filed under Article 226 of the constitution of India for the issuance of directions to the respondents to prospectively fix the family pension of the petitioner as per rules after deducting DA and to reimburse the recovery of the excess amount made unilaterally from the petitioner's family pension without passing of any order.

It is contended that the petitioner is the widow of late Sh. Jagjinder Singh, who died on 26.10.91 while serving in Punjab Police Department. The petitioner has been granted family pension

vide pension payment order dated 09.01.92 (Annexure P-1). On 10.03.1994 the son of the petitioner also got employment as a Constable with the Punjab Police on compassionate grounds. After that the petitioner was informed by respondent No.3 that she should deposit a sum of Rs.1,83,799/-, so that the excess DA paid to the petitioner after her son got employment in the Punjab Police Department may be deducted, failing which her family pension would be stopped. The petitioner deposited the said amount in her bank account and the same was deducted from the bank account of the petitioner without passing any notice. Aggrieved against the said recovery, the petitioner made several requests and last such representation dated 20.05.2011 (Annexure P-5) was served upon the respondents.

Hence, this writ petition.

The learned counsel for the respondents has opposed the contentions raised by the learned counsel for the petitioner.

At the very outset, the learned counsel for the petitioner states that the case of the petitioner is squarely covered by the ratio of law laid down by the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) Recent Apex Judgments 104.***

In ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.*** it has been 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.

(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.”

In the circumstances, the present petition is allowed and the competent authority is directed to take decision whether the case of the petitioner is covered by the State of Punjab and others Vs. Rafiq Masih (supra). In case, the decision of the competent authority is in affirmative, in that eventuality, it is directed that the representation (Annexure P-5) of the petitioner be decided in the light of Rafiq Masih's case (supra), by passing a speaking order within four months from the date of receipt of a certified copy of this order.

07.04.2015
ashok

(JITENDRA CHAUHAN)
JUDGE