IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25425 of 2015
Date of Order: 05.12.2015

Yash Pal Sharma

....Petitioner

Versus

The Administrator General and Official Trustee, Punjab and Ors.

....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vijay Kumar Chaudhary, Advocate for the petitioner.

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

RAJIV NARAIN RAINA, J.

1. This petition has been filed by the son of late Sh. Des Raj Sharma, who served the office of Administrator General and Official Trustee and retired on superannuation as Superintendent in 1985. He received service pension and died on 13.10.2014. In the evening of his life, when he was old and infirm and unable to move without difficulty and unable to defend his rights, respondent No.2 started making deductions from his pension on account of over-payment of dearness allowance in the remote past. This DA is a component of pension. The recovery was started from pension without issuing notice to the petitioner or hearing. His pension was brought down this way from Rs.27,947/- to Rs.16,189/- per month. He represented against the recovery through his son, who is the petitioner before this Court, praying that the illegal recovery be discontinued and money refunded. Unfortunately, father of the petitioner passed away and thereafter his son, who is the present petitioner made a representation dated

05.10.2015 (P.3) to the Government, which was, in fact, a reminder to the representation filed by the pensioner during his life time. No action has been taken on the representation of the petitioner. The nature of the recovery is also not very clear from the record in the paper-book. The law is settled against recovery in certain circumstances laid down by the Supreme Court in the judgment reported as **State of Punjab and others etc Vs. Rafiq Masih (White Washer) etc,** AIR 2015 SC 696 wherein the following principles has been indicated with respect to rights of Government to make recoveries of money mistakenly given to its employees. To quote from para. 12 of the reported text:

> *"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."*

2. In terms of direction (ii) supra, Supreme Court has put a complete embargo and prohibition against recovery of money from retired employees even if mistakenly granted. The case of the petitioner's father also falls in impermissible zone of employees belonging to Class III service. In view of the law laid down, the recovery is impermissible and the amount will have to be refunded to the legal heirs of the deceased/pensioner.

3. Notice of motion.

4. On the asking of the Court, Mr. Inqulab Nagpal, AAG, Punjab accepts notice on behalf of the respondents and waives service on them.

5. Heard.

6. In view of the clear enunciation of law on the subject and issue of recovery where payments have been mistakenly made by the employer even in excess of employees' entitlement, in **Rafiq Masih** case (supra) there is a complete bar on recovery against the pensioner and presently from his estate left behind. The action of the respondent-State in deducting money from pension to recover excess amount paid is therefore held indefensible and no further arguments can be entertained in view of the binding authority in **Rafiq Masih** case (supra) and it would be a sheer wastage of time to await reply of the State on a matter which is no longer res integra and, therefore, no useful purpose would be served in adopting that prolix course of action.

7. It is for this reason, this Court will not enter into the merits of the payment made mistakenly or whether it was within or in excess of the

entitlement since those considerations are been ruled out by the Supreme Court as not germane to the cause.

8. As a result of this, the present petition is allowed. The impugned action and inaction of the State is declared bad, inequitable and unconstitutional in view of the statement of law in **Rafiq Masih** case (supra). A writ of mandamus is issued to the Department to refund the amount of deductions effected from the pension till the date of death of the pensioner i.e on 13.10.2014 and to refund the amount to legal heirs of the deceased/pensioner, the late Sh. Des Raj Sharma. The petitioner and his family would furnish a certificate of legal heirs to each of three respondents upon which the detail of amounts recovered can be calculated. The amount of illegal recovery will be paid into the bank account named by the legal heirs to facilitate payments after due completion of formalities.

9. Let the entire exercise be carried out within 3 months from the date of receipt of certified copy of this order. In case, a Succession Certificate is required from the court of law, then the period spent in obtaining the same will not be counted towards decision making on refund of money. The legal heirs and representatives of late Des Raj Sharma will be entitled to simple interest @ 6 % per annum on the amount of illegal deductions effected from the late pensioner, which will be paid together with the principal amount illegally recovered from the pension account of the father of the petitioner.

10. Petition stands disposed of accordingly.

December 05, 2015 **(RAJIV NARAIN RAINA)**
manoj **JUDGE**