

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 24th September, 2015.**

+ **W.P.(C) 6644/2015, CM No.12129/2015 (for stay) & CM No.19375/2015 (for amendment of petition and filing additional documents)**

INDIRA DEY

..... Petitioner

Through: Mr. Raghav Shankar with Mr. V. Siddharth & Ms. Sonakshi Malhan, Advs.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Rakesh Kumar, Adv. for R-1.
Mr. Himanshu Dubey, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the action of the respondent No.1 Union of India (UOI) of stopping the pension under Swatantrata Sainik Samman Pension (SSSP) Scheme, 1980 to the petitioner and also seeking to recover back a sum of Rs.7,11,270/- alleged to have been wrongly paid as SSSP to the petitioner and of which amount, a sum of Rs.3,60,000/- was recovered in lumpsum from the pension account of the petitioner with the respondent No.2 Bank of India, Green Park, New Delhi and the balance sum is being recovered by deduction at the rate of Rs.15,000/- per month from the Service Pension (IPS) of about Rs.25,000/- per month being received by the

petitioner on account of her husband's service as an Indian Police Service (IPS) officer with the respondent No.1 UOI.

2. Notice of the petition was issued though no interim stay as sought, granted. The counsel for the respondent No.1 UOI states that a counter affidavit was filed in the Registry but the same was returned under objection. The counsel for the respondent No.1 UOI has been permitted to handover the said counter affidavit in the Court and the same is taken on record. The counsel for the petitioner states that there is no need to file rejoinder to the said counter affidavit. The counsel for the respondent No.2 Bank states that the respondent No.2 Bank has been acting as per the instructions of the respondent No.1 UOI and thus there is no need to file a separate counter affidavit. The counsels have been heard.

3. The position which emerges is that the husband of the petitioner viz. Sh. Shanti Nath Dey was since August, 1980 being awarded the SSSP under the Scheme which had then been floated by the respondent No.1 UOI. He continued to receive the said pension till his death on 27th October, 1989 and whereafter the petitioner as his widow started receiving the said pension till payment thereof was stopped in April-May, 2014.

4. The respondent No.1 UOI served a notice dated 30th January, 2015 on

the petitioner asking the petitioner to show cause as to why the amount already drawn by her under the SSSP Scheme be not recovered from her, because as per the revised Policy Guidelines dated 6th August, 2014, a dependent pension is not sanctioned to a spouse of a freedom fighter if the spouse had been receiving pension on account of previous employment of the deceased freedom fighter and stating that since the petitioner was also receiving the Service Pension (IPS), she was not entitled for SSSP.

5. The petitioner replied to the said show cause notice.

6. The respondent No.1, vide letter dated 26th February, 2015 stopped the payment of SSSP to the petitioner and directed recovery of excess amount received by the petitioner reasoning,

- “(i) That as per the Ministry’s letter dated 13th October, 2000 “regarding dependent family pension under the SSSP Scheme to the widows of the deceased freedom fighter pensioners”, the claimant to pension has to fulfil that he / she does not have any independent means of livelihood, and,
- (ii) That since the petitioner had been also drawing Service Pension (IPS) of her husband, she is not entitled to the pension under the said scheme.”

7. The petitioner was vide letter dated 13th March, 2015 of respondent No.2 Bank informed of Rs.3,60,000/- out of her account having already been remitted to respondent No.1 and the balance of the total excess payment to the petitioner of Rs.7,11,270/- being recovered as aforesaid and impugning which this petition is filed.

8. The counsel for the petitioner has contended:

- (a) That the show cause notice was with reference to the revised policy guidelines dated 6th August, 2014 and on the basis thereof the pension paid earlier could not have been recovered back and the petitioner could at best be disentitled from receiving the said SSSP with effect from 6th August, 2014 only and which in any case has been stopped with effect from April, 2014.
- (b) That the decision pursuant to the show cause notice is however based on a Ministry's letter dated 13th October, 2000 which did not form part of the show cause notice.
- (c) That even if the Ministry's letter dated 13th October, 2000 is to be read, the same is for adoption "in all future cases" and cannot have application to the petitioner who was since 1989

already receiving pension.

- (d) That action on the basis of Ministry's letter dated 13th October, 2000 could not have been taken in the year 2014.

9. Per contra, the counsel for the respondent No.1 has contended that since the petitioner with effect from 13th October, 2000 is not entitled to pension, there is no error in the decision to recover back the amount, erroneously paid to her and to which she was not entitled.

10. The counsel for the petitioner, in rejoinder, has confined the challenge in this petition to the action of respondent No.1 of recovering back Rs.7,11,270/- from the petitioner.

11. I have considered the material on record and the rival contentions.

12. I have enquired from the counsel for the respondent No.1 UOI, whether there is any plea or allegation of any fraud, deceit or misrepresentation having been practiced by the petitioner in drawing the pension after 13th October, 2000 and to which now it is stated that she was not eligible.

13. The counsel for the respondent No.1 UOI has fairly stated that no such plea has been taken.

14. I have next enquired from the counsel for the respondent No.1 UOI,

whether any communication of the Ministry's letter dated 13th October, 2000 or of what is contained therein was sent to the petitioner and / or whether any public notices were published informing the dependents / recipients of the said pension of the change in policy.

15. The counsel has again fairly stated that there is nothing on record to suggest the same. He however states that the copy of the said letter was sent to the Reserve Bank of India with direction to send it to all the banks who were disbursing pension, for compliance therewith. He further states that it was the respondent No.2 Bank who was disbursing the SSSP as well as the Service Pension (IPS) to the petitioner and the respondent No.1 UOI could not have been in the know of the petitioner receiving the Service Pension (IPS) also.

16. It therefore transpires that the petitioner, till April, 2014, cannot be said to be aware of having become disentitled with effect from 13th October, 2000 to the SSSP. I have wondered whether without intimating the petitioner so and without any fault on the part of the petitioner, the respondent No.1 could recover back the payment in the nature of pension paid to the petitioner, according to them erroneously, and for reasons attributable to them only.

17. The counsel for the respondent No.1 UOI in this regard has drawn my attention to the guidelines dated 6th August, 2014 to which reference was made in the show cause notice also and which impose obligation on the banks to recover back the pension paid to any pensioner which was not due.

18. However the fact remains that there was no direction to the banks as on 13th October, 2000 and the direction came only with effect from 6th August, 2014.

19. I am of the view that the payments in the nature of pension which have an element of subsistence, are such which once paid cannot be recovered back in the manner being done i.e. in a lumpsum and thereafter by deducting a major chunk of Rs.15,000/- out of the Service Pension (IPS) of Rs.25,000/- per month payable to the petitioner especially when there is no knowledge least fault attributed to the petitioner for drawing the amount which it is now alleged she was not entitled to draw.

20. The Supreme Court in *Col. (Retd.) B.J. Akkara Vs. Govt. of India* (2006) 11 SCC 709 held that it has consistently granted relief against recovery of excess wrong payment of emoluments / allowances from an employee, if the following conditions are fulfilled:

(a) the excess payment was not made on account of any

misrepresentation or fraud on the part of the employee;

(b) such excess payment was made by the employer by applying a wrong principle for calculating the pay / allowance or on the basis of a particular interpretation of a rule / order, which is subsequently found to be erroneous.

It was further held that such relief, restraining recovery back of excess payment, is granted by Courts, not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees from the hardship that will be caused, if recovery is implemented. It was reasoned that an employee would spend whatsoever emoluments he receives for the upkeep of his family and if receives an excess payment for a long time, would spent it genuinely believing that he is entitled to it. Any subsequent action to recover the excess payment will cause undue hardship to him. It was yet further held that on the same principles, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position, when compared to in-service employees and any attempt to recover excess wrong payment would cause undue hardship to them. The argument that the excess payment

made should be allowed to be recovered in easy instalments also did not find favour. In fact, the payments made under orders of the Court were also not directed to be refunded for the reason of the confusion on account of the earlier interpretation by the employer itself.

21. The same principles were reiterated subsequently also by a three Judges Bench in *Syed Abdul Qadir Vs. State of Bihar* (2009) 3 SCC 475.

22. Notice in this regard may also be taken of *D.S. Nakara Vs. Union of India* (1983) 1 SCC 305 laying down that payment of pension is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer (in this case, for those who fought for the freedom of the country) and thus the provisions with respect thereto should be interpreted accordingly.

23. Not only so, I also find that all that was prescribed in the Ministry's letter dated 13th October, 2000 was that for being eligible to draw SSSP, it had to be certified that the dependent did not have any independent means of livelihood. I have in this regard, enquired from the counsel for the respondent No.1 as to what was the criteria to assess / determine "independent means of livelihood"; whether the dependent receiving a meagre amount from another source could be deprived of the SSSP for the

reason of receiving such meagre amount.

24. The counsel for the respondent No.1 states that no criteria, at that stage, of independent means of livelihood was provided.

25. The counsel for the petitioner in this regard has drawn attention to the Circular dated 6th August, 2014 which has clarified that recipients of service pension would be considered as having independent means of livelihood and the criteria *inter alia* of income of more than Rs.20,000/- per month was to be considered as disentitling to the SSSP.

26. From the aforesaid, it is clear that in the year 2000, there was ambiguity as to what was to be treated as an independent means of livelihood. It was not provided in the terms of the Ministry's letter dated 13th October, 2000 that the dependent recipients of the SSSP should not be receiving service pension or service pension in excess of any prescribed amount. For the reason of the said ambiguity also and which has been clarified vide Policy Guidelines issued only on 6th August, 2014, it is felt that the respondents cannot recover back the amount already paid as pension from the petitioner.

27. The counsel for the petitioner on his part has stated that the petitioner will not be making any claim for receipt of SSSP in future.

28. Accordingly, this petition is partly allowed. The respondents are directed to, within 45 days hereof, refund to the petitioner all the amounts recovered from her bank account / deducted from her Service Pension (IPS) in pursuance to the decision dated 26th February, 2015 / 13th March, 2015 and to immediately stop making any deductions from the service pension (IPS) or any other monies of the petitioner. If the amounts are not so refunded within 45 days, the same will then attract interest at the rate of 9% per annum from the date of realization and till the date of refund.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 24, 2015

‘gsr/bs’