

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

**CWP No.10810 of 2006
Decided on :06.06.2016**

Ram Pati and others

... Petitioners

Versus

State of Punjab and others

... Respondents

(2)

**CWP No.12082 of 2006
Decided on :06.06.2016**

Rajinder Kaur and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. D.K. Bhatti, Advocate for the petitioners.

Mr. Pankaj Mulwani, DAG, Punjab.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of two writ petitions i.e. CWP Nos.10810 and 12082 of 2006, as common questions of law and fact are involved. The facts are being taken from ***CWP No.10810 of 2006 'Ram Pati and others Vs. State of Punjab and others'***.

Petitioners seek fixation of full family pension without deducting the amount of Dearness Allowance (D.A.), which the respondents have started doing and not to recover the excess amount which is already paid to the petitioners.

It is not disputed that the petitioners are family pensioners and their children were granted compassionate appointments on account of the death of the Government Employee/Husband/Wife. Apart from the family pension, which was being paid to them alongwith D.A., the other family member who had been appointed on compassionate basis also continued to be paid salary alongwith D.A. In view of the instructions dated 14.05.2001 issued in view of the judgment of the Apex Court in **'HSEB and others Vs. Azad Kaur' 2000 (2) SCC 227**, the respondents sought to recover the D.A. paid on the family pension from the petitioners. Resultantly, they approached this Court and vide interim order recovery was ordered to be stayed.

The State in its reply has taken the plea that in view of the employment given on compassionate grounds, the widow/widower forgoes her right and cannot say that the ward forms a separate unit. The arrangement is a package and right of such family pensioner to dearness allowance stands extinguished. It was further pleaded that the State Government has further clarified vide instructions dated 18.02.2003. The appointment was given on an assurance that such a ward would continue to support the family and therefore the employment of such ward would liable to be terminated, if he/she did not support the family. Resultantly, the recovery was sought to be justified, in view of the judgment of the Apex Court in **'Union of India and others Vs. Sujatha Vedachalam and others (2000) 9 SCC 187**. It has been further averred that the petitioners never informed about the appointment of the children on the

compassionate grounds and due to which instructions dated 14.05.2001 could not be implemented.

Bank-respondent No.4 in its reply has also taken the plea that due to mistake and also due to the fact that the pensioner had not informed the pension paying authority about the factum of re-employment, therefore, excess amount which had been paid was sought to be recovered.

The issue already stands covered against the petitioner regarding the entitlement of full D.A., since the Apex Court itself in ***Azad Kaur's case (supra)*** has held that an additional benefit in the form of an employment on compassionate grounds on account of the death of the employee had been given. The need to provide another cushion in the form of ad hoc relief was not to be there. Reliance had been placed upon the earlier judgment in ***Union of India Vs. G. Vasudevan Pillay 1995 (2) SCC 32***. The said view has been followed thereafter by the Division Bench of this Court in ***CWP No.891 of 2003 'Mukhtiar Singh and others Vs. The State of Punjab and others'*** decided on 20.01.2004 and the claim for D.A. on the family pension was disallowed.

However, the issue of recovery which is the second subsequent issue, which arises was decided in favour of the petitioners, keeping in view of the judgment of the Apex Court in ***'Sahib Ram Vs. The State of Haryana and others' 1994 (5) SLR 753***.

Thereafter, the Apex Court in ***'State of Punjab and others Vs. Rafiq Masih (White Washer)' 2015 (1) RSJ 177*** has further laid

down the principles of recovery. The principles laid down read 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.

The petitioners case would fall under Clause-(iii) and (v) of the above said principles, since admittedly D.A. even after 2001 was being paid to the petitioners till the 2006 when the petitioners were forced to approached this Court. Even otherwise the appointments were made on compassionate basis to family members on account of the death of the Government employee and, therefore, the recovery from the widow or widower on account of the employment given to the ward would also be iniquitous/harsh and arbitrary to such an extent and would far outweigh the equitable balance of the employer's right to recover. Therefore the principles laid down in Clause-(v) would also be in favour

of the petitioners.

Resultantly, the writ petitions are disposed of by confirming the interim order and directing the respondents not to make further recovery. The petitioners shall be entitled for the family pension minus the D.A.

The prayer for refund of recovery, however, cannot be granted, since the position of law was settled and the amount has been rightly recovered.

JUNE 06, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE