

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

CIVIL WRIT PETITION NO. 535 of 2006

DATE OF DECISION: JUNE 14, 2016

Gurmail Kaur wife of Late Shri Khushia SinghPetitioner

Versus

State of Punjab and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.DK Bhatti, Advocate for the petitioner.

Ms.Simsi Dhir Malhotra, Deputy Advocate General, Punjab.



TEJINDER SINGH DHINDSA, J.

The instant writ petition was instituted in the year 2006 seeking the issuance of a writ of mandamus directing the respondent-Authorities to release to the petitioner full family pension. Further prayer made is for refund of the amount that already stands recovered from the petitioner on the pretext that excess payment towards family pension had been released.

2. Facts, in brief, are that husband of the petitioner while serving on a Class IV post under the Punjab Excise Department, died in harness on 6.7.1994. Thereafter, the petitioner was granted family pension. Son of the petitioner was granted compassionate appointment in the respondent-Excise Department in the year 1995.

3. From the pleadings on record, it transpires that for the period

July 2001 to June 2004 the petitioner was entitled for 2nd rate (reduced rate) of family pension i.e. with effect from 7.7.2001. However, inadvertently, family pension being paid to the petitioner was not reduced as per entitlement. That apart, as per Government policy decision, if a family member of a deceased employee is granted benefit of compassionate appointment, then the dearness allowance component is not admissible on family pension. In spite of son of the petitioner having been granted the benefit of compassionate appointment in the year 1995 itself, certain payment towards DA component on family pension was also released to the petitioner. It is towards making necessary rectification that the family pension of the petitioner was reduced and the excess payment made over was sought to be recovered in instalments of ₹2,000/- per month.

4. It may be apposite to notice that on 24.7.2006, a Division Bench of this Court while adjourning the matter for further consideration on 28.9.2006 had directed that further recovery from the petitioner shall remain stayed.

5. During the course of hearing today, learned counsel appearing for the petitioner would make a statement that the family pension admissible to the petitioner has been correctly re-fixed and the petitioner is not entitled to the DA component on family pension on account of her son having been appointed in the respondent-Department on compassionate basis. Learned counsel states that he is confining the scope of the present writ petition only as regards further recovery to be not made from the petitioner. Learned counsel has also stated that he would not be pressing the prayer seeking

refund of the excess amount of the family pension that already stands recovered.

6. Having heard learned counsel for the parties at length and having perused the pleadings on record, this Court is inclined to accept the limited relief pressed for by the learned counsel.

7. The Hon'ble Supreme Court in **State of Punjab and others v. Rafiq Masih (White Washer) etc., 2015(1) RSJ 177** had considered the issue of recovery from employees where payments had mistakenly been made by the employer in excess of their entitlement and had culled out certain situations wherein recoveries at the hands of the employer were held to be impermissible in law. Para 12 of the judgment in **Rafiq Masih's** case (supra) would be relevant and is re-produced hereunder:

“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.”

8. Adverting back to the facts of the present case, the petitioner is a widow and in advanced age. Certain amount towards family pension in excess of her entitlement has been released to her. However, this was not on account of any mis-representation on her part. Be that as it may, part recovery in instalments has already been effected. Remaining recovery, if permitted to be effected at this stage of the life of the petitioner would be highly iniquitous as also harsh and would outweigh the right of the employer to recover the excess amount already paid. Permitting the respondents to make the remaining amount of recovery would virtually translate into the petitioner not receiving her family pension which would be necessary for her sustenance. Recovery would also be impermissible as per

guidelines and parameters laid down by the Hon'ble Supreme Court in **Rafiq Masih's** case (supra).

9. In view of the above, the present writ petition is partly allowed. The action of the respondent-Authorities in reducing the family pension of the petitioner as per entitlement is upheld. However, it is directed that the respondents shall not recover the balance amount of family pension that had been paid and released to her inadvertently over and above her entitlement.

10. Petition is disposed of accordingly.

(**TEJINDER SINGH DHINDSA**)
JUDGE

JUNE 14, 2016
SRM

Note: Whether referred to Reporter? (Yes/No)