

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 591 of 2006 (O&M)

Date of Decision: 15.06.2016.

Veena Rani

--Petitioner

Versus

State of Punjab & others

--Respondents

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

Present:- Mr. D.K. Bhatti, Advocate for the petitioner.

Ms. Simsi Dhir Malhotra, D.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

Veena Rani wife of late Sh. Sansar Chand, Constable instituted the instant writ petition in the year 2006 seeking the issuance of a Writ of Mandamus for directing the respondent authorities to release in her favour full family pension along with Dearness Allowance component. Further prayer raised is that a recovery of Rs.61,712/- on account of excess payment of Dearness Allowance be not effected from her.

Brief facts are that husband of the petitioner namely Sansar Chand while serving on the post of Constable died in harness on 9.2.2000. Petitioner was granted family pension plus Dearness Allowance as admissible and the requisite P.P.O was issued. Admittedly, son of the petitioner namely Bishan Dev was appointed as Constable in the year 2001 on compassionate basis. It so transpires that inspite of a family member having been given appointment on compassionate basis, Dearness Allowance on family pension continued to be paid to the present petitioner i.e. the widow for the period 2001 to 2005. This led to the issuance of directions from the Treasury Office to the banks concerned to stop payment

of Dearness Allowance on family pension with regard to pensioners wherein a family member had been granted benefit of compassionate appointment. Accordingly, the petitioner was released family pension w.e.f. 2005 minus Dearness Allowance component. The excess amount i.e. Dearness Allowance released to her for the period 2001 to 2005 i.e. Rs.61,712/- was sought to be recovered and which led to the filing of the present petition.

Learned counsel appearing for the petitioner, during the course of arguments today, concedes that the petitioner was not entitled to payment of Dearness Allowance on family pension w.e.f. the year 2001 i.e. the year her son had been appointed as Constable on compassionate grounds. Counsel makes a statement at the bar that he is confining the scope of the present petition only as regards recovery of the Dearness Allowance component that already stands released in favour of the petitioner.

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 learned counsel.

The Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) R.S.J., 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 was held to be impermissible in law. Para 12 of the judgement in ***Rafiq Masih's*** case (supra) would be relevant and is reproduced hereunder:-

“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 recovery."*

Adverting back to the facts of the present case the petitioner is a widow. Dearness Allowance component on family pension had been released to her for a period w.e.f. 2001 to 2005 not on account of any misrepresentation on her part. Petitioner is a lady in advanced age. Learned State counsel who is instructed by Mr. Jatinder Kumar, an official of the respondent State Bank of India states that recovery till date has not been effected.

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 such recovery would virtually translate

into the petitioner not receiving her family pension which is currently stated to be Rs.4909/- per month over a considerable length of time. The same would be impermissible as per guidelines and parameters laid down by the Hon'ble Supreme Court in ***Rafiq Masih's*** case (supra).

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 by not granting to her the Dearness Allowance component thereupon on account of compassionate appointment granted to her son, is upheld. However, the respondents shall not recover the amount of Dearness Allowance already released to the petitioner on family pension for the period w.e.f. 2001 to 2005.

Petition is disposed of accordingly.

(TEJINDER SINGH DHINDSA)
JUDGE

15.06.2016.
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Whether to be referred to Reporter? Yes.