

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

**CWP No.7545 of 2012
Decided on : 30.03.2016**

Sudesh Kumari

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present : Mr. Talwinder Singh, Advocate for
Mr. Hemant Saini, Advocate for the petitioner.

Mr. L.S. Virk, Addl. AG, Punjab.

G.S. Sandhawalia, J. (Oral)

The petitioner seeks that the relief of Dearness Allowance already paid to her be not deducted and for refund of the same which was wrongly deducted, as per the judgment passed in ***CWP No.891 of 2003 'Mukhtiar Singh and others Vs. The State of Punjab and others'*** decided on 20.01.2004 (Annexure P-1). Reliance has also been placed upon the instructions dated 28.05.2007 (Annexure P-2), wherein instructions have been given that if there was no mis-statement of facts, recovery is not to be done on the excess payment of Dearness Allowance.

The case of the petitioner is that the husband of the petitioner was working as ASI in the Police Department, who has died on 05.07.1989 and in his place the petitioner's son Raj Kumar

was given service on compassionate ground as a Head Constable on 01.03.1994. However, no details have been given regarding the recovery which has allegedly been made.

In the written statement filed by respondents No.2 to 4 the defence taken is that where family pensioners whose request for grant of compassionate employment was accepted, in those cases no Dearness Allowance relief is admissible. It has further been admitted that the respondent is not demanding the recovery from the petitioner and in case any excess payment has been made, then as per agreement executed between the bank and the Government, the answering respondent has a right to receive the amount from the bank.

Perusal of Annexure P-1 also would go on to show that the Division Bench has already decided the issue, in view of the judgment of the Apex Court in **'H.S.E.B. and others Vs. Azad Kaur', (2002) 2 SCC 227** and came to the conclusion that the entitlement to Dearness Allowance on family pension was not there, since the employment had been granted to her dependent family member. Similarly, regarding the issue of refund the matter was decided in favour of the petitioner, keeping in view of the judgment of the Apex Court in **'Sahib Ram Vs. The State of Haryana and others', 1994 (5) SLR 573** at that point of time.

The written statement does not depict that any mis-

representation or fraud has been there on the part of the petitioner to receive the dearness allowance on family pension, which is now sought to be recovered. Nor any details have been mentioned as what amount is due or has been recovered.

In such circumstances, keeping in view the judgment of the Apex Court subsequently in '**State of Punjab Vs. Rafiq Masih (White Washer) and others' 2015 (1) RSJ 177**, wherein it was held that where payments have been made for over 5 years, then the State is not to recover the amount and the recovery of any amount paid cannot be justified.

Accordingly, the present writ petition is disposed of, in terms of the abovesaid judgment by directing the State not to recover any amount from the petitioner, in case she has been paid in excess.

MARCH 30, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE