242

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

CWP-16634-2016
Date of decision : 09.05.2017

Gaurav Mohunta

... Petitioner(s)

Versus

Rajya Sabha and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Suman Jain, Advocate
for the petitioner.

Ms. Zubeda Begam, Advocate and
Ms. Sona Ansari, Advocate
for respondent No.1.

Mr. Puneet Gupta, Advocate
for respondent No.2.

Mr. Sandeep Suri, Advocate
for respondent No.3.

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AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned letter dated 12.07.2016 (Annexure P-1) issued by respondent No.3, intimating him to give the debit authorisation of an amount of ₹ 96,822/- to refund the excess amount to the Government, at the earliest.

Mr. Suman Jain, learned counsel appearing on behalf of the petitioner submits that the grandfather of the petitioner, Late S.C. Mohunta, was a Member of the Rajya Sabha. However, he died and his grandmother was drawing family pension which was revised from time to time and ultimately, she expired on 19.04.2014. The respondent No.3 issued a letter dated 12.07.2016 (Annexure P-1) to the petitioner, wherein, it has been stated that owing to the misinterpretation of the notification, additional pension (20% of basic pension) has been paid in the account of the late grandmother and therefore, the amount of ₹ 96,822/- is required to be debited.

He further submits that the aforementioned demand is arbitrary, much less, erroneous on two accounts, i) the grandmother had died; and ii) in view of the *ratio decidendi* culled out by the Full Bench of this Court in ***"Budh Ram and others V/s State of Haryana and others" 2009 (3) SCT 333***, wherein, it has been held that in case, some excess amount of the pension is being paid owing to the *bona fide* mistake by the authorities, the same cannot be restored/reversed.

Mr. Sandeep Suri, learned counsel appearing on behalf of respondent No.3/Bank submits that while opening the bank account, the petitioner was appointed as a nominee of the saving bank account and he has drawn the attention of this Court to paragraph Nos.3 and 4 of the preliminary objections of written statement, which reads as under:-

> *"3. That inadvertently the pensioner was wrongly given the benefit of additional pension @ 20% above the basic pension on attaining the age of 80 years, in terms of notification mentioned at para 7 of the petition and annexed as Annexure P-5. That on account of a misunderstanding, the benefit of 20% additional to the basic pension was granted whereas the same was not applicable to the pensioner. That the said scheme was only applicable to Civil Servants under the All India Services. That, the benefit of the same was not available to petitioners under the Parliamentary pension and Parliamentary Family Pension Rules. That inadvertently, on*

> *account of wrong interpretation of the rules, the benefit of 20% additional pension was given to the pensioner starting from July 2011 till September 2014, under which, an excess amount of ₹ 96,822/- was released and credit to the account of the pensioner.*
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> *4. That during the audit carried out by the CPAO, (Central Pension Accounts Office, New Delhi), it was observed that the pensioner was not entitled to the additional pension of 20% above the basic pension as Annexure P-5 was not applicable. The internal audit report of CPPC is herewith annexed as Annexure R-3."*

Ms. Zubeda Begam, learned counsel appearing on behalf of respondent No.1/Rajya Sabha, submits that no relief has been sought against respondent No.1.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the impugned letter dated 12.07.2016 (Annexure P-1) is not sustainable in the eyes of law and liable to be set aside, for, once the grandmother of the petitioner has already died way back in the year 2014, much less, as per the *ratio decidendi* culled out by the Full Bench of this Court, the *bona fide* extra amount paid by the authorities, cannot be recovered back. For the sake of brevity, the relevant findings rendered in para 10 of the Full Bench's judgment cited supra reads as under:-

> *"10. It is in the light of the above pronouncement, no longer open to the authorities granting the benefits, no matter erroneously, to contend that even when the employee concerned was not at fault and was not in any way responsible for the mistake committed by the authorities, they are entitled to recover the benefit that has been received by the employee*

on the basis of any such erroneous grant. We say so primarily because if the employee is not responsible for the erroneous grant of benefit to him/her, it would induce in him the belief that the same was indeed due and payable. Acting on that belief the employee would, as any other person placed in his position arrange his affairs accordingly which he may not have done if he had known that the benefit being granted to him is likely to be withdrawn at any subsequent point of time on what may be then said to be the correct interpretation and application of rules. Having induced that belief in the employee and made him change his position and arrange his affairs in a manner that he would not otherwise have done, it would be unfair, inequitable and harsh for the Government to direct recovery of the excess amount simply because on a true and correct interpretation of the rules, such a benefit was not due. It does not require much imagination to say that additional monetary benefits going to an employee may not always result in accumulation of his resources and savings. Such a benefit may often be utilized on smaller luxuries of life which the employee and his family may not have been able to afford had the benefit not been extended to him. The employees can well argue that if it was known to them that the additional benefit is only temporary and would be recovered back from them, they would not have committed themselves to any additional expenditure in their daily affairs and would have cut their coat according to their cloth. We have, therefore, no hesitation in holding that in case the employees who are recipient of the benefits extended to them on an erroneous interpretation or application of any rule, regulation, circular and instructions have not in any way contributed to such erroneous interpretation nor have they committed any fraud, misrepresentation, deception to obtain the grant of such benefit, the benefit so extended may be stopped for the future, but the amount already paid to the employees cannot be *recovered from them. "*

It would be apt to reproduce the contents of impugned letter dated 12.07.2016 (Annexure P-1), which reads as under:-

"Mr. Gaurav Mohunta
House No.23 Sector 6,
Panchkula
Haryana : 134109

Excess credit in Pension Account 001301002124

Dear Mr. Gaurav Mohunta

We value your relationship with ICICI Bank.

This is with reference to the Pension Payment Order (PPO) No.MPRAJ0900551/669399/A1 which was held by your grandmother Late Ms. Usha Mohunta. We also refer to our various oral and email communications with you in this regard.

As per the above mentioned PPO, we had been making pension payments to your grandmother till she attained 80 years of age. On attaining 80 years, we had paid additional pension (20% of basic pension) over the basic pension which she was entitled. However, during audit and verification of ICICI Bank records by the Central Payment Accounts Office (CPAO), it has been observed that she was not entitled for the additional pension. Hence, an excess pension payment of ₹ 96,822/- (Rupees Ninety six thousand eight hundred and twenty two only) has been paid to her for the period December 2010 to September 2014.

The detailed working of the amount as given by the CPAO is attached herewith for your reference.

As per the Reserve Bank of India guidelines, any excess payment made to the Pensioner is to be recovered and is to be remitted back to the government.

The excess amount paid in the above captioned account was *eventually transferred to your account held with ICICI Bank Chandigarh Branch as you were the nominee to the account held by Late Ms. Usha Mohunta.*

We request you to kindly provide us your debit authorisation of an amount of ₹ 96,822/- to refund the excess amount to the government at the earliest.

We request your cooperation knowing the sensitivity of the matter. For any clarification or more information regarding this matter, you can write to us through Email at cppc@icicibank.com or can visit to our Branch. We will happy to assist you."

On juxtaposition of the contents of the impugned letter and as well as the stand of the respondent No.3 taken in the written statement, it is revealed that additional pension (20% of basic pension) was given to the late grandmother of the petitioner started from July 2011 to September 2014, resultantly, the excess amount of ₹ 96,822/- was released. Such an act of the Bank, in my view, is not sustainable in the eyes of law in view of the *ratio decidendi* culled out by the Full Bench's judgment cited supra.

Keeping in view the aforementioned facts, the demand as per impugned letter dated 12.07.2016 (Annexure P-1), is not sustainable in the eyes of law being opaque, arbitrary, much less, erroneous and the same is hereby set aside.

Accordingly, the present writ petition stands allowed.

(AMIT RAWAL)
JUDGE

09.05.2017
Yogesh Sharma

✓
Whether speaking/reasoned **Yes/ No**

✓
Whether Reportable **Yes/ No**