

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

**CWP No. 4639 of 2016
DECIDED ON: AUGUST 10, 2018**

SURINDER PAL KAUR

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ashok Bhardwaj, Advocate
 for the petitioner.

Mr. Balbir Singh Sewak, Addl. AG, Punjab.

Mr. Umesh Kumar, Advocate
for respondent No.4.

JASPAL SINGH, J (ORAL)

Through the instant petition preferred under Articles 226 of the Constitution of India, petitioner has sought the following relief:-

- (i) to issue a writ in the nature of mandamus directing the respondents to release family pension to her;
- (ii) to issue a writ in the nature of certiorari to quash the orders/letters dated 15.09.2015 (P-2), 13.01.2016 (P-3) and 20.05.2014 (P-5), whereby recoveries have been ordered to be made from the dues of the deceased-

Jagtar Singh husband of the petitioner.;

(iii)to issue a writ in the nature of mandamus directing the respondents to refund the amount illegally recovered from the amount of leave encashment and gratuity paid to the petitioner, on account of death of her husband. ;

(iv)to issue a writ in the nature of mandamus directing the respondents to pay interest @18% per annum on the delayed payments of leave encashment, gratuity and arrears of family pension etc;

(v)to issue a writ in the nature of mandamus directing the respondents to pay increment and ACP to her husband w.e.f. 01.06.2012 and 12.06.2012 respectively and make payments of arrears of pay and pensionary benefits along-with interest @18% per annum on the delayed payments thereof.

2. In response to the notice of motion, respondent No.4 filed separate written statement taking a categoric stand that petitioner's husband has taken a personal loan from State Bank of Patiala, which was to be adjusted. After the demise of her husband petitioner herself submitted a declaration to the effect that loan amount be adjusted from the leave encashment and after adjustment thereof, balance amount of leave encashment be paid to her. Accordingly, as per the declaration submitted by the petitioner a cheque bearing No. 430080, dated 08.03.2013 to the tune of ₹1,67,453/- was issued in favour of the afore-said bank whereas, remaining amount of ₹1,60,237/- was released in favour of petitioner vide cheque No. 430079 of the even date. Since, the afore-said amount stands deducted as per the declaration submitted by the petitioner, there is no illegality especially when her husband was liable to pay the said amount

on account of loan raised by him.

3. As far as the relief with regard to the refund of an amount of ₹1,20,141/-, which was ordered to be recovered from the amount of gratuity vide letter dated 07.09.2015 (P-2), is concerned, the said amount has been sought to be recovered on account of alleged excess payment made to petitioner's husband towards the fixation of his increments done by he himself wrongly during his service. However, prior to the passing of afore-said order for the recovery of ₹1,20,141/- petitioner's husband was not served with any show cause notice or asked for any explanation in this regard. He alone was not competent or authorize to grant him increments. Rather at the most being the Superintendent, he must have dealt with the file but the orders must have been passed by some senior officer on his note. Otherwise also, he continued to draw the afore-said increments till the same were stopped or the amount was recovered. There is nothing substantive on the part of the husband of the petitioner that the wrong fixation was on account of any fraud or representation made by him. Mere allegation in this regard is not suffice. Thus, keeping in the view the instructions issued by the State of Punjab, on the basis of law laid down by Hon'ble Apex Court in the case of **State of Punjab and others vs. Rafiq Masih (White Washer) and others; 2015 SCC (4) 334** wherein, it has been held that no recovery can be effected particularly when an employee or retiree is a Class-III employee and in the case in hand, there is no dispute in this regard. Thus, recovery effected to the tune of ₹1,20,141/- from gratuity, is absolutely against the settled law and petitioner deserves the refund of the amount thereof.

4. As regards the recovery of an amount of ₹48,600/-, which was ordered to be recovered vide letter dated 13.01.2016 (P-3), is concerned three different amounts are stated to have been given to petitioner's husband during his service with respect to the Court case of Ms. Kanta Devi i.e. Rent of private vehicle availed by Sarpanches for to and fro to Delhi as well as for the expenditure of Panchayat Samiti Elections. Here, it would be pertinent to mention that the amount, if any as referred to above, availed of by the petitioner's husband in the year 2006 to 2008 when petitioner remained in service. Subsequent thereto, after a considerable period of 4 years i.e. prior to his demise on 17.07.2012 respondents did not opt to take action against him either for the recovery of the afore-said amount or for any explanation with regard to the expenditure incurred of the afore-said amount towards the purposes the same were obtained or availed of by him.

5. Now, it would be desirable and in the fitness of things to impose the recovery of afore-said amount of ₹48,600/- upon the widow i.e. petitioner. Moreover, petitioner cannot be said to be aware about the afore-said temporary advances given to or obtained by her husband. Thus, the recovery of the aforesaid amount from the petitioner is neither legally nor factually justified. Accordingly, petitioner deserves the refund thereof.

6. As far as withdrawal of ACP scale granted w.e.f 01.02.1996 vide letter dated 20.05.2014 (P-5) is concerned, learned counsel for the petitioner has fairly conceded that he does not claim with regard to the legality or illegality of the said order. However, his concern is only with regard to the recovery of amount which as per his version is violative of the instructions issued by the

Government of Punjab in the light of *Rafiq Masih's case (Supra)*. However, learned State counsel as well as counsel for respondent No.4 could not dispute with regard to the applicability of *Rafiq Masih's case (Supra)* as well as instructions.

7. Now the matter which remains for determination is only with regard to the grant of increments and ACP scale to petitioner's husband w.e.f. 01.06.2012 and 12.06.2012 respectively. It would suffice to mention here that the matter is already under active consideration of the respondents, as is evident from the letter dated 09.01.2014 (P-6). The matter was initiated by Superintendent (Grade-I) of the office of respondent No.4 and was reported to the Executive Officer, Panchayat Samiti, Jhunir vide afore-said letter (P-6). But to the utter surprise despite the period of 4 ½ years has elapsed for the initiation of those proceedings with regard to the grant of increments and ACP scale but it is strange enough that no conscious decision has been taken by the concerned authority till date. In this regard, the matter is disposed of with a direction to respondents to take a conscious decision with regard to the letter dated 09.01.2014 (P-6) within a period of three months from the date of receipt of certified copy of this order. In case of passing of any adverse order by the respondents in this regard, petitioner shall be at liberty to have recourse to other remedies available under law as well as to approach this Court.

8. In the light of afore-said discussion, instant petition is partly allowed and impugned orders/letter dated 07.09.2015 (P-2), 13.01.2016 (P-3) stand quashed. Respondents are directed to refund the amounts recovered from the petitioner in pursuance of impugned orders/letters dated 07.09.2015 (P-2),

13.01.2016 (P-3) as well as the amount if any deducted on account of excess payment on withdrawal of increments w.e.f. 01.02.1996 to the petitioner within a period of three months from the date of receipt of certified copy of this order that too, along-with interest @ 9% per annum from the date it was deducted, till actual payment of refund thereof.

9. As far as the relief with regard to the grant of increment and ACP scheme are concerned that should be dealt with and disposed of as already directed by this Court in para 7 of this order.

10. Disposed of, accordingly.

AUGUST 10, 2018
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>