

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

Sr. No.229

Civil Writ Petition No.7447 of 2016
DECIDED ON: March 08, 2018

VIDHYA DEVI

..PETITIONER

VERSUS

**DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED AND
ANOTHER**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. B.K. Bagri, Advocate,
for the petitioner.

None for

JASPAL SINGH, J. (ORAL)

Through the instant civil writ petition, preferred under Article 226 of the Constitution of India, petitioner has sought the issuance of a writ in the nature of Certiorari for quashing the notices dated February 29, 2016, March 09, 2016 and March 29, 2016 (P-7 to P-9) respectively, vide which recovery of Rs.1,10,000/- has been ordered to be effected from the petitioner on the ground of alleged excess amount of pension released to her, further petitioner has also sought the direction that respondents are not legally and factually justified to recover the said amount.

2. The only stand taken by the respondents in the written statement is that petitioner cannot take the undue advantage of the process of law. The husband of the petitioner namely Late Sh.Teka Ram @ Tek

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Chand was taken away by the nature on September 14, 2010. But an intimation in this regard was given by the petitioner to the respondent-Department by submitting the death certificate of her husband along with an affidavit dated September 22, 2014 attested by the Executive Magistrate and it was only in that eventuality, the petitioner has been paid the excess amount of pension till the date when it was brought to the notice of the respondents. Otherwise, amount of pension was only payable till the date of death of the husband of the petitioner. Learned counsel for the respondents further contends that since the petitioner has intentionally committed this act and has not brought the factum of sudden demise of her husband immediately thereafter and only intimated the department by way of affidavit dated September 22, 2014, the petitioner is not entitled to the relief sought by her. In such a situation, the judgment given by the Hon'ble Apex Court in case *State of Punjab and ors. etc. vs. Rafiq Masih, 2015 AIR (SC) 696; 2015 (1) S.C.T. 195* would not be attracted. Even otherwise, the non-furnishing of information immediately after the demise of her husband by the petitioner amounts to mis-representation of the fact, whereas on the other hand, it is a specific case of the petitioner that her husband breathed his last on September 14, 2010. Immediately thereafter, matter was brought to the notice of the respondents, but they continued to pay the pension till September, 2014, as is reflected in the impugned recovery notice(s). Since, respondents were intimated immediately about the demise of her husband, respondents-department started paying the family pension to her. Thus, it cannot be said that there was no mis-representation or fraud played by the petitioner on account of which, pension was granted till September, 2014.

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3. From the facts and circumstances referred to above and documents available on file, it is evident that factum of death of the husband of the petitioner was brought to the notice of the respondents immediately after September, 2010. It was only on account of that reason, they started making the payment of the family pension to the petitioner. In such circumstances, it cannot be said that the factum of death was not brought to the notice of the respondents or that there was any mis-representation or concealment in this respect by the petitioner. Thus, ***Rafiq Masih's case (supra)*** is fully attracted in the facts and circumstances of the case in hand and debars the respondents-department from recovering the amount which has allegedly been paid to the petitioner as an excess on account of pension after the demise of her husband.

4. In the light of what has been discussed above, notice(s) dated February 29, 2016, March 09, 2016 and March 29, 2016 (P-7 to P-9) are quashed/set aside and a direction is issued to the respondents that if any amount(s) has been deducted or recovered from the petitioner in pursuance of aforesaid notices, the same should be refunded to the petitioner, within a period of two months from the date of receipt of a certified copy of this order. Otherwise, it would entail interest @ 9% per annum from the date of filing of instant petition till actual payment.

March 08, 2018

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes
Yes/No**