

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 6926 of 2018
Date of Decision : 21.11.2018

Anita

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.

Harsimran Singh Sethi, J.(Oral)

The present writ petition has been filed by the petitioner challenging the order of recovery dated 23.11.2017 (Annexure P-3). It has further been mentioned in the writ petition that by the said order, an amount of ₹11,84,130/- is sought to be recovered by deducting monthly installment of ₹10,929/- from family pension.

2. The facts which have led to the impugned order are that husband of the petitioner, namely, Kamal Kumar Abrol was working with the respondent-department, who superannuated on 30.09.2013. At the time of superannuation, he was working as Senior Assistant. Keeping in view the service rendered by the husband of the petitioner, pensionary benefits were calculated and sanctioned. Monthly pension was being paid to the husband of the petitioner regularly.

3. Unfortunately, husband of the petitioner died on 20.12.2013 i.e. within a period of three months from the date, he retired. Petitioner filed an

application for the grant of family pension. After the death of the husband of the petitioner, the petitioner was also granted pension and the family pension was being paid to her regularly.

4. Despite the fact that the husband of the petitioner had died on 20.12.2013 and the family pension had already been allowed to the petitioner after the death of her husband still the pension, which was being paid to the husband of the petitioner, was being deposited inadvertently by mistake of the bank regularly till 30.09.2017. When the said mistake was noticed by the bank, a notice was given to the petitioner that the petitioner has got an amount of ₹11,84,130/- as pension on behalf of her husband from 21.12.2013 till 30.09.2017, for which she was not entitled for and, therefore, the same should be refunded.

5. Learned counsel for the petitioner contends that the bank is deducting ₹10,929/- per month for realising the amount of ₹11,84,130/-, the recovery of which is arbitrary and illegally and the same cannot be done from the petitioner as there was no misrepresentation on behalf of the petitioner. In support of his contention, learned counsel for the petitioner has placed reliance upon a judgment of Hon'ble the Supreme Court in the case of *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SCC 334*, to contend that the recovery cannot be made from the petitioner as it will result in extreme hardship for the petitioner.

6. I have heard learned counsel for the petitioner and have gone through the case file carefully.

7. It is not disputed by learned counsel for the petitioner that the petitioner has been receiving not only the family pension which was allowed to her after the death of her husband but she kept on receiving the

pension which the bank deposited by mistake/inadvertently. Petitioner knew that she is not entitled for the said amount but did not inform the bank about the same. There might not be any misrepresentation on behalf of the petitioner but the petitioner knew that the amount which is being deposited by the bank, she was not entitled for, still she kept quiet and retained the amount. Therefore, in the present case, the petitioner received and retained the amount which she knew that she is not entitled for and hence, the case of the petitioner will not fall within the parameters laid down by Hon'ble the Supreme Court in ***Rafiq Mashis's case (supra)*** so as to quash the order of recovery. Hon'ble Supreme Court in ***Col. B.J. Akkara Vs. Govt. of India, 2006(11) SCC 709***, while discussing this aspect held as under :-

“where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.”

8. Learned counsel for the petitioner further states that a sum of ₹10,929/- is being recovered every month. In fact, the same amounts to 60% of the family pension. This ground is also not available to the petitioner for the reason that the petitioner had the amount of ₹11,84,130/-, which was being deposited regularly in the bank. If she has used that amount, she has to deposit the same with monthly installment of ₹10,929/-, it will take approximately 10 years for the bank to recover the amount.

9. Under these circumstances, it cannot be said that the installment of ₹10,929/-, which the bank has given to the petitioner to re-

deposit the amount, is arbitrary or excessive.

10. In view of the above, there is no merit in the present writ petition and the same is hereby dismissed.

November 21, 2018
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*