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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1130/2017**

**MALTI SINGH**

..... Petitioner

Through: Mr. Maninder Dubey, Advocate.

versus

**UNION OF INDIA & ORS**

..... Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC  
with Mr. Kamaldeep and Mr. Shravan  
Kumar Shukla, Advocates for UOI.

**CORAM:**

**JUSTICE S. MURALIDHAR**

**JUSTICE SANJEEV NARULA**

**ORDER**

**27.11.2018**

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**Dr. S. Muralidhar, J.:**

1. The Petitioner, who was nearly 72 years old at the time of filing of the present writ petition, and is now 74 years old, is the widow of the late Mr. Sitaram Singh who was employed as an Upper Divisional Clerk ('UDC') in the Border Roads Organization ('BRO').

2. The Petitioner approached this Court, aggrieved by the action of the Ministry of Personnel, Public Grievances & Pension, Government of India in recovering from her savings bank account with the State Bank of India ('SBI') a sum of Rs.1,68,990/- on 8<sup>th</sup> April 2016. She was intimated by letter dated 20<sup>th</sup> May 2016 that it had been determined that a total sum of

Rs.7,09,862/- was to be recovered on account of alleged overpayment of pension.

3. During the pendency of the petition, on 30<sup>th</sup> August 2017, an interim order was passed by the Court to the effect that, until the next date of hearing, the Respondents would not make any recovery on account of arrears and that the correct pension payable to the Petitioner would be credited to her bank account. On the next date of hearing, i.e. on 26<sup>th</sup> October 2017, learned counsel for SBI assured the Court that the earlier order dated 30<sup>th</sup> August 2017 would be complied with.

4. Learned counsel for the Petitioner points out that despite her representation dated 1<sup>st</sup> June 2016 to the General Manager of SBI for reversal of the recovery, no action has been taken till date.

5. According to the Respondents, the Petitioner apparently was paid pension at Rs.6,043/- per month instead of at Rs.3,500/- per month during the period January 2006 and April 2016 on account of “wrongful migration/feeding of data as regular pension instead of family”. Further, it was stated that the date of birth was wrongly filled as 18<sup>th</sup> November 1928, resulting in pension enhancement during the period from November 2008 to April 2016.

6. It is an admitted fact that after detecting the alleged overpayment, the Respondent Ministry on one fine day woke up and informed the Petitioner by a letter dated 20<sup>th</sup> May 2016 about seeking to recover a total sum of Rs.7,09,862/-. By this time, on 8<sup>th</sup> April 2016, without any notice to her, the Respondent SBI had deducted a sum of Rs.1,68,990/- from her savings

account.

7. The question regarding the recovery of overpayment of pension is no longer *res integra*. After discussing a litany of judgments on this issue, the Supreme Court by its judgment in *State of Punjab v. Rafiq Masih (2015) 4 SCC 334* held as under:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

8. As far as the present case is concerned, the Petitioner's late husband was

in fact working in a Group C post with the BRO and, therefore, the case of the Petitioner would be covered by the above decision which says that there will be no recovery in case of excess pension payment made to a Group C service employee.

9. Learned counsel for the Respondents submits that the above judgment would apply only where the recovery was made from the employee himself and not to the family of the employee. This argument requires to be rejected for the simple reason that the hardship in such event that the Supreme Court spoke of would be apply *a fortiori* in the case of the family member of an expired employee belonging to the Group C or Group D services (Class 3 and Class 4). In the considered view of this Court, the judgment of the Supreme Court in **Rafiq Masih** (*supra*) restrains the recovery of alleged excess payment even from family of the expired Group C and Group D employees.

10. This position becomes clearer from the fact that consequent upon the above judgment, fresh instructions have been issued by an Office Memorandum dated 2<sup>nd</sup> March 2016 by the Department of Personnel and Training ('DoPT') incorporating those very categories identified by the Supreme Court in **Rafiq Masih** (*supra*) from whom recovery will not be made and this includes employees belonging to Class 3 and Class 4 services or Group C and D Services.

11. In that view of the matter, the impugned action of SBI in deducting Rs.1,68,990/- from the Petitioner's account on 8<sup>th</sup> April 2016 I declared to be illegal. The said sum is directed to be refunded to the Petitioner forthwith

and in any event not later than four weeks from today. If the refund is not made within the period indicated, simple interest @ 9% per annum will be payable to the Petitioner by the DoPT from the date on which it falls due, i.e. 30<sup>th</sup> December 2018, until the actual date of payment. The letter dated 20<sup>th</sup> May 2016 issued by SBI in so far as it proposes recovery of Rs.7,09,862/- from the Petitioner is hereby quashed. It is however clarified that this Court is not interfering with the re-fixation/correction of the Petitioner's pension which will be effective from the date of such re-fixation/correction.

12. The writ petition is allowed in the above terms.

**S. MURALIDHAR, J.**

**SANJEEV NARULA, J.**

**NOVEMBER 27, 2018**

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