IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202 **CWP No.18111 of 2016**
Decided on : 05.12.2019

Krishna Devi

... Petitioner

Versus

State Bank of India and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. A.S. Walia, Advocate
for the petitioner.

Mr. Vikas Chatrath, Advocate
for respondents No.2 & 3.

G.S. Sandhawalia, J. (Oral)

The petitioner whose husband was serving as Points Man in the Northern Railways, has filed the present writ petition under Articles 226/227 of the Constitution of India challenging the order dated 28.12.2015 (Annexure P-3), whereby recovery of ₹4,45,919/- was sought to be made on account of the excess pension drawn by the petitioner.

The respondent-Bank itself in the said communication has admitted that the error was on its part as the date of birth of the petitioner was fed as 04.05.1910, whereas the Aadhar Card showed that her date of birth is 15.11.1930. It was on this account recovery of ₹3,300/- per month from January, 2016 is sought to be made and the excess amount as such had been paid w.e.f. 01.01.2006 to ₹4,45,919/-

Counsel for the petitioner has relied upon the judgment passed in State of **'Punjab and others Vs. Rafiq Masih (White Washer)' 2015 (4) SCC 334**, to contend that the case would fall within the ambit of the clauses specified therein, as the amount had been drawn for a period of almost 10 years before the respondent-Bank detected the mistake. It is further submitted that it is not a case of any fraud or mis-representation on the part of the petitioner.

The argument of the counsel for the Bank is that it be permitted to recover the amount by easy installment of ₹3,300/- per month, as undertaken by the petitioner vide letter dated 30.01.2016 (Annexure P-4). Counsel for the Bank has thus relied upon the subsequent judgment of the Apex Court passed in **'High Court of Punjab & Haryana and others Vs. Jagdev Singh', 2016 (4) SCT 286** to submit that once an undertaking as such has been given, the petitioner would be bound by the same.

After hearing counsel for the parties, opinion that the petitioner cannot be faulted on account of the fault of the bank itself. As noticed that the petitioner is a senior citizen and in the evening of her life, she is not expected to make good the recovery of such a huge amount of ₹4,45,919/- @ of ₹3,300/- per month. The excess amount admittedly is being drawn since the year 2006, which would also be clear from the reply to the legal notice issued by the Bank (Annexure P-7), wherein mention was made of release of a due-drawn statement which was prepared on 01.01.2006. The contention that the client had the duty to inform this to banker or employer is baseless. It is not expected that the petitioner's husband who was serving as Points Man would be aware as to the exact benefits, which would accrue to her, on account of ever changing revision of pay. Therefore, if an additional amount was received by her, it cannot as such be said that she had concealed any fact and fraud with the Bank for the enhanced pension pension, which she had been drawing.

In **Rafiq Masih (supra)** it has been held that few situations, wherein recoveries by the employers, would be impermissible in law, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. The said clause reads 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:
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> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
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> (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."

Reliance upon the judgment of **Jagdev Singh (supra)** in such circumstances would not be applicable, since it was a case which was of a Judicial Officer who had retired on 12.02.2003 and who had been served with a notice of recovery on 18.02.2004. It was noticed that on account of an undertaking given, he could not get the benefits of the revised pay-scales in the Selection Grade which had been allowed on 07.01.2002. The recovery notice had been quashed initially by this Court but the same was set aside by holding as under:

> "11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.
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> 12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.
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> 13 The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs."

Accordingly, keeping in view the above discussion, the present writ petition is allowed. The order dated 28.12.2015 (Annexure P-3) is quashed. It is, however, made clear that this Court is not interfering with the recovery, which has already been effected, in the facts and circumstances.

(G.S. SANDHAWALIA)
JUDGE

DECEMBER 05, 2019

Naveen

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No