

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

(201)

CWP-16832-2018

Date of Decision: July 04, 2019

Jagesh Devi

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ajay Vijarania, Advocate, for the petitioner.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance of the petitioner is that vide letter dated 15.11.2017 (Annexure P-1), the respondents have ordered a recovery to the tune of Rs.5,14,312/- on the ground that the petitioner's family pension was wrongly calculated by the respondents and after re-fixing the family pension as Rs.4,485/- w.e.f. 11.01.2015, the petitioner is liable to refund excess payment of Rs.5,14,312/-.

Though, in the present writ petition, the petitioner is challenging the re-fixation of her family pension, but at the time of arguments, learned counsel for the petitioner restricts his claim only to the recovery which is being effected from the petitioner vide Annexure P-1 amounting to Rs.5,14,312/-.

The facts as mentioned in the writ petition are that the late husband of the petitioner, namely Satbir Singh was working as T-mate and he unfortunately died on 10.01.2008. After the death of Sh. Satbir Singh, petitioner was being given the last drawn salary as per Haryana Compassionate Assistance to the Dependents of Deceased Government

Employees Rules, 2006 and the same was to be paid to the petitioner till the date her late husband would have attained the age of superannuation and thereafter, she was to be paid the family pension admissible to her.

Late husband of the petitioner, would have attained the age of superannuation in January, 2015 and therefore, the petitioner was entitled for the last drawn salary upto January, 2015 only and thereafter, she was entitled for family pension.

It is admitted by the petitioner that petitioner continued to get monthly financial assistance (last drawn salary) till February, 2017 though the same was liable to be stopped in January, 2015. Upon noticing the said mistake, the respondents fixed the family pension of the petitioner with effect from February, 2015 onwards @ Rs.4,485/- and directed that the excess payment amounting to Rs.5,14,312/- be refunded by the petitioner, which she has got in excess of her entitlement. The refund was asked from the petitioner vide letter dated 15.11.2017 (Annexure P-1). The said letter is under challenge in the present writ petition.

While issuing notice of motion, on 12.07.2018, this Court had stayed the operation of the impugned order (Annexure P-1) whereby the recovery was sought to be done by the respondents.

Upon notice of motion, the respondents have filed the reply. In the reply, it has been stated that the petitioner was entitled to get the last drawn salary under the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006 and under the said 2006 Rules, the spouse was to get the last drawn salary as the monthly assistance after the death of employee till the deceased employee was to attain the age of superannuation and the monthly assistance comes to

an end when the deceased employee would have attained the age of superannuation and in the present case, Sh. Satbir Singh would have attained the age of superannuation in January, 2015 and therefore, from the said date, the petitioner was entitled for family pension instead of monthly financial assistance under 2006 Rules and therefore, the excess amount which was paid to the petitioner is sought to be recovered as the same was paid inadvertently. The relevant paragraph of the reply is as under:-

“3. That as per the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006 the all the service benefits of Late Sh. Satbir Singh was released in favour of the petitioner and monthly financial assistance was also sanctioned in her favour vide office order dated 30.04.2008.

4. That as per rule 5 (1) of the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006 the petitioner was entitled for monthly financial assistance for a period of only seven years or till the date of employee could have retired from Govt. Service. The relevant rule 5 (1) of the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006 is reproduced as under:-

5 (1) On the death of any Government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim,-

(a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty five years;

(b) for a period of twelve years or till the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the

employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years;

(c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty eight years.

5. That petitioner was allowed to draw monthly financial assistance beyond period of seven years inadvertently due to the fault of DDO Sh. Sohan Lal Sharma the then Executive Engineer and the petitioner continued to draw monthly financial assistance even after the age of superannuation of deceased Sh. Satbir Singh.

6. That the mistake came into the notice when family case of the petitioner was sent to the office of respondent No.2. The respondent No.2 vide his letter Annexure P-1 pointed out about this mistake. The copy of Annexure P-1 was also endorsed to the petitioner also. The petitioner has submitted her reply Annexure P-2 of said letter Annexure P-1. The reply of the petitioner was considered before deciding the family pension case of the petitioner. The office of respondent No.2 has directed vide order dated 09.05.2018 (Annexure P-4) to the District Treasury Officer, Bhiwani for releasing the family pension of Rs.4,485/- per month with further direction to recover the excess payment of Rs.5,14,312/- made to her as monthly financial assistance from her arrears as well as from her family pension on installments.

7. That the family pension of the petitioner has been fixed correctly vide Annexure P-4 along with order of recovery the excess payment of Rs.5,14,312/- made to her as monthly financial assistance from her arrears as well as from her family pension on installments. The order dated 09.05.2018 (Annexure P-4) is strictly issued as per the instructions/rules issued by Finance Department

Haryana.”

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question of law which arises for determination in this case is as to whether, the petitioner, who has been paid excess amount by the respondents themselves, can the same be recovered from the petitioner upon noticing the mistake?

It is admitted by the respondents that there is no misrepresentation on behalf of the petitioner and it was the duty of the respondents to stop the monthly financial assistance and give family pension to the petitioner when the deceased employee would have attained the age of superannuation in case he would have continued in service. Once, the excess amount was paid mistakenly by the respondents themselves without there being any input from the petitioner, no recovery could have been ordered from the petitioner.

The husband of the petitioner was working on a Class III post as a T-mate. Petitioner is an illiterate lady who did not know that w.e.f. January, 2015, she was only entitled for family pension. Therefore, it cannot be said that despite knowledge, the petitioner continued to get higher emoluments. Once, the petitioner did not had the knowledge about the excess amount being paid, nothing can be attributed to her of continuously getting the higher emoluments for which she was not entitled for and therefore, no motive can be attributed to her in the present case.

Further, the Hon'ble Supreme Court of India in **State of Punjab and others vs. Rafiq Masih and others, (2015) 4 SCC 334**, has issued guidelines as to under what circumstances, the recoveries can be effected.

After detailed consideration of law, the Hon'ble Supreme Court of India has held that no recoveries can be ordered from the employees belonging to Class III and IV and further, no recoveries can be ordered from the employees, who have retired or who are about to retire within a period of one year. In the present case, the husband of the petitioner was working on a Class III post and the emoluments which have been paid to the petitioner, were in respect of the service which the late husband of the petitioner had rendered on a Class III post. The emoluments which were being paid to the petitioner, were under the 2006 Rules, which have been framed by the respondents for removing the financial difficulties of the dependents of the deceased Government employees. The relevant paragraph of the said judgement is as under:-

“ 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 employees, 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.”*

The case of the petitioner will be covered under clause (i) and (v) of the said judgment. In the present case, the recovery would be harsh and arbitrary as petitioner was not in any way responsible for the receipt of the said excess amount and petitioner being a widow of a Government servant who was working on a Class III post and totally illiterate, if made to refund the amount as being asked by the respondents, will suffer prejudice and the same will be harsh as well.

In view of the above, order dated 15.11.2017 (Annexure P-1) whereby recovery of an amount of Rs.5,14,312/- from the petitioner is ordered, is set aside. However, petitioner will only be entitled for the pension as fixed by the respondents w.e.f. February, 2015 onwards as being determined by the respondents.

The writ petition is allowed in above terms.

July 04, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: Yes