IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(204) **CWP-7569-2012**
Date of Decision: February 28, 2019

Santosh Kumari **.. Petitioner**

Versus

State of Punjab and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Hemant Saini, Advocate, for the petitioner.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance of the petitioner is that the respondents started making recovery from the petitioner on the ground that the Dearness Allowance was paid wrongly and therefore the same needs to be recovered.

The facts as mentioned in the writ petition are that the husband of the petitioner Sh. Roop Chand was working as Head Constable in Punjab Police, who unfortunately died on 02.08.1987. The petitioner was granted the family pension after the death of her husband.

Learned counsel for the petitioner states that the respondents started making recovery from the family pension on the ground that the family pension was wrongly calculated by inclusion of the Dearness Allowance and therefore the said amount, which was wrongly paid to the petitioner, needs to be recovered. Without giving any show cause notice or any opportunity of hearing, the recovery was done from the petitioner of the so called excess amount paid on account of inclusion of Dearness Allowance while calculating the family pension.

Learned counsel for the petitioner states that in similar circumstances, while deciding CWP No.891 of 2003 on 20.01.2004, this Court held the recovery to be bad and therefore, the amount which has been recovered from the petitioner on account of the grant of excess Dearness Allowance is liable to be refunded.

Learned counsel for the petitioner further states that even the State of Punjab had issued instructions in the year 2007 that no recovery of the payment of excess Dearness Allowance is to be recovered from the family of the pensioners.

Upon notice of motion, the reply has been filed by the respondents. The factum of passing of the order by this Court that no recovery can be done in case there is no misrepresentation or fraud, has been accepted by the respondents in paragraph 3 of the reply. Respondents in their reply, admitted that no recovery will be done from the petitioner. The relevant portion of the reply is as under:-

> " *3) That keeping in view the decision by the Hon'ble Punjab & Haryana High Court in CWP No.891 of 2003 Mukhtiar Singh Vs. State of Punjab and others and bunches of similar other writ petitions i.e. Sahib Ram Versus State of Haryana 1994 (5) SLR 753 the government of Punjab Department of Finance (Finance Pension policy and coordination Branch) vide its letter no.4/40/2006-1 FPPC/4057 dated 28.05.2007 has issued instructions that where no mis-representation or fraud has been made by the family pensioner who are receiving dearness relief on family pension, the same be stopped with immediate effect, but the recovery of the amount already paid to them be not effected.*
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> *4) That as per clause 4.1 of the scheme dated 13.06.1977 for payment of pension to Punjab Government*

Pensioner by Public Sector Banks the Punjab Government has been indemnified against any wrong or over payment that may be made to pensioners by the public sector banks. So the pension Disbursing authority made the excess payment in violation of the Punjab Government instructions dated 14.05.2001 is liable to refund the excess payment made by the pension Disbursing authority to the pensioners.

5) That the Punjab Government vide their Circulated No.473 OSD(P) 77/15357 dated 13.06.1977 made payment of pension to the Pensioners optional to draw their pension either through any public sector banks or at the treasury counter. Thereafter the Punjab Government vide their circular No.FPPC/2003/3FPPC/2476 dated 20.02.2003 made it mandatory that now every Punjab Government pensioners will get his/her pension only through the specified public sector banks by opening a saving Bank Account with immediate effect.

6) That as per instructions issued vide No.4/40/2006-1 FPPC/4057 dated 28.05.2007, the answering respondent deponent is not demanding recovery from the petitioner."

I have heard learned counsel for the parties and have gone through the record.

It is a settled priniple of law that where there is no misrepresentation on part of the petitioner, the amount paid inadvertently cannot be recovered. In the present case, there is no misrepresentation on behalf of the petitioner as family pension was fixed by the respondents themselves and there is no representation in this regard by the petitioner in any manner and therefore, it cannot be said that there was any misrepresentation on behalf of the petitioner to claim the Dearness Allowance, which the respondents was not payable to the petitioner.

Further, once the respondents themselves have passed instructions in the year 2007 that no recovery is to be done, recovery could not have been effected from the petitioner. The relevant instructions issued by the respondent-department are as under:-

> *"I am sending herewith a photocopy of Finance Department's letter No. 4/40/2006-1 FPPC/4057 dated 28.5.2007, vide which recovery of excess payment of dearness relief is not to be effected from those family pensioners who have not made any mis-statement of facts or committed fraud etc. for the purpose of getting family pension. So, in order to avoid unnecessary litigation in such Court cases in future, instead of forwarding the detailed written statements to this department/Finance department for vetting, short affidavit may please be filed in the Hon'ble High Court well before the date of hearing in the case, as per above said instructions."*

Under these circumstances, the recovery which has been done from the petitioner, was impermissible and was contrary to the settled principle of law. The action of the respondents in recovering the amount is set aside. A direction is issued that whatever amount has been recovered from the petitioner on account of the excess Dearness Allowance, shall be refunded to the petitioner immediately within a period of three months from the receipt of copy of this order.

The writ petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

February 28, 2019
harsha

Whether speaking/reasoned: Yes
Whether reportable: Yes