Sr. No.209

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.7607 of 2012 (O&M)
Date of Decision: 12.07.2019**

Surinder Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Pradeep Sharma, Advocate,
for the petitioner.

Ms. Anu Chatrath, Senior Advocate with
Ms. Ambika Bedi, AAG, Punjab.

Mr. I.P.S.Doabia, Advocate,
for respondent No.3.

ARUN MONGA, J.(ORAL)

1. Grievance of the petitioner, *inter alia*, is essentially directed against respondent No.3 i.e. Punjab and Sind Bank inasmuch as in contemplation of respondent No.2 i.e. District Treasury Officer, Jalandhar taking action against the petitioner it has wrongly withheld the Fixed Deposits (FDs) of the petitioner without any written instructions from the District Treasury Officer.

2. Petitioner herein is the widow of late Harminder Singh who has been in receipt of family pension after the demise of her husband on 06.05.2003 who was working in Public Works Department (B&R) Punjab. At the time of his demise, petitioner's husband was survived by his widow, one married daughter, one

son and two unmarried daughters aged 20-24 years respectively.

3. One of the daughters i.e. Tejinder Kaur applied for a job on compassionate grounds which was granted to her and she joined the service on 05.07.2004. Petitioner continued to receive the family pension regularly upon the Bank clerk getting her signatures on the relevant document as a token of "life certificate".

4. However, as bolt from the blue vide letter dated 22.04.2011, the family pension was stopped by respondent No.3 and she was informed that she is liable to pay an amount to the tune of Rs.5,45,717/- on the ground that every year while submitting the "life certificate" she had been giving undertaking neither she or any other dependent family member had got any job on compassionate grounds. She had undertaken that she would inform the Bank as and when any family member got a job. She had thus concealed the said fact for about 7 years and had been submitting a written information to the Bank which tantamounts to gross misrepresentation in order to take undue monetary gains.

5. The petitioner thereafter sought copy of "life certificate" under RTI in order to ascertain the veracity of the allegations contained in letter dated 22.04.2011 and the same was provided to her vide information Annexure P-2 (colly.). Meanwhile, the petitioner vide her letter dated 04.05.2011 (Annexure P-4) responded to the letter dated 22.04.2011 sent by the Bank informing that the allegations contained therein with regard to the concealment/ misrepresentation are totally wrong and baseless as she had already informed the Bank immediately in

writing along with appointment letter of her daughter and had also verbally informed the Bank Manager and the dealing official who had informed her that appropriate action would be taken after approval from the Head Office.

6. In the premise, she requested that her family pension be released as she was living in crucial financial constraints. She also submitted that, if any, recovery is to be made from her family pension then proper and easy installments be scheduled in such a way that she can continue to afford her life smoothly and feed herself/her family.

7. Yet, respondent No.3 has passed the impugned order for recovery and has not released the family pension, even though no order has been passed either by respondent No.1 or 2 instructing respondent No.3 Bank to stop the pension or cause any recovery from the petitioner.

8. Petitioner states that before passing of the order of recovery by the respondent-Bank neither any notice was issued to her by respondents No.1 and 2 nor any opportunity of hearing was granted to her nor even otherwise any instructions have been issued to the Bank to make the recovery from the petitioner. In the premise, the petitioner also caused a legal notice dated 15.06.2011 (Annexure P-6) through her counsel on the respondent-Bank and respondents No.1 and 2 and pointed out the fallacy in the action of the bank in stoppage of the family pension and proposing to make the recovery and requested for immediate release of the family pension of the petitioner. The said Notice was replied by the

respondent-Bank stating that the petitioner never intimated the Bank that her daughter had joined the job on compassionate ground on 05.07.2004 and she had every year while submitting "life certificate" scored off the column where it was mentioned whether any person has joined the job on compassionate grounds. Therefore, the request of the petitioner vide her legal notice seeking release of her family pension was rejected. Hence, the writ petition.

9. In the return filed on behalf of respondent No.2, a very short and cryptic stand has been taken that no intimation regarding employment on compassionate ground regarding her daughter was given by the petitioner and, therefore, in view of instructions of Accountant General, Punjab regarding payment of family pension and it had passed on PPO No.48018/S/Punjab to respondent No.3-Bank for making the payment as desired by the petitioner. The Pension Disbursing Authority in the case of petitioner is respondent No.3-Bank and hence the writ petition is liable to be dismissed as against respondents No.1 and 2.

10. A detailed reply has been filed on behalf of the Bank-respondent No.3. Essentially reiterating the response it gave to the legal notice of the petitioner as already narrated hereinabove. It is further stated that as per Instructions issued by respondent No.1 in case of employment of any family member of the deceased employee on compassionate grounds, full dearness allowance is not payable to any pensioner. Accordingly, vide impugned letter dated 04.03.2011, the Bank informed the petitioner that she had

been wrongly getting full dearness allowance with effect from 20.04.2004 and the same is to be recovered from her by making recovery of Rs.5,45,717/-. It is further stated that as per the record of the respondent Bank prior to 04.03.2011 neither the petitioner nor respondents No.1 and 2 ever informed the Bank regarding appointment of petitioner's daughter on compassionate ground.

11. After the issuance of legal notice by the petitioner to the respondents, the office of the Accountant General, Punjab wrote a letter (Annexure R-3/6) to the District Treasury Officer-respondent No.2 asking for the reason of stopping the pension to be intimated to the A.G. Office. Pursuant thereto, District Treasury Officer vide its letter dated 07.12.2011 (Annexure R-3/8) wrote to respondent No.3-Bank giving reference of the letter of the Accountant General asking for the reasons of stoppage of pension and intimating the same directly to the A.G., Punjab under intimation to the office of District Treasury Officer.

12. The stand of the respondent-Bank establishes that petitioner did not inform respondents No.2 and 3 and also the Accountant General, Punjab regarding appointment of her daughter on compassionate ground with the intention to continue getting the additional benefit of full dearness allowance which she was not entitled.

13. An independent reply/affidavit has been filed by the State-respondent No.1 stating that the State did not issue any Instructions for stoppage/recovery of family pension of the petitioner. However, Department of Finance of the State

Government vide Instructions dated 04.12.2001 (Annexure R-1) had clarified that if any member of family of the widow gets compassionate appointment then DA on family pension is not payable. In view of the said Instructions, since petitioner's daughter had been given appointment on 05.07.2004, the petitioner, therefore, was not entitled for dearness allowance on her family pension with effect from 05.07.2004. As regards the intimation of appointment of petitioner's daughter, the stand taken by the State is that neither the petitioner nor her daughter intimated the State about receipt of dearness allowance on the petitioner's basic pension. It is further stated that no action is required on the part of respondent No.1 as the petitioner's grievance is directed against respondent No.3 and, therefore, writ petition be dismissed qua the State.

14. In the course of hearing, this Court vide order dated 04.12.2014 passed the following order :-

> *"Concerned Chief Engineer of the PWD (B&R) is directed to file an affidavit giving reasons therein as to why, after the first payment of dearness relief had been made to the petitioner along with family pension, after the date on which her daughter was given appointment on compassionate basis, no intimation was sent to the Bank with regard to the fact that her daughter has been given such appointment and as such, dearness relief would not be admissible to her."*

15. In compliance of the above order, an additional affidavit of Sh. G.R.Bains, Chief Engineer has been filed stating that when the case of the family pension was sent to the Accountant

General, Punjab and the petitioner was assigned PPO No.48018/S/PB by Accountant General, Punjab, thereafter, the matter remains between the Punjab and Sind Bank, Kala Bakra, District Jalandhar and the Pensioner. It is further stated that the petitioner was bound to inform the Punjab and Sind Bank i.e. Respondent No.3 especially when her daughter was appointed on compassionate ground. However, she concealed the factum of appointment of her daughter in the year of 2004 on compassionate grounds and submitted the wrong information in the "life certificates" pertaining to the years 2009 to 2013 for the reasons best known to her. As such, the petitioner concealed the material and relevant information from the Punjab & Sind Bank i.e. Respondent No.3 and received the amount of dearness allowance for years together for which the Punjab & Sind Bank i.e. Respondent No.3 has rightly and legally taken steps for recovery of the excess amount.

16. In these circumstances, this Court expressed its prima facie opinion with regard to the incongruity of the procedure adopted by the respondents and had passed the following order on 24.12.2014:-

> *"Though the Chief Engineer has filed his affidavit, in compliance of order dated 04.12.2014, he will remain present in Court on the next date of hearing to explain as to why no procedure is adopted by the Government to intimate the Bank concerned with regard to a widow/widower or his/her dependents having been given employment on compassionate basis, so as to enable the Bank to stop payment of dearness relief.*

Without a doubt, the petitioner cannot be wholly absolved of withholding information to the effect that her daughter had been given such compassionate appointment; however, the stand taken by the Chief Engineer in his affidavit, that there is no practice of intimating the Bank, is completely and wholly untenable, which he will answer for personally, as he has stated that fact in his affidavit. The rationale behind the department not intimating the Bank is further absolutely not understood, in view of the fact that a widow or widower of an employee, who has died, may often be illiterate and give a "life certificate" without understanding the terms and conditions thereof; however, the person who is disbursing such dearness relief in the office of the Chief Engineer, would obviously be aware of such employment or would be required to be aware of such appointment on compassionate basis, as has been granted to the dependent of a deceased employee and, accordingly, such an objection for releasing dearness relief should have been raised by the Department at the outset itself.

Intimation in that regard would also be required to be sent to the office of the Accountant General, Punjab, so as to ensure that misuse of public funds is not perpetuated. The Chief Engineer would also, therefore, take the trouble to explain as to why no action has been taken against anybody in his own office, for non intimation of the appointment given to the petitioners' daughter."

17. An additional affidavit was filed by the Chief Engineer. Though the "life certificates" from 2009 to 2013 Annexure R-2 to Annexure R-6 have been appended but there is stoic silence as to what transpired prior thereto since the petitioner's daughter was admittedly given appointment by the State itself on 05.07.2004 and

yet respondents continued to pay the dearness allowance to the petitioner. In the explanation seems to be that petitioner was bound to inform the respondents.

18. As regards, the "life certificate" submitted by the petitioner prior to 2009 neither any response has been given by way of pleadings nor in the course of arguments to the submission of learned counsel for the petitioner that the "life certificate" submitted from 2004 to 2008 contained at Annexure P-2 (colly.), there was no clause in the "life certificate" in respect of declaration that any employment on compassionate grounds or otherwise in lieu of the petitioner's spouses employment has been availed in the State or any Government Department by any family member of the deceased and the petitioner undertakes to inform the Bank as and when any member of the family gets the job on compassionate grounds. The reasons of non production of the "life certificate" prior to 2009 by the Bank are thus not far to be seen.

19. It was obvious that petitioner was under no instructions to inform the appointment of her daughter from 2004-2008 and, therefore, under no circumstances, fault of dearness allowance having been paid to her can be attributed to her for the said period. As regards the insertion of undertaking with regard to the compassionate appointment in the "life certificate" from the year 2009 onwards, I am of the view that the argument of learned counsel for the petitioner is fair and reasonable that when a widow goes to get her pension from the Bank and every year the concerned Bank official as pre requisite thereof asked her to sign

the requisite "life certificate" she would barely know the contents of the same and was rather anxious to get her pension rather than understanding the contents of the same. Other than this, that the same simply means that she has to certify/declare with regard to her being life.

20. As far as widow petitioner is concerned, she would not know the surreptitious insertion of the clause so as to put her under the legal obligation as expected of her to give any intimation to the Bank with regard to the appointment of her daughter. Particularly, when the employment has been offered by the respondents themselves, the petitioner would not even think that the respondent State does not know that her daughter has been offered the appointment on compassionate grounds.

21. Before adverting on the merits of the case, I cannot restrain from expressing my intrigue as to the casual and lackadaisical manner in which both the State and the respondent-Bank operate and also the strange procedure adopted by them in stopping the pension of the widow. The husband of the petitioner was serving as Head Draftsman who died in harness. The petitioner who is stated to be matriculate would not be aware of the intricacies of the legal procedure and the Administrative Instructions which operate in the domain as has been expected by the respondents from her. The entire blame has been put on the widow petitioner of her not intimating the appointment of her daughter while the respondents have washed their own hands despite having full knowledge of the Administrative Instructions

applicable, even though the appointment of petitioner's daughter is also with the same from State which is giving family pension to the petitioner.

22. In the premise, I do not find it necessary to go into the controversy whether or not petitioner intimated the respondents as claimed by her in the petition as the said controversy, to my mind, is wholly irrelevant. Further more, this Court has already echoed its mind with regard to the strange procedure adopted by the respondents to stop the pension of the widow and I need not elaborate any further on the same. However, I may observe here that it is expected of the State/respondents to work *in tandem* and exchange the relevant information with each other in order to avoid such an unsavory situation where hapless widows/illiterate people are made a scapegoat for no fault of theirs. In this respect, I see no reason given the facts why the petitioner being a widow of class-III employee be also not given the benefit on the principles of the judgment rendered by Hon'ble Supreme Court in case titled as ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others, AIR 2015 SC 696.*** The relevant part thereof is as below:-

> *"18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

iii) Recovery from the 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 out weigh the equitable balance of the employer's right to recover."

23. Applying the above ratio to the present case and also keeping in view my discussion and the foregoing reasons, the writ petition is allowed. Even though I have given my mind as above that petitioner cannot be found fault so as to entitle her either of the family pension or dearness allowance on account of no intimation with regard to her daughter's appointment but since she had been giving a "life certificates" Annexure R-2 to Annexure R-6 after year 2009 onwards which had the clause that in the event of any such appointment she would intimate the Bank, I partly sustain the impugned order for the recovery of dearness allowance for the period from 04.11.2009 onwards when for the first time she gave

such declaration/undertaking to the Bank.

24. Accordingly, the impugned order/letter dated 22.04.2011 (Annexure P-1) is modified to the extent that respondent No.2 shall be entitled to make recovery of dearness allowance wrongly disbursed to the petitioner for the period from 04.11.2009 onwards, when for the first time a declaration with regard to employment on compassionate ground was necessary but was not furnished while submitting the "life certificates".

25. Respondents are, accordingly, directed to re-calculate the amount to be recovered on account of dearness allowance and pass fresh orders. If it is found that any amount in excess of the recovery has been deducted/recovered from the petitioner, the same shall be refunded to her with interest @ 9% per annum.

26. In the parting, it would not be out of place to mention here that the conduct of the respondent-Bank is highly deprecable inasmuch as having withheld the maturity amount of two FDRs of Rs.1 lakh each of the petitioner without any notice being issued to her and without there being any Instructions from respondents No.1 or 2.

27. Petitioner is also entitled to a costs of Rs.20,000/- to be paid by Bank/respondents No.3.

28. The writ petition is allowed in above terms.

(ARUN MONGA)
JUDGE

12.07.2019
vandana

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No