

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

**CWP No. 26233 of 2014
Date of decision : 26.09.2019**

Zora Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- None for the petitioner.

Mr. H.S. Sitta, Assistant Advocate General, Punjab.

Mr. Ravi Kumar, Advocate for respondent No. 4.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the challenge is to the action of recovery of an excess amount of ₹2,40,692/- which was deducted by the respondents from the pension of the late wife of the petitioner and also from the family pension of the petitioner, which was being given to the petitioner after the death of his wife.

As per the averments made in the writ petition, late wife of the petitioner, who was working as a PTI teacher with the respondents, retired on attaining the age of superannuation on 31.3.2008. After the said date, wife of the petitioner was being given the pensionary benefits. After approximately 5 years of the retirement, respondents decided to recover an

amount, which according to them, had been paid in excess to the wife of the petitioner on the ground that the pension of the late wife of the petitioner was wrongly fixed by paying her the D.A. @ 73% instead of 27%, which should have been paid to her from February, 2010 onwards. After reassessing the pension of the late wife of the petitioner, respondents found that a sum of ₹2,40,692/- has been paid in excess to the late wife of the petitioner while paying her pension. The said amount was being recovered initially from the pension of the late wife of the petitioner and after her death, the said amount was being deducted @ ₹9,000/- per month from the family pension of the petitioner. The challenge is to the said recovery of the excess amount, which is being done by the respondents.

Upon notice of motion, reply has been filed by the State, wherein, it has been mentioned that the pension of the late wife of the petitioner was wrongly fixed after her retirement and though, the DA permissible to be added to the basic pay was 27% but the benefit of DA to the tune of 73% was given while fixing the pension of the late wife of the petitioner starting from February, 2010 onwards and the excess amount, for which the late wife of the petitioner was not entitled, has been rightly being recovered. The relevant portion of the reply is as under :-

“1. That through the present writ petition, the petitioner sought for direction for quashing/stay the recovery order of ₹2,40,692/- effected from the pension of the wife of the petitioner and after her death family pension of the petitioner. The petitioner further prayed for direction to the respondents to refund the recovered amount alongwith interest @ 18% per annum.

2. In this regard, it is very respectfully submitted that wife

of the petitioner Late Smt. Charanjit Kaur was serving as PTI Teacher under the respondent Department. She got retired from Government Girls High School, Dakha District Ludhiana on 31.03.2008. After retirement, wife of the petitioner was drawing pension from respondent No. 4 through her saving Bank Account No. 07772151005953. As per information provided by the respondent No. 4, Smt. Charanjit Kaur wife of the petitioner, was drawing Basic Pay at revised rate but DA percentage was at older rate. In this way, the pensioner had overdrawn ₹2,40,692/-. It was specifically mentioned that respondent No. 4 had brought the fact regarding overdrawn of pension in notice of the pensioner i.e. Smt. Charanjit Kaur. As the petitioner was not able to refund the whole amount at that time, that's why on request of the pensioner, it was decided that amount @ ₹9000/- (Nine thousand) would be recovered from future pension of the pensioner on monthly basis without any interest. A copy of letter dated 19.05.2015 issued by the office of respondent No. 4 is being annexed hereto as Annexure R-1 for kind perusal of this Hon'ble Court."

Respondent No. 4-bank has also filed a reply giving the details as to on what account, the amount is being deducted from the pension of the late wife of the petitioner and thereafter, from the family pension being given to the petitioner. The relevant portion of the reply is as under:-

- "2. That in terms of letter dated 28.01.2010 (Annexure R-1) received from the office of Accountant General Punjab, basic pay of the Late Smt. Charanjit Kaur, wife of the petitioner, was fixed at Rs. 11330/- p.m. and after commutation amount of Rs. 3097/- her basic pay was fixed at Rs. 8233/- for the purpose of pension.*
- 3. That though the basic pay was revised upwards to Rs. 8233/- but the respondent-Bank continued to pay inadvertently DA @ 73% on revised basic pay also*

instead of 27% applicable for revised basic pay from February, 2010 to January, 2013.

4. *That the basic pay was again revised to Rs. 12275/- w.e.f. 01.04.2008 in terms of Accountant General Letter dated 15.02.2012 (Annexure R-3) and after taking into account the commutation amount of Rs. 3097/-, basic pay was fixed at Rs. 9178/- for the purpose of pension.*
5. *That accordingly a chart was prepared for the pension already paid from April 2008 to January 2013 and revised pension payable in view of letter dated 15.02.2012 (Chart attached as per Annexure R-4).*
6. *That on the detection of mistake in the month of February, 2013, petitioner's wife was duly informed about the excess amount paid to her and it was mutually decided to recover Rs. 24,792/- in February 2013 and Rs. 9000/- per month from March, 2013 onwards. Clarification to this effect was provided to the petitioner vide letter dated 12.09.2014 (Annexure P-1 of the petition).*
7. *That it is humbly submitted that recovery was effected with the consent of the petitioner's wife and on mutually acceptable terms of deducting Rs. 9000/- per month with a view to creating minimum hardship to her."*

I have heard learned counsel for the respondents and have gone through the record very carefully.

The justification given by the respondents for the recovery of the amount after the retirement of late wife of petitioner is that an excess amount was paid to the wife of the petitioner by wrongly fixing her pension after February, 2010 by giving the benefit of DA @ 73%, whereas the same was to be given @ 27% and, therefore, the excess amount paid to the late wife of the petitioner, is liable to be recovered as the same is a public

money, which cannot be retained by the employee beyond his/her entitlement.

The petitioner is not challenging the re-fixation of the pension in the present writ petition and only claim is with regard to the recovery, which is being made of the excess amount keeping in view the settled principle of law as settled by the Hon'ble Supreme Court of India in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**. Hon'ble Supreme Court of India has given guidelines as to under what circumstances, the recovery of excess amount cannot be made. The relevant paragraph 12 of the judgment is 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.”

A bare perusal of the above judgment would show that no recovery can be made from a retired employee. In the present writ petition, the recovery is being made from a retired employee and that too out of the pension/family pension, which is impermissible as per the settled principle of law. Learned counsel for the respondents is not able to distinguish as to how the case of the petitioner is not covered under para 12 of the judgment in ***Rafiq Masih's (White Washer) case (supra)***.

Learned counsel for the respondent-Bank states that under the Reserve Bank of India guidelines, the bank was well within its jurisdiction to recover the amount. He relies upon the Instructions dated 17.3.2016 issued by the Reserve Bank of India in this regard.

The reliance upon the said Instructions is misplaced. The order passed by the Hon'ble Supreme Court of India is law as declared under Article 141 of the Constitution of India and will have precedent over the Reserve Bank of India guidelines, which are being brought into for the support by the learned counsel appearing on behalf of the respondent-bank and therefore, once it has been held by the Hon'ble Supreme Court of India that no recovery can be made from a retired employee, the guidelines cannot be of help to the learned counsel for recovering the excess amount.

Keeping in view of the above, the recovery which has been made from the pension of the late wife of the petitioner as well as from the family pension being given to the petitioner, is held to be bad and the recovery of the excess amount is set-aside. Respondents are directed to refund the amount, which has been recovered from the pension given to the

late wife of the petitioner as well as from the family pension of the petitioner within a period of 2 months from the date of receipt of certified copy of this order.

Writ petition stands allowed in above terms.

September 26, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*