IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-31240-2019
Date of decision: - 30.10.2019

Rajesh Aggarwal

....Petitioner

Versus

State Bank of India and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: - Mr. Vikas Mohan Gupta, Advocate, for the petitioner.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance, which is being raised by the petitioner is qua the recovery of the excess amount, which has been paid to the petitioner to the tune of ₹8,47,062/- for the period starting from July, 2008 till June, 2019. The prayer of the petitioner is that keeping in view the judgment of the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195,** no recovery of the excess amount can be made from the petitioner and therefore, the impugned order dated 15.07.2019 (Annexure P-2) is contrary to the settled principle of law and is liable to be set aside.

As per the facts mentioned in the writ petition, husband of the petitioner, namely, Sh.Gian Chand Aggarwal, who was working as a Stenographer in the office of the Director Employment Department, Haryana, unfortunately died on 30.06.2001 in harness. After the death of the husband of the petitioner, respondents granted the benefits to the petitioner in respect of the service rendered by her late husband. In the year 2001, the pension payment order was issued in favour of the petitioner, which has been attached as Annexure P-1 wherein, it was mentioned that petitioner will be paid pension amounting to ₹3550/- per month from 01.07.2001 onwards till 30.06.2008, being enhanced pension, which was to be paid keeping in view the date of superannuation of the late husband of the petitioner. After the late husband of the petitioner would have attained the age of superannuation, petitioner was entitled for the normal pension amounting to ₹2130/- per month from 01.07.2008 onwards. At the time of receiving the benefits, petitioner had given an undertaking before the respondent-Bank, which has been attached by the petitioner as Annexure P-11, wherein, the petitioner had undertaken that in case, it is found that petitioner has received any excess amount than her entitlement, she agreed to bind herself for the refund of the same and to indemnify Bank against any loss suffered or incurred due to the excess amount released in her favour.

Though, as per the pension payment order (Annexure P-1), w.e.f. 01.07.2008, petitioner should have been paid the normal pension of ₹2130/- per month, but the respondent-Bank kept on paying the petitioner enhanced pension @ ₹3550/- per month till the said mistake was detected by the respondents in June, 2019. Immediately upon the detection of the said mistake, petitioner was served a show cause notice that an excess amount of family pension has been paid to her amounting to ₹8,47,062/- and the same should be returned, otherwise, the said amount will be recovered in monthly installments of ₹4,768 starting from 01.07.2019 onwards. Petitioner filed the reply to the show cause notice by serving legal notice dated 29.07.2019 (Annexure P-7) through her counsel objecting to the action of the respondents for effecting recovery of the excess amount of Family Pension paid to her by relying upon the judgment of the Hon'ble Supreme Court in **Rafiq Masih's case (supra)** to contend that no recovery can be ordered from a retired employee or an employee, who was working on a Class III or Class IV post, or where the excess amount was paid for a period of more than five years. The respondent-Bank replied to the said legal notice (Annexure P-8) and informed the counsel that there was an undertaking given by the petitioner to the respondent-Bank at the time of the commencement of the pension so as to give the jurisdiction to respondent-Bank to recover the excess amount of pension paid to the petitioner over and above her entitlement. Even the Administrative Department replied to the legal notice on 05.09.2019 (Annexure P-9) stating that the petitioner was given the excess amount of family pension, which is contrary to the PPO issued in the favour of the petitioner and further, excess payment made to the petitioner can be recovered keeping in view the undertaking given by the petitioner at the time of receiving the benefit. The said action of the respondent-Bank in recovering the excess amount of family pension is under challenge in the present writ petition.

Learned counsel for the petitioner argues that case of the petitioner is squarely covered by the judgment in **Rafiq Masih's case (supra),** wherein, certain categories have been culled out in paragraph 12, under which, the recovery cannot be ordered and the case of the petitioner is covered under Clauses (i) and (iii) of the said categories, as husband of the petitioner was working on a Class III post and the excess payment was made to the petitioner starting from July, 2008 till June, 2019, which is for more than five years, as envisaged in category (iii) in para 12 of the judgment in **Rafiq Masih's case (supra)**, therefore, the excess payment cannot be recovered from the petitioner.

Learned counsel for the petitioner further argues that the undertaking given by the petitioner, was given at the time of receiving the benefit in the year 2001 and not at the time when the excess payment was started to be given in the year 2008 and therefore, the said undertaking cannot entitle the respondent-Bank to recover the said excess amount.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

It is not disputed by the learned counsel for the petitioner that at the time when the family pension was sanctioned in favour of the petitioner, it was clearly stated in the pension payment order (P-1) that enhanced family pension amounting to ₹3550/- will be paid to the petitioner from 01.07.2001 till 30.06.2008 and thereafter, petitioner will be paid normal family pension @ ₹2130/- starting from 01.07.2008 and petitioner has been receiving the benefit of family pension under this very pension payment order. It is not disputed by counsel for the petitioner that the undertaking, which has been given by the petitioner and attached as Annexure P-11, was submitted by the petitioner to the Bank. In the said undertaking, petitioner has clearly undertaken that in case she receives any excess amount over and above her entitlement and loss is caused to the respondent-Bank because of the said excess payment, the respondent-Bank will be well within its jurisdiction to recover the said amount.

Keeping in view the abovementioned facts and circumstances of this case, it can be very well said that petitioner received the excess amount of pension with clear knowledge of the same. Petitioner knew from the day one i.e. from 01.07.2008 that petitioner is to get the normal pension @ ₹2130/- whereas, she was getting the pension @ ₹3550/- in her Bank account, but she did not raise any objection and did not inform the Bank about the said mistake. Petitioner took a calculated chance so as to get the family pension over and above her entitlement.

The question, which arises for consideration before this Court, is whether keeping in view the fact that petitioner knew that she was getting the excess amount as family pension starting from 01.07.2008 coupled with the fact that the petitioner had given an undertaking to refund the excess amount, if any, paid to her, whether the Bank has the jurisdiction to recover the excess amount paid to the petitioner over and above her entitlement.

The first argument raised by the learned counsel for the petitioner is that case of the petitioner is squarely covered by the decision rendered by the Hon'ble Supreme Court in **Rafiq Masih's case (supra)** and the case of the petitioner is covered under Clause (i) and (iii) of paragraph 12 of the said judgment. The relevant part of the said 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."

No fault can be found in the arguments, which have been raised by learned counsel for the petitioner that the case of the petitioner is covered under the above reproduced Clause (iii), as excess amount was paid to the petitioner for a period of more than five years, as excess amount of family pension was paid to the petitioner from 01.07.2008 till June, 2019, which is approximately eleven years. Question is whether judgment in **Rafiq Masih's case (supra),** will be applicable in the facts and circumstances of the case of the petitioner.

In **High Court of Punjab and Haryana and others Vs. Jagdev Singh**, **2016(4) S.C.T. 286**, the Hon'ble Supreme Court of India had an occasion to consider the applicability of **Rafiq Masih's case (supra)** in a situation where an employee has furnished an undertaking to refund excess amount in case amount paid to the said employee is over and above his entitlement. After considering the judgment in **Rafiq Masih's case (supra)**, Hon'ble Supreme Court has held that where an employee has given an undertaking that in case any amount is paid in excess of his/her entitlement, will be refunded, then the employee will be bound by the said undertaking. In **Jagdev Singh's case (supra)** also, petitioner-Jagdev Singh was claiming the benefit Clause (ii) of the paragraph 12 of the **Rafiq Masih's case (supra)** to contend that as he had retired from service, no recovery can be made from him, but the Hon'ble Supreme Court held that retired employee cannot claim the benefit of Clause (ii) to avoid the refund of the excess amount in case he has given an undertaking at the time of receiving the benefit that in case it is found that any excess payment has been made to the employee and employee will be required to refund the same as the employee will be bound by the said undertaking. The relevant part of judgment in **Jagdev Singh's case (supra)** is as under:-

> "6. In view thereof the pay scales of judicial officers in Haryana were once again revised with effect from 1 January 1996. An exercise was undertaken for adjustment of excess payments made to judicial officers, following the notification of the revised pay rules. On 18 February 2004, a letter for the recovery of an amount of ₹1,22,003/- was served upon the Respondent pursuant to the direction of the Registrar of the High Court.
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> 7. The Respondent challenged the action for recovery in writ proceedings under Article 226. The petition was allowed by the

impugned judgment of the High Court. The High Court found substance in the grievance of the Respondent that the excess payment made to him towards salary and allowance prior to his retirement could not be recovered at that stage, there being no fraud or misrepresentation on his part.

8. The order of the High Court has been challenged in these proceedings. From the record of the proceedings, it is evident that when the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit which has been filed by the Respondent in these proceedings, this position has been specifically [1]admitted. Subsequently, when the rules were revised and notified on 7 May 2003 it was found that a payment in excess had been made to the Respondent. On 18 February 2004, the excess payment was sought to be recovered in terms of the undertaking.

9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In **State of Punjab & Ors etc.** vs. **Rafiq Masih (White Washer) etc**. 2015(1) S.C.T. 195: 2015(1) Recent Apex Judgments (R.A.J.) 104; (2015) r SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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." (emphasis supplied).

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.

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.

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."

Therefore, Hon'ble Supreme Court, has carved out an exception with regard to the applicability of **Rafiq Masih's case (supra)** to the effect that where there is an undertaking given by an employee at the time of receiving any benefit so as to refund the excess amount received, the employer will be within its rights to recover the amount even though the case of the employee might be covered under the conditions laid down in paragraph 12 of the **Rafiq Masih's case (supra)**.

The question of recovery from a retired employee also came up for consideration before this Court in **LPA No.2230 of 2016** titled as **Punjab Water Resources Management & Development Corporation Limited** Vs. **Subhash Chand and others**, **decided on 10.01.2018**. In the said LPA, the judgment of learned Single Judge of this Court was challenged, wherein, by relying upon the judgment in **Rafiq Masih's case (supra)**, the claim of the petitioner-Corporation, seeking to recover the excess amount of salary paid, was held to be bad. In the said LPA, the Division Bench after considering **Jagdev Singh's case (supra)**, held that where there is an undertaking given by an employee, **Jagdev Singh's case (supra)** will be applicable and not **Rafiq Masih's case (supra)**. Consequently, the judgment of the learned Single Judge was set aside and the petitioner-Corporation was held entitled for recovery of the excess amount paid to the employee keeping in view the undertaking given by the employee. Relevant paragraphs of LPA-2230-2016 is as under: -

> "11. It was after the circulation of the seniority list in terms of the order passed by this Court in *Darshana Sharma*'s case (supra) that the Corporation found that certain benefits had been granted to the respondents/writ petitioners, which were not in consonance with the placement of the respondents/ writ petitioners in the seniority list. Hence, those were required to be recovered. Thereafter, notices were issued to the respondents/writ petitioners on various dates in the year 2015, specifying the amount which was to be recovered from them, as a consequence of decision in *Darshana Sharma*'s case (supra). The aforesaid orders were

challenged by the respondents by filing CWP No. 17709 of 2015 relying upon judgment of Hon'ble the Supreme Court in *Rafiq Masih*'s case (supra), as the respondents had retired from service by that time and found to be employees of Group-C service. The writ petition was allowed on 6.5.2016. Even the Review Application filed by the appellant-corporation bearing RA No. 220-CWP of 2016 was also dismissed on 17.8.2016.

12. The issue regarding recovery of the emoluments paid in excess of entitlement, especially in the cases where an employee furnished an undertaking/ affidavit to return the same in case emoluments are not found to be payable, has been gone into by Hon'ble the Supreme Court in *Jagdev Singh*'s case (supra), wherein considering the earlier judgment in *Rafiq Masih's* case (supra), it has been opined that the principles laid down therein cannot apply in a situation where an officer to whom the payment is made at the first instance is clearly placed on notice that any payment found to have been made in excess will be required to be refunded and undertaking to that effect had been given by that employee, in that situation he will be bound by the undertaking. Relevant paras from the aforesaid judgment are extracted below:-

> "10 In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc1. this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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." (emphasis supplied).

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.

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."

13. Considering the aforesaid enunciation of law laid down by Hon'ble the Supreme Court, in our view, the order passed by this Court in *Ravinder Paul Malhi*'s case (supra), which was decided on 21.12.2015, will not come to the rescue of the respondents/ writ petitioners, where a distinction was carved out regarding payment of emolument before the undertaking was furnished and subsequent thereto. In the case in hand, definite stand taken by the appellant is that entire amount, which is sought to be recovered from the respondents/ writ petitioners was paid to them only after they had furnished the undertaking.

14. For the reasons mentioned above, the present appeal is allowed. The order dated 6.5.2016 passed in the writ petition and the order dated 17.8.2016 passed in Review Application are set

> aside. As a consequence thereof, the writ petition stands dismissed."

Even the SLP filed against the said judgment, being **SLP(c) No.9015 of 2018** titled as **Jasbir Singh** Vs. **Punjab Water Resources Management and Development Corporation Limited and others**, has been dismissed by the Hon'ble Supreme Court, on 02.07.2018. The relevant portion of the said judgment is as under: -

> "No ground for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India.
>
> The special leave petition is accordingly dismissed. Pending application, if any, stands disposed of."

Further, from the facts, which have been narrated above, it is clear that petitioner knew from the day one that she was entitled for the normal family pension amounting to ₹2130/- from 01.07.2008 onwards. Petitioner has been receiving the enhanced pension @ ₹3550/- even after 01.07.2008 though, petitioner was entitled for the normal family pension of ₹2130/-. Petitioner kept quiet and knowingly received the excess amount. Once, the petitioner knew that she is getting the excess amount starting from 01.07.2008, she cannot object to the recovery of the said amount when the mistake has been detected by the Bank. Petitioner cannot be allowed to take the benefit of the excess amount, which she has received with clear knowledge. Being a good citizen, it was the duty of the petitioner to inform the respondent-Bank about the excess amount of public money, which she was receiving though she was not entitled for the same.

The second argument raised by learned counsel for the petitioner is that the undertaking was a printed proforma, which the petitioner was made to sign.

There is no challenge to the undertaking given by the petitioner before receiving the family pension in this writ petition. Once, the petitioner has signed the undertaking and received the benefits after signing the undertaking, petitioner cannot wriggle out of the undertaking on the ground that petitioner was made to sign on the dotted line. Once, there is no challenge to the undertaking, argument of the counsel for petitioner that the petitioner was made to sign on the dotted line cannot be accepted. The printed proforma cannot be a ground to not enforce the undertaking, which the petitioner has duly signed and is not under challenge before this Court on any ground of coercion or misrepresentation.

Learned counsel for the petitioner raises another ground to challenge the recovery that notice was given to the petitioner in July, 2019 and the recovery has also been effected w.e.f. 01.07.2019. Therefore, the respondents were pre-determined to recover the amount.

In the present case, learned counsel for the petitioner is not challenging the refixation of the pension starting from 01.07.2008 onwards. Learned counsel for the petitioner very fairly admits that the amount, which was paid to the petitioner starting from 01.07.2008 till June, 2019, was in excess of her entitlement. The only challenge in the present writ petition is to the recovery proceedings. Once, it is not disputed by learned counsel for the petitioner that the amount of family pension received by the petitioner from 01.07.2008 onwards was beyond her entitlement, no grievance can be raised by the petitioner with regard to the action of the respondents in recovering the same. The only question raised before this Court is whether the respondents, upon fixing the correct family pension starting from 01.07.2008, can also recover the excess amount or not.

Learned counsel for the petitioner relies upon the judgment of the Co-ordinate Bench of this Court passed in **CWP No.8534 of 2016** titled as '**Satish Manchanda and another** Vs. **State of Haryana and others'**, **decided on 16.12.2016**.

First of all, keeping in view the Division Bench judgment in **Jasbir Singh's case (supra)**, the judgment in **Satish Manchanda's case (supra)** cannot come to the rescue of the petitioner. Once, in the similar facts, the Division Bench in **Jasbir Singh's case (supra)**, after considering **Rafiq Masih's case (supra)**, on the basis of which **Jagdev Singh's case (supra)**, has declined the relief, no benefit can be extended to the petitioner as per **Satish Manchanda's case (supra)**.

Even otherwise also, reliance placed by learned counsel for the petitioner on **Satish Manchanda's case (supra)** is totally misplaced. The facts and circumstances in **Satish Manchanda's case (supra)** are entirely different from the case of the present petitioner. In the present case, petitioner kept withdrawing the amount of higher pension despite having knowledge that she is not entitled for the same coupled with the fact that an undertaking has been given by her to the effect that she will refund the excess amount paid to her, which facts were not there in **Satish Manchanda's** **(supra).**

Learned counsel for the petitioner also relies upon judgment of a Co-ordinate Bench of this Court passed in **CWP-23915 of 2015** titled as '**S.S. Guraya** Vs. **Union of India**, **decided on 17.03.2017**.

The said judgment is also of no help to the petitioner keeping in view the facts recorded in para 7 of the said judgment, where the undertaking, which was being pressed into, was being disputed and this Court held that said undertaking cannot be taken into consideration, as the same was being disputed and the said undertaking was not given at the time of receiving the benefits, therefore, even the judgment rendered in **S.S. Guraya's** **case (supra)** will not come to the rescue of the petitioner because in the present case the undertaking is not disputed at all and same was given at the time of receiving the family pension.

In view of the above, the prayer of the petitioner for setting aside the action of the respondents in seeking the recovery of the excess amount paid to the petitioner cannot be accepted.

No ground for interference is made out.

Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

October 30, 2019
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes