

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

242

CWP-9492-2020

Date of Decision : 06.04.2022

Jagwanti

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr.Deepak Sonak, Advocate,
for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

Mr. Bhushan Bhatia, Advocate
for respondent No.5.

Harsimran Singh Sethi, J.(Oral)

The present petition has been filed for quashing the action of the respondents for recovering the excess amount paid to the petitioner beyond her entitlement, keeping in view the settled principles of law as settled by the Hon'ble Supreme Court of India in “**State of Punjab and others Vs. Rafiq Masih (White Washer) etc.** ”, **2015(1) S.C.T., 195.**

As per the averments made in the present petition, the husband of the petitioner was working as a sub Divisional Clerk with the respondent-department and he died while in service on 08.08.2001. Keeping in view the family pension scheme of 1964, the petitioner was extended the family pension after the death of her husband and as per the pension payment order extending

the family pension to the petitioner, the pension was fixed @ Rs.2673/- per month starting from 09.08.2001 upto 08.08.2008 thereafter, the family pension was to be given @ Rs.1680/- per month. Inadvertently, though w.e.f. 09.08.2008, the petitioner was to be paid the family pension @ Rs.1680/- per month but the petitioner continued to get family pension @ Rs.2673/- per month up to April 2020 i.e. for a period of 12 years beyond her entitlement. When the said fact came to the notice of the respondents, a show cause notice was given to the petitioner after which, her monthly family pension was refixed and the excess amount paid was sought to be recovered, which action is under challenged.

Learned counsel for the petitioner argues that keeping in view the judgment of the Hon'ble Supreme Court of India passed in “**Rafiq Masih's case (supra)**”, no recovery of the excess amount paid can be done from a retired employee or legal heirs hence, the petitioner though was paid amount beyond her entitlement, but the same cannot be recovered.

Learned counsel for the respondents, defends their action on the ground that in the present case, the petitioner knew her entitlement about the family pension, which was clearly detailed in the pension payment order itself, which fact was duly accepted by the petitioner. Learned counsel for the respondents further submits that at the time of receiving the family pension, the petitioner had given an undertaking that in case, the petitioner draws any amount beyond her entitlement, she will refund the same on the asking of the authorities and therefore, keeping in view the said undertaking, the judgment in **Rafiq Masih's case (supra)** is not applicable and the judgment passed by the Hon'ble Supreme Court of India in the case of “**High Court of Punjab and**

Haryana Vs. Jagdev Singh”, decided on 29.07.2016, is applicable.

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

It is a conceded position that as per the pension payment order, the petitioner was only entitled to get pension @ Rs.2673/- per month upto 08.08.2008 after which, the same was to be reduced @ Rs.1680/- per month. Inadvertently, the petitioner continued to get the excess family pension for a period of 12 years which was beyond her entitlement. It is also a conceded position that the petitioner had given an undertaking to the respondents to allow them to recover the excess amount in case, the petitioner is paid amount beyond her entitlement. That being so, the judgment in case **Jagdev Singh's case (supra)** will be applicable, which is as under :-

“ - x - x -

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.*1. 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.

- x - x -”

Keeping in view the above, case of the petitioner is covered by the judgment in **Jagdev Singh's case (supra)**, hence, no fault can be found in the act of the respondents in recovering the excess amount paid to the petitioner keeping in view the facts and circumstances of the present case, hence, no ground is made out to accept the prayer of the petitioner as raised in the petition.

Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

06.04.2022
anju

<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>