

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

(205)

CWP-15615-2021

Date of Decision : October 11, 2022

Shiksha Devi

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Parminder S. Kaul, Advocate, for
Mr. Saurabh Garg, Advocate, for the petitioner.

Mr. Sandeep Singh Mann, Addl. Advocate General,
Haryana, for respondents No. 1 to 3 and 5.

Mr. I.S. Sidhu, Advocate, for respondent No.4.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition, the grievance of the petitioner is that the respondents have passed an order Annexure P-7 for the recovery of the amount of Rs.17,45,051/- from the family pension due to the petitioner on the ground that the petitioner was inadvertently paid excess payment under the compassionate financial assistance.

As per the facts mentioned in the petition, the husband of the petitioner namely Bhaya Ram was serving in Haryana Police as a Head Constable and he unfortunately died in a road accident on 01.07.2007.

Keeping in view the Haryana Compassionate Financial Assistance Scheme

of the year 2006, the petitioner became entitled for the grant of said benefit under the said scheme and an order was passed by the respondents on 03.08.2007 allowing the petitioner the benefit of last pay drawn by the deceased husband w.e.f. 02.07.2007 for a period of 11 years and 13 days i.e. upto the date on which the husband of the petitioner would have attained the age of superannuation. The said benefit was paid for the said period and thereafter, the petitioner was given the regular family pension which she became entitled for in respect of the service rendered by her late husband. Thereafter, the respondents passed an order, a copy of which has been appended with this petition as Annexure P-7 by which, the respondents held the petitioner liable for refund of Rs.17,45,051/- to be recovered from the arrears of the family pension due to her on the ground that the order passed by the respondents granting the benefit under the Haryana Compassionate Financial Assistance Scheme for a period of 11 years was incorrect as the petitioner was only entitled for the benefit for a period of seven years and the said order dated 03.08.2007 was issued inadvertently granting the petitioner, the benefit for a period more than her entitlement, hence, the excess payment needs to be recovered from the pensionary benefits. The said order of recovery is under challenge in the present petition.

Learned counsel for the petitioner argues that there is no misrepresentation on part of the petitioner to claim any benefit and rather, the order granting the benefit for a particular period was passed by the respondents themselves, hence, the benefit which the petitioner got under the said order though, was beyond the entitlement of the petitioner, cannot be recovered keeping in view the settled principle of law 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.

The further argument of the petitioner is that the recovery order has been passed without giving any opportunity of hearing to the petitioner, which is also contrary to the settled principle of law.

Learned counsel for the respondent-State on the basis of the written statement, submits that though the petitioner got the benefit of excess payment keeping in view the order passed by the respondents themselves but the said mistake was inadvertent on the part of the Department hence, was rightly rectified as and when the same came to their notice, therefore, the excess payment, which has been made to the petitioner inadvertently, can be recovered keeping in view the fact that the same is public money as well as keeping in view the undertaking which was given by the petitioner in the year 2009, hence, keeping in view the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No. 3500 of 2006 titled as High Court of Punjab & Haryana and others Vs. Jagdev Singh, decided on 29.07.2016***, recovery of the excess amount can be made from the petitioner when there is an undertaking given at the time of receiving the benefits.

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

It is a conceded position that whatever benefit was paid to the petitioner was in accordance with the order passed by the respondents themselves dated 03.08.2007, according to which, the compassionate financial assistance was to be paid to the petitioner for a period of 11 years and 13 days starting from 02.07.2007 onwards. In case, the said order was passed inadvertently by the respondents, the petitioner cannot be blamed for

the same. The petitioner was paid the amount as per the order passed by the respondents themselves.

There is no allegation of any misrepresentation on part of the petitioner so as to receive the excess amount which was paid to the petitioner by the respondents themselves. Once, there is no misrepresentation on part of the petitioner at the time of receiving of the benefit and the benefit was received by the petitioner in accordance with the order passed by the respondents themselves, keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022***, no recovery can be made. The relevant paragraph of the said judgment is as under:-

“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of

amount paid in excess.”

Learned counsel for the respondents is relying upon the undertaking given by the petitioner, a copy of which has been appended with this petition as Annexure P-8 with the petition.

A bare perusal of the said undertaking would show that the same was given by the petitioner in June, 2009 and another undertaking is dated 12.10.2018. The order extending the benefit to the petitioner was passed by the respondents on 03.08.2007. Concededly, there was no undertaking given by the petitioner at the said stage so as to conclude that the petitioner had given an undertaking at the time of receiving the benefits in the year 2007 and was bound to refund the excess amount keeping in view the undertaking submitted. No undertaking submitted by the petitioner in the year 2007, with respect to the benefits, which are now sought to be withdrawn so as to recover the excess payment has been placed on record.

Keeping in view the fact that the undertakings, which are being relied upon by the respondents, cannot be put to use so as to recover the excess payment.

In the present case, the claim of the petitioner is squarely covered by the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)*** according to which, once a benefit has been given to the petitioner and the petitioner continued to receive the said benefit for a period of five years, no recovery can be made. Further, the recovery from a retired employee cannot be made and in the present case, the benefits were extended to the petitioner after the death of her husband, hence, the claim of the respondents for the refund of the amount, which was paid to the petitioner in excess of her entitlement, cannot be recovered.

Further, it is a settled principle of law that no order causing prejudice to a person can be passed without giving her an opportunity of hearing.

The Hon'ble Supreme Court of India in ***Civil Appeal No.9417 of 2019 titled as M/s. Daffodils Pharmaceuticals Limited and another vs. State of U.P and another, decided on 13.12.2019***, has held that no one can be inflicted with adverse order without being afforded a minimum opportunity of hearing. Relevant paragraph of the said judgment is reproduced as under:-

“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.”

In the present case, it is a conceded position that the impugned order of recovery was passed by the respondents unilaterally without giving any opportunity of hearing to the petitioner and even on this account, the order Annexure P-1 cannot be sustained in the eyes of law.

Any amount which has been recovered from the petitioner be refunded to her within a period of two months of the receipt of copy of this order.

The present writ petition is allowed in above terms.

October 11, 2022

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes