IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212 **CWP-1290-2016**
Date of Decision :18.05.2022

Sunita Devi **..Petitioner**

Versus

State of Haryana and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Pardeep Solath, Advocate for the petitioner.

Mr. Raman Kumar Sharma, Addl. A.G. Haryana.

Mr. Amit Kumar Goyal, Advocate for respondents No.2 and 4.

***

Harsimran Singh Sethi, J. (Oral)

In the present petition, the grievance of the petitioner is that the respondents have started making deductions from the family pension being given to the petitioner in respect of the services rendered by her late husband namely, Ranbir Singh Nagal on the ground that an excess amount of Rs.1,12,794/- has been paid to the petitioner from January, 2014 onwards till March, 2015.

Learned counsel for the petitioner argues that in the present case, the family pension of the petitioner was fixed by the respondents themselves and the same was being deposited by them in the bank account of the petitioner. Learned counsel for the petitioner submits that computation of the family pension was also done by the respondents and the petitioner had no role to play but suddenly, in the year 2015, the respondents started deducting some amount on the ground that the petitioner was paid excess amount of Rs.1,12,794, which needs to be recovered. A sum of Rs.7500/- per month being deducted so as to recover the excess amount paid to the petitioner.

After notice of motion, the respondents have filed reply. Learned counsel for the respondents submitted that inadvertently while computing pension of the petitioner D.A was added @ 200% whereas, the same was 100% starting from January, 2014 onwards till June, 2014 and 107% from July, 2014 to March, 2015 and when the said discrepancy was corrected by the respondents in April, 2015, it was found that an excess amount of Rs.1,12,794/- was paid to the petitioner, which needs to be recovered.

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

In the present case, keeping in view the facts and circumstances noticed hereinbefore, the petitioner is not at all at fault and the family pension, which was being extended to the petitioner was computed and fixed by the respondents themselves and was being deposited by them straightaway in the bank account of the petitioner. That being so, it cannot be said that the petitioner misrepresented the respondents in any manner so as to get the higher family pension than her entitlement. The fault squarely lies with the respondents.

The question whether excess amount paid to the employee can be recovered from him/her, has already been 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,** wherein, it has been held that no recovery can be made from a retired employee working on Class-III and Class-IV post. In the present case, the family pension was being paid to the petitioner in respect of the services rendered by her late husband namely Ranbir Singh Nagal. That being so, keeping in view para-12 of the said judgment, which is reproduced hereinafter, no recovery can be made from the petitioner.

> *"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 out weigh the equitable balance of the employer's right to recover."*

Further, judgment in the Rafiq Masih's case (supra) has been considered again by the Hon'ble Supreme Court of India while passing order in Civil Appeal No.7115-2010 titled s **Thomas Daniel vs. State of Kerala and others** on 02.05.2022, wherein after considering the law on the said issue, the Apex Court again has held that where there is no misrepresentation or fraud played by an employee, excess amount cannot be recovered even when the mistake committed by the department came to their notice subsequently.

Keeping in view the above said proposition of law, in the present case, the petitioner never played any fraud with the respondents and the excess amount has been paid to the petitioner due to the fault of the respondents themselves, therefore, no recovery of the excess amount can be made from the petitioner and, consequently, the same is held to be bad and is set aside.

Resultantly, the amount, if any, recovered from the petitioner by the respondents so far be refunded to her within a period of two months from the date of receipt of copy of this order.

Petitions stands allowed.

May 18, 2022 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No