IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

214 **CWP-11220-2017**
Date of Decision :30.05.2022

Bhagwani Devi **..Petitioner**

Versus

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

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.S. Banyana, Advocate for the petitioner.

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

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Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the challenge is to order dated 19.03.2017 (Annexure P/2) passed by the respondents, whereby, recovery of Rs.4,26,641/- is being done from the family pension of the petitioner.

As per the averments made in the present petition, husband of the petitioner was working as JBT teacher in Education Department, Haryana and retired on attaining the age of superannuation on 31.03.2002. Thereafter, husband of the petitioner unfortunately died on 30.11.2002, after which, the petitioner was given family pension in respect of the services rendered by her late husband. The petitioner continued getting family pension after the death of her husband till March, 2017 after which, an impugned order dated 19.03.2017 (Annexure P/2) was passed by the respondents for recovery of an amount of Rs.4,26,641/- from the petitioner

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for the period starting from April, 2009 to February, 2017. As per the said impugned order, the petitioner was paid family pension beyond her entitlement and the excess amount paid to her needed to be recovered from her.

After notice of motion, the respondents have filed reply, wherein, it has been mentioned that the petitioner was getting higher family pension @ Rs.7209/- instead of Rs.4679/- starting from year 2009 onwards which amount is needed to be recovered from her. Respondents have further mentioned in their reply that as the petitioner had herself given an undertaking, copy of which has been appended with the reply as Annexure R-4, therefore, payment of excess amount can be recovered from the petitioner.

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

It is a conceded position that the family pension of the petitioner was fixed by the respondents themselves, which was paid to the petitioner straightway in her bank account and the petitioner had no role to play in fixing her family pension @ Rs.7209/- instead of Rs.4679/- and the said act is attributable to the respondents themselves. The petitioner is an illiterate lady, who was only receiving family pension after the death of her husband starting from the year 2002 onwards. That being so, once the petitioner had no role to play in fixing her family pension and excess amount was paid to her by the respondents themselves, no recovery can be effected from the petitioner keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in **State of Punjab and**

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others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195. Relevant paragraph 12 of the said judgement 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 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.

Learned counsel for the respondents argued that the petitioner

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had herself given an undertaking Annexure R-4 therefore, judgment in **Rafiq Masih's case (supra)** is not applicable in the present case and the present case is covered by the judgment in **High Court of Punjab and Haryana and others vs. Jagdev Singh, 2016 (14) SCC 267.** The said argument of the respondents is fallacious as the recovery from the petitioner was made in March, 2017 whereas, the undertaking is of December 2017 i.e after the recovery. Rather the said undertaking has been procured by the respondents from the petitioner being an illiterate lady after filing of the present petition, which shows that the respondents were bent upon to create some document so as to justify the recovery done from the petitioner.

Learned counsel for the respondents further argued that even on the date of passing of impugned order, the petitioner had given an undertaking. The said undertaking will not come to the aid of the respondents as the undertaking should be taken at the time of receiving the benefits and not at the time of withdrawal of the benefits. Therefore, the recovery of excess amount, which has been done from the petitioner vide impugned order dated 19.03.2017 (Annexure P/2) being contrary to the settled principle of law is held to be bad and is accordingly set aside.

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

May 30, 2022 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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

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