IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(218-4) **CWP No. 22220 of 2017(O&M)**
Date of Decision : 13.05.2022

Sita Rani

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Balpreet Kaur Sidhu, Advocate for the petitioner.

Mr. Mahesh Dheer, Advocate for the respondents.

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Harsimran Singh Sethi J. (Oral)

CM-13781-CWP-2019

Present application has been filed for placing on record reply filed on behalf of the respondents along with Annexures R-4/1 to R-4/7 as well as seeking exemption for filing certified copies of the same.

Application is allowed and reply filed on behalf of the respondents along with Annexures R-4/1 to R-4/7 is taken on record.

CWP No. 22220 of 2017

In the present petition, the grievance being raised by is that after 9 years of the retirement, the respondents have started recovery of the excess amount paid to the petitioner as pension, which is not permissible keeping in view the judgment of 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 facts mentioned in the petition, the petitioner retired as a Helper from the Military Hospital on 31.07.2008 and was granted pension thereafter. The petitioner was drawing the pension of ₹15,161/- and in the year 2017 vide demand notice dated 27.06.2017 (Annexure P-1) petitioner was informed that there is a recovery against her, which will be done by monthly installment of ₹5,000/-. The challenge is to the said recovery by the petitioner in the present petition.

Upon notice of motion, the respondents have filed the reply, wherein, they have stated that the petitioner was being paid pension and DA at the old rate, whereas the petitioner was entitled for the pension along with DA at new rates, which was less than at old rates and, therefore, the recovery was being done from the petitioner. Learned counsel for the respondents submitted that at the time of seeking pension, petitioner had given an undertaking that in case there is any wrong calculation of the amount for which the petitioner is entitled for, she will refund the same without raising any grievance and, therefore, keeping in view the said undertaking, recovery of the excess amount can be done from the petitioner.

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

In the present case, at the time when the petitioner retired, the petitioner had submitted an undertaking dated 08.09.2008, a copy of which has been appended as R-4/1 with this petition, wherein, the petitioner has mentioned that in case, any amount beyond the entitled of the petitioner, is paid to her by way of pension or other benefits, she will refund the same without raising any grievance and the respondents will be within their jurisdiction to recover the excess amount.

That being so, the case of the petitioner is covered by 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. The relevant paragraph of the said judgment is as under :-

"12. As far as the undertakings are concerned then it fall for consideration can those be used against employees falling in direction (ii) of Rafiq Masih as interpreted in Jagdev Singh where the issue involved was of an employee opting out of revised pay scale while furnishing undertakings. Undertakings given at the time of pay revision are different in character from grant of an additional increment because in revision of pay scales employees reap benefits differently and, therefore, are allowed by rules to exercise options depending on variable factors such as dates when increments fall due and things like that. The additional increment here was given as a one-time measure but with a recurring effect increasing pay but not the pay scale and that is why undertakings given at the time of revision of pay scales would be binding as a person should not be seen to shift his stand according to the vagaries of pay revision. If direction (iii) operates then by the very nature of things direction (i) would be accompanying right and when the two are read together recoveries are in my view impermissible in law.

13. The undertakings given by the petitioners at Annex R-3/2 and R-3/3 [with the written statement] in 2008 was even when the additional increments wrongly conferred were being paid since 2003 till retirement. What occasioned the demand of furnishing undertaking by the petitioners was the pay *revision in the year 2008 in implementation of the Shetty Commission when a decision was taken to give benefits retrospectively from 2003 and not 2005. In any case, at the time undertakings were given, parties did not contemplate that they will ever be used against them since the petitioners were allowed to retire peacefully without initiating any action for recovery. Once they passed the age of superannuation then to disturb them may be a travesty of justice. However, since the grant of additional increments was indisputably wrongful with no clarity on the subject prior to retirement, the benefit inflating the pay wrongly will not percolate to increase service pension, allowances and retiral benefits which are open to alteration. This order only makes impermissible recovery from 2003 to 2012 in view of the law in direction (iii) in Rafiq Masih."*

The judgment in ***Jagdev Singh's case (supra),*** has been rendered by the Hon'ble Supreme Court of India after noticing the judgment in ***Rafiq Masih's case (supra)***, which deal with the question of recovery of the excess amount from the retiree.

A bare perusal of the above would show that the Hon'ble Supreme Court of India while passing the judgment in ***Jagdev Singh's case (supra)*** has held that where there is an undertaking given by an employee, the recovery of excess amount is permissible.

In the present case, it is a conceded fact that at the time of receiving the pension, the petitioner had given an undertaking, therefore, no fault can be found in recovering the excess amount.

At this stage, learned counsel for the petitioner submits that petitioner is only receiving the pension amounting to ₹12,000/- and after the deduction of the installment of ₹5,000/-, she is only receiving a sum of

₹7,000/- approximately, which is insufficient to live a dignified life keeping in view the fact that petitioner is 80 years old lady and is suffering from various ailments. Learned counsel for the petitioner submits that even if the respondents are to recover the excess payment, the installments of recovery should be reduced to ₹1,000/- or at the most ₹2,000/- and not beyond that so that the petitioner can survives on the remaining pension.

Keeping in view the facts and circumstances of this case, though the option of deciding should have been given to respondents but keeping in view the facts and circumstances of this case, interest of justice will be served in case, the recovery of excess amount is done by monthly installments of ₹2,000/- henceforth.

Present petition is disposed of in above terms.

May 13, 2022 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

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