

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(220)

CWP No. 24646 of 2017

Date of Decision : 09.05.2022

Rama Rani

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vipin Kumar, Advocate for
Mr. Ravi Malhotra, Advocate for the petitioner.

Mr. Sandeep Bhatia, Advocate for the respondent-UOI.

Harsimran Singh Sethi J. (Oral)

The present petition has been filed for quashing the order dated 16.03.2013 (Annexure P-2) by which, the respondents decided to recover an excess amount of pension paid to the petitioner amounting to ₹2,46,918/-.

Learned counsel for the petitioner argues that the late husband of the petitioner was working as a Havildar in the Boarder Security Force and unfortunately, died while in service on 18.05.2004, after which the petitioner was granted the family pension. The family pension, which was initially granted to the petition was being revised from time to time and the petitioner was being paid revised pension but, vide order dated 16.03.2013 (Annexure P-2), the said pension was found to be incorrectly assessed and the respondents sought to recover a sum of ₹2,46,918/- paid to the

petitioner. The reason for the recovery was that the excess pension was paid due to the wrong data fed in the system. The said order of recovery is under challenge in the present petition.

After notice of motion, the respondents have filed the reply. In the reply, the respondents have mentioned that the petitioner was granted the benefits after the death of her husband but as the pension was being paid by way of Centralized Pension Processing Centre while revising the pension of the petitioner, the wrong data was fed due to which, the petitioner continued getting a higher pension than her entitlement, which excess amount, being a public money, is being recovery, which is perfectly valid and legal.

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

In the present case, the petitioner is a family pensioner. Nothing has come on record to show that the petitioner played any role in getting the excess pension rather, the respondents have conceded the fact that it was due to wrong data fed in the computer, the petitioner was paid the excess amount. That being so, petitioner cannot be blamed/ petitioner is not at fault and she has not mislead the respondents so as to secure higher amount of pension.

The question whether, the excess payment can be recovered is 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 relevant paragraph 12 of the said judgment 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 outweigh the equitable balance of the employer's right to recover.”

It has further mentioned that where a person continued to get a benefit for a period of 5 years before the same is sought to be withdrawn, the recovery cannot be made and further, the recovery cannot be made from a retired person. In the present case, the respondents themselves have mentioned in the impugned order dated 16.03.2013 (Annexure P-2) that the pension to the petitioner was paid at a higher rate from 01.01.2006 to 28.02.2013, which is more than period of 5 years and further, the petitioner

was being paid family pension, which is admissible to a widow/widower of a retired employee. The case of the petitioner is squarely covered by paragraph 12 of the judgment in ***Rafiq Masih's case (supra)***, that the recovery being done from the petitioner is impermissible. Nothing has been brought to the notice of this Court so as to rebut that the judgment in ***Rafiq Masih's case (supra)*** is not applicable in the case of the petitioner.

Keeping in view the above, no recovery is permissible from the petitioner as the petitioner is not at fault with regard to securing of the said amount, which was paid unilaterally by the respondents themselves. The amount, which has been recovered from the petitioner be refunded back to her within a period of two months of the receipt of copy of this order.

Petition is allowed in above terms.

May 09, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

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