

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

259)

CWP-21549 of 2019

Date of Decision: 30.08.2022

Smt. Santra

.....Petitioner

Vs.

Haryana Shahari Vikas Pradhikaran (HSVP) and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil K. Nehra, Advocate,
for the petitioner.

Mr. Arvind Seth, Advocate,
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present petition, the grievance of the petitioner is that an order has been passed on 14.06.2019 (Annexure P-4) by which, a sum of Rs.4,20,000/- is being recovered from the monthly pension of the petitioner on the ground that excess amount has been paid to the petitioner while granting benefits under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006.

As per the averment made in the present petition, the husband of the petitioner was appointed in the respondent department as a Sweeper on 03.11.1985 on daily wage basis, which services were regularised by the department on 01.04.1993. While on service, the husband of the petitioner unfortunately died on 17.10.2009. After the death of the husband of the petitioner, the petitioner's claim was considered under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 and it was directed that the petitioner will be paid the

last drawn salary of her late husband for a period of 7 years after which, the petitioner will be granted the benefit of family pension. The compassionate financial assistance under the 2006 Rules was to continue till 17.10.2016 but, the same continued beyond the said period, the respondents realizing their mistake in not stopping the compassionate financial assistance to the petitioner after October 2016, passed the impugned order to the effect that the petitioner has been paid an excess amount to the tune of Rs.4,20,000/-, which needs to be recovered. The respondents kept on paying compassionate financial assistance under 2006 Rules upto 30.06.2019 thereafter, the respondents calculated the entitlement of the petitioner and found that a sum of Rs.4,20,000/- has been paid in extra and after starting the family pension w.e.f. 18.06.2016 onwards, the excess amount paid, has been recovered to the tune of Rs.3,94,695/- upto 30.06.2019 from the family pension. The balance amount of Rs.25,305/- was to be recovered from the remaining family pension extended to the petitioner.

Learned counsel for the petitioner argues that though the amount which has been paid to the petitioner was excess of her entitlement but there was no mis-representation on the part of the petitioner, therefore same cannot be recovered keeping in view the judgment of the Hon'ble Supreme Court of India in ***Thomas Daniel versus State of Kerala and others, Civil Appeal No.7115 of 2010, decided on 02.05.2022.***

Learned counsel for the petitioner submits that the petitioner is an illiterate lady and did not knew about her entitlement which is why the petitioner is to be given the benefit of the fact that that there was no mis-representation on the part of the petitioner in receiving the amount in excess to her entitlement.

Learned counsel for the respondents submit that the petitioner could have got the compassionate financial assistance under 2006 Rules only upto 17.10.2016 after which, her family pension was to start and as the petitioner was given the compassionate financial assistance up to 31.08.2018, the excess amount has to be adjusted in the family pension admissible to the petitioner starting from 18.10.2016 onwards.

Learned counsel submits that the excess amount paid being a taxpayer money, is rightly being recovered from the petitioner.

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

The factual position is not in dispute. After the death of the husband of the petitioner, the petitioner was given compassionate financial assistance under 2006 Rules, which were admissible to the petitioner upto 17.10.2016 only. After which, the petitioner was to get her family pension in accordance with the Pension Rules. The respondents inadvertently kept on paying the petitioner the benefits under 2006 Rules upto 31.08.2018 after which date, the said mistake was realized by the respondents and the respondents vide the impugned order dated 05.07.2019 (Annexure P-4) rectified the said mistake vide which recovery of the excess amount of Rs.4,20,000/- paid to the petitioner beyond her entitlement upto 31.08.2018 has been sought to be done from the family pension admissible to the petitioner from 18.10.2016.

The same question of law came up for consideration before this Court in ***CWP-16832 of 2018, titled as Jagesh Devi v. State of Haryana and others, decided on 04.07.2019***, wherein also the recovery of the excess amount being recovered was set aside.

The Hon'ble Supreme Court of India in ***Thomas Daniel*** (supra) has held that where there is no misrepresentation on behalf of the employee concerned to get the extra amount beyond his/her entitlement, the excess payment cannot be recovered. 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.”

Keeping in view the aforesaid judgment, once there is no misrepresentation, no recovery can be done and in the present case, it is not even the case of the respondent that the petitioner mis-represented in any manner to get the excess amount.

That being so, the recovery cannot be done from the petitioner.

Keeping in view the above, the excess amount of Rs.4,20,000/-

which is sought to be recovered from the petitioner is contrary to the settled principle of law and cannot be recovered, however, the petitioner cannot be paid the compassionate financial assistance under 2006 Rules as well as the family pension simultaneously.

As in the present case, learned counsel for the petitioner has conceded that the petitioner has been paid the compassionate financial assistance upto 31.08.2018 hence by notional fixation the amount paid to the petitioner as compassionate financial assistance which is sought to be recovered by the respondents be treated as family pension for the said period and respondents are directed not to recover any amount paid in excess of the actual family pension admissible to the petitioner for the period 17.10.2016 to 31.08.2018 from the petitioner.

August 30, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No