

201 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-24393-2019

Date of Decision: 16.05.2022

Shukla Devi

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: None for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. Vikas Chatrath, Advocate,
for respondents No.4 and 5.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the challenge is to order dated 17.05.2019 (Annexure P-3), vide which order, the respondents have started recovery of the excess amount paid to the petitioner.

Facts of the case are that the petitioner was appointed as a Clerk with the respondent-Department on 22.09.1995, from which post, she retired on 30.11.2017, upon attaining the age of 60 years. At the time of her retirement, her pension was fixed at Rs.5,560/-, the commuted pension calculated was Rs.1,668/- and finally, the petitioner was to be paid a sum of Rs.3,896/- as pension payable to her by the respondent-Department.

Vide letter dated 17.05.2019 (Annexure P-3), the respondents informed the petitioner that that while entering the data in computer, instead of entering the basic pension of Rs.5,560/-, for which amount, the petitioner was actually entitled for, it was wrongly mentioned that the petitioner is

entitled for the grant of pension amounting to Rs.13,900/-, and keeping in view the said incorrect data fed in the computer, the petitioner has been given a higher amount of pension than her entitlement, therefore, an amount of Rs.3,68,666/- is sought to be recovered from the petitioner, which was paid to the petitioner more than her entitlement.

Upon notice of motion, the respondents have filed the reply, wherein they have submitted that in the present case, at the time of calculating the pension, a wrong data was fed by the respondents, due to which mistake, instead of the actual entitlement of the petitioner for an amount of Rs.5,560/- as pension, a wrong sum of Rs.13,900/- was entered in the computer. It is also mentioned in the reply that the petitioner had also given an undertaking, a copy of which has also been annexed as Annexure R-1 with the present petition, that in case any incorrect calculation takes place or the petitioner is paid an amount more than her entitlement, the respondents will be within their jurisdiction to recover the said excess amount from the petitioner.

As there is no representation on behalf of the petitioner to address the arguments, therefore, learned counsels for the respondents are heard. I have gone through the record with their able assistance.

In the present case, the case is of entering of the wrong data in the computer, while computing the pensionary benefits of the petitioner, due to which mistake, instead of a sum of Rs.5,560/- for which the petitioner was entitled for as pension, a wrong amount of Rs.13,900/- was entered in the computer. Petitioner was being paid pension contrary to the pension payment order of the petitioner, where the petitioner was only held entitled for the payment of pension of Rs.5,500/- and after the commutation, the

petitioner was only entitled for the grant of Rs.3,890/-. The petitioner knew that she is getting the pension at a higher rate than her entitlement and it was duty of the petitioner also to inform the respondents about the incorrect grant of pension to her, which was at a higher rate than her entitlement.

Further, claim of the petitioner in the present petition is that the excess amount cannot be recovered from a retired employee and the reliance has been placed upon the settled principle of law as laid down by the Hon'ble Supreme Court of India, while passing judgment in “**State of Punjab and others Vs. Rafiq Masih (White Washer) etc.**”, 2015(1) S.C.T., 195.

The said judgment has been considered later on by another Bench of the Supreme Court in “**High Court of Punjab and Haryana Vs. Jagdev Singh**”, decided on 29.07.2016, wherein it was held that where an employee has given an undertaking at the time of receiving a benefit that the excess payment paid will be refunded, hence the undertaking given by an employee at the time of receiving a benefit, has to be given meaning to, therefore, **Rafiq Masih's case** (supra) will not be applicable qua recovery of the excess amount in the aforesaid situation. The relevant paragraphs of the judgment passed in **Jagdev Singh's case** (supra) is as under:-

“ - x - x -

9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment

found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc¹. this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.” (emphasis supplied).

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in

excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

- x - x -”

In the present case, the respondents only corrected the amounts in the computer, which were wrongly entered, regarding the grant of pension amount payable to the petitioner, therefore, the petitioner cannot get the benefit of the amount, which was paid to her due the incorrect data entered in the computer and keeping in view the undertaking given by her (Annexure R-1), according to which, the excess amount paid is liable to be recovered from her.

Further, present case of the petitioner is also covered by the judgment of this Court, passed in **CWP-14116-2015**, titled as “***Chaman Lal Vs. State of Punjab and others***”, decided on 27.04.2022.

In view of the above, no fault can be found with regard to the recovery of the excess amount from the petitioner by the respondents in the facts and circumstances of the present case.

Accordingly, the present writ petition is dismissed.

16.05.2022

Apurva

(HARSIMRAN SINGH SETHI)
JUDGE

1. Whether speaking/reasoned : Yes
2. Whether reportable : No