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

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**CWP-3198-2021
Date of decision: 19.09.2023**

RAKSHA KAUSHIK AND OTHERS ....Petitioners

VERSUS

UNION OF INDIA AND OTHERS ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present:- Mr. Imran Mohammad, Advocate
for the petitioners.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

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VINOD S. BHARDWAJ, J. (Oral)

1. The petitioners have sought quashing of the impugned orders (Annexure P-7 to P-24) passed by District Social Welfare Officer, Ambala City whereby the said respondent had discontinued the old age pension granted to the petitioner on the ground that after the revision of the pension of their spouses and by implementation of Recommendations of the 7th Pay Commission, the total family income from all sources surpasses the upper limit of Rs. 2 lakhs as prescribed, rendering them ineligible for the pension.

2. The petitioners are old age pension holder and were found eligible by the respondents for grant of pension. The State of Haryana had decreased the minimum age limit from 65 years to 60 years and subsequently, vide notification dated 22.03.2012, the upper income limit from all sources was increased from Rs. 50,000/- to

Rs.2,00,000/-. The 7th Pay Commission was implemented in the year 2016, whereupon the pension increased beyond Rs. 2,00,000/- from all sources. The income limit was, however, not changed. A show cause notice was served upon the petitioners by the respondents to which replies were submitted claiming that the income limit be revised. An order was nonetheless passed, ignoring the reply and directing discontinuation of pension & deposit of pension drawn.

3. Written statement on behalf of respondents No.2 and 4 had been filed on 01.09.2022 wherein it was specifically averred that the old age pension had been discontinued as the eligibility criteria prescribed in the pension scheme was not fulfilled for being eligible under the scheme, it prescribes a cap on total Annual Income to not exceed Rs. 2 lakhs per annum from all sources for claiming pension in terms of the Old Age Allowance Samman Allowance Scheme, however, the petitioners herein do not dispute that their total income in terms of the scheme is beyond the sum of Rs. 2 lakhs. The relevant extract of the written statement filed on behalf of the respondents is reproduced hereinafter below:

> "*4. That all the petitioners were availing the benefit of Old Age Samman Allowances Scheme. The answering respondent No. 4 got conducted the general survey and during the survey, it was found that the spouses of all the petitioners were getting pension from the Central/State Government being retired employees of the Government. So, in order to know the genuineness of old age pension of the petitioners towards income criteria, the answering respondent No. 4, following the Principles of Natural Justice, has issued notices vide which the*

petitioners were directed to produce their spouses' Bank Pass Book and clarify their position but only 13 petitioners have clarified their position in respect of their annual income before the answering respondent No. 4. After perusal of their replies, it has been revealed that their annual income is more than Rs. 2.00 lac. There are provisions in Rule 9 of the said scheme ***(Annexure R/1)*** *in respect of stoppage of old age pension, the relevant part of which is reproduced as under:*

> *"..... The old age pension is given to the beneficiary for his/her entire life. The DSWO has right to stop the pension, if at any stage it is found that the same was sanctioned on mistaken ground or false information or the condition for which the allowance was granted no longer exist..."*

Consequent thereupon, in view of annual income exceeding more than Rs. 2.00 lac of said 13 petitioners, their old age pension has been discontinued and recovery notices issued and old age pension of rest of the petitioners, who did neither appeared nor produced any document, has also been discontinued, considering their annual income more than Rs. 2.00 lac and recovery notices issued.

Apart from this, the petitioners have also admitted themselves in the present writ petition that after revision of pension of their spouses on implementation of 7th Pay Commission their annual income has been more than Rs. 2.00 lac.

Hence, action, in respect of discontinuing the pension of the petitioners as well as issuing the recovery notices against them, taken by the answering respondent No. 4 is legal and justifiable in view of the provisions of the said scheme because they are not no longer entitled for *old age pension.*

5. That it would be worthwhile to mention here that in so far as question of revising the income limit of Rs. 2 lac per annum is concerned, it is submitted that the State Government institutes the welfare schemes for all the needy people and these schemes always targets to provide financial assistance to such old age persons of the society/state who are unable to earn their livelihood and meet day-to-day needs. The income limit prescribed in the scheme is genuine as the same is sufficient to trace out the needy people and if any person having another income source or earning more than Rs. 2 lac per annum such persons cannot deemed to be an indigent person because they are able to maintain themselves as well as their spouses efficiently. Moreover, Government decides the income limit based on the financial capacity of the state.

6. That it is further submitted that under the Indira Gandhi Old Age Pension Scheme, amount of Rs. 200/- and 300/- per month is given to old age persons having age above 60 to 79 years and above 80 years respectively. The benefit of the Indira Gandhi Old Age Pension Scheme is granted to those old age persons who are covered in the category of Below Poverty Line (BPL) and the income limit for BPL families is also fixed as up to Rs. 1,80,000/- per annum from all sources of complete family whereas for granting the benefit of Old Age Samman Allowances Scheme, income limit has been fixed as up to Rs. 2.00 lac per annum of the beneficiary and his/her spouse only.

Thus, the State Government of Haryana is making all the possible as well as best efforts to financially assist the needy old age persons and always tries to keep away the defaulters and to avoid the loss of public exchequer.

Hence, the petitioners are not entitled for

> *continuing their old age pension and are liable to deposit the recovery amount. Apart from this, there is no relation between implementation of 7th Pay Commission and income criteria mentioned in the said scheme as has been alleged in the writ petition hence, it is not a compulsion for the answering respondents to revise the income criteria of the said scheme on the pattern of 7th Pay Commission. Therefore, the present writ petition deserves to be dismissed in the interest of justice.*

4. Since there is no challenge to the scheme document and there is no rejoinder/replication to the written statement that had been filed despite lapse of more than than a year, the position of fact as remained uncontroverted.

5. Even though Old Age Pension Samman Scheme is a social Welfare Scheme, however, the condition prescribed in the scheme document need to be complied with. The scheme involve state fiscal expenses and it would be within the competence of the state to prescribe eligibility conditions. It is obligatory for the respondents to ensure that the recipients fulfill those conditions. The State is not the owner of public finance and purse and is only its custodian. It has the duty to ensure that welfare measures reach the needy and are not garnered by those who have been excluded. At the same time, a duty is also imposed on every citizen to claim the benefit ony if he/she fulfills the requirements & to move an appropriate application for discontinuance, if ineligible. There is no entitlement to a benefit availed in violation of the scheme. Ignorance of law cannot be accepted as a valid defence against law enforcement. Where the act of the beneficiary is not fraudulent or based on misrepresentation, he/she is not liable

to be criminally prosecuted for such an act, however, it cannot mean that they are entitled to retain the undue benefits as well. An indulgence shown in such cases is often a bad example for the society which tends to learn that law can be violated and that no harm will come their way, even if detected, on the ground of hardship, lack of intent, age or such pleadings. The period for which such benefit is availed is thus protected, giving rise to a tendency to secure the benefits by manipulations in the scheme and to plead ignorance thereafter. The majesty of law and its ability to undo a wrong is thus a casualty.

6. As a result of such gracious indulgence shown by a Court of law as well, instances of abuse of public funds in social welfare schemes is on a forever rise. Ineligible person are doled out benefits from public funds so as to capitalize on such abuse in its own favour by people in seat of power and many times by the officials on quid-pro-quo basis. The trap draws away public funds from investment to revenue expenditure and significantly impacting fiscal health of a State. As a matter of fact, it revealed in an affidavit filed by the Principal Secretary to Government of Haryana in the Department of Social Justice and Empowerment in ***CWP No. 801 of 2017*** titled ***"Rakesh Bains and another versus CBI and others"*** that there were thousands of illegal and ineligible beneficiaries in one district itself. The figure in the entire state, if honestly verified, may run into lakhs. This Court, vide its order dated 29.08.2012 passed in CWP No.13209 of 2011 had accepted the undertaking of State to recover the wrongly disbursed pension. Action taken by State is being questioned in CWP-801 of 2017 supra. Any directions to not effect recovery also dilutes earlier orders

passed by this Court and emboldens the Executing Officers to not comply with orders. Any mixed and contradictory directions are counter-productive and tend to persuade people to take chances to commit a wrong. Indulgence extended has to be valued in light of its impact and lesson learnt.

7. It would thus rather be a dis-service to the rule of law where an illegality is condoned and the violator is permitted to retain the ill-gotten fruits.

8. Once the factual aspect remains undisputed, there remains no illegality in the impugned orders.

9. The present petition is accordingly dismissed.

10. Dismissal of the writ petition would not, however, debar the petitioners from being considered for the welfare schemes if they are otherwise eligible.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 19, 2023

Vishal sharma

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