IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

244 **CWP-7306-2021**
Date of Decision: 01.03.2023

Swarna Rani Megh and others **......Petitioners**

Vs.

State of Punjab and others **.......Respondents**

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R.S Bajaj, Advocate and
Mr. Sidakjit Singh Bajaj, Advocate
for the petitioners.

Ms. Jasleen Kaur, DAG Punjab.

Mr. Harsh Garg, Advocate
for the respondent No.3.

<u>JASGURPREET SINGH PURI J. (ORAL)</u>

The present writ petition has been filed under Article 226/227 of Constitution of India praying for issuance of a writ in the nature of certiorari for quashing the order dated 19.02.2021 (Annexure P-3) as well as order dated 18.03.2022 (Annexure P-5) passed by respondent No.3, which is the Punjab National Bank by which straightaway recovery of Rs. 11,52,273/- has already been effected from the family pension of the petitioner without even giving an opportunity of hearing and without issuing any show cause notice. Further, prayer has been made in the petition seeking release of the gratuity amount of Rs. 1,42,349/- which has already been sanctioned by the State vide order dated 18.12.2020. (Annexure P-1) alongwith interest @12% per annum.

Mr. R.S Bajaj, Advocate appearing on behalf of the petitioner No.1 has submitted that the husband of the petitioner had died while in service on 03.02.2008. Thereafter, petitioner No.1 who is the second widow of the aforesaid person and petitioners No. 2 and 3, who are two children of the petitioner No.1 were entitled for the grant of the pension but thereafter, there was some dispute with regard to the proportionality in the grant of pension for the first widow as well. Ultimately, the matter was resolved on the basis of the Writ Petition bearing No. CWP No. 18150 of 2008 filed by the petitioner No.1 earlier and directions were issued to grant family pension to the petitioners and thereafter, the State as well as the Bank started giving family pension to the petitioners vide order dated 31.10.2014, regarding which facts have been given in para 3 of the reply filed by the State Government.

He submitted that the subject matter of the present petition is that after the petitioner started getting family pension suddenly vide Annexures P-3 and P-5, the Punjab National Bank, who is the authorised Bank to give the pension to the petitioner had issued a letter to the petitioner that they have paid excess pension to her and therefore, the petitioner was asked to deposit back the excess paid pension which amounted to Rs.11,52,273/- Learned counsel for the petitioner submitted that such kind of letter written is not only contrary to statutory provision, but is also contrary to the law laid down in the judgment passed by Hon'ble Supreme Court in "***State of Punjab and others Vs. Rafiq Masih (White Washer) and others" 2015 (4) SCC 334***. He further submitted that the petitioners were already drawing family pension and without issuance of any show cause notice suddenly a letter was written by the Punjab National Bank that aforesaid amount will be recovered by them pertaining to some excess payment of pensionary benefits. He submitted that there is neither any reason nor any reference to any letter of the State is mentioned in the aforesaid Annexures P-3 and P-5 but straightaway a letter has been written to the petitioners to refund the aforesaid amount. He submitted that now it is a settled law that after retirement, any excess amount paid to the person or any employee or his legal representatives in the absence of any fraud or misrepresentation by the employee or his LRs, the same cannot be recovered. While referring to aforesaid judgement in ***Rafiq Masih's case (Supra),*** he submitted that the case of the petitioners is covered under Clause (ii) and Clause (v) of para No.18 of the aforesaid judgment and therefore, Annexures P-3 and P-5 are liable to the quashed.

Learned counsel further submitted that so far as the second grievance of the petitioners is concerned, it is rather an admitted case of the State in the reply which they have filed that the gratuity of amount of Rs. 1,42,349/- was sanctioned by the State vide order dated 18.12.2020, but the same has not been paid to the petitioners despite the fact that more than 02 years have elapsed after sanctioning of the gratuity as per the stand taken by the State and therefore, directions be issued for the release of the gratuity to the petitioners alongwith interest. Mr. Bajaj has specifically stated that the scope of the present petition is only pertaining to the recovery and not to the action of reducing the pension.

Ms. Jasleen Kaur, DAG Punjab has appeared on behalf of State and Mr. Harsh Garg, Advocate has appeared on behalf of respondent No.3/ Punjab National Bank. The stand of respondent No.3 is only to a limited extent that they acted upon the instructions issued by the State Government and therefore, they had to reduce the pension of the petitioners so that the excess amount would be recovered.

I have heard the learned counsel for the parties.

Learned counsel for the petitioners have raised two grievances. Firstly that the petitioners being the family pensioners were regularly getting pension and thereafter suddenly vide Annexures P-3 and P-5 in the year 2021 they were asked by the Bank to deposit an amount of Rs. 11,52,273/- since excess pension was paid to them. Learned counsel for the petitioners submitted the grievance in the present petition is with regard to the recovery of pension and he does not dispute the action of the respondent in reducing the pension for which, she may be allowed to avail separate remedy in accordance with law. The argument raised by learned counsel for the petitioners is that his case is covered by the judgement in ***Rafiq Masih's case (Supra)***. A perusal of the different replies filed by different respondents would show that they are shifting the responsibility on each other. The State Government and the department of Accountant General Punjab, have taken the stand that it is the Bank who has made the aforesaid recovery and stand of the Bank is that they acted in accordance with direction of the State. Be that as it may, the question would be as to whether recovery can be made from a retired employee or a family pensioner after retirement and that too after about a period of 11 years, the Hon'ble Supreme Court of India in ***Rafiq Masih's case (Supra)*** laid down various parameters, the same are reproduced as under:-

> "*18. 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 hereinabove, 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 was so observed in the aforesaid case that it is not possible to postulate all the situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer but for the sake of ready reference some other situations were summarized. As per Clause (ii), recovery is impermissible from the retired employee or the employee, who are due to retire within one year of the order of recovery and as per sub Clause (v) which is a residuary clause where the Court arrived at the conclusion that recovery 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. The facts of the present petition suggest that the petitioners being family pensioners and recovery is sought to be made after 11 years from them and as per the reply filed by the State and as argued by learned counsel for the respondent No.3, there was no allegation of fraud and misrepresentation on the part of the petitioners and the aforesaid excess amount of pension was paid by the Bank or the State on their own. Therefore, this Court is of the view that the case of petitioners would certainly fall in sub Clause (ii) of aforesaid para No.18. So far as sub

Clause (v) is concerned since the petitioner No. 1 is a widow and was receiving the family pension which itself is sufficient to come to a conclusion that when a widow has been paid a family pension and recovery is sought to be effected from her then it will certainly be harsh and iniquitous and therefore, this Court is satisfied that in case aforesaid amount is recovered from the petitioner then it would also fall within clause (v) of para 18 as well.

So far as the second prayer made by learned counsel for the petitioners with regard to non releasing gratuity of Rs. 1,42,349/- is concerned, it is the admitted case of the respondent that the gratuity of the aforesaid amount has already been sanctioned by the Government on 18.12.2020 and till date the same has not been paid to the petitioners and therefore, on the face of it, the petitioners were entitled for the grant of gratuity alongwith interest.

In view of the above, the present petition is allowed. The impugned order Annexures P-3 and P-5 are hereby set aside. It is directed that neither the State nor the Bank will be entitled for recovery of the amount of Rs.11,52,273/- from the petitioners.

So far as the amount of gratuity of Rs. 1,42,349/- is concerned, the same shall be paid to the petitioners within a period of four months from today alongwith interest @ 6% per annum with effect from the date of sanction, if already not paid.

(JASGURPREET SINGH PURI)
JUDGE

01.03.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : No