2023:PHHC:123275

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

220-3

CWP-10957-2021
Date of decision: 19.09.2023

GURDEVI ....Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER ....Respondents

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

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Present:- Mr. Rakesh Gupta, Advocate
for the petitioner.

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

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the letter Memo No.2030 dated 27.05.2021 (Annexure P-11) issued by respondent No. 2 whereby the petitioner has been ordered to deposit Rs. 1,40,942/-, the principal amount alongwith interest.

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. It has been further averred by the petitioner that she was having a dispute with her husband and is residing separately from him, in the same village, but with her son Ravi Kumar for last 5/6 years and that she has no information regarding revision of pension of her husband.

4. Written statement on behalf of respondents No.1 and 2 had been filed on 01.09.2022 wherein it has been averred as under:

> *"3. That the State Government stipulates the income criteria for availing the benefit of the Social Security Schemes in order to identify the needy people. As such, an income criterion had also been fixed by the State Government of Haryana for the benefit of Old Age Samman Allowances Schemes and same had been amending time to time. The State Government of Haryana had fixed the income limit as Rs.50,000/- per annum for getting old age pension vide notification dated 10.06.2011 and the same had been amended vide notification dated 22.03.2012 (P/2) whereby income limit of Rs. 50,000/- per annum was increased to Rs. 2.00 lac per annum. At present, as per provisions of the said scheme, such old age persons are eligible to get old age pension whose income from all sources together with that of his/her spouse does not exceed Rs. 2.00 lac per annum.*
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> *4. That the present petitioner was availing the benefit of Old Age Samman Allowances Scheme since the year 2009. The answering respondent No. 2 has conducted the general survey in the year 2020 and during the survey, it was found that the spouse of the petitioner was getting pension from the State Government being retired employee*

of the Government. So, in order to know the genuineness of old age pension of the petitioner towards income criteria, the answering respondent No. 2, following the Principles of Natural Justice, has given opportunity to the petitioner to explain her position, issuing the various notices dated 05.08.2020, 23.10.2020, 19.11.2020 and 04.12.2020 and she replied thereto but the same were found not satisfactory. Therefore, the old age pension of the petitioner has been discontinued vide order dated 08.12.2020 and the recovery notices dated 27.05.2021 and 27.08.2021 of Rs. 1,40,942/- (Rs. 1,09,800/- as principal amount and Rs. 31,142/- as interest @ 12% per annum) for the period of January, 2016 to December, 2020 have also been issued against her. It is also clarified here that 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..."*

Despite this, even the petitioner has also admitted herself in the present writ petition that after revision of retirement pension vide notification dated 28.10.2016, pension amounting to Rs. 20,670/- per month was withdrawn by her husband. Meaning thereby, that the annual income of the petitioner together with that of her husband has been surpassed the income limit of Rs. 2 lac per annum.

Hence, action, of discontinuing the pension of the petitioner as well as issuing the recovery notices against her, taken by the answering respondent No. 2 is legal and justifiable in view of the provisions of the said scheme and

> *the petitioner is not entitled for continuing her old age pension rather liable to deposit the said recovery amount, as already obtained by her in wrongful manner in shape of old age pension.*

5. The said reply was filed on 01.09.2022 showing that the total annual income of the petitioner together with that of her husband has surpassed Rs. 2 lakhs per annum, however, the only explanation offered by the petitioner is that she is not living with her husband. The scheme document does not contemplate a separation of residence as the basis for grant of pensionary benefits. There is no challenge to the scheme document under such circumstances the terms and conditions prescribed thereunder have to be read as a whole. Even otherwise, this would be a disputed question as to whether the petitioner is living separately and as to whether she has severed all her relations with her husband or not. So long as she is legally wedded to her husband and the marriage can not been considered as dissolved, the computation of income has to be done in accordance with the scheme.

6. 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 only 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.

7. 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.

8. 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.

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

10. Faced with the above, counsel for the petitioner does not press the instant petition at this stage so as to take recourse to the remedies available to her in accordance with law.

Disposed of as not pressed with liberty as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 19, 2023
Vishal sharma

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