IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

220/5

CWP-16489-2021 (O&M).
Date of Decision: 19.09.2023.

SMT. BHUPINDER KAUR AND ANOTHER

... Petitioners

Versus

UNION OF INDIA AND OTHERS

... Respondents

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

Present: Mr. Imran Mohd, Advocate, for
Mr. Arvinder Arora, Advocate, for the petitioner.

Mr. S.K. Sharma, Senior Panel Counsel,
for respondent No.1/Union of India.

Mr. Vivek Chauhan, Addl. A.G. Haryana with
Mr. Om Parkash, District Social Welfare Officer,
Charkhi Dadri.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present writ petition is for seeking quashing of orders (Annexures P-8 and P-9), whereby the Old Age Pension granted to the petitioners has been discontinued for the reasons that the annual income of the petitioners as well as their spouses has exceeded the limit of Rs.2 Lakhs as an eligibility condition prescribed under the said Scheme.

The petitioners are spouses of the old age pensioners and were found eligible by the respondents for grant of pension. The State of Haryana had deceased 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 rejecting the reply and directing discontinuation of pension and deposit of pension drawn.

Reply on behalf of respondents No.2 to 4 dated 17.11.2022 had been filed wherein it was 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 for the benefit of Old Age Samman Allowances Schemes and the same had been amended from time to time. The State Government had fixed the income limit as Rs.50,000/- per annum for getting the old age pension vide notification dated 10.06.2011 and the same had been amended vide notification dated 22.03.2012 (P/2) whereby the 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.

4. That the petitioner No. 1 and 2 were availing the benefit of Old Age Samman Allowances Scheme since the year 2013 and 2010 respectively. The answering respondent No. 4 got conducted the general survey and during the survey, it was found that the spouses of both the petitioners were getting pension from the 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 given an opportunity to explain their position. On receipt of notices, respective husband of petitioner Nos. 1 and 2 appeared before the answering respondent No. 4 and recorded their statement that they have retired from the Haryana Roadways and Government department of Haryana respectively and they are getting pension amounting to Rs. 19,000/- per month and Rs. 20,000/- per month respectively. Meaning thereby, annual income of both the petitioners along with that of their husbands is more than Rs. 2.00 lac and hence, notice dated 25.10.2019 for recovery of Rs. 87,718/- for the period of January, 2016 to July, 2019 and notice dated 06.07.2021 for recovery of Rs. 1,60,910/- has been issued against petitioner No. 1 and 2 respectively. 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 the 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 exists."

Consequent thereupon, in view of the annual income exceeding more than Rs. 2.00 lac of the petitioners, their old age pension has been discontinued 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 are legal and justifiable in view of the provisions of the said scheme because they remained no longer entitled for old age pension.

5. That it would be worthwhile to mention here that in so far as the 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 is earning more than Rs. 2 lac per annum, such persons cannot be 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."

Learned counsel appearing on behalf of the State of Haryana submits that the respective husbands of petitioner No.1 and 2 specifically made a statement before the respondent authorities that they are pensioners from the Haryana Roadways and are getting pension of Rs.19,000/- and Rs.20,000/- per month respectively. Hence, the annual income of the respective husband of the petitioners No.1 and 2 is more than Rs.2 Lakhs.

No replication/rejoinder has been filed on behalf of the petitioners controverting the averments made in the aforesaid written statement filed by the respondents.

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.

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.

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.

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

In view of the aforesaid uncontroverted statement of fact, I do not find any infirmity of illegality in the orders (Annexures P-8 and P-9) passed by respondent No.4 i.e. the District Social Welfare Officer, Ambala City discontinuing the pension allowance to the petitioners and also for seeking recovery thereof.

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

Disposed of as not pressed with liberties as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

September 19, 2023.
raj arora

Whether speaking/reasoned *: Yes/No*

Whether reportable *: Yes/No*