IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

220 (2)

CWP-17775-2021
Date of decision: 19.09.2023

DARSHANI DEVI ....Petitioner

VERSUS

UNION OF INDIA AND ORS ....Respondents

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

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Present:- Mr. Arshit Goel, Legal Aid Counsel
for the petitioner.

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

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<u>VINOD S. BHARDWAJ, J. (Oral)</u>

1. Challenge in the present petition is to the impugned orders dated 03.02.2020 and 22.03.2021(Annexure P-5 & P-6) respectively whereby the respondent No.4 has discontinued the old age pension granted to the petitioner and is further directed the petitioner to deposit the amount paid during the period of December, 2014 to September, 2019 as old age pension.

2. Legal Aid Counsel appearing on behalf of the petitioner contends that the respondents have wrongly discontinued the pension of the petitioner notwithstanding that the income of the petitioner from all sources is less than Rs. 2 Lakhs and that any such person would be entitled to the grant of pension in cases income is below Rs. 2 Lakhs. It is, however, not disputed by the counsel that the petitioner is receiving a family pension.

3. 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.

4. Counsel for the respondent-State has referred to the written statement filed on behalf of respondents No.2 and 4 on 01.09.2022 wherein it has been averred as under:

> *2. That in this context, it is submitted that the State of Haryana had instituted the various Social Security Schemes with stated objective of providing public assistance to people living in poverty in case of old age, sickness, widowhood, disability or death of a family member. One of these schemes is Old Age Samman Allowances Scheme having eligibility criteria to avail the benefit of this scheme as prescribed therein. The Social Security Schemes represent a significant step of the State Government towards implementation of Directive Principle of State Policy as mentioned in Article 41 of the Indian Constitution and always targeted the poor households, with some exclusion criteria, to ensure that it reaches more of the people it intends to help. Article 41 of the Indian Constitution provides that the State shall within*

the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other case of undeserved want. The State Government, keeping the said provision of the Constitution of India in view, had instituted the Social Security Schemes with the eligibility criteria and same had been amending time to time.

There is no doubt that the old age persons are wealth of the nation and therefore the State Government has been formulating the welfare schemes for them. This scheme is a welfare scheme and instituted for providing the financial assistance only to needy old age persons. The said scheme provides better livelihood to the senior citizens and make their life easy and if any old age person is already able to maintain himself/herself from his/her own resources then the State Government is not responsible to provide social security to such person. In short, old age pension is granted to such old age persons who are destitute in the sense of having little or no means of regular income.

3. That the factual position of the present matter is that the petitioner was getting old age pension since June, 2013 under Pension ID No. 5217255 but in meanwhile a complaint bearing No. CMOFF/N/2019/112869 dated 16.09.2019 was moved against the petitioner by Sh. Ram Nath S/o Sh. Bhulla Ram R/o Village Naushahra, Post office Sadhawa, Tehsil Bilaspur, District Yamuna Nagar alleging that the petitioner is getting family pension since 01.01.2014 after death of her husband despite of getting old age pension. A copy of the said complaint is annexed as ***Annexure R/1****. On receipt of said complaint, the answering respondent No.4 vide letter dated 26/09/2019 and 15.10.2019 has given on opportunity to explain her* *position in respect of allegations made against her but she didn't respond. Therefore, the answering respondent No. 4 vide letters dated 14/11/2019 has sought information from Branch Manager, Punjab National Bank, Bilaspur, District Yamuna Nagar that from what time the petitioner was getting family pension. With reference thereto, Punjab National Bank vide letter dated 20.11.2019 has informed that the petitioner was getting pension under PPO No. 127309/HR since January, 2015 and same is being deposited in SF Account No. 0548000302421689. A copy of letter dated 20.11.2019 is annexed as* ***Annexure R/2.*** *Subsequently, answering respondent No.4 has issued recovery notice dated 03.02.2020 (P/5) against the petitioner for get effecting the recovery amounting to Rs. 92,000/- for the period of 12/2014 to 09/2019 along with interest @ 12% per annum, as already obtained by her as old age pension in wrongful manner because she was getting double pension and as per mandate of the scheme mentioned in notification dated 10.06.2011* ***(Annexure R/3),*** *the person, getting any other pension as mentioned therein, is not entitled for the benefit of Old Age Samman Allowances Scheme. When the petitioner didn't respond the answering respondent No. 4 has also requested to District Collector. Yamuna Nagar to got effected the said recovery under the Land Revenue Act and when the summons dated 22.03.2021 (P/6) issued by Tehsildar, Bilaspur, Yamuna Nagar received to the petitioner to deposit the amount of recovery i.e. Rs. 1,43,812/-, the petitioner has filed the present writ petition in order to escape herself from depositing the said recovery amount.*

4. That it would be appropriate to made clarify here that the petitioner has made reference of CWP No. 3198 of 2021 titled as Raksha Kaushik and Others Vs Union of India and Others whereas the present matter in hand does not pertain to excess income limit as prescribed in the said *scheme i.e. Rs. 2.00 Lac per annum rather pertains to double pension because as per notification dated 10.06.2011 (Annexure R/3) in respect of Old Age Samman Allowances Scheme, any person is not eligible for getting old age pension in case of getting any other pension. The relevant part of the said notification is herein as under: -*

"Exclusion

Notwithstanding the above, in case the person is receiving pension from any Government or Local/Statutory Body or any organization substantially financed by any Government or Local/Statutory Body will not be eligible to receive allowance under the scheme...."

5. That further it is also submitted that There are provisions in Rule 9 of the said scheme 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..."

Therefore, in light of the said provisions of the said scheme, the decision taken by the answering respondent No. 4 in respect of stoppage of pension of the petitioner and that of issuance of recovery notice against her is as per provisions of the said scheme and not arbitrary in nature.

Hence, the present writ petition is not maintainable in the eyes of law and deserves to be dismissed, in the interest of justice.

5. It has been argued by the State counsel that the pension has been discontinued not on account that the income from all sources is exceeding Rs. 2 lakhs but on account of the exclusion that has been

provided in the scheme document as per which if a person is receiving pension from any Government/local/statutory body or any organization substantially financed by any Government or Local Statutory body will not be eligible to receive allowance under the scheme. The relevant extract of the said scheme notified on 10.06.2011 has already been extracted in the reply.

6. It is also contended that the petitioners have not raised any challenge to the notification containing the above said exclusion clause and that in the absence of any challenge thereto, the discontinuation of the pension is in accordance with the above said scheme document. He further referred to the information received from the Punjab National Bank as per which the petitioner has been drawing pension in Saving Bank Account No. 0548000302421689 of the petitioner.

7. 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.

8. 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.

9. 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.

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

11. The contention of the petitioner that the scheme should be read only in the in terms of the conditions prescribed notwithstanding the exclusion clause cannot be accepted as the scheme document has to be read in its entirety. There being no challenge to the scheme document, this Court has no option but to accept the terms and conditions including the exclusion of the scheme as they are.

12. The present petition is accordingly dismissed.

13. The petitioner shall, however, be at liberty to take recourse to the remedies available to her in accordance with law including raising a challenge to the scheme document, if so advised.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 19, 2023

Vishal sharma

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