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

220 (4)

CWP-20629-2021
Date of decision: 19.09.2023

NIRMALA KAUR AND ANOTHER ....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 petitioner.

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

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is the impugned order (Annexure P-11 and P-12) whereby the respondents have discontinued the old age pension granted to the petitioner and have directed recovery of the amount wrongly released to them.

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 the respondents No.2 and 4 has been filed on 15.12.2022 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 for the benefit of Old Age Samman Allowances Schemes and same had been amending time to time. The State Government 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 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 the old age pension beneficiaries including that of both the petitioners were getting pension from the Central/State Government being retired employees of the Government and their annual income exceeds the income criteria prescribed in the said scheme vide notification dated 22.02.2012 (P/2). So, in order to know the genuineness of*

old age pension of all the said beneficiaries including the petitioners towards income criteria, the answering respondent No. 4, following the Principle of Natural Justice, issued notices vide which they were directed to produce their spouses' Bank Pass Book and clarify their position. Pursuant thereto, the petitioners showed the Pension Payment Orders (PPOs) of their husbands whereby it was reveled that the husbands of the petitioner No. 1 and 2 already got commuted their pension amounting to Rs. 2666/- and Rs. 2318/- respectively out of their total monthly pension, which is also a part of their pension. It is also submitted that their monthly pension had been revised w.e.f. 01.01.2016 as per 7th Pay Commission and they are getting monthly pension amounting to Rs. 15,784/- and Rs. 16,527/- respectively. The said amount of commutation of pension, being a part of pension, is also liable to be added in their monthly pension. Accordingly, total pension of husband of the petitioner No.1 is Rs. 18,450/- (15,784+2,666) and that of husband of the petitioner No.2 is Rs. 18,845/- (16,527+2,318). Hence, annual income of both the petitioners along with that of their husbands exceeds the income criteria mentioned in the said scheme i.e. Rs. 2.00 lac per annum. 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..."*

Therefore, in view of the said provisions, their old age pension has been discontinued and recovery notices have been issued against them as their annual income is more than income criteria specified in the respective scheme.

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."

4. The total annual income of both the petitioners alongwith their husband exceeds Rs. 2 lakhs which is beyond prescribed

eligibility criteria mentioned in the scheme.

4. Counsel for the petitioner contends that the pension of the petitioner is Rs. 1,98,324/- and the same is below the cap of Rs. 2 lakhs as imposed in the scheme document.

5. Learned State counsel has, however, contended that the calculation furnished by the petitioner is not in accordance with mandate. As a matter of fact, the commutation of pension has not been taken into consideration while submitting the aforesaid figure. The total pension of the petitioner No.1 would be Rs. 18,450/- p.m. (Rs. 2.21 lakh annual) while that of petitioner No.2 would be Rs. 18,845/- p.m. (Rs. 2.26 lakhs annual). The same would thus exceeds Rs. 2 lakhs.

6. There has been no replication controverting the said stand of the State filed in their written statement and further, there is no challenge to the clauses of the scheme document.

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 present petition is accordingly dismissed at this stage. Liberty, is however, granted to the petitioners to pursue their other remedies, if so advised, in accordance with law.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 19, 2023

Vishal sharma

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