

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

**CWP No.173 of 2017(O&M)
Date of Decision: 25.04.2023**

Santosh Devi

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Shivam Malik, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the order dated 04.11.2016 passed by the respondent No.4, directing the respondent No.5 to effect recovery of an amount of Rs.1,66,846/-, which was paid to the petitioner prior to the year 2010 and further for the issuance of a writ in the nature of mandamus, directing the respondents not to effect recovery of excess amount of family pension paid to the petitioner.

[2]. The petitioner was married to one Raghbir Singh, who was working as Constable in Haryana Police. After the demise of Raghbir Singh on 05.03.1978, the petitioner did kareva marriage with the younger brother of her husband namely Rajbir Singh. Rajbir Singh was also working in the police department. The name of the petitioner was incorporated in the nomination form by the aforesaid Rajbir Singh, showing the petitioner to be eligible for getting the terminal/retiral benefits after his demise. From this wedlock of the petitioner and Rajbir Singh, one daughter was born. Rajbir Singh also expired while in service on 30.03.2005. After the demise of Rajbir Singh, the petitioner was granted family pension and she kept on getting the said family pension till the year 2010.

[3]. A dispute arose in the year 2010 between the petitioner and second wife of the deceased Rajbir Singh. As a result of the said dispute, family pension of the petitioner was stopped. The petitioner filed CWP No.4195 of 2010 titled Santosh Devi Vs. State of Haryana and others. During pendency of the aforesaid writ petition, a compromise was effected between the parties on 23.09.2013 and the writ petition was disposed of by the High Court, directing the respondents that all the retiral benefits including the family pension till the date of compromise be disbursed in the ratio of 50:50 i.e. 50% to the petitioner and 50% to the second wife of Rajbir Singh.

[4]. The respondent-department has already implemented the said compromise. On 04.11.2016, the petitioner was served with the impugned order, wherein the respondent No.4 had directed the respondent No.5 to effect recovery of Rs.1,66,846/- from the monthly salary of the petitioner. The petitioner is working in the office of Senior Medical Officer, ESI Dispensary, Bahadurgarh.

[5]. Learned counsel for the petitioner submits that there was no misrepresentation on behalf of the petitioner at the time of payment of the aforesaid amount of Rs.1,66,846/-. The retiral dues released in favour of the petitioner were not on account of any fraud committed by the petitioner upon the department. The petitioner is a Class-IV employee. Vide the impugned proceedings of recovery against the petitioner, the recovery of the aforesaid amount of Rs.1,66,846/- is being effected for the period from 01.09.2005 to 23.09.2013. With reference to the undertaking dated 06.06.2014 in Form-E, learned counsel for the petitioner submits that the aforesaid undertaking is not relatable to the period, for which, the recovery in question is being effected. The undertaking at the most could have been treated to be prospective in nature and there was no amount in excess of the entitlement of the petitioner subsequent to the date of undertaking dated 06.06.2014. In support of his contentions, learned counsel for the petitioner has relied upon

State of Punjab and others Vs. Rafiq Maish (White Washer) etc, 2015(4) SCC 334, Thomas Deniel Vs. State of Kerala and others, 2022 AIR (Supreme Court) 2153, order dated 24.11.2021 passed in **LPA No.549 of 2021** titled **State of Haryana and others Vs. Sh. J.C. Sharma XEN (Retd.) and others**, order dated 30.01.2020 passed in **W.P.(S) No.9716 of 2019** titled **Shankar Narayan Chakrawarty Vs. State of Chhattisgarh and others**, order dated 19.09.2019 passed in **Writ Petition No.5226 of 2022** titled **Sanjay and others Vs. State of Maharashtra and others**, order dated 07.01.2021 passed in **Writ-A No.10699 of 2020** titled **Sarojbala Pandey Vs. State of U.P and others, State of Kerala represented by Secretary to Government, Department of General Education and others Vs. Vinod Kumar C.R, 2020(4) KLT 230** and **Rajendra Prasad Pandey Vs. State of U.T. through Secy. Agriculture and others, 2018(6) All WC 6133** and contends that it would be absolutely iniquitous and arbitrary to allow such a recovery at such a stage, particularly when there was no misrepresentation on behalf of the petitioner while availing service benefits of her deceased husband. The excess payment was for the period from 01.09.2005 to 23.09.2013 i.e. the period prior to the undertaking dated 06.06.2014 and the said period is not hit by any undertaking given by the petitioner on 06.06.2014.

The facts of the case are squarely hit by the ratio laid down in **Shankar Naryan Chakrawarty's case (supra)**.

[6]. *Per contra*, learned State counsel duly assisted by the learned counsel for the respondent No.4 submits that the entitlement of both the wives in the ratio of 50:50 already stands implemented. 50% of the recovery has already been effected from the second wife of Rajbir Singh and she has not come forward to assail the aforesaid recovery, nor has joined the petitioner in these proceedings.

[7]. Having heard learned counsel for the parties, I find that the proposed recovery of 50% from the petitioner is wholly illegal and is not sustainable in law. Even if, challenge to the recovery has not been made by the second wife namely Munni Devi to the extent of recovery from her in the ratio of 50%, the same cannot debar the petitioner from challenging in-action on behalf of the department on the basis of undertaking dated 06.06.2014, which is not in respect of period of recovery from 01.09.2005 to 23.09.2013. The ratio laid down in **High Court of Punjab and Haryana and others Vs. Jagdev Singh, 2016(4) SCT 286** is not attracted to the facts of the present case. The undertaking at the most could have been applied prospectively to the facts of a given case and the same cannot be universally applied.

[8]. For the reasons recorded hereinabove, this writ petition is allowed. Impugned proposed recovery of Rs.1,66,846/- is hereby quashed. Necessary consequences to follow.

25.04.2023
Prince

(RAJ MOHAN SINGH)
JUDGE

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