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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-26377-2016
Date of Decision: 06.02.2023

Madhu Bala and others
..... Petitioners

Versus

State of Punjab and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Nitesh Singla, Advocate,
for the petitioners.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Parambir Singh, Advocate,
for respondent No.4.

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JASGURPREET SINGH PURI, J. (ORAL)

The present writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of *mandamus* directing respondent No.4 which is the Municipal Corporation, Phagwara not to deduct the excess amount paid under mistake to the petitioners after their superannuation/death with a further prayer to direct respondent No.4 to return the amount deducted out of the pensionary benefits payable to the petitioners.

Learned counsel for the petitioners has submitted that the present is a petition filed by six petitioners, who are getting the family pension from different dates and regarding which a chart has been so prepared and mentioned in Para No.2 of the petition which shows that the employees had died from the year 2006 to 2011 on different dates and the present petitioners are the family pensioners of the aforesaid employees. They were the employees of the Department of local bodies in the State of Punjab at that point of time but thereafter, the services were merged with respondent No.4-Municipal Corporation, Phagwara in the year 2012. They were getting family pension but suddenly in the year 2016, the Bank started deducting some amount from the family pension of the petitioners regarding which a chart has been prepared and so mentioned in Para No.6 of the petition. He also submitted that a perusal of the chart would show that from the month of May, 2016, there was a substantial cut/recovery made from the family pension of the petitioners and which almost amounted to half of the family pension received by them. The learned counsel for the petitioners further submitted that the employees were falling in the Category of 'C' & 'D' and after the death/retirement of those persons, no recovery could have been effected from the family pensioners. He further submitted that even otherwise also the petitioners have not even come to understand as to why and under what circumstances, such recovery has been made and how calculation has been made by respondent No.4-Corporation. He also submitted that neither any notice was issued to the petitioners nor any order has been passed by respondent No.4-Corporation so as to effect the recovery and in this way the aforesaid action of respondent No.4-Corporation involved civil consequences and there has been flagrant violation of the *Principles of Natural Justice* as no opportunity was given to the petitioners nor any notice was issued nor any specific order was passed for recovery, and therefore, the action of respondent No.4-Corporation was not only violative of *Principles of Natural Justice* but was also contrary to the law laid by the Hon'ble Supreme Court in "***State of Punjab and others Vs. Rafiq Masih***", ***2015(4) SCC 334***. He also submitted that by way of an interim order, this Court had stayed further recovery on 20.12.2016 and thereafter, no recovery has been effected from the petitioners but before that some recovery was effected from the petitioners.

On the other hand, Mr. Parambir Singh, learned counsel appearing on behalf of respondent No.4-Corporation submitted that reply has been filed by the Corporation wherein it has been so stated that the family pension of the petitioners was wrongly fixed at the time when the family pension was granted and was contrary to the circular issued by the Finance Department, Punjab on 21.12.2009 and when the mistake was detected by way of audit inspection in the year 2016, then the recovery was effected from the family pensioners. He further submitted that excess family pension was drawn by the petitioners and therefore, recovery was to be effected. He also submitted that at the time of getting the family pension, all the petitioners had executed an affidavit wherein they have stated that in case any amount is paid in excess in pension, it can be recovered from them or from the legal heirs and they will have no objection in this regard. He further submitted that in view of the above, the present petition is liable to be dismissed.

I have heard the learned counsel for the parties.

Here is a case where all the petitioners are family pensioners and the employees, who were serving in the Department of Local Bodies from the State of Punjab, had died or superannuated prior to the year 2011. A perusal of the affidavit filed by the Municipal Corporation would show that the Municipal Corporation itself came into being in the month of May, 2012 and all the petitioners were getting family pension prior to that. The files of some employees of the Government of Punjab, Department of Local Bodies were sent to the Municipal Corporation, Phagwara which included those petitioners as well and after about 4 years that as per the learned counsel for respondent No.4, an audit inspection took place and it was found that they were getting excess pension. It is clear that at the time when the petitioners started getting family pension, they were not employees of respondent No.4-Municipal Corporation. It is an admitted position that all the employees were either Category 'C' or Category 'D' employees and those employees had retired prior to the year 2011. On 25.02.2020, learned counsel for the petitioners had at that point of time submitted that recovery was made from them without passing any order and without following the *Principles of Natural Justice* as no Show Cause Notice was issued to them before effecting recovery and learned counsel for the respondent No.4 had sought some time to place on record any order or a Show Cause Notice in that regard.

Today, during the course of argument, a specific query was raised to the learned counsel for respondent No.4-Corporation that as to whether any Show Cause Notice or any order has been passed for the purpose of recovering the amount, he submitted that no such order has been passed nor any notice has been issued and nothing so reflects from the reply filed by the respondent No.4-Corporation. A perusal of the reply also shows that it was only in the year 2016 that probably the Audit Department found that some excess amount has been paid to the petitioners as a family pension and therefore, immediately the recovery was started effecting till the time interim order was passed by this Court.

So far as the effect of undertaking given by the petitioners at the time of grant of family pension is concerned, the same was given prior to the year 2012, when the respondent No.4-Corporation came into being except for one of the affidavit which was given in October, 2012. Therefore, such an affidavit/undertaking was executed not before the respondent-Corporation but before the Government of Punjab where they were drawing family pension.

Learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih's case (Supra)*** to contend that after so many years, no recovery can be effected especially because the employees fell in the Category of 'C' & 'D' whereas the learned counsel for respondent No.4-Corporation has referred to another judgment of Hon'ble Supreme Court passed in "***High Court of Punjab & Haryana and others Vs. Jagdev Singh***" ***2016(14) SCC 267*** to contend that they had themselves given an undertaking that in case an excess pension is paid to them, then the same can be recovered from them.

However, this Court is of the view that in case any recovery was to be effected from the petitioners then at least some notice was required to be given to the petitioners and thereafter, some order had to be passed by taking a conscious decision but the same has not been done in the present case. Therefore, this Court is of the view that action of respondent No.4-Corporation was totally in violation of *Principles of Natural Justice*, namely, *audi alteram partem.* The action of the respondent-Corporation has caused serious civil consequences affecting the right and livelihood of the petitioners and also the Constitutional Right of pension/family pension.

In view of the above, the present petition is partly allowed. The recovery effected from the petitioners till date shall be refunded back to them along with interest @6% within a period of two months from today. After the amount is refunded back to the petitioners as the same is being in violation of *Principles of Natural Justice,* the respondent No.4-Corporation shall be at liberty to issue any kind of notice to the petitioners and follow the *Principles of Natural Justice,* and thereafter, may take a conscious decision with regard to the right to recovery in the light of judgments of Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih's case (Supra)*** and ***High Court of Punjab & Haryana and others Vs. Jagdev Singh's case (Supra)***.

In case, any order is passed by which any recovery is to be effected by the respondent-Corporation then the said order shall be kept in abeyance for next three months so that the petitioners, who are family pensioners may approach any appropriate forum/Court for the redressal of their grievances.

06.02.2023 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No