

219

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.26299 of 2018(O&M)
Date of Decision: 23.01.2023

SANTOSH DEVI

-Petitioner

Versus

STATE OF HARYANA AND ORS

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.S. Shekhawat, Advocate,
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

Mr. Ravi Sharma, Advocate
for respondent No.3.

Mr. Anshul Mongla, Advocate
for respondent No.5.

RAJ MOHAN SINGH, J. (Oral)

CM No.158-CWP of 2023

Replication is taken on record subject to all just
exceptions.

Application stands allowed.

Main case

[1]. The petitioner has preferred this writ petition for the
issuance of an appropriate writ in the nature of certiorari,

quashing the order dated 29.09.2018 passed by the respondent No.5, wherein recovery of Rs.1,87,425/- was ordered to be effected in equal installments of Rs.5000/- per month from the family pension of the petitioner.

[2]. The husband of the petitioner was serving as a Forest Guard in the respondent-Department since 13.07.1985 and he died on 18.10.2005 while in service. The family pension was sanctioned in favour of the petitioner. Thereafter, the enhanced family pension was also sanctioned w.e.f. 19.10.2012 for a period of three years as per Government instructions.

[3]. On 29.09.2018, the impugned order was passed by the respondent No.5 and the petitioner received a recovery memo, seeking to recover installments of Rs.5000/- per month from the family pension of the petitioner on the premise that some excess amount has been paid to the petitioner.

[4]. Learned counsel for the petitioner contended that it was not a case of fraudulent payment having been made to the petitioner towards her family pension, nor was on account of any misrepresentation on behalf of the petitioner. After the demise of husband of the petitioner, amount from the family pension cannot be recovered. At one point of time, only one installment of Rs.5000/- was recovered from the family pension of the petitioner, but the same has now been refunded to the petitioner

after issuance of interim order passed by this Court.

[5]. Learned counsel for the petitioner relied upon Full Bench judgment of this Court passed in **CWP No.2799 of 2008** titled **Budh Ram and others Vs. State of Haryana and others** decided on 22.05.2009 and **State of Punjab Vs. Rafiq Masih, 2015(2) SCC 608** and contended that the amount deposited in the pension account of the petitioner was not on account of any fraud, misrepresentation or deception by the petitioner. The amount was deposited on the basis of *bona fide* mistake committed by the respondent-Bank. The petitioner was not in any way responsible for the mistake committed by the authorities.

[6]. In view of law laid down in **Budh Ram and others case (supra)** and **Rafiq Masih's case(supra)**, the amount in question cannot be recovered from the pension account of the petitioner. The case of the petitioner cannot be treated with the instinct of fraud, misrepresentation or any other act of deception, which cannot possibly qualify for any relief in equity. It is no longer open to the authorities to recover the amount.

[7]. Additional monetary benefits going to the petitioner may not construe and result in accumulation of her resources and saving. Having induced by such payments, the petitioner/employee may have changed her position/schedule,

which she otherwise would not have changed. Such a benefit may often be utilized on a smaller issue/item of need of luxuries of life, which otherwise may not have been perceived by the petitioner, had the benefit not been given to her.

[8]. For the reasons recorded hereinabove, this petition is allowed. impugned order is set aside. The petitioner would be entitled to her normal family pension without intending recoveries.

23.01.2023
Prince

(RAJ MOHAN SINGH)
JUDGE

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