

201

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

CWP-28978-2019

Date of Decision: 13.02.2023

Baljinder Kaur

..... Petitioner

Versus

Punjab State Power Corporation Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Nitin Sharma, Advocate,
for the petitioner.

Mr. Sehaj Bir Singh, Advocate
for the respondents-PSPCL.

JASGURPREET SINGH PURI, J. (ORAL)

The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari/mandamus* or any other writ/order or direction restraining the respondents to make illegal, arbitrary, unconstitutional recovery from the family pension of the petitioner.

It has been submitted by learned counsel for the petitioner that the husband of the petitioner, namely, Sh. Satnam Singh, who was working as Regular Team Mate died on 20.11.2011 while in service of the respondent-Corporation at Naushara Majja Singh, Division, District Gurdaspur. Thereafter, the petitioner, who is the widow of the aforesaid Sh. Satnam Singh was appointed as Peon on compassionate basis and

simultaneously, she was also entitled for grant of family pension. He further submitted that the petitioner was immediately granted the family pension from 07.03.2012 of Rs.5,292/- per month. Thereafter, suddenly in the year 2018, her family pension was reduced and the respondent-Department started recovering an amount of Rs.7,735/- per month. Thereafter, she filed a writ petition before this Court bearing CWP-29575-2018 wherein directions were issued by this Court to the respondents to decide the legal notice which was earlier issued to the respondent-Corporation by passing a speaking order in accordance with law and it was also directed that the judgment passed by the Hon'ble Supreme Court in “*State of Punjab and others Vs. Rafiq Masih (White Washer) and others*”, 2015(4) SCC 334 be also kept in mind. Thereafter, vide impugned order (Annexure P-7), the claim of the petitioner was rejected by the Senior Executive Engineer, PSPCL, Division Dhariwal on 07.05.2019. Thereafter, the petitioner has filed the present petition challenging the aforesaid order.

Mr. Sehaj Bir Singh, learned counsel appearing on behalf of the respondents-PSPCL while referring to the speaking order which was passed in pursuance of the directions issued by this Court, has submitted that it is a case where the petitioner was granted family pension after the death of her husband and she was drawing Rs.5,292/- per month from the year 2012, but however the total pension admissible to her was inadvertently fixed at Rs.9,709/- as Basic Pension and the same was uploaded wrongfully with the result that the petitioner started to draw the basic pension of Rs.9,709/- instead of Rs.5,292/- and in this way she kept on getting the extra family pension till the same came to the light during the inspection of Audit of

Dhariwal Division during the period of 12.04.2018 to 23.04.2018 and once it came to the light of the Audit Department, it was conveyed to the respondent-Corporation whereby excess pension was stopped and she started getting the normal pension of Rs.5,709/-. He further submitted that thereafter now she is getting her family pension which is actually admissible to her but from the year 2012-18, she had been inadvertently granted the benefit of Rs.7,16,098/-, for which the respondent-Corporation is entitled to recover from her. He submitted while referring to the order passed by the aforesaid Senior Executive Engineer that when she was posted in the year 2014 in the Dhariwal Division, she managed to remove her original P.P.O paper from her personal file maintained by the office and kept the same in her custody to conceal the fact regarding the actual sanctioned Basic Pension amount of Rs.5,292/- per month. Thereafter, an explanation was called from her but she had denied the same. He further submitted that because of the aforesaid reason the P.P.O. file was not available and the mistake could not be detected at an earlier point of time and it was only during audit, the mistake was detected. He also submitted that the effect of the aforesaid judgment of Hon'ble Supreme Court passed in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (supra)*** has also been discussed in the speaking order wherein it has been so stated that no hardship will be caused to the petitioner and no equity can be treated in favour of the petitioner because she has received unjustified excess pension and she is already having sufficient salary and amount to meet her family needs, and therefore, the aforesaid judgment will not apply in the present case. He has, therefore, prayed for dismissal of the

present petition.

I have heard the learned counsel for the parties.

It is not in dispute that the petitioner is a widow, started getting family pension from the year 2012 after the death of her husband on 20.11.2011. The husband of the petitioner was working as Regular Team Mate, which falls in the 'D' Category. The petitioner was also appointed as Peon on compassionate basis and she was also working in 'D' Category. Although, as per the learned counsel for the respondents-Corporation, she has now been promoted as LDC which would also fall in 'C' Category. A perusal of the impugned order (Annexure P-7) would show that the reason for grant of excess payment to the petitioner as a family pension was that there was an inadvertent mistake while uploading the basic pension of the petitioner and consequently she started getting excessive pension for a period of about 6 years. Although, it has been so mentioned in the impugned order that some explanation was called from the petitioner but a specific query was raised to the learned counsel for the respondents-Corporation during the course of argument that as to whether any disciplinary proceedings or any criminal proceeding or any other proceedings were initiated against the petitioner pertaining to the missing of the file which has been allegedly taken by the petitioner, he submitted that no such proceeding or action has been taken against the petitioner till date. Another query has been raised to the learned counsel for the respondents-Corporation that as to whether any action has been taken against the official, who inadvertently uploaded wrong basic pension of the petitioner, to which he submitted no such action has been taken against any person at

all till date. Therefore, the ground which has been taken by the respondent that the petitioner herself got misplaced the file is not acceptable and there can be no presumption in this regard that the petitioner had taken away the file herself.

The reason given by the respondent-Corporation vide impugned order with regard to the applicability of the aforesaid judgment passed by the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (supra)*** is also unsustainable. It has been so stated in the speaking order that no undue hardship will be caused to the petitioner because she is earning sufficient amount of money. However, the judgment passed by the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (supra)*** has infact laid down various categories in the concluding part of the judgment. The same are reproduced as under:-

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess

payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

It has been so observed that It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement but some of the situations have been summarised wherein recoveries by the employers, would be impermissible in law. The first situation is in Sub Para (i), which states that 'recovery from employees belonging to Class-III and Class-IV (Category 'C' & 'D') is impermissible and in Sub Para (iii) it has been stated that recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. The case of the petitioner falls in both the two categories, since her husband belonged to Class 'D' Category and she was also appointed as Class 'D' Category but she is now in Class 'C' Category and the pension was fixed in the year 2012 and the audit had taken place in the year 2018, which was after more than five years. So far as the Sub Para (v) is concerned, the same is residuary in nature, whereby it has been so observed by the Hon'ble Supreme Court that in any other case,

where the Court arrives at a conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as it would outweigh the equitable balance of the employer's right to recover. The petitioner was in 'D' Category and now in 'C' Category and her husband was in 'D' Category and this Court is of the view that recovery from her would cause hardship and would be harsh and inequitable. Therefore, apart from Sub Para (i) and Sub Para (iii), the petitioner would also be covered in Sub Para (v).

Apart from the above, recovery is sought to be made on the ground that the Corporation itself has fixed the pension of the petitioner but thereafter, it has been found to be an inadvertent mistake. In Sub Para No.2 of the aforesaid judgment of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (supra)*** , various eventualities have been so stated as to how wrongful payments can be made by the employer to the employee. Those situations are not exhaustive. The Hon'ble Supreme Court has noted that the mistake could have been occurred on account of variety of reasons including various reasons which have been provided and therefore, the reasons are not exhaustive in nature. In the present case, the petitioner being a poor widow was granted family pension which according to the learned counsel for the respondent was due to inadvertent mistake and that too recovery is sought to be effected after six years. She falls in Class 'D' and now in Class 'C' category. No action has been taken either against the petitioner after making allegations that she had misplaced the file or any action has been taken against any other employee whatsoever. Therefore, this Court is of the considered view that the case of the present petitioner is

sqaurely covered by the aforesaid judgment passed in *State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (supra)*.

Consequently, the present petition is allowed. The impugned order dated 07.05.2019 (Annexure P-7) is hereby set aside. It is directed that no recovery shall be effected from the petitioner with regard to the excess pension paid to her. The recovery, if any, recovered from the petitioner shall be refunded back to the petitioner within a period of three months from today along with interest @ 6% per annum.

13.02.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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