IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4188-2016 (O&M)
Date of Decision :01.02.2023

The Haryana State through Deputy Commissioner/Collector Hisar and others **...Appellants**

Versus

Gitika Hasija and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Ambika Luthra, Addl. A.G. Haryana for the appellant-State.

Mr. Jainainder Saini, Advocate for respondent No.1.

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Harsimran Singh Sethi, J. (Oral)

In the present regular second appeal filed by the appellant-State, the challenge is to judgment and decree dated 07.04.2014 passed by the trial Court by which, the suit filed by respondent No.1 challenging the order dated 17.03.2009 passed by the bank so as recover the excess amount paid to the respondent No.1/plaintiff, was decreed as well as order dated 28.03.2016 passed by the Lower Appellate Court by which, the appeal filed by the appellant-State against the said judgment and decree dated 07.04.2014 of the trial Court, was dismissed.

Certain facts need to be noticed here. Husband of the respondent No.1/plaintiff was working in the respondent-bank and while in service he unfortunately died on 16.07.2006. After the death of the husband of the respondent No.1/plaintiff, the respondent-Bank fixed the family pension admissible to the respondent No.1/plaintiff being a widow of the deceased employee and she continued to get the same till 17.03.2009 when the respondent-bank passed an order dated 17.03.2009 that family pension admissible to the respondent No.1/plaintiff was wrongly calculated by including non-practising allowance and a recovery of Rs.1,62,420/- was ordered qua the excess payment paid to respondent No.1/plaintiff. The said order of recovery of the excess amount after refixation of her family pension dated 17.03.2009 was challenged by the respondent No.1/plaintiff by way of filing a civil suit.

The trial Court allowed the said suit filed by the respondent No.1/plaintiff vide order dated 07.04.2014 holding that the order dated 17.03.2009 passed by the respondent-Bank for the recovery of the excess amount paid to the respondent No.1/plaintiff is contrary to the settled principle of law as there was no misrepresentation on the part of the respondent No.1/plaintiff and as per the settled principle of law once, there was no misrepresentation on the part of an employee, recovery of the excess amount paid, cannot be done. Appeal was preferred by the appellant-State against the said order of trial Court dated 07.04.2014, which was also dismissed vide order dated 28.03.2016 passed by the Lower Appellate Court upholding the judgment and decree of the trial Court dated 07.04.2014. Hence, the present regular second appeal.

Learned counsel for the appellant-State argues that while calculating the family pension, NPA was not to be taken into account while fixing family pension of the respondent No.1/plaintiff after the death of her husband hence, as there was a mistake in calculating her entitlement of family pension admissible to the respondent No.1/plaintiff, when the said fact came to the notice of the department, the said mistake was rectified and the excess amount paid to her was required to be recovered from her as the same is public money. Learned counsel for the appellant-State further argues that the Courts below have not considered the evidence, which had come on record in a correct perspective that after the mistake, which had occurred while fixing family pension of the respondent No.1/plaintiff came to the knowledge, the State was within its jurisdiction to recover the excess amount paid, from respondent No.1/plaintiff.

Learned counsel for the respondent No.1/plaintiff submits that the respondent No.1/plaintiff is not against the re-fixation of her family pension but is only against the recovery of the amount of Rs. 01,62,420/- as there was no misrepresentation on the part of the respondent No.1/plaintiff, which fact has already come on record in the evidence and keeping in view the said fact, which has been duly proved before the Courts below coupled with the settled principle of law, no recovery can be done from the respondent No.1/plaintiff.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The only question which arises in the present case is whether once it has already come on record by way of an evidence that there was no misrepresentation on the part of the respondent No.1/plaintiff, recovery of the excess amount paid, from the family pension of the respondent No.1/plaintiff, which family pension was fixed by the respondents themselves, is admissible or not.

Hon'ble Suprme Court of India in **Civil Appeal No.7115-2010** titled as ***Thomas Daniel vs. State of Kerala and others*** has held that where there is no misrepresentation on the part of the employee, no recovery of the excess amount paid, can be done. Relevant paragraphs of the judgment is as under:-

> "9.This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.

Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195*** held that no recovery can be done from a retired employee. In the present case, the recovery has been done in respect of the family pension being paid to the respondent-wife of the deceased employee.

Learned State counsel has not been able to rebut the settled principles of law cited hereinbefore, which goes in favour of the respondent No.1/plaintiff to hold that once there is no misrepresentation on the part of the employee to claim any benefit, the excess amount paid due to the act of the department itself, cannot be recovered.

Keeping in view the above stated facts and the evidence which has come on record, no perversity in the orders passed by the Courts below has been brought to the notice of this Court hence, no interference is called for by this Court as no substantial question of law arises and the orders of the Courts below are upheld and accordingly the present second regular appeal preferred by the appellant-State is dismissed.

CM-10762-C-2016

The present application for staying operation of the impugned order is dismissed accordingly.

February 01, 2023 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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