In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2112 of 2018 (O&M)

Date of Decision: 14.11.2023

Karnail Kaur

... Appellant(s)

Versus

Punjab Mandi Board and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Amitabh Tewari, Advocate
for the appellant(s).

Anil Kshetarpal, J.

CM-5782-C-2018

1. For the reasons stated in the application, the same is allowed and delay of eight days in re-filing the appeal is condoned.

RSA-2112-2018

2. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in ***Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157***.

3. The excess payment of public money to the appellant is not in dispute. The appellant claims that the excess amount cannot be recovered because her husband was a Class-III employee. He relies upon the judgment passed by the Supreme Court in ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others (2015) 4 SCC 334*** and ***Budh Ram v. State of Haryana (2009) 122 FLR 1053 (P&H) (FB)***

4. This Court has considered the submissions. It would be noted here that the appellant was also employed as a government teacher.

Subsequently, she retired and is now receiving pension for having rendered government service, apart from the amount of family pension after the death of her husband who was also in government service. The family pension was to be calculated @ 50% of the basic salary till 2009, however, it was paid at the same rate upto March, 2013. Thus, the amount of ₹2,46,186/- was paid in excess. The appellant remains entitled to the amount of family pension @ 30% of the basic salary till her death. The aforesaid amount which was paid in excess has been adjusted towards the excess payment. The judgments passed in ***Rafiq Masih (White Washer)'s case*** *(supra)* and ***Budh Ram's case*** *(supra)* are in exercise of equitable jurisdiction by the Courts. In this case, the appellant retired as a Teacher. She was getting her regular pension. She was also getting family pension as her husband has died. The excess payment by mistake is not in dispute. The amount paid is a public money. In the facts of the case, this Court does not find it suitable to invoke the equitable jurisdiction to stop adjustment of the excess payment particularly when the appellant continued to receive the amount of family pension as well as salary as a Teacher.

5. Keeping in view the aforesaid facts, no ground to interfere with the judgment of the First Appellate Court. Hence, the present appeal is dismissed.

(Anil Kshetarpal)
Judge

November 14, 2023
"DK"

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