

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-23461-2023 (O&M)
Decided on : 16.10.2023

KRISHNA DEVI

. . .Petitioner

Versus

STATE OF HARYANA AND OTHERS

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Rakesh Nagpal, Advocate for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance of the petitioner is that by impugned order dated 26.09.2023 (Annexure P-4), the recovery of Rs. 8,59,700/- has been ordered against the petitioner, which cannot be done on the ground that no recovery from a retired employee or the family member of a retired employee can be done as per the judgment of the Hon'ble Supreme Court of India in State of Punjab and others etc. v. Rafiq Masih etc., 2015 (1) SCT 195.

Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

The husband of the petitioner was working in the Department of Food and Supply since 10.12.1993. He unfortunately died while in service on 23.08.2006 while working as a Sub-Inspector with the respondent department. The petitioner raised a claim for the grant of benefit under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short ' the Rules

2006'). After examining the claim of the petitioner, respondent passed an order Annexure P-2 dated 07.04.2007 wherein it was mentioned that keeping in view the provisions of Rule 5 of the Rules 2006, the petitioner being a wife of the deceased employee will be given monthly financial assistance for a period of 15 years commencing from 24.08.2006 or till the date of superannuation, had the employee remain alive, whichever is earlier.

As, the deceased employee would have retired after a period of 15 years had he been alive, hence, in the case of the petitioner, the financial assistance was to be paid for a period of 15 years starting from 24.08.2006. Despite the fact that 15 years had elapsed, the petitioner continued getting the monthly financial assistance which she was getting under the 2006 Rules though, after completion of 15 years, family pension was admissible to the petitioner. A Sum of Rs. 8, 59, 700/- was paid in excess to the entitlement of the petitioner under 2006 Rules.

Realizing that mistake in continuing the grant the benefits admissible under 2006 Rules beyond the entitlement of the petitioner, the respondents passed an impugned order seeking refund the excess amount so that, the family pension could be released to the petitioner.

Thereafter, the respondent department vide Annexure P-5 wrote to the Accountant General, Haryana that the petitioner is entitled for the grant of family pension but due to clerical error in the database of the computer, the date of retirement of the deceased employee was wrongly recorded as 31.03.2030 instead of 30.06.2023 and the petitioner was only entitled for the financial assistance for the period of 15 years

under 2006 Rules, and a the sum of Rs. 8,59,700/- which is paid in excess be recovered from the family pension admissible to the petitioner. The orders Annexure P-4 & P-5 are under challenge in the present petition.

Learned counsel for the petitioner argues that in the present petition, there is no misrepresentation on the part of the petitioner and as the claim was raised in respect of a dead employee, no recovery of the excess amount paid can be recovered keeping in view the settled principle of law, settled by the Hon'ble Supreme Court of India in **Rafiq Masih's case (Supra)**.

The said arguments of the petitioner cannot be accepted for the reasons that while extending the benefit to the petitioner vide order dated 07.04.2007 appended with the petition as Anneuxre P-2, it was duly mentioned that the petitioner will be entitled for the benefit of monthly financial assistance for a period of 15 years only i.e. till the superannuation of the deceased employee. The petitioner already knew her entitlement and the date till which the said benefit under 2006 Rules is to be extended to her. Being a good citizen, the petitioner was requires to approach the respondents that her claim for monthly financial assistance has already expired and therefore, she should be given family pension. Rather, the petitioner continued to claim the m0onthly financial assistance despite not being entitled for even after expiry of 15 years which period commenced from 24.08.2006. That being so, in the present case it cannot be said that the employee got the amount without there being any knowledge that she is not entitled for the said amount so as to claim the benefits as per the judgment in **Rafiq Masih's case (Supra)**..

The particular period for which the petitioner was entitled for the grant of monthly financial assistance was known to her since 07.04.2007 and therefore, merely that the department keeping in view the some clerical error in the computer has released the amount to the petitioner more than her entitlement hence, the petitioner cannot be allowed to retain the benefit for which she was not entitled for.

Further, it is not the case that the petitioner is not entitled for any other benefit after the expiry of 15 years. After the expiry of 15 years of monthly financial assistance, the petitioner was to be granted the benefit of family pension. The petitioner cannot be allowed to retain the excess amount paid to her and also claim the family pension for the same period. In case, the arguments of the petition is accepted, it will amount to undue enrichment, which is not permissible.

Keeping in view the above, no ground is made out for any interference by this Court. Accordingly, present petition stands dismissed.

Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

16.10.2023

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Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: Yes/~~No~~