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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1203-2020
Date of Decision: 29.11.2023

Sona Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.K. Redhu, Advocate for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

Ms. Neha Rana, Advocate respondent No.4.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, grievance of the petitioner is that her family pension has been deducted to the tune of 50% so as to recover the excess amount which was paid to her by the respondents.

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

3. One Sh. Kanwar Singh late husband of the petitioner who was working with the Department of Health, Haryana, retired on attaining the age of superannuation on 31.01.2004. After the retirement, the said Kanwar Singh S/o Roop Ram was granted the benefit of pension. The husband of the petitioner died on 23.07.2005 but the pension was being granted to Kanwar Singh. In the year 2019, the respondents realized their mistake of giving the pension to a dead employee rather than fixing the family pension of the petitioner, the respondent issued an order recovering the excess amount paid to Kanwar Singh by way of

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pension, so as to be deducted from the family pension for which the petitioner was entitled for after the death of her husband.

4. The grievance of the petitioner is that without giving any recovery notice, straightaway the deduction have been made from the entitlement of the family pension of the petitioner which is arbitrary and illegal. As per the petitioner, no recovery can be made from a retired employee or the legal heirs of the retired employee or with regard to an amount which was being paid by the respondent for a continuous period of five years, keeping in view the judgment of Hon'ble Supreme Court passed in ***'Civil Appeal No.11527 of 2014 titled as 'State of Punjab and others Vs. Rafiq Masih and others'.***

5. The respondents are defending the recovery being done from the petitioner. The respondent No.4-Bank has filed the reply, wherein, it has been mentioned that the mistake occurred at the hands of the bank in not granting the family pension after the death of the husband of the petitioner and the dead employee was being paid the pension and when the said mistake was detected in the year 2019, the deductions receiving of excess payment was ordered to be recorded from the entitlement of family pension. Learned counsel submits that the petitioner herself allowed the Bank to deduct the amount, keeping in view the request Annexure R4/1.

6. The State in its reply has submitted that there is no role of the State in recovering the amount from the petitioner as the same is being done by the Bank at their own and that too without there being any order passed by the State.

7. I have heard learned counsel appearing on behalf of the respondents and have gone through the record with the able assistance.

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8. It is the matter of fact that the pension was being paid by the respondent-Bank after the death of the husband of the petitioner. The said error was attributable to the bank only and not to the petitioner. Once there is no misrepresentation on part of the petitioner to get an amount, the recovery being done from her is totally contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in ***Rafiq Masih's*** case (supra). The relevant paragraph-12 of the judgment is as under:-

> *'12. 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 herein above, 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.'*

9. A bare perusal of the above reproduction would show that no

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recovery can be made from a retired employee and in the present case, the excess amount was paid to the husband of the petitioner who was retired employee and had already died much before the order of the recovery was passed. Even otherwise, any amount which was being paid for a period of five years, the same cannot be recovered and in the present case, it is a conceded position that the amount of pension was paid to the husband of the petitioner from the year 2005 onwards till 2019 i.e. for a period of 14 years. That being factual position, learned counsel for the respondent has not been able to rebut the fact that keeping in view the law settled by the Supreme Court of India in **Rafiq Masih's** case (supra), no recovery can be made from the petitioner.

10. Even otherwise, as per the judgment of the Hon'ble Supreme Court of India in ***'Civil Appeal No.7115 of 2010 decided on 02.05.2022 titled as Thomas Daniel Vs. State of Kerala and others'***, no excess payment can be recovered in case, there was no misrepresentation on the part of the employee concerned. In the present petition, there is not even a single allegation that either the husband of the petitioner or the petitioner made any misrepresentation so as to get the excess amount. The relevant paragraph 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*

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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'.

Even on this principle of law, the recovery which was being done from the petitioner is bad in law.

11. Even otherwise, in the present case the recovery is being done without complying with the Rules of natural justice. No show cause notice whatsoever has been given to the petitioner before effecting the recovery. The respondent have taken in writing from the petitioner that her family pension will not be released till she exceeds to the recovery. That being the factual position, any letter given contrary to the entitlement under law cannot be enforced by the Bank so as to effect the recovery from the petitioner. Consequently, on this account also that rules of natural justice have not been followed before effecting the recovery, the order of recovery cannot be sustained.

12. The present petition is allowed. The recovery being done from the petitioner is set aside. Any recovery already made be refunded back to the petitioner within a period of two months from the receipt of copy of this order. The petitioner will be paid the family pension which she is entitled for without there being any recovery done for the same.

29.11.2023 **(HARSIMRAN SINGH SETHI)**
ps-I **JUDGE**

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

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