IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-2940-2020
Date of decision: 04.12.2024

Parmeshwari Devi

....Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present:- Mr. Ashwani Bhardwaj, Advocate
for the petitioner.

Mr. Sandeep Bhatia, Sr. Standing Counsel
for respondent Nos.1 to 3-UOI.

Mr. Abhishek Singla, Advocate for
Mr. Vikas Chatrath, Advocate for the respondent-SBI.

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AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for setting aside the Notice dated 27.06.2016, whereby the recovery of excess pension payment had been deducted from the pension account of the petitioner and for directing to re-pay the entire amount alongwith interest.

2. Learned counsel submits that case of the petitioner being squarely covered by the judgment in **Simerjit Kaur vs. State of Punjab and others**, CWP-34539-2019 alongwith other connected petitions, decided on 01.05.2024, it may be disposed of in the same terms, to which learned counsel for the respondents have no objection, the relevant paras whereof read thus:-

> "2. This Court after having heard the learned counsel for the parties, had passed an order on 28.02.2023, which reads thus:-

"Learned counsel for the petitioner submitted that the petitioner had retired on 31.10.2009 as a Head Teacher in a Government Primary School, Sangatpur, District Gurdaspur and at the time of retirement, her pension was fixed and necessary DA was granted to her. After a period of ten years, i.e. in the year 2019 impugned demand notice (Annexure P-1) has been issued by the State Bank of India which although is purportedly stated to be as a demand notice but in fact it is an order seeking a recovery from the petitioner within a period of fifteen days. The petitioner thereafter even filed a reply to the above vide Annexure P-4. However, no order has been passed by any authority till date for fixing any liability of the petitioner. She submitted that the action of the respondent Bank was totally violative of the principles of natural justice.

When the State filed reply through its District Education Officer (Elementary Education), Gurdaspur, it is so stated in paragraph 4 of the preliminary submissions that the State has never deducted any amount of pension of the petitioner and the claim of the petitioner can only be redressed by respondent No.4 which is the Bank and the State is only a proforma party in the present writ petition. When reply is filed by the bank which is the State Bank of India, they also take a preliminary objection by saying that they have been unnecessarily arrayed in the petition and they have only a role of disbursement of the pension to the petitioner and nothing else.

It is very strange to note that when the replies are filed by the State of Punjab and by the bank, they shift the onus on each other with the result that none of them are owning the responsibility. The claim of the petitioner is that after her retirement, approximately an amount of Rs.12,00,000/- is being sought to be recovered from the pension of the petitioner which is not only violative of the authoritative law laid down by a judgment of the Hon'ble Supreme Court in **State of Punjab and others versus Rafiq Masih (White Washer), etc .** 2015 (4) SCC 334 and **Thomas Daniel versus State of Kerala and others** 2022 AIR (SC) 2153 but also instructions issued by the State of Punjab as well as by the bank repeatedly for complying the aforesaid orders passed by the Hon'ble Supreme Court.

This Court has come across in a number of cases earlier also whereby there had been shifting of responsibilities. Although there might be some arrangement or agreement between the banks and the State for the purpose of disbursement of money but the State being a welfare State cannot abdicate it's responsibilities in such like manner since the petitioner is their own ex-employee and the State cannot be expected to be insensitive to its ex employees. Furthermore, when the amount is to be either paid or deducted, the entire amount flows from the State Treasury whereas the banks are only commercial banks and they do not have any adverse impact on their finances. When the recoveries are unlawfully made by the bank and are set aside by this Court in view of the law laid down by the Hon'ble Supreme Court in **Rafiq Masih**'s case (supra) and **Thomas Daniel**'s case (supra), the amount goes back to the employees and it appears that the ultimate result of the same is financial loss to the State exchequer and not the bank. However, the wrongful action for recovering etc. is made by the bank but the loss is incurred by the State. Considering the entire conspectus from a macro view in a larger perspective, this Court is of prima facie view that the State Government being a welfare State cannot abdicate its responsibilities in such like manner and especially while filing replies in the Court by saying that they have nothing to do the same and shift the onus to the bank. It appears on the face of it that there is lack of coordination between the State Government and the banks who have been given responsibility of disbursement of pension etc. The lack of coordination according to this Court has resulted in generation of large scale litigation which could have been avoided.

In view of the aforesaid matter being extremely serious in nature, this Court directs the Chief Secretary of the State of Punjab and the Chairman and Managing Directors of all the banks to whom responsibilities have been given for the pension purposes to coordinate with each other and if possible, to hold a meeting and to discuss this issue and to take corrective and remedial measures and report to this Court by filing an affidavit. It shall be kept in mind that the State is a welfare State and because of these shifting of responsibilities inter se between the bank and the State, it has generated large scale avoidable litigation and prejudiciously affected the rights of its ex-employees.

The aforesaid exercise shall be completed within a period of five weeks from today. Thereafter, the Chief Secretary, State of Punjab shall file his own affidavit to this Court.

It is made clear for the sake of repetition that the affidavit which is to be filed by the Chief Secretary will not be vague and shall be in clear terms.

The learned DAG, Punjab as well as the learned proxy counsel appearing on behalf of respondents No.4 and 5 shall supply a copy of this order to the Chief Secretary of the State of Punjab and to the CMD of the bank respectively.

Adjourned to 11.04.2023.

Interim order to continue till the next date of hearing."

3. In compliance thereto, an affidavit of the Chief Secretary of the State of Punjab, dated 10.04.2023 was filed, relevant portion whereof reads thus:

"6. That it is imperative to mention here that, with regards to the present case, the representatives of the State Bank of India however duly admitted the lapse on their part in calculation and thereafter disbursement of excess dearness allowance. They submitted that, inadvertently, they disbursed the Dearness Allowance applicable to the Central Government employees to the present petitioner.

7. That, as per the procedure of Government of Punjab, the pension disbursing banks are first required to enter into an Agreement with the Department of Finance regarding payment of pension/family pension to the pensioners. All the concerned Banks are well conversant with the existing specific Clause in all the Agreements of Indemnities, entered with the Government of Punjab from time to time, in which it has been categorically mentioned that the Banks shall indemnify the State Government against any loss to the State on account of wrong payment or overpayment made by the Bank. Also as per the Agreements the Government of Punjab has not issued any directions of recovery from pensioners and there is no Clause regarding the same also in any of the Agreements. During the meeting it was transpired that the concerned pension disbursing banks are not adhering to the terms and conditions of the Agreement of Indemnities, especially, the State Bank of India which is the respondent bank herein. The relevant part of the Agreement is reproduced herein under:-

"WHEREAS the State Government have decided to provide facility to the pensioners of the State Government to receive their pension from any branch of the Bank in terms of the orders issued in this behalf by the State Government from time to time and subject to the bank indemnifying the State Government against any loss on account of wrong payment or overpayment that may be made by the Bank.

AND WHEREAS the Bank has agreed to arrange payment on behalf of the State Government to such pensioners by credit to their Saving Account or Current Account and to execute this indemnity bond."

8. That, to ensure the compliance of the RBI Master Circular dated 01.04.2022 (Annexure R-1) by all the banks, the State Government will take up the matter with the RBI to issue directions to all the Banks to strictly follow these instructions. The relevant part of the RBI Master Circular are reproduced as under.-

".......Refund of excess pension payment to Government

5. Whenever any excess/overpayment is detected the entire amount thereof should be credited to the Government account in lump sum immediately when the excess/overpayment is due to an error on the part of the agency bank. This action is independent of recovery from the pensioner. Agency banks are requested to seek guidance from respective Pension Sanctioning Authorities regarding the process to be followed for recovery of excess pension paid to the pensioners, if any....."

9. That, as per the Agreement entered between Government of Punjab through Department of Finance and the Banks, there is no clause in the Agreement directing the Banks to effect recovery from the Pensioners/Petitioner.

10. That, in case the bank is effecting recovery, then the same should be as per the guidelines enshrined in judgments titled as State of Punjab and others versus Rafiq Masih, 2015 (4) SCC 334, Thomas Daniel versus State of Kerala and others 2022 AIR (SC) 2153 and CWP 10694 of 2022 titled as Daljit Singh Vs State of Punjab and Others."

4. Learned counsel, on instructions from the petitioners, submit that these cases may be disposed of, directing reconsideration of the matter, after issuing fresh notice and granting reasonable opportunity to them, whereafter appropriate orders in accordance with law may be passed, taking into account the peculiarity of each case. Certain petitioners were refunded a part of the amount, which had been wrongly recovered, interest on the said amount be also paid.

5. Learned counsel appearing for petitioner in CWP-11705-2016, would additionally submit that insofar as her claim for extraordinary family pension is stated to be pending as well as the recalculation of the DCRG, regarding which the Department may be directed to take a decision, in a time bound manner, which the learned State counsel does not oppose.

6. Learned counsel for respondent-Bank on instructions, have no objection to the limited prayer made.

7. In view of the aforesaid and without commenting on the merits of the case, the present petitions stand disposed of with a direction to the competent authority of the respondent-Bank to have a relook at the matter, after issuing fresh notices to the respective petitioners, giving out the basis for effecting recovery and thereafter considering their response thereto before taking a decision, which this Court has no reason to believe the authorities would not address in a just, fair and reasonable manner. The interest on the amount, if any, previously refunded be also paid. Needless to say, if the orders are adverse to the petitioners, the same shall contain reasons, leaving them free to seek legal redress thereupon.

8. It is made clear that till the time final decision is taken by the respondent-Bank and for two weeks thereafter, no recovery shall be effected from the petitioners.

9. The respondent-State, in CWP-11705-2016, is directed to decide the claim pending with it, within a period of four months and if found entitled, release the benefits forthwith."

3. Accordingly, the present petition is disposed of in terms of the judgment passed in **Simerjit Kaur** (supra).

(AMAN CHAUDHARY)
JUDGE

04.12.2024
Hemant

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