114

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2178-2024
Date of Decision:16.02.2024

PHOOLWATI .... Petitioner

Versus

UNION OF INDIA AND OTHERS ..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sandeep Kumar Goyat, Advocate
for the petitioner.

Ms. Bhavna Datta, Sr. Panel Counsel
for respondent No.1-UOI.

Mr. Bhushan Bhatia, Advocate
for respondents No.5 and 6.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of order dated 05.01.2024 (Annexure P-24) whereby respondent has initiated recovery against the petitioner.

2. The petitioner is a 84 years old widow of late Tara Chand s/o Phoola. The husband of the petitioner on 26.01.1949 joined Indian Army as Solider and after completing service of 21 years, he retired on 26.01.1970 from JAT Regiment. He passed away on 05.04.2008. He is survived by his wife and children. The petitioner being widow was entitled to family pension, thus, w.e.f 05.04.2008, she started getting family pension. On account of revision of pay scales, the respondents time to time revised pension of the petitioner. The respondent by

Asgar Ali
2024.02.17 11:38
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impugned order has initiated recovery of Rs.9,01,669/- alleging that Bank has made excess payment of said amount during 2014-2023.

3. Learned counsel for the petitioner submits that petitioner is a 84 years old widow lady. She had no concern with calculation of her pension. The entire calculation was made by respondents. They have paid excess amount, if any, during 2014-2023 and at this belated stage, they have no right to effect recovery. It is not mistake of 1 or 2 years whereas as per respondents, it perpetuated for 10 years. The petitioner cannot be blamed for the mistake, if any, committed by respondents. The respondent at the most may forfeit amount lying in her account. The case of the petitioner is squarely covered by judgment of Supreme Court in ***'State of Punjab Vs. Rafiq Masih (White Washer) etc.' 2015 (4) SCC 334.***

4. Leaned counsel for the respondents submits that petitioner had furnished undertaking dated 15.04.2008 to the effect that she would refund excess payment, if any, made to her. As the petitioner had furnished undertaking to refund excess payment, if any, made to her, the respondent-Bank has every right to effect recovery from the petitioner. The case of respondent is squarely covered by judgment of Supreme Court in ***'High Court of Punjab and Haryana and ors. Vs. Jagdev Singh' (2016) 14 SCC 267.***

5. I have heard arguments of both sides and scrutinized the record with their able assistance.

6. The conceded position emerging from the record is that Central Government time to time accepted recommendations of pay commission, accordingly, salaries/pension of employees was revised. The

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2024.02.17 11:38
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pension of the petitioner was also revised from time to time. She filed an undertaking dated 15.04.2008 to the effect that she would refund excess payment, if any, made to her. The respondent made excess payment during 2014-2023. As per impugned communication, the excess payment made to petitioner comes to Rs.9,01,669/-. Some amount is still lying in the account of the petitioner and she has agreed if the said amount is withheld as recovery of alleged excess pension.

7. Supreme Court in ***Rafiq Masih*** (Supra) had occasion to advert with question of recovery of excess amount from an employee. The Court after considering plethora of judgments had contemplated situations where recovery should not be effected from an employee. The relevant extracts of the judgment read as:

> *"18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> > *(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
> >
> > *(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
> >
> > *(iii) Recovery from the 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*

Asgar Ali
2024.02.17 11:38
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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."

8. A Division Bench of Bombay High Court in ***'Smt. Sudha Vs. Zilla Parishad' 2023 (3) CLR*** *727* has considered judgment of ***Rafiq Masih*** (supra) as well as ***Jagdev Singh*** (supra) where recovery was going to be effected from family pension. The Court has held that on the basis of undertaking to refund excess amount, the respondent cannot recover payment from family pension. The relevant extracts of judgment read as:

"*12. Thus, the relief against the recovery of excess amount is granted not because of any right of the employee, but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. The matter being in the realm of judicial discretion, the Court may on the facts and circumstances of any particular case order for recovery of amount paid in excess.*

13. In the case of Jagdev Singh (supra), the employee was alive. He was getting full pension and the recovery was sought within a year from the date of his compulsory retirement. Considering the facts and circumstance of the said case, their Lordships under judicial discretion have held that when the officer has furnished an undertaking to refund the excess amount while opting for revised basic scale, is bound by the undertaking and the employer's recovery of excess amount was held valid.

Asgar Ali
2024.02.17 11:38
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14. Here is the case, where the deceased employee died in the year 2016 while he was in service. In the year 2002, his grade pay was fixed. In the year 2009, he had given an undertaking to refund the amount if excess amount is paid due to incorrect fixation of pay grade by the respondent no.2. Now, after 16 years and almost five years after the death of the deceased employee, the respondent no.2 comes up with the case that it had fixed the grade pay of the deceased employee incorrectly and the petitioner - widow of the deceased employee has been asked to consent for recovery of the excess amount paid to the deceased employee from family pension.

15. It appears from the record that the petitioner, who is widow is not earning and is doing household work. Considering her age, it is also obvious that her children are also dependent upon her. She is getting Family Pension of Rs.14,250/- per month which is already 50% of the original pension. Whereas, an excess amount of Rs.2,62,841/- is sought to be recovered. Considering the facts that the deceased employee who died in his early during his service leaving behind him, a widow and children; the time gap of 16 years, when the amount has been sought to be recovered; the quantum of recovery amount and the amount of Family Pension; we are of the opinion, that it would be iniquitous and harsh to effect the recovery from the Family Pension of the petitioner, who is a widow and dependent entirely on her Family Pension. Though, the deceased employee had, at the time of fixation of his salary, given the undertaking but considering the situation mentioned above, it will not be permissible to recover the excess amount of Rs.2,62,841/- from the Family Pension of the petitioner.

16. To sum up, the writ petition is allowed. The communications dated 18.1.2021, and dated 22.4.2021, to the extent it directs recovery of alleged excess pay Grade from 1.7.2002 till 5.7.2016 i.e. 14 years amounting to

Asgar Ali
2024.02.17 11:38
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Rs.2,62,841/- from the family pension of the petitioner are set aside."

9. The entire case of the respondent is based upon undertaking dated 15.04.2008 furnished by respondent. The said undertaking is reproduced as below:

> *"**Letter of Undertaking***
> *In consideration of your having at my request agreed to make payment of pension due to me every month by credit to my account with you, I the undersigned agree and undertake to refund or make good any amount to which I am not entitled or any amount which may be credited to my account in excess of the amount to which I am or would be entitled. I further hereby undertake and agree to bind myself and my heirs, successors and administrators to indemnify the bank from and against any loss, suffered or incurred by the bank in so-crediting my pension to my account under the scheme and to forthwith pay the same to the bank also irrevocably authorize the bank to recover the amount due by debit to my said account or any other account/ deposits belonging to me in the possession of the bank."*

10. The petitioner had furnished undertaking on 15.04.2008 and excess amount was paid during 2014-2023. The undertaking does not create an absolute right in favour of respondent-Bank to recover any amount which was assessed and paid by them. The respondent-Bank in view of the undertaking can recover, if by mistake some wrong entries are made in the account. The undertaking cannot be read in a way that for all times if Bank makes incorrect assessment of pension and monthly credits for a quite long time, in the account of a pensioner, it would have right to recover. It is not a case that pension was assessed by petitioner or she had submitted papers disclosing incorrect figure which gave impetus to respondent-Bank to make incorrect calculation of amount. All the

Asgar Ali
2024.02.17 11:38
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activities relating to determination of pension were carried out by the respondent-Bank who cannot take advantage of an undertaking which was filed 16 years back. The more important is that undertaking was filed in April' 2008 whereas excess payment was made during 2014-2023. It is further apt to notice that it is not a case of one time excess payment whereas it is case of excess payment which sprawled 10 years.

11. Learned counsel for the parties are *ad idem* that some amount is still lying in the account of petitioner which represents excess payment made by respondents. The petitioner has conceded that she has no objection if the said amount is appropriated against alleged recovery.

12. In the wake of above discussion and findings, the present petition is hereby disposed of with liberty to respondent-Bank to withhold amount lying in the account of petitioner on 05.01.2014. The respondent shall not effect any recovery over and above the said amount.

(JAGMOHAN BANSAL)
JUDGE

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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*

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