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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3649-2020 (O&M)
Date of decision: 13.03.2024

Ram Wati

...Petitioner

VERSUS

Dakshin Haryana Bijli Virtan Nigam Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Abhishek Kaushik, Advocate for
Mr. Brij Bhushan, Advocate, for the petitioner.

Mr. Ashish Sanghi, Advocate, for respondents No.1 to 3.

Mr. Nitin Kumar, Advocate, for respondents No.4 and 5.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 19.08.2019 (Annexure P-2) whereby recovery has been effected from the petitioner on account of wrong fixation of family pension.

2. The brief facts of the present case are that the present petitioner is a widow of one Attar Singh who was working as a Circle Assistant with the respondent-Nigam and he retired on 31.10.2008 on attaining the age of superannuation. Thereafter, unfortunately he died on 30.08.2009. The petitioner is the widow of the aforesaid Attar Singh and she being widow was entitled for

family pension which she started receiving. As per Rules of the respondent-Nigam, the widow was to receive the full pension which was equivalent to the pay of the husband of the petitioner uptill 31.10.2015 i.e. for seven years and thereafter, normal family pension was to be restored. The respondent-Nigam has a tie up with the respondent-Bank who is to pay the pension. However, after the aforesaid date when the total amount of pension was to be restored to its family pension and a reduction was to be effected, respondent-Bank did not do the same and continued to give the same to the petitioner till November, 2019 and it was thereafter that the mistake was detected and the Bank thereafter recovered an amount of Rs.3,05,000/- from the account of the petitioner. Apart from the aforesaid recovery which was effected from the petitioner, the Bank also sought to recover the remaining amount in installments of Rs. 6,147/- per month. The Bank recovered three installments but thereafter the petitioner filed the present petition and an interim order was passed by this Court on 11.02.2020 and thereafter, no recovery has been effected.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is a widow and it was not the fault of the petitioner nor it was because of any misrepresentation or fraud on the part of the petitioner to get more amount but it was only because of the fault of either the respondent-Nigam or the Bank who had after the expiry of 31.10.2015 continued to pay the same amount of pension which otherwise was required to be reduced by fixing the family pension of the petitioner in normal course. He submitted that the petitioner does not dispute re-fixation of the pension after 31.10.2015 because that was in accordance with the rules but the petitioner only disputes the recovery which has been effected from the petitioner and which is sought to be

effected because it was not the fault of the petitioner and has also relied upon a judgment of the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others, 2015(4) SCC 344.***

4. On the other hand, Mr. Ashish Sanghi, learned counsel appearing on behalf of the respondent-Nigam while referring to the reply submitted that the respondent-Nigam had rather written a letter to the Bank on 18.02.2010 which is so stated in para No.2 of the preliminary submissions of the reply and a copy of the same has also been attached as Annexure R-1 that now a family pension is to be paid after 31.10.2015 i.e. from 01.11.2015 and it was therefore duly informed to the Bank that the aforesaid correction was to be carried on but the Bank did not do the same and, therefore, no fault can be attributable to the respondent-Nigam because fault if any was on the part of the Bank and not on the part of the Nigam because they with due diligence and in a proper method had rather informed the Bank vide Annexure R-1 way back in the year 2010 and it was for the Bank to have fixed the pension to a normal course.

5. Mr. Nitin Kumar, learned counsel appearing on behalf of the respondent-Bank submitted that in fact it was an inadvertent mistake on the part of the Bank because there was a merger of State Bank of India with State Bank of Patiala in the year 2017 and the mistake was detected and after detecting the mistake, the excess amount was recovered from the account of the petitioner and the remaining amount was sought to be recovered by way of installments of Rs. 6,147/-per month. He submitted that the judgment of ***Rafiq Masih's case (Supra)*** will not apply in the present case in view of the judgment of the Hon'ble Supreme Court in ***High Court of Punjab & Haryana and others Vs.***

Jagdev Singh, 2016(14) SCC 267 because the petitioner had also given an undertaking vide Annexure R-4/1 that in case any excess payment is to be made, then she will be liable to refund the same and, therefore, the judgment of ***Jagdev Singh's case (Supra)*** will apply and ***Rafiq Masih's case (Supra)*** will not apply.

6. I have heard the learned counsel for the parties.

7. It is a case where the petitioner is a widow and after the death of her husband, she started receiving the pension which was equivalent to the pay which was paid to her in accordance with the Rules of the respondent-Nigam for a period of seven years and the aforesaid was to stop on 31.10.2015 and thereafter, the normal pension was to be fixed w.e.f. 01.11.2015. However, it is the admitted case of the parties that the Bank who was to disburse the pension did not do the same despite the fact that the Nigam vide letter dated 18.02.2010 (Annexure R-1) had provided the information in this regard to the Bank and in this way as per the Nigam, there was no fault of the Nigam. However, the stand of the Bank was that it was an inadvertent mistake on the part of the Bank to have not rectified the total amount which was to be paid to the petitoiner.

8. It was argued by the learned counsel for the petitioner that the petitioner is a widow and it was not the fault of the petitioner at all and in this way, the amount of Rs. 3,05,000/- which has been recovered from the account of the petitioner is not in accordance with law in view of the judgment of the Hon'ble Supreme Court in ***Rafiq Masih's case (Supra).***

9. This Court is of the considered view that so far as the applicability of the judgment of the Hon'ble Supreme Court in ***Rafiq Masih's case (Supra)*** is concerned, the same will not apply to the present case since it is a case where

the recovered amount is not an amount which has been given prior to retirement but it is a case of post retirement and even otherwise also, in view of the undertaking given by the petitioner, the judgment of the Hon'ble Supreme Court in ***Rafiq Masih's case (Supra)*** will not apply but another judgment of the Hon'ble Supreme Court in ***Jagdev Singh's case (Supra)*** will apply in the facts and circumstances of the present case and, therefore, it cannot be said that the Nigam or the Bank cannot recover the amount from the petitioner.

10. However, the facts and circumstances of the present case suggest that because of negligence of the Bank, the aforesaid amount has been recovered to the extent of Rs. 3,05,000/- in lump sum from a poor widow and this action is totally arbitrary on the part of the Bank and a perusal of the reply filed by respondent-Bank also shows that there was some SMS alert also with regard to an amount of Rs. 5,00,000/- of FDR which was also not in accordance with law. Apart from the above, the total family pension of the petitioner as of now as per the learned counsel for the petitioner is Rs. 15,550/- per month and the Bank has fixed an installment of Rs.6,147/- per month. Learned counsel for the petitioner has clearly argued that the petitioner being a poor widow cannot even make her both ends meet in case the aforesaid amount is deducted as an installment.

11. Therefore, this Court is of the view that the aforesaid amount of Rs. 6,147/- which is in the form of monthly installment is excessive and it is, therefore, directed that the recovery from the family pension of the petitioner will only be restricted to an amount of Rs. 2,500/- per month and the respondent-Bank is therefore directed to refix the aforesaid installment in this regard. So far as the lump sum recovery of Rs. 3,05,000/- from the account of

the petitioner is concerned, recovery could have been effected in small installments and not lump sum. Clearly the Bank has committed a negligence which has affected the right to livelihood of the petitioner who is a widow and her right under Article 21 of the Constitution of India has been infracted. Therefore, it will be just and proper to impose costs upon the respondent-Bank in this regard. Consequently, costs of Rs. 50,000/- (fifty thousand) is imposed upon the respondent-Bank. The respondent-Bank is directed to pay the aforesaid costs to the petitioner who is a widow within a period of three months from today.

12. The present petition stands disposed of.

13. List for compliance purposes only on 03.07.2024.

(JASGURPREET SINGH PURI)
JUDGE

13.03.2024
rakesh

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