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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-6821-2023
Date of Decision: 26.09.2024

Ram Karan
..... Petitioner

Versus

Haryana Vidyut Prasaran Nigam and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. T.C. Dhanwal, Advocate,
for the petitioner.

Ms. Geeta Rani, Advocate,
for respondents No.1 to 4 and 6.

None for respondent No.5.

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JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 02.07.2020 (Annexure P-7) passed by respondent No.4 for recovery of over payment of pension from the petitioner; further a recovery amounting to Rs.3,78,705/- was passed vide order dated 04.01.2023 (Annexure P-13), Memo No.205/PPO-12781 dated 01.03.2023 (Annexure P-15) and further subsequent proceeding arising there of being artibrary, illegal and against the law, facts and the principles of natural justice with further writ in the nature of *mandamus* directing the respondent not to recover the alleged amount of Rs.3,78,705/- from the petitioner.

2. Learned counsel for the petitioner submitted that the petitioner was working as Assistant in the respondent-Nigam which is a Class-III (Category-C) post and after attaining the age of superannuation he retired on 31.01.2004. He further submitted that after his retirement, the respondent-Nigam fixed the pension of the petitioner and the pension is disbursed by respondent No.5 i.e. the State Bank of India. He also submitted that after 16 years of his retirement, the respondent-Nigam is now seeking to recover an amount of Rs.4,14,333/- from the petitioner on the ground that initially when the pension of the petitioner was fixed it was wrongly fixed due to some mistake and due to wrong fixation of the pension, the recovery is ought to be made. He further submitted that the Bank, who has disbursed the pension, is respondent No.5 in the present case but despite being served, the Bank has chosen not to appear before this Court. He referred to impugned letter dated 02.07.2020 (Annexure P-7) whereby the respondent-Nigam had written to the Bank by giving details pertaining to irregular fixation of pension and seeking recovery from the pension of the petitioner. He further submitted that it is very clear that the PPO was prepared pertaining to the petitioner in the year 2004 itself before his retirement and the same was revised from time to time and the petitioner had been getting pension accordingly, but as per the respondent-Nigam it was only in the year 2020 that they had detected their mistake of irregular fixation of pension and consequent upon the same, a recovery of Rs.4,14,333/- is sought to be made from him. Learned counsel for the petitioner submitted that the prayer of the petitioner is squarely covered by the judgment of Hon'ble Supreme Court in "***State of Punjab and others Vs. Rafiq Masih (White Washer) and others***", ***2015(4) SCC 334***

wherein it was held that no recovery can be effected from Class-III (Category-C) employees and particularly from the retired employees. He further submitted that it is not the case of the respondent that it was because of some wrong representation or any misrepresentation or any fraud being commited by the petitioner that his pension was wrongly fixed but the respondent-Nigam itself fixed the pension of the petitioner wrongly and now after 16 years they cannot make any recovery from the petitioner also it will create a hardship for the petitioner because he retired as a Class-III (Category-C) employee and now he is about 78 years of age. He also submitted that before the interim order was passed by this Court on 29.03.2023, some amount has already been recovered and he is entitled for the refund of the same along with interest.

4. On the other hand, Ms. Geeta Rani, learned counsel for the respondents No.1 to 4 & 6, while referring to the reply filed by the respondent-Nigam submitted that earlier the State Bank of India was disbursing the pension to the petitioner but it is only in the year 2019 that now the duty of disbursement has been shifted to the Centralized Pension Disbursement Cell, HVPNL. She further submitted that at the time of re-fixation of the pension that the matter had come to the knowledge of respondent-Nigam that the petitioner was entitled for the revised pension of Rs.11,023/- w.e.f. 01.01.2006 and Rs.28,330/- w.e.f. 01.01.2016 but it was due to the irregular re-fixation of pension and due to some mistake in computation of pension, the petitioner was drawing the pension of Rs.12,261/- w.e.f 01.01.2006 and Rs.31,511/- w.e.f. 01.01.2016 and therefore, an excess amount has been disbursed to the petitioner in his

account. She also submitted that the respondent-Nigam, therefore, wrote a letter to the Bank vide Annexure P-7 to look into the matter and to recover the excess amount of pension paid to the petitioner. She submitted that in this way the total amount of Rs.4,14,333/- has been given to the petitioner from 01.01.2006 to 31.07.2020 which the respondent-Nigam can recover because the same was wrongly paid to the petitioner. She also referred to Annexure R-1 to state that the petitioner has also given an undertaking whereby it has been stated that in case of any revision of pension, if any excess payment is found to have been made, then the petitioner undertakes to refund the same and therefore, in view of the judgment of Hon'ble Supreme Court passed in "***High Court of Punjab & Haryana and others Vs. Jagdev Singh***" ***2016(14) SCC 267***, the respondent-Nigam is entitled to recover the excess amount.

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

6. The prayer of the petitioner in the present case is that the respondents are seeking to recover an amount of Rs.4,14,333/- from the petitioner after 16 years of his retirement and he is 78 years old person. At the time when the petitioner had retired from the respondent-Nigam, the respondent-Nigam itself prepared the PPO and sent it to the Bank and subsequent various other revised fixation were also issued. A perusal of the reply filed by the respondents would also show that no fault has been attributable to the petitioner and rather they have admitted their own fault. So far as the undertaking which has been relied upon by the learned counsel for the respondent-Nigam i.e. Annexure R-1 is concerned, the same is dated 05.08.2017 whereas as per the reply filed by the respondents, the extra

amount has been paid to the petitioner from 01.01.2006 to 31.07.2020. The aforesaid judgment of Hon'ble Supreme Court in ***High Court of Punjab & Haryana and others Vs. Jagdev Singh (supra)***, would not be applicable in the present case because it is distinguishable on facts. In the aforesaid judgment, it was held that at the time when the benefits were granted with regard to revision of pay or any such like benefit is granted then an employee is put to notice and he gives an undertaking that in case any excess amount is paid then he undertakes to pay the same, subsequently the employer is within its right to recover the same, since the concerned employee is put to notice. However, in the present case, the excess amount, if any, was paid to the petitioner even as per the reply filed by the respondents from 01.01.2006 to 31.07.2020 whereas the aforesaid undertaking which has been attached by the respondent vide Annexure R-1 is of the year 2017 and therefore, the aforesaid undertaking will have no effect upon the grant of benefit to the petitioner even if it was given inadvertently. Therefore, the aforesaid judgment of Hon'ble Supreme Court in ***High Court of Punjab & Haryana and others Vs. Jagdev Singh (supra)***, is not applicable to the petitioner. The petitioner has been granted the pension after his retirement and he was Class-III (Category-C) employee and presently he is of the age of 78 years. After 16 years such amount has been sought to be effected from the petitioner as it is so stated in the reply itself that the excess amount was the mistake of the respondents themselves. This Court is of the considered view that the extreme hardship will be caused to the petitioner in case such amount is now sought to be recovered from the petitioner particularly in view of the fact the petitioner is now retired and is of the age of 78 years. The excess amont, if any, was paid to the petitioner by the Bank. As to whether who was responsible for the mistake has to be seen at the level of the Bank and the department themselves *inter se* but certainly the petitioner cannot be penalised for the amount which went to his account spreading from 01.01.2006 to 31.07.2020 and suddenly if a recovery sought to be effected from the petitioner, who is a pensioner in this manner, then it will not be in the interest of justice.

9. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 02.07.2020 (Annexure P-7) vide which the Bank was directed by the respondent-Nigam to recover the amount is set aside. It is held that no recovery can be effected from the petitioner. In case, any recovery has already been effected, the same shall be refunded to the petitioner within a period of three months from today along with interest @ 6% per annum (simple).

26.09.2024 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No