IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

227

CWP-8753-2019
Decided on : 23.05.2024

Swaranjeet Kaur …..Petitioner

Versus

State of Punjab and others ..Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Himanshu Malik, Advocate for
Mr. Harbans Sharma, Advocate for the petitioner.

Mr. Teevar Sharma, AAG, Punjab
for respondent No.1.

Mr. Karan Kaushal, Advocate
for respondents No.2 to 6-PSPCL.

NAMIT KUMAR, J. (Oral)

1. The petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India seeking a writ of certiorari for quashing the order dated 12.11.2016 (Annexure P-6), whereby an amount of Rs.4,40,173/- has been ordered to be recovered from the family pension of the petitioner and further sought a writ of mandamus directing the respondents to continue paying the liberalized family pension to the petitioner from 10.08.2006 to 05.11.2018 as period of 7/10/15 years has not been completed after the death of husband of the petitioner on 01.12.2011.

2. Brief facts of the case, as have been pleaded in the present petition, are that the husband of the petitioner, who was working as Upper Division Clerk with the respondent-Corporation, died in harness

on 09.08.2006 at the age of 50 years and the petitioner was allowed family pension as per instructions dated 21.12.2009 according to which the liberalized family pension @ 50% of the last pay drawn by the deceased husband of the petitioner was sanctioned which was to be paid for the first seven year or till the deceased employee would have attained age of 56 years. On 25.07.2011, the Punjab Government issued fresh instructions which provide that family pension to the dependants of the employee, who died in harness, will be granted at enhanced rates upto first 10 years or till the date on which the deceased employee would have superannuated, whichever period is less. The family pension of the petitioner was modified accordingly. On 23.12.2011, the Punjab Government issued fresh instructions which provide that family pension to the dependents of the employee, who died in harness, will be granted at enhanced rates upto first 15 years or till the date on which the deceased employee would have reached the age of 65 years, whichever period is less. The family pension of the petitioner was again modified accordingly. After issuance of instructions dated 23.12.2011, the petitioner submitted representation dated 10.03.2014 to the respondents requesting for payment of enhanced pension upto 08.11.2018, when her late husband would have attained the age of 65 years. The petitioner started getting pension at enhanced rates after the representation. On 21.04.2014, a revised PPO was issued to the petitoiner in which it was stated that she would be entitled to enhanced family pension w.e.f. 10.08.2006 to 05.11.2018. However, vide impugned order dated 12.11.2016, passed by respondent No.6, recovery of Rs.4,40,173/- has been ordered to be effected from the family pension of the petitioner. Thereafter, on 14.11.2016, the petitioner submitted representation to respondent No.6 but no action was taken on the same and a revised PPO dated 07.10.2016 was issued to the petitioner in which family pension of the petitioner is shown w.e.f. 10.08.2006 to 30.11.2011 only instead of upto 05.11.2018 and normal family pension @ Rs.5,883/- from 01.12.2011. Hence this petition.

3. On issuance of notice of motion on 01.04.2019, the recovery, during the pendency of the present petition, was stayed.

4. Written statement, on behalf of respondents No.2 to 6 has been filed. In the said written statement, it has been averred as under :-

> *"xx xx xx xx xx*
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> *3. That the petitioner's husband died during the service in year 2006. Petitioner further approached the Answering Respondent to get increased liberalized pension as per Financial Circular 6/2012 dated 12.03.2012.*
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> *4. It is pertinent to mention here that the service of deceased employee (petitioner's husband) would have been completed on 30.11.2011. However, the Financial Circular 6/2012 dated 12.03.2012 was applicable w.e.f. 01.12.2011. Therefore, petitioner is not entitled for the enhanced pension according to the Finance Circular 6/2012.*
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> *5. That the Department of Accounts/Pension Audit of the Answering Respondent issued a PPO 34698 dated 21.04.2014 for Rs.9805/- per month. Subsequently to the audit conducted it was found that excess money has been released to the petitioner and therefore, the Answering Respondents issued another another amended PPO*

104122 dated 07.10.2016. Thus, Rs.4,43,173/- was made recoverable from the petitioner.

*6. It is further pertinent to mention here that the Petitioner had given an undertaking to the Answering Respondents stating that if there would be any excess payment made to her then the petitioner would be liable to return the same. A copy of said undertaking is annexed as **Annexure R-1**.*

xx xx xx xx xx"

5. Learned counsel for the petitioner submits that the husband of the petitioner died on 09.08.2006 and after more than 10 years the impugned order dated 12.11.2016 has been passed for effecting recovery for an amount of Rs.4,40,173/- from the family pension of the petitioner, being alleged excess payment made to the petitioner. He submits that the impugned order was passed, without issuance of any show cause notice or granting an opportunity of personal hearing, which is not only in violation of the principles of natural justice but also against the law laid down in judgment of the Hon'ble Supreme Court passed in ***State of Punjab Vs. Rafiq Masih (White Washer) and others*** : ***2015(1) S.C.T. 195***. During the course of hearing, learned counsel for the petitioner confines his prayer qua setting aside of order dated 12.11.2016 for recovery of amount from the family pension of the petitioner.

6. On the other hand, learned counsel for the respondents, while referring to the averments made in the reply, submits that there is no illegality or infirmity in the impugned order dated 12.11.2016 as the excess payment was made to the petitioner and the same is liable to be

recovered from her. He further submits that the petitioner had also given an undertaking to the effect that if there would be any excess payment made to her then the petitioner would be liable to return the same.

7. I have heard learned counsel for the parties and perused the relevant documents.

8. As per reply filed by respondents No.2 to 6, the service of petitioner's husband (since deceased) would have been completed on 30.11.2011 and the Financial Circular No.6 dated 12.03.2012 was applicable w.e.f. 01.12.2011. Therefore, the petitioner is not entitled for the enhanced pension. However, in the audit conducted by the Accounts Department, it was found that excess money has been released to the petitioner and amount of Rs.4,43,173/- was paid which is recoverable from the petitioner. Even if an excess amount on the basis of wrong fixation of family pension was paid to the petitioner, the same cannot be recovered from her. The action of the respondent-Corporation is totally contrary to the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih (White Washer)'s case (Supra)***. The relevant portion of the aforesaid judgment is reproduced 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:*
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> ***(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. The facts and circumstances of the present case suggests that it is not the case of the respondent-Corporation that it was due to some fraud or misrepresentation of the petitioner, she was granted excess payment but it was granted by the respondent-Corporation on their own.

10. So far as the second argument raised by the learned counsel for respondents No.2 to 6 that the petitioner had furnished an undertaking vide Annexures R-1 is concerned, the same is also not sustainable in view of the fact that the said undertaking is a stereotyped undertaking and is also generalized in nature. Undertaking, Annexure R-1, furnished by the petitioner also do not contain any date which

indicates the time period thereof. Therefore, the furnishing of such an undertaking would not be of any avail to the respondent-Corporation.

11. Moreover, the recovery has been ordered by the respondent-Corporation in violation of the principles of natural justice as neither any show cause notice was issued to the petitioner nor she was granted an opportunity of personal hearing.

12. In view of the above, this Court is of the considered view that the case of the present petitioner is squarely covered by Clauses (i) to (iii) of the judgment of Hon'ble Supreme Court passed in ***Rafiq Masih (White Washer) and others case (Supra)***.

13. Consequently, the present petition is allowed and the impugned order dated 12.11.2016 (Annexure P-6), whereby an amount of Rs.4,40,173/- has been ordered to be recovered from the family pension of the petitioner, is set aside.

14. So far as grievance of the petitioner for paying the liberalized family pension from 1.08.2006 to 05.11.2018 is concerned, liberty is granted to the petitioner to raise her grievance at appropriate level, in accordance with law.

(NAMIT KUMAR)
JUDGE

23.05.2024
Kothiyal

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No