**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

201 CWP-12431-2022
Date of Decision: 15.03.2024

SHIVANI JOSHI …PETITIONER

Versus

STATE BANK OF INDIA AND ANOTHER --- RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Anupam Singla, Advocate
for the petitioner.

Mr. Nitin Kumar, Advocate
for respondent Nos. 1 and 2-SBI.

Mr. Karan Kumar Jund, Senior Panel Counsel
for respondent No. 3-UOI.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 09.01.2020 (Annexure P-1) whereby respondent has recovered a sum of Rs. 1,79,121/- from the family pension of the petitioner.

2. The husband of the petitioner was working with Indian Navy. He retired from Indian Navy on 31.07.2011 and as per applicable rules, started getting pension from Government of India. The payment was made through respondent-State Bank of India. The said employee passed away on 08.12.2019 and thereafter, the petitioner-wife of deceased employee started getting family pension. The respondent after death of aforesaid employee

came to know that bank had made excess payment of Rs. 1,79,121/- during 01.07.2014 to 30.11.2019. The respondent has recovered aforesaid amount from the family pension of the petitioner.

3. Mr. Anupam Singla, counsel for the petitioner would submit that respondent made alleged excess payment during the life time of petitioner's husband and respondent cannot recover alleged amount from the family pension.

4. Mr. Karan Kumar Jund, Senior Panel Counsel, submits that no recovery of excess payment can be made from LRs of deceased employee.

5. Learned counsel for the respondent-bank asserts that a sum of Rs. 1,79,121/- has been recovered from family pension.

Faced with statement made by learned counsel for the respondents-UOI, Mr. Nitin Kumar, Advocate submits that deceased employee had furnished undertaking and as per said undertaking, bank can recover excess payment even from legal heirs.

6. The respondent-bank is claiming that they have right to recover excess payment of pension from legal heirs of the deceased employee. This Court in CWP No.4626 of 2019 involving similar issue has held that alleged excess payment cannot be recovered from legal heirs of the deceased employee.

7. Supreme Court in ***State of Punjab Vs. Rafiq Masih (White Washer) etc 2015 (4) SCC 334*** has laid down circumstances where no recovery can be effected from an employee despite excess payment. The

circumstances enumerated in the judgment are not conclusive. The circumstances where the Court has categorically held that no recovery shall be effected are reproduced as below :

> *"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 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."*
>
> *(emphasis supplied)*

9. In the case in hand, the respondent-UOI has conceded that no recovery can be effected from legal heirs of deceased employee, however, bank is disputing on the ground that deceased employee had furnished undertaking. The undertaking, if any, furnished by deceased employee was binding upon him and in the absence of any statutory provision, it cannot create liability of legal heirs.

The Supreme Court in ***Shabina Abraham and others vs. Collector of Central Excise and Customs, (2015) 34 GSTR 146*** has held that even tax cannot be recovered from legal heirs of a proprietorship concern if there is no statutory provision. An employee gets pension under the statutory provisions. The right of pension has been recognised as constitutional right in terms of Article 300-A of Constitution of India. It is apt to notice that prior to omission of clause (f) of article 19(1) of the Constitution of India, it was considered as fundamental right.

10. This Court everyday is getting similar cases where there is excess payment on account of mistake on the part of bank. The employer i.e. Union of India or State Government is not at fault whereas it is bank who is at fault and claiming that excess payment has been made on account of its mistake. There is no case wherein it has been found that mistake was on the part of employee. In every case, there is mistake on the part of bank. The bank has initiated recovery even from the widow. It ill behoves the banks.

11. In the backdrop, this Court is of the considered opinion that the present petition deserves to be allowed and accordingly allowed. The respondent-bank shall re-credit the aforesaid amount within two months from today.

(JAGMOHAN BANSAL)
JUDGE

15.03.2024
Anju

Whether speaking/reasoned	*Yes*
Whether reportable	*Yes*