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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-11298-2023
Date of Decision: 19.04.2024

Bedo Devi

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Deepak Grover, Advocate,
for the petitioner.

Mr. Arvind Seth, Advocate,
for the respondents.

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 *mandamus* directing the respondents to withdraw the notice No.3032 dated 08.05.2023 (Annexure P-8) vide which respondent No.3 had issued notice to the petitioner to recover the excess amount of leave encashment and gratuity, which has been inadvertently transferred by the department to the petitioner's bank account.

2. Learned counsel appearing on behalf of the petitioner submitted that it is a case where the husband of the petitioner died on 19.11.2020 and thereafter, the petitioner ought to have been given the family pension and the financial assistance, which was not paid to the petitioner and thereafter, the DCRG amount and leave encashment, amounting to Rs.10,48,276/- was paid

to the petitioner on 09.06.2021 and thereafter on 10.05.2022, again same amount was paid to the petitioner in her account. He further submitted that the aforesaid amount although is double the amount of entitlement of the petitioner if was paid to her in her account by way of a mistake, the same cannot be recovered from the petitioner in view of the judgment of Hon'ble Supreme Court in "State of Punjab and others Vs. Rafiq Masih (White Washer) and others", 2015(4) SCC 334.. He also submitted that the petitioner never asked the respondent to pay the double amount and therefore, the recovery cannot be effected from the petitioner. He further submitted that even the initial amount of DCRG and leave encashment has been paid to the petitioner after about 6-7 months with a delay and regarding which no interest has been paid to the petitioner and there is no justification for the delay. He also submitted that the petitioner started getting family pension in July, 2023 whereas the husband of the petitioner died in November, 2020 and there has been a delay in payment of family pension as well and for that she is entitled for grant of interest and also in case any arrears have not been paid, then she is entitled for the arrears as well.

3. On the other hand, Mr. Arvind Seth, learned counsel for the respondents, while referring to the affidavit filed by the respondents and particularly the details which have been mentioned in Annexure R-1 submitted that it is a case of inadvertent mistake which was immediately rectified on being detected. He further submitted that after the death of the husband of the petitioner, she was sanctioned an amount of Rs.10,88,276/- on account of DCRG and leave encashment, out of which, Rs.40,000/- was deducted because of pending amount and the remaining amount of

Rs.10,48,276/- was paid on 09.06.2021. However, unintentionally a mistake had occurred and exactly the amount as aforesaid amount of D.C.R.G and leave encashment i.e. Rs.10,48,276/- was again deposited in the account of the petitioner. However, this mistake was detected and therefore, a recovery has been effected in this regard because it was a mistake of depositing the double amount which can always be rectified otherwise it will amount to undue enrichment. He submitted that the ratio of the judgment of Hon'ble Supreme Court in ***Rafiq Masih's case (Supra)*** will not apply in the present case in view of the fact that it is not a case where some amount has been given to an employee, who was in service and thereafter, after his retirement, the same is deducted. But, it is a case where the petitioner being dependent upon the deceased employee was rather given the aforesaid amount, but after some time by mistake, the same amount was again deposited and therefore, the aforesaid judgment will not apply to the present case. He submitted that so far as the delay aspect in release of the initial amount of DCRG and leave encashment on 09.06.2021 and release of the family pension from July, 2023 is concerned, the same has now been paid to the petitioner. He submitted that in this way the amount was rather wrongfully transferred in the account of the petitioner which can always be recovered.

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

5. The prayer made in the present petition is with regard to the action of the respondent in recovering the excess amount of DCRG and leave encashment, which has been transferred in the account of the petitioner inadvertently as a double entry. It is a case where the husband of the petitioner had died on 19.11.2020 and thereafter, the payment of DCRG and

leave encashment was released to the petitioner in the month of June, 2021. However, as per the Annexure R-1 attached with the affidavit filed by the respondent, after the aforesaid amount of Rs.10,48,276/- which was deposited after deducting the amount of loan, the same was again deposited in the account of the petitioner on 05.04.2022 which was about 10 months later. The plea taken by the learned counsel for the respondents is that it was pure and simple mistake of depositing double amount which can always be rectified. The learned counsel for the petitioner has referred to a judgment of Hon'ble Supreme Court in ***Rafiq Masih's case (Supra)***, to which learned counsel for the respondent has stated that the same is not applicable in the present case.

6. After hearing the learned counsel for the parties, this Court is of the considered view that the aforesaid judgment of ***Rafiq Masih's case (Supra)*** will not be applicable in the present case in view of the fact that it is a case where after the death of the husband of the petitioner, the petitioner being pensioner was granted DCRG and leave encashment and after 10 months, the same amount was again deposited in her account. It is not a case where the employee had received any amount at the time when he was in service and thereafter, after his retirement, the amount has been sought to be recovered because only in those circumstances the ratio of the aforesaid judgment will be applicable. In the present case, it appears that it was a pure and simple mistake and in case the Department is not permitted to recover the aforesaid amount, which was credited in the name of the account of the petitioner as a double amount, then it will amount undue enrichment of the petitioner. Therefore, this Court is of the view that the respondents were well

within their rights to have recovered the aforesaid amount. However, in case the recovery has been made along with interest, then in that situation, the respondents will not be entitled for the recovery of any interest on the aforesaid payment. It is, therefore, directed that in case any interest has been recovered on the aforesaid amount, then the same shall be refunded to the petitioner immediately along with interest @ 6% per annum (simple).

7. So far as the second prayer of the petitioner is concerned, although it has not been prayed in the present petition but it has been so prayed during the course of the argument by learned counsel for the petitioner that the initial amount of the DCRG and leave encashment has been paid on 09.06.2021 whereas the husband of the petitioner died on 19.11.2020 and there have been a delay of about 7 months. No justification has come forth from the learned counsel for the respondents as to why such a delay has occurred. Similarly, the petitioner was entitled for the grant of family pension after the death of her husband in the year 2020, but as per Annexure R-1, she was granted regular family pension from July, 2023 onwards. Again there has been a delay in this regard.

8. The learned counsel for the respondents during the course of arguments submitted that the delay has occurred in starting of the family pension was because of the aforesaid reason that the double amount has been paid in the account of the petitioner. This Court is of the considered view that such kind of justification is not sustainable in the eyes of law. The mistake, if any, was at the end of the respondents and not at the end of the petitioner and therefore, such a justification is rejected. The petitioner will be entitled for the arrears of the family pension, if not paid till date and she

will also be entitled for the interest on the aforesaid arrears if already paid @ 6% per annum (simple). The aforesaid amount shall be calculated and paid to the petitioner along with interest @ 6% per annum (simple) within a period of 3 months from today.

9. In case, the aforesaid amount is not paid to the petitioner within a period of three months from today, then the petitioner shall also be entitled to future interest @ 9% per annum instead (simple) of 6% per annum (simple).

10. Since it is a case where a widow has been constrained to approach before this Court by filing a writ petition because of the mistake of the respondents in giving a payment again of DCRG and leave encashment and thereafter, even her family pension was stopped because of the aforesaid reason for about 3 years, it has certainly caused hardship to the widow and therefore, she will be entitled for costs of Rs.50,000/- which shall also be paid by the respondents to the petitioner within a period of three months from today.

19.04.2024 (JASGURPREET SINGH PURI)
Bhumika JUDGE

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