IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-14564-2022 (O&M)
Date of Decision: 29.08.2024

Raj Bala

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Mr. Shubham Saroha, Advocate for the petitioner.

Mr. Dushyant Saharan, AAG, Haryana.

Mr. APS Sekhon, Advocate for respondent No.4.

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AMAN CHAUDHARY, J.

1. The present petition has been filed for quashing the orders dated 18.05.2022 and 04.07.2022, whereby the petitioner has been directed to deposit Rs.4,49,260/-, paid in excess to her husband Roshan Lal (since deceased) with a direction to grant family pension and other benefits along with interest @ 18% per annum.

2. The undisputed facts of the case are that the husband of the petitioner, working as Patwari, was initially terminated from service vide order dated 05.08.1999, against which appeal stood dismissed, however, in the revision filed by him, he was reinstated with the punishment modified to stoppage of 5 increments with cumulative effect vide order dated 29.02.2008, non-implementation of which has been realised by the Department after more than 13 years. In the interregnum, he died in harness on 25.05.2015, while being due to superannuate on 31.12.2021 and accordingly, his wife received the last drawn salary till the latter date under the Ex-gratia Rules and DCRG amounting to Rs.2,59,176/- was released on 04.03.2016, as stated in para 4 of the reply filed by

Accountant General-respondent No.4.

3. The Department vide impugned orders, without assigning any reason directed the recovery of the amount released, which was however sought to be justified in the counter filed, by stating that due to non-implementation of the abovementioned punishment order, full salary was given in excess and on realizing the said mistake, while calculating the family pension, an amount of Rs.1,35,021/- paid to her husband during his lifetime and Rs.3,13,765/- to her from May, 2021 to October, 2021, has become recoverable.

4. As regards the above, a beneficial reference can be made to the judgment of **State of Punjab vs. Rafiq Masih**[1], wherein Hon'ble the Supreme Court examined the validity of orders passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at their behest. The relevant part thereof reads thus:-

> "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:
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> (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
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> (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
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> (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."

1 (2015) 4 SCC 334.

5. The recovery order issued against the appellant in **Thomas Daniel vs. State of Kerala and others**[2], for excessive payment made for the reason of wrong interpretation of Rules, pointed out subsequently, was set aside by following the afore dictum of law.

6. In view of the facts and circumstances of the case and the afore-referred judgments, the impugned orders dated 18.05.2022 and 04.07.2022, are liable to be and hereby set aside. As a corollary thereto, the respondents are directed to release the family pension to the petitioner, along with interest @ 6% per annum, within a period of three months.

(AMAN CHAUDHARY)
JUDGE

29.08.2024
ashok

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

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2 2022 SCC OnLine SC 536.