IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-1351-2016 (O&M)
Date of decision: 02.04.2024

Rajesh Mahajan ...Petitioner

Versus

State of Punjab and Others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Vipin Mahajan, Advocate for the petitioner

Mr. Amarpreet Singh Bains, AAG, Punjab.

Mr. Mahesh Dheer, Advocate for respondent No.2-SBI.

AMAN CHAUDHARY, J. (ORAL)

1. The present Civil Writ Petition under Articles 226/227 of the Constitution of India, is for quashing the letter directing recovery of Rs.1,60,733/- from the family pension, dated 29.09.2015, Annexure P-2, as well as reimburse the amount already recovered and further direct for the release of family pension from December, 2014 to July, 2015.

2. Learned counsel contends that mother of the petitioner was recipient of family pension on account of death of her husband, however, on not submitting life certificate in the month of November, 2014, the same was automatically stopped in December, 2014. On 19.07.2015, she passed away after a prolonged illness, on intimation of which by the petitioner, an amount has been ordered to be recovered from 2009 till 2013 vide impugned letter dated 29.09.2015, Annexure P-2. However, learned counsel on instructions of the petitioner does not press for return of any amount that was recovered, but prays that the amount still lying in the account of his mother, be released to him, as the bank is asserting its right over the same as well.

3. Learned counsel appearing on behalf of respondent No.2-Bank submits that as a matter of fact, it was detected that mother of the petitioner was wrongly paid old age allowance of Rs.1400/- from 01.12.2009 till 30.11.2011 and Rs.1575/- from 01.12.2011 till 30.06.2013, amounting to Rs.1,60,733/-, a part of which was recovered as was held to be permissible in light of the judgments in **Balbir Singh vs. State of Haryana and others,** LPA-874 of 2014, decided on 04.09.2014, by the Division Bench of this Court, followed in **Surinderjit Singh vs. State of Punjab and others,** CWP-8511-2020, decided on 12.09.2023, **Parkash Singh vs. State Bank of India**, CWP-18089-2019 decided on 29.01.2024 and **Radha Rani vs. State of Punjab and others,** CWP-18693-2021, decided on 19.03.2024. However, mother of the petitioner having passed away on 19.07.2015, no further amount is recoverable from him and Smt. Vidya Devi (since deceased), regarding which reference is made to para 4 of the written statement, wherein this finds mentioned. As regards the prayer of the petitioner is concerned, he on instructions states that in case, an application is filed by him for releasing amount, lying in the account of his mother, the needful shall be done subject to submission of the requisite documents and as per Rules.

4. The question whether revision of clerical error in fixing of pension, and subsequent recovery of the excess amount so paid is correct in the eyes of law was discussed and answered in the affirmative in **Balbir Singh** (supra), relevant paras of the same reads thus:

> “The appellant is not challenging the fixation of his pension. He also does not dispute that after re-fixation of his pension by the authorities, less payment was to be made, but due to inadvertent clerical error on the part of the bank authorities, excess amount was credited in his pension account, which he was not entitled to. In these circumstances, notice was issued to the appellant to refund the excess payment received by him. In our opinion, the said excess payment, which was made to the appellant due to clerical error on the part of the bank, is duly recoverable. The aforesaid judgments,

> relied upon by learned counsel for the appellant, are not applicable in the wake of the situation as sketched out above. The principle laid down in these judgments is that where the Government consciously makes excess payment to an employee considering that it was validly being given to him, but later on it is found that such employee was not actually entitled to receive the said amount, in that situation, if the excess payment was made under bonafide act of the State, and without any misrepresentation or fraud by the employee, recovery of such excess payment cannot be effected from the employee after his retirement. This principle enunciated in the aforesaid judgments does not apply to the facts of the present case. Here, due to clerical error on the part of the bank, excess amount was credited in the pension account of the appellant, for which he was not entitled to either at that time or subsequently. Therefore, such amount has to be refunded by the appellant to the authorities, which has been received by him in excess. The principle of unjust enrichment will be applicable in the present case and when the appellant is approaching this Court under Article 226 of the Constitution of India, he cannot be granted an inequitable benefit, by relying upon the aforesaid judgments. The necessary relief has already been granted to the appellant by the learned Single Judge, which in our opinion is more than the relief, which he deserves. We do not find any illegality in the order passed by the learned Single Judge.
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> No merit. Dismissed."

5. Relevant paras of **Parkash Singh** (supra), a similar case where rectification of wrongly fixed pension and recovery of excess pension paid prior to it was upheld, read thus:

> "The learned counsel appearing on behalf of the respondent-Bank contends that the present writ petition is liable to be dismissed since an excess amount had been released in favour of the petitioner on fixation of higher pension, even though the same was neither admissible nor payable to him. An inadvertent release of excess amount would not confer any title on the petitioner to retain the said money. The recovery of excess pension was effected by way of monthly installments commencing from October 2018 onwards. It is further contended that there is no relationship of employer and employee between the petitioner and the respondent-Bank and that the respondent-Bank is acting only as a pension disbursing agency for and on behalf of the Sanctioning Authority. A mere error in crediting pension cannot thus fasten liability on the respondentBank and a recipient of an undue benefit would be liable to refund the excess benefit received by him. He further contends that the issue in question has already been decided by this Court in

CWP No.14116 of 2015 titled as 'Chaman Lal Vs. State of Punjab & Others' decided on 27.04.2022 as well as in CWP-8511 of 2020 titled as 'Surinderjit Singh Vs. State of Punjab & Others' decided on 12.09.2023. Both these cases pertain to the wrong re-fixing of the pension by the Bank and the recovery thereof. The action of the bank in effecting the recovery has been upheld by this Court by referring to the judgment in the matter of State of Punjab and others Vs. Rafiq Masih (White Washer) etc. reported as(2015) 4 SCC 334 and holding that the said judgment is not applicable to the facts of the concerned case.

Reliance was also placed on a Division Bench Judgment of this Court in LPA No.874 of 2014 titled as 'Balbir Singh Versus State of Haryana and others' decided on 04.09.2014 to contend that clerical mistake in refixation of the pension can be rectified and the excess amount paid can be duly recovered.

The abovesaid orders passed by this Court are not refuted or denied by the counsel for the petitioner. The counsel for the petitioner also does not dispute that the controversy involved in the present case is covered by the ratio of the above judgment.

In view of the above, I do not find any merit in the present petition, and the same deserves to be dismissed in light of the judgments passed by this Court in the matters of Chaman Lal and Surinderjit Singh (supra).

The instant petition is accordingly dismissed."

6. Learned counsel for the petitioner was unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

7. Taking into consideration the judgments referred to hereinabove, the present petition being bereft of merit, is hereby dismissed. However, the amount as prayed for, may be released to the petitioner on completion of formalities and in accordance with law.

(AMAN CHAUDHARY)
JUDGE

02.04.2024
ashok

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