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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17422-2022
Date of decision: 20.03.2024

KAMLESH RANI

...Petitioner

VERSUS

HARYANA VIDYUT PRASARAN NIGAM LTD AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Rajiv Kumar Saini, Advocate
for the petitioner.

Mr. Vishal Aggarwal, Advocate for
Mr. H. S. Gill, 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 seeking issuance of a writ in the nature of *certiorari* for quashing order dated 30.03.2022 (Annexure P-6), whereby 1/3rd pension of the petitioner has been deducted for recovery of excess amount of pension/arrears and salary and for further directing the respondents to refund the deducted recovery along with interest @ 18% per annum.

2. Learned counsel for the petitioner submitted that the petitioner was working as an Assistant in the respondent-Nigam and she retired on 31.08.2014 and prior to her retirement, she was granted an increment by the respondents themselves without any request made by her and it was not a result of any fraud or misrepresentation on the part of the petitioner. He further submitted that the

respondent-Nigam has granted the increment to the petitioner on their own based upon their instructions but thereafter, the petitioner retired and after the retirement, repeated notices were issued to the petitioner that she was granted wrong increment at the time when she was in service and thereafter, the pension was also wrongly fixed and therefore, the respondent-Nigam was within its powers to have recovered the excess amount which she has withdrawn from her salary and also due to wrong fixation of the pension, the excess amount which has been given to the petitioner in her pension and in this way, a total amount of Rs.1,07,137/- is sought to be recovered from the petitioner. He further submitted that the increment was fixed by the respondents themselves and the petitioner falls in Category-'C' and therefore, is covered by the judgment of the Hon'ble Supreme Court in **State of Punjab and others versus Rafiq Masih (White Washer) and others, 2015(4) SCC 344** and also the instructions issued by the Government of Haryana from time to time. He also submitted that no such recovery can be effected from the petitioner in this regard.

4. On the other hand, learned counsel appearing on behalf of the respondents submitted that so far as the recovery pertaining to the period prior to the retirement of the petitioner is concerned, the same undoubtedly cannot be recovered now after her retirement because of the fact that she falls in Category-'C' and to that extent, the prayer of the petitioner would be covered by the judgment of Hon'ble Supreme Court in **Rafiq Masih's case (Supra)**. He further submitted that thereafter, once the petitioner was paid excess amount for her pension as well, she was not entitled to claim the aforesaid amount and since the petitioner was getting extra pension, she was bound to pay back the amount which has been given to her. He referred to the impugned order

(Annexure P-6), wherein it has been so stated that the petitioner had furnished an undertaking at the time of her retirement and also at the time of revision of pension as on 01.01.2016 and therefore, after her retirement, the judgment of Hon'ble Supreme Court in **Rafiq Masih's case (Supra)** will not apply with regard to recovery of excess pension but another judgment of Hon'ble Supreme Court in **High Court of Punjab & Haryana and others versus Jagdev Singh, 2016(14) SCC 267** will apply because of her undertaking. He also referred to the undertaking which has been attached as Annexure R-6 with the reply filed by the respondents in this regard.

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

6. So far as the earlier amount of salary which the petitioner has got on the basis of increment while she was in service is concerned, the same is undoubtedly covered by the judgment of the Hon'ble Supreme Court in **Rafiq Masih's case (Supra)** and on this point, the learned counsel for the respondents has also not disputed the same because the petitioner falls in Category 'C' and any amount which was paid because of fixation of her increment during her service would not have been recovered from the petitioner after retirement. So far as the later part of the recovery which is sought to be made from the pension of the petitioner is concerned, the learned counsel for the respondents has referred to the undertaking (Annexure R-6). A perusal of the aforesaid undertaking (Annexure R-6) would show that the undertaking is dated 07.07.2020. A perusal of the impugned order (Annexure P-6) would show that it has been so stated that the petitioner had given an undertaking at the time of her retirement and also that the time of revision of pension as on 01.01.2016 but no such undertaking has been attached with the present reply and the only

undertaking which is now referred is Annexure R-6 which is of the year 2020 and in the absence of any such undertaking, no inference can be drawn that the petitioner had given any undertaking at the time of retirement or at the time of revision of pension as on 01.01.2016. Apart from the above, when notice of motion was issued by this Court, the further recovery from the petitioner was also stayed and as per the learned counsel for the parties, no recovery has been made from the petitioner, which is to the tune of Rs.1,07,137/-.

7. During the course of arguments, the learned counsel for the petitioner has specifically stated that the petitioner is not disputing the powers of the respondent-Nigam to have re-fixed the pension but she is only disputing that the recovery cannot be made once it has been paid to her. Since there is no such undertaking on the record as so stated by the learned counsel for the respondent-Nigam, the judgment of Rafiq Masih's case (Supra) will be applicable to the petitioner and not that of Jagdev Singh's case (Supra). Even otherwise also, the total amount is only Rs.1,07,137/-, which cannot be recovered from the petitioner.

8. Consequently, the present writ petition is allowed. The impugned order dated 30.03.2022 (Annexure P-6) is hereby set aside. The respondent-Nigam cannot recover the aforesaid amount of Rs.1,07,137/- from the petitioner. However, if at all, any recovery has been made from the aforesaid amount at any stage, the same shall be refunded to the petitioner forthwith.

20.03.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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