

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(225)

CWP-18784-2019

Date of Decision : February 15, 2024

Parmeshwari Devi

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shyam Singh Chhokar, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. Deputy Advocate General, Haryana.

Mr. Vikas Chatrath, Advocate, with
Mr. Dharambir Singh, Advocate,
Mr. Rajbir Singh, Advocate and
Ms. Ritu, Advocate, for respondents No. 3 and 4.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance of the petitioner is that the respondents are recovering a certain amount from her account in view of the order dated 25.04.2019 (Annexure P-4) on the ground that a sum of Rs.10,40,830/- was paid to the petitioner beyond her entitlement while making the payment of pension due to incorrect entry in the computer.

2. Learned counsel for the petitioner submits that no recovery can be done from a retired employee keeping in view the judgment of the Hon'ble Supreme Court of India in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195* hence, the recovery sought to be done from the petitioner of excess amount paid is liable to be set aside.

3. Upon notice of motion, the respondents have filed the reply wherein, they have stated that keeping in view wrong entry into the computer, qua the age of the petitioner, the petitioner's pension was wrongly calculated and keeping in view the undertaking given by the petitioner at the time of seeking of pensionary benefits, the recovery of excess amount can be done from the petitioner and the Bank is well within its jurisdiction to recover the said excess amount keeping in view the judgment of the Hon'ble Supreme Court of India in *Civil Appeal No. 3500 of 2006 titled as High Court of Punjab & Haryana and others Vs. Jagdev Singh, decided on 29.07.2016.*

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. It is a conceded position that the petitioner has received the pension at a higher rate, which is much more above the entitlement of the petitioner. The said amount, over and above the entitlement of the petitioner, was paid due to the fact that the date of birth of the petitioner was erroneously mentioned as 08.12.1920 instead of 01.01.1939. The petitioner was given additional pension (Old Age Allowance) at the rate of 20% of the basic pension, which the petitioner was not entitled for as the same was only admissible to pensioner who was above the age of 80 years.

6. The factum that the petitioner was not above the age of 80 years but was getting 20% additional pension (old age allowance), was not brought to the notice of the authorities concerned by the petitioner and the petitioner allowed the excess benefit to be paid to her. Keeping in view the fact that it is not disputed that the petitioner was paid pension at higher rate than her entitlement, the only question which arises whether the said excess amount can be recovered or not.

7. As per the respondents, the petitioner had given an undertaking at the time of retirement that in case any pension is paid to her over and above her entitlement or any excess amount is credited in her account, the same can be withdrawn or claimed back by the bank. Copy of the said undertaking has been attached as Annexure R-3/1. Keeping in view the said undertaking, the question arises as to whether, the claim of the petitioner qua the recovery of the excess amount being done from her is to be decided as per the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)*** or by the ***Jagdev Singh's case (supra)***.

8. It may be noticed that the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)*** has been considered by the Hon'ble Supreme Court of India in ***Jagdev Singh's case (supra)*** and it has been held that where there is an undertaking qua the recovery of excess amount paid, the said undertaking has to be given effect to and once the petitioner has given an undertaking that in case any amount over and above her entitlement is credited in her account, the same can be recovered by the bank hence, recovery of the excess amount of Rs.10,40,830/- paid to the petitioner is well within the jurisdiction of the bank.

9. A similar question came up for consideration before this Court in ***CWP No.8511 of 2020 titled as Surinderjit Singh vs. State of Punjab and others, decided on 12.09.2023*** wherein, similar recovery being done on account of rectification of pension by the Bank, has been held to be valid. The relevant paragraphs of the said judgment is as under:-

“7. Further, in the similar cases, this Court has already passed an order in Chaman Lal's case (supra), wherein, not only the re-fixation has been held to be valid but even the recovery has been held to be valid keeping in view the settled principle of law by relying upon the judgment of the Division

Bench in LPA No. 874 of 2014 titled as Balbir Singh Vs. State of Haryana and others, decided on 04.09.2014. The relevant paragraph of the said judgment is as under :-

“8. A bare perusal of the paragraph 12 would show that no recovery can be done from the retired employees and no recovery could have been done with regard to the benefits, which the employee continued to get for a period of 5 years prior to the date of withdrawal.

9. In the present case, the petitioners retired in the year 1999 much before the re-fixation of their pension in the year 2009, which was to be done w.e.f. 01.01.2006 and therefore, the benefit was being granted to the petitioner after their retirement. Further, present is not the case where a benefit given is being withdrawn rather, a mistake occurred in fixation is being rectified, therefore, keeping in view the facts and circumstances of this case, the judgment of the Hon'ble Supreme Court of India in Rafiq Masih's case (supra), will not be applicable.

10. Further, a Division Bench of this Court in LPA No.874 of 2014 titled as Balbir Singh v. State of Haryana and others, decided on 04.09.2014 held that where there is a clerical mistake in re-fixation of pension, the same can be rectified and the excess amount paid can be recovered. The relevant paragraph of the judgment is as under:-

"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.

" 11. Keeping in view the above, as the present case relates to the re- fixation of pension and while calculating the amount of pension so as to refix the same, the pension was wrongly fixed due to a clerical mistake. Keeping in view the settled principle of law stated hereinbefore, the respondents are well within their jurisdiction to recover the excess amount paid being public money which amount has been paid to the petitioners over and above their entitlement."

8. Keeping in view the above, the claim of the petitioner is covered against him keeping in view the judgment in Chaman Lal's case (supra), hence, no relief can be granted to him in the present petition and the order passed by the respondent-Bank re-fixing the pension of the petitioner as well as recovery of the

excess amount paid is held to be valid.

Petition is accordingly dismissed.”

10. Learned counsel for the petitioner has not been able to rebut the settled principle of law that where there is an undertaking given allowing the authorities to recover the excess payment, as per the judgment of the Hon’ble Supreme Court of India in ***Jagdev Singh’s case (supra)***, the recovery of the excess amount paid can be done.

11. Even otherwise, where the pension has been rectified, the recovery is also permissible hence, no ground is made out for any interference by this Court qua the recovery of the amount.

12. Now the question arises as to how the recovery is to be done from the petitioner.

13. Learned counsel for the respondent-Bank submits that some amount has already been recovered and the remaining amount will be recovered from the petitioner in the monthly installments of Rs.10,384/-.

14. Learned counsel for the petitioner is satisfied qua the said undertaking given by the learned State counsel.

15. Keeping in view the above, the present writ petition is dismissed with the observation that recovery of the excess amount will be done as per the undertaking given by the learned counsel for the respondent-Bank.

February 15, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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