

2024:PHHC:098542



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

212

**CWP-17909-2020
Date of Decision: 29.07.2024**

BALA DEVI

... Petitioner

VERSUS

STATE OF HARYANA AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. S.S. Verma, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge is to the order dated 13.08.2020 and 03.09.2020 passed by the District Welfare Officer, Bhiwani, whereby they have directed recovery of a sum of Rs.1,07,200/- on account of excess payment made to the petitioner for the period from January 2014 to November 2019, alongwith interest @ 12% per annum.

Learned counsel for the petitioner argues that the respondent- Department of Social Justice and Empowerment had issued a notification in the year 2004 later amended in the year 2007; whereby handicapped persons were held entitled to the benefit of pension in an event of their being the domicile of the State of Haryana, at the rate of Rs.2,000/- per month. He further submits that the petitioner has a permanent disability to the extent of 80% as per the certificate issued by the Chief Medical Officer, Bhiwani. A complaint was

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however lodged before the District Social Welfare Officer, Bhiwani against the petitioner availing pension on the basis of fake disability certificate. The said complaint was a result of personal grudge and hatred since the petitioner had lodged an FIR No.359 dated 29.10.2018 under Sections 384 and 509 of IPC and Section 3 of SC/ST Act, 1989 against the complainant. The respondents-department verified the Disability Certificate of the petitioner from the office of Civil Surgeon. Despite the same being just and valid, the pension to the petitioner has been discontinued and recovery has been ordered to be effected. He submits that the order of recovery is inequitable and is harsh.

Learned State Counsel, however, relies upon the policy (Annexure P-1) appended with the present writ petition, as per which, the eligibility condition prescribed for seeking benefit under the 'Haryana Divyang Pension Scheme' of the Government is that the total annual income of the candidate from all sources should not be more than the minimum wages prescribed for an unskilled labour, as notified by the Labour Department, and circulated on an year to year basis. Reference is made to the table extracted in the reply giving a comparison of rate of allowances paid to the Anganwadi Workers and to the unskilled labour on year to year basis. The relevant extract of the preliminary objections raised by the respondents in their reply is reproduced hereinafter below:

“2. That in this context, it is submitted that the State Government had instituted the social security scheme namely Haryana Divyang Pension scheme vide notification dated 01-07-1991 with an objective of providing social security to such disabled persons who are unable to sustain themselves from their own resources and are

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in need of financial assistance themselves from their own resources and are in need of financial assistance from the State. The petitioner was getting pension since July, 2006 under the said scheme. On dated 13-07-2019, Sh. Vikram Singh son of Sh. Jawahar Singh, one resident of petitioner's village, had sought information under RTI Act, 2005 in respect of sanction of the Disability Pension in favour of the petitioner. During examination of the documents of the petitioner, a doubt arose in the mind of the answering respondent No.2 about genuineness of the petitioner's disability pension. As per mandate of the said scheme, the answering respondent No.2 is have the right to stop the payment of pension, if any stage, it appears that same was sanctioned to mistaken ground or false information or the condition for which pension was granted no longer exist. Therefore, to ascertain the genuineness of Disability Pension of the petitioner, the answering respondent No.2 vide letter dated 23-10-2019 and 05-11-2019 had requested the Chairman, Handicapped Board, O/o Civil Surgeon, Bhiwani to verify the Disability Certificate of the petitioner but vide letter dated 05-11-2019 the Handicapped Board has replied that without registration number and date same cannot be verified. Thereafter, the answering respondent No.2 vide letter dated 20-11-2019 had called upon the petitioner to produce her Disability Certificate with warning if she failed to do so then her disability pension would be stopped and process to recover the amount, already obtained by her as disability pension, along with interest @ 12% would be initiated. Pursuant thereto, she produced her original Disability Certificate and same has been forwarded to the Chairman, Handicapped Board by the answering respondent No.2 vide letter dated 25-11-2019 and again requested to verify the same but the Chairman, Handicapped Board by the answering respondent No.2 vide letter dated 25-11-2019 and again requested

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to verify the same but the Chairman, Handicapped Board vide letter dated 02-12-2019 again expressed their inability to verify the Disability Certificate of the petitioner. The process of verifying the Disability Certificate of the petitioner was going on and in between, complaint dated 03-12-2019 (Annexure R/1) made by Sh. Vikram Singh, who also received in the Oro the answering respondent No.2, wherein it was alleged that the petitioner was getting disability person on the basis of fabricated/ forged Disability certificates. On receipt of this complaint, the answering respondent No.2 vide letter dated 03-12-2019 had requested the Superintendent of Police, Bhiwani to inquire into this matter and to proceed accordingly In the meanwhile, the Chairman, Handicapped Board vide letter dated 03-02-2020 had intimated that the petitioner was appeared before the medical board and afresh disability certificate having disability @80% has been issued to her on dated 22-01-2020. Further, the Superintendent of Police, Bhiwani took cognizance of the offence alleged against the petitioner in complaint dated 03-12-2019 and got inquired into this matter and vide letter dated 04-12-2020 submitted the report that no offence found to be caused.

3. That apart from the above complaint, Sh. Vikram Singh has also moved another complaint dated 09-12-2019 alleging that the petitioner was getting disability pension inspite of being posted as Anganwadi worker. A copy of complaint dated 09-12-2019 is annexed as Annexure R/2.

It would be appropriate to mention here that as per notification dated 24-02-2004 (Annexure-R/3) and further amended notification dated 27-02-2017 (Annexure-R/4), any person is entitle for getting disability pension under the said scheme if he/ she is domicile of Haryana State and has been residing in Haryana State for 3 years at the time of submission of

application and if his/her close relative such as parents, son, son's son are not supporting him/her and his/her own annual income from all sources is not more than minimum wages of unskilled labour as notified by the Labour Department on year to year basis. A copy of notification dated 24-02-2004 and 27-02-2017 is annexed as Annexure R/3 and R/4. It is also submitted that the Director General, Social Justice & Empowerment Department, Haryana had issued a letter dated 18-06-2014 (Annexure-R/5) vide which it had been clarified that Anganwari workers/helpers, Sarpanch, Panch, Gram Chowkidar and Nambardar, who are obtaining honorarium, are eligible for getting pension under the Social Security Schemes if they fulfill all the conditions prescribed in the related scheme and his/her income including the amount of honorarium does not exceed the income limit as stipulated in the said scheme. Therefore, on account of complaint dated 09-12-2019, the answering respondent No.2 has examined the matter and in order to inquire into the allegations made therein, a letter dated 13-12-2019 (Annexure R/6) has been written to the Women and Child Development Project Officer (WCDPO), Bhiwani vide which the detailed information, about the designation of the petitioner and honorarium paid to her since the month of July, 2006 to December, 2019 has been sought. Pursuant thereto, requisite information has be sent by the WCDPO, Bhiwani vide its letter dated 11-06-2020 (Annexure R/7). Thereafter, rate of honorarium, paid to the petitioner since the year 2006 to 12-12-2019, has been compared with the rate of minimum wages, pad to unskilled labour, which in the tabular form is as under:-

Sr. No.	Period	Rate of allowances paid to Anganwari	Rate of allowances paid
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		<i>Worker</i>	<i>to unskilled labour</i>
1.	7/2006 to 12/2006	7453/-	14,905.68/-
2.	1/2007 to 6/2007	8378/-	15,321.48/-
3.	7/2007 to 12/2007	8778/-	21,060/-
4.	1/2008 to 6/2008	8978/-	21,516/-
5.	7/2008 to 12/2008	8326/-	21,987.24/-
6.	1/2009 to 6/2009	14,549/-	23,040/-
7.	7/2009 to 12/2009	18,656/-	23,484/-
8.	1/2010 to 6/2010	18,756/-	25,285.38/-
9.	7/2010 to 12/2010	20,219/-	26,089.26/-
10.	1/2011 to 6/2011	18,756/-	27,017.88/-
11.	7/2011 to 12/2011	20,756/-	27,863.34/-
12.	1/2012 to 6/2012	30,756/-	29,083.02/-
13.	7/2012 to 12/2012	30,756/-	29,803.74/-
14.	1/2013 to 6/2013	30,390/-	31,006.50/-
15.	7/2013 to 12/2013	32,648/-	32,049.06/-
16.	1/2014 to 6/2014	45,378/-	33,282.6/-
17.	7/2014 to 12/2014	45,378/-	33,837/-
18.	1/2015 to 6/2015	45,378/-	34,876.5/-
19.	7/2015 to 12/2015	45,378/-	38,746.68/-
20.	1/2016 to 6/2016	45,378/-	47,857.2/-
21.	7/2016 to 12/2016	45,378/-	48,422.64/-
22.	1/2017 to 6/2017	45,134/-	49,681/-
23.	7/2017 to 12/2017	47,298/-	49,334.64/-
24.	1/2018 to 6/2018	60,067/-	50,985.36/-
25.	7/2018 to 12/2018	67,468/-	51,249.84/-
26.	1/2019 to 6/2019	60,041/-	53,964.4/-
27.	7/2019 to 12/2019	70,102/-	54,145.44/-

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From the perusal of the same, it is revealed that income of the petitioner exceeded intermittently, the income limit prescribed in the said scheme since the year 2012.

It is, also submitted that as per notification dated 10-06-2011 clause (e) any amount obtained under the social security scheme, on the wrongful basis, would be recovered as arrear of Land Revenue along with interest @ 12% per annum. The relevant extract of which is reproduced as under:-

“Any benefit received under the scheme by suppressing true information or making wrong claim would be recovered as arrear of land revenue with 12% interest per annum.”

Accordingly, recovery proceedings has been initiated against the petitioner and recovery notices dated 21-07-2020, 13-08-2020 and 03-09-2020 (P-7) have been issued to recover the amount, which has already been obtained by the petitioner in wrongful manner, but all in vain. Thereafter, vide letter dated 24-09-2020 (Annexure R/8), the Collector, Bhiwani was requested to recover the said amount from the petitioner as per land revenue. In spite of making all these efforts, the petitioner did not pay the recovery amount rather she has filed the present Writ petition just to escape herself from liability of depositing the recovery amount.

Thus, in view of all the above facts, recovery notices, issued to the petitioner are as per rule, Hence, the present Writ petition is liable to be dismissed with costs in the interest of justice.”

Even though said reply was filed by the respondents on 29.11.2022, however, no replication or rejoinder controverting the averments contained in the reply had been filed till date. The stand of the respondents thus remained uncontroverted.

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It is thus established from a perusal of the aforesaid table that the petitioner was ineligible for being granted the benefit of pension under the 'Haryana Divyang Pension Scheme' as she was an employee of the Government under the Anganwadi Scheme and was thus being paid the emoluments which disentitled her from the pensionary benefits.

The ineligibility of the petitioner as also the emoluments not being a subject matter of dispute, I am of the opinion that the order passed by the respondents for seeking recovery of the pension cannot be alleged to be illegal, non-speaking or unsustainable. An individual has no fundamental right to a financial assistance and such entitlement can only be claimed through the welfare schemes notified by the Government. However, the eligibility conditions prescribed thereunder become essential pre-requisites to claim such benefit. Any person who seeks an entitlement under a welfare scheme has to establish his/her eligibility thereunder failing which the benefits can be denied. One cannot claim enforcement of the scheme to his/her advantage in the absence of eligibility.

At this stage, learned counsel for the petitioner contends that there was no willful concealment on the part of the petitioner about her income status as the emoluments were variable during the entire period. It had been below the rate of allowances paid to unskilled labour at different times and hence, there was no misrepresentation or concealment on the part of the petitioner and that the information has now been sent to her. He contends that the petitioner may be permitted to deposit the principal amount in installments and that the interest thereupon may kindly be waived off.

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Even though the aforesaid prayer has been objected to by the learned State Counsel, however, I am of the opinion that the petitioner still remains a marginal section in the society, even though she may not have availed of the benefits in accordance with law. It is also evident that the income of the petitioner had been different at different times and the essential requirements may not be known to her. It cannot be said to be a case of an outright fraud or concealment/deliberate misrepresentation played on the State Exchequer by a citizen. Accordingly, the request made by the counsel for the petitioner is accepted on equitable grounds.

Resultantly, in the event of the petitioner depositing the principal amount of Rs.107,200/-, as assessed vide impugned order dated 13.08.2020 and 03.09.2020 and undertaken by her, in ten equal installments commencing after a period of one month of the receipt of certified copy of this order, the interest calculated and demanded @ 12% per annum be waived off. It is further clarified that if the petitioner fails to deposit the principal amount in ten equal installments within the prescribed period as undertaken, the respondents shall be entitled to recover the entire amount alongwith interest so calculated.

Petition stands partly allowed in above terms.

JULY 29, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No