



CWP-19091-2022 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-19091-2022
Date of Decision: 14.05.2024**

Surjeet Kaur

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vikram Singh, Advocate,
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

Mr. Vivek Saini, Advocate,
for respondent Nos.2 & 3.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially a writ in the nature of *mandamus* directing the respondents to refund the amount of pension for the period from March, 2021 to February, 2022 as adjusted illegally and arbitrary and further to refund the amount of Rs.5,000/- per month being recovered from the pension of the petitioner every month along with interest at the rate of 18% p.a., as recovered from the pension of the petitioner without passing any office order, without any show-cause notice and without affording any opportunity of hearing in violation of the instructions dated 20.01.2017 (Annexure P-5) and in violation of settled principle of law.



2. Learned counsel for the petitioner submitted that the husband of the petitioner, namely, Jarnail Singh was working as UDC in the respondent-Nigam and retired on 31.03.2009 and thereafter, he was given all his pensionary benefits to which there is no dispute in the present case. Thereafter, the husband of the petitioner died on 30.03.2013 and the family pension of the petitioner, who is a widow of the aforesaid Jarnail Singh, was fixed as per the Haryana Civil Services (Revised Pension) Part-I & II Rules, 2009. He further submitted that thereafter, the family pension which was fixed qua the petitioner was based upon the enhanced family pension of the husband of the petitioner @ Rs.7050/- (plus DR thereon) and it was required to be continued till 01.03.2016 in accordance with the Rules i.e. till attaining the age of 65 years of the deceased pensioner and after the end of the specific period of the family pension, it was required to be refixed to be Rs.4653/- (plus DR thereon). Learned counsel for the petitioner submitted that now as per the affidavit filed by the respondent-Nigam, the aforesaid enhanced family pension which was given to the petitioner as family pensioner continued for some months after 01.03.2016 which was by mistake and in this way the petitioner got an excessive amount w.e.f. 01.04.2016 till 31.12.2016. Thereafter, in the year 2017, there was a revision of the pay-scale and arrears were to be calculated and again for the second time, the mistake was committed by the respondent-Nigam and for the aforesaid period of enhanced family pension, the arrears were calculated and paid to the petitioner and now the respondents are wanting to recover a total amount of Rs.2,36,188/- and submitted that it was also decided by the respondent-Nigam to recover the same from the family pension of the



petitioner by way of an installment at the rate of Rs.5,000/- per month.

3. Learned counsel for the petitioner submitted that when this petition was filed, in the meanwhile an interim order was passed on 29.08.2022 whereby further recovery was stayed and thereafter, the recovery has been stopped but some of the amount has already been recovered from the family pension of the petitioner. He further submitted that once the respondents themselves had committed a mistake in giving an excess amount to the petitioner by way of enhanced family pension, then the same cannot be recovered from the petitioner later on in view of the law laid down by the Hon'ble Supreme Court in "*State of Punjab and others Vs. Rafiq Masih (White Washer) and others*", 2015(4) SCC 334. He also submitted that now even if an excess amount due to wrong calculation has been paid to the petitioner, the same cannot be recovered from the family pension of the petitioner and even otherwise also so far as the fixation of an amount of Rs.5,000/- per month which is an installment is concerned, in case the aforesaid amount of Rs.5,000/- per month would be recovered from the family pension of the petitioner, then the petitioner will not be able to make her both ends meet, since Rs.5,000/- would be an excessive amount from her family pension and to that extent also, the action of the respondent-Nigam is arbitrary in nature.

4. On the other hand, Mr. Vivek Saini, learned counsel for respondents No.2 & 3-Nigam while referring to the reply filed by the Account Officer, HVPNL, Panchkula submitted that it is an admitted position that there was an inadvertent mistake in the calculation when the petitioner was given extra family pension w.e.f. 01.04.2016 till 31.12.2016.



He submitted that when the husband of the petitioner had died, then at that point of time if under the Rules, the pension of the husband of the petitioner was to be given which was in the nature of enhanced family pension which was required to be reduced from the date when the husband of the petitioner would have attained the age of 65 years and therefore, the family pension of the petitioner ought to have been reduced but inadvertently the same was not reduced and that is the reason as to why the recovery for the aforesaid few months will be effected. He submitted that later on when due to the implementation of the 7th Pay Commission, the pay-scales were revised then arrears of enhanced family pension were to be calculated then again inadvertently the arrears for the same period as aforesaid were calculated and in this way a total amount of Rs.2,36,188/- is now required to be recovered from the petitioner. He submitted that the petitioner has also furnished an affidavit vide Annexure R-6 in this regard which is reproduced as under:-

“HARYANA GOVT. GAZ. (EXTRA.), MAR. 3, 2017
(PHGN. 12, 1938 SAKA)
ANNEXURE II
[See rule 17 (2)]
UNDERTAKING

I hereby undertake that as a result of any rectification or adjustment in the pension granted to me on the basis of any interim order by any Court of law, any excess amount which is found to have been made as a result of relevant appropriate decision taken by the Government on the final decision of the Court of law, shall be refunded by me to the Government either by adjustment against future payments due to me or otherwise. I further undertake to abide by such relevant



appropriate decision of the Government taken on the final decision of such Court of law as the case may be.

*Date: 20/07/17
Place: PKL*

*Signature Sd/-
Name: Surjit Kaur
Address: #175/B, Budanpur
Sec. 16, PKL.
A/C NO-65172640258.*

*P. RAGHAVENDRA RAO,
Additional Chief Secretary to Government Haryana,
Finance Department.”*

5. Learned counsel for the respondents-Nigam submitted that the ratio of ***Rafiq Masih's case (Supra)*** will not apply in the present case particularly in view of the fact that the petitioner had herself furnished the affidavit as aforesaid and therefore, the ratio of the judgment of Hon'ble Supreme Court in "***High Court of Punjab & Haryana and others Vs. Jagdev Singh***" 2016(14) SCC 267, will be applied in the present case. He also submitted that even otherwise also, the ratio of ***Rafiq Masih's case (Supra)*** will apply when an extra amount was given to an employee and thereafter, after retirement the same was sought to be recovered whereas in the present case it is a case of family pension and the petitioner is not an employee of the respondent-Nigam and therefore, the aforesaid ratio of ***Rafiq Masih's case (Supra)*** will not apply in the present case.

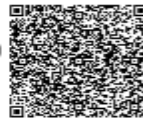
6. I have heard the learned counsels for the parties.

7. The only dispute in the present case is with regard to recovery of Rs.2,36,188/- from the family pension of the petitioner. The aforesaid amount which is sought to be recovered from the family pension of the petitioner is pertaining to two periods. First is pertaining to the extra amount



of family pension paid to the petitioner w.e.f. 01.04.2016 to 31.12.2016 and second is pertaining to the arrears due to revision of the pay-scales for the same period. In this way, admittedly, the respondent-Nigam has committed the same mistake twice. First of all, in the year 2016 when the enhanced family pension was to be refixed w.e.f. 01.03.2016 under the Rules but the same was not refixed and it continued on older amount due to the mistake of the respondents for next 9 months and thereafter it was detected and secondly, when the arrears of revision of pay-scale were to be given then again the same period of 9 months was calculated and the arrears were given and therefore, there was a clear-cut mistake on the part of the respondent-Nigam not once but twice.

8. The second question which would arise for consideration before this Court is as to whether the ratio of the judgment of Hon'ble Supreme Court in ***Rafiq Masih's case (Supra)*** will apply in the present case or not. The petitioner is a family pensioner and she was not an employee of the respondent-Nigam. As per the ratio of ***Rafiq Masih's case (Supra)*** when an employer pays an extra amount to the employee and thereafter, recovery is sought to be effected, then it was so held that no recovery can be made from a retired employee or who is due to retire and various other directions were also issued. However, in the present case, it was a case of a family pensioner where due to the mistake of the respondent-Nigam, there was a continuation of the enhanced family pension, which was being paid to the petitioner, which ought to have been refixed w.e.f. 01.03.2016, but it continued till December, 2016. Thereafter, even the arrears were also paid on the aforesaid amount of enhanced family pension. In this way,



respondent-Nigam has committed the mistake twice. So far as the affidavit which has been furnished by the petitioner vide Annexure R-6 is concerned, the same would not be of any significance in view of the fact that the petitioner was not in any position even to have refused to sign and furnish any such affidavit in order to get her family pension.

9. The amount which is now sought to be recovered is Rs.5000/- per month as an installment. According to the learned counsel for the petitioner the fixation of such an amount of Rs.5000/- per month is a big amount as installment from a widow, who is a family pensioner and she cannot make her both ends meet and the amount is also on the higher side.

10. After hearing the learned counsels for the parties, this Court is of the considered view that the extra amount which has been paid to the petitioner because of continuation of the enhanced family pension which was admittedly the mistake of the respondent-Nigam but at the same time, the ratio of *Rafiq Masih's case (Supra)* will not apply to the present petitioner and the recovery can certainly be made from the family pension of the petitioner but not in the manner in which it has been sought to be made. It is a case of the learned counsel for the petitioner that the amount of Rs.5,000/- per month is on the higher side because after giving such installment, the petitioner cannot make her both ends meet.

11. In view of the aforesaid facts and circumstances, the present petition is disposed of with the following directions:-

- (i). The respondent although can effect the recovery of the amount of Rs.2,36,188/- from the family pension of the petitioner but the same cannot be done by way of a huge



amount of installment of Rs.5,000/- per month. Therefore, the respondent-Nigam is directed to reduce the installment from Rs.5000/- to Rs.2,000/- per month.

(ii). Admittedly, there was a mistake committed by the Nigam not once but twice. The respondent-Nigam is an instrumentality of the State and it has to be extra cautious when dealing with pension and retiral benefits especially with the family pension. The petitioner, who is a widow, had to approach this Court for redressal of her grievances because of admitted mistake on the part of respondent-Nigam. Therefore, the petitioner shall be entitled for costs which are assessed at Rs.50,000/- (Rupees Fifty Thousand Only). The respondents-Nigam are directed to pay the aforesaid costs to the petitioner within a period of three months from today.

14.05.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |