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

**CWP-24037-2019**

**Reserved on : 20.08.2024**
**Date of decision : 28.08.2024**

Neeta Rani …..Petitioner

Versus

State of Haryana and others …..Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present : Mr. Ajay Vijarania, Advocate for the petitioner.

Mr. Ravi Dutt Sharma, D.A.G., Haryana.

Ms. Swati Dayalan, Advocate for respondent No.2.

**NAMIT KUMAR, J. (Oral)**

1. The petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India, seeking a writ of certiorari, quashing the action of the respondents by which they started to recover the amount of Rs.2,51,936/-, being alleged excess payment made to the petitioner, by way of monthly installments deducting from the family pension of the petitioner from the month of June 2019, without any intimation or consent of the petitioner. Further seeking a writ of mandamus, directing the respondents to release full family pension of the petitioner and to refund the amount already recovered from the family pension of the petitioner by way of installments.

2. Brief facts of the case, as have been pleaded in the present petition, are that the husband of the petitioner namely Rajender Parshad Chaba was appointed as T-Mate on 16.01.1977 and on attaining the age of superannuation on 31.03.2009 he has retired from service as

Supervisor. Unfortunately, after six months of his retirement, the husband of the petitioner died on 25.09.2009. As per the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short '2006 Rules'), the respondents had to pay full family pension to the petitioner till 65 years of her husband's age or till 07 years from the date of her husband's retirement, whichever is earlier and after that they had to pay half of the family pension to the petitioner. The respondents had to pay full family pension to the petitioner till 31.03.2016. However, due to their own mistake, they continued to pay full family pension i.e. amounting to Rs.25,000/- to the petitioner till May, 2019 and when they came to know about the said mistake, they revised/re-calculated the family pension of the petitioner amounting to Rs.13,907/- and from June, 2019, they have surprisingly started to deduct half amount of the family pension amounting to Rs.7,000/- as installments to recover the excess payment made by them without informing the petitioner or without taking her consent. The petitioner contacted the office of respondents and requested them to release her full family pension but to no avail. Hence, this petition.

3. While issuing notice of motion, on 03.09.2019, this Court had restrained the respondents from recovering any further amount from the petitioner.

4. Separate replies on behalf of respondent No.2 and respondents No.1, 3 & 4 have been filed. In the reply filed on behalf of respondents No.1, 3 & 4, it has been stated as under :-

*"xx xx xx xx xx*

*2. That Sh. Rajender Parshad (husband of the petitioner) was working as T-Mate in the office of answering respondent and was retired from service on attaining the age of superannuation on 31.03.2009 from the post of Supervisor. Unfortunately he died on 25.09.2009.*

*3. That as per the Rules, all the service benefits of Late Sh. Rajender Parshad were released in time and family pension was also sanctioned in favour of petitioner. As per rules, the petitioner was entitled for full family pension till 65 years of the age of the husband or for 7 years from the retirement of her husband whichever is earlier. PPO (Annexure P-1) was issued in this regard by respondent no.2. It is specifically mentioned in PPO annexure P-1 that the petitioner will get full pension @ Rs 4538/- per month from the day following the day of death of Sh. Rajinder Parshad Chaba till the expiry of 7 years or completion of 65 years of age by the employee, had the Govt. employee survived, whichever is earlier and after that she will be entitled for family pension @ Rs. 2723/- per month.*

*4. That the petitioner was well aware about the fact that she is entitled for full pension up to date 31.03.2016 only and she got the family pension in excess till April 2019 but she remained mum and enjoyed the wrongly given benefit till the date the recovery has been initiated from her. The deduction of Rs.7,000/- per month on account of amount excess period to the petitioner has been started from the month of June 2019 and as a result of this deduction, the petitioner had started getting family pension @ of Rs. 6564/- from the month of June instead of Rs 13907-. The excess payment was released to her by respondent no. 2 and Treasury Officer, Bhiwani but the excess payment made to the petitioner was public money and she is not entitled to retain it: It is also pertinent to*

> *mention here that the order of deduction has not been issued by the answering respondent."*

5. Learned counsel for the petitioner submits that the husband of the petitioner retired from service on 31.03.2009 and thereafter, unfortunately died on 25.09.2009. The respondents without passing any specific order, started recovery of Rs.2,51,936/-, being excess payment made to the petitioner, by way of installments deducted from the family pension of the petitioner from June 2019. He submits that since the petitioner is old aged lady and was not aware about the rules that the full family pension was to be paid to her till 65 years of her husband's age or till 07 years from the date of her husband's retirement, whichever is earlier, therefore, there is no misrepresentation or fraud on the part of the petitioner. He further submits that the respondents started the deduction from the family pension of the petitioner, without issuing any show cause notice or granting an opportunity of personal hearing in unilateral manner, which is not only in violation of the principles of natural justice but also against the law laid down in judgment of the Hon'ble Supreme Court passed in ***State of Punjab Vs. Rafiq Masih (White Washer) and others*** : ***2015(1) S.C.T. 195.***

6. On the other hand, learned State counsel and learned counsel for respondents No.2, while referring to the averments made in the reply filed on behalf of respondents No.1, 3 and 4, submits that there is no illegality or infirmity in the impugned recovery, as the petitioner had wrongly been given excess family pension till May, 2019 and accordingly recovery of Rs.2,51,936/- has been started by way of installments from the family pension of the petitioner. In support of their

contention, learned counsel for the respondent(s) has placed reliance upon the judgment passed by Hon'ble Supreme Court in ***High Court of Punjab & Haryana and others Vs. Jagdev Singh : 2016(14) SCC 267***.

7. I have heard learned counsel for the parties and perused the relevant documents with their able assistance.

8. Admittedly, the husband of the petitioner retired from service on attaining the age of superannuation on 31.03.2009 and after six months of his retirement, he unfortunately died on 25.09.2009. As per 2006 Rules, the respondents had to pay full family pension to the petitioner till 65 years of her husband's age or 07 years from the date of her husband's retirement, whichever is earlier and after that they had to pay half of the family pension to the petitioner. The respondents had to pay full family pension to the petitioner till 31.03.2016. However, inadvertently they continued full family pension to the petitioner till May, 2019 and when they came to know about the said mistake, they revised/re-calculated the family pension of the petitioner and from June, 2019, they started to deduct the half amount of the family pension as installments to recover the excess payment made by them to the petitioner.

9. The petitioner, who is an old lady, was not aware of the fact that w.e.f. 01.04.2016, she was only entitled for half family pension. Once, the petitioner had no knowledge about the excess amount being paid, nothing can be attributed to her of continuously getting full family pension and therefore, no motive can be attributed to her in the present case.

10. Further, the Hon'ble Supreme Court of India in ***Rafiq Masih (White Washer) and others case (Supra)***, has issued guidelines as to under what circumstances, the recoveries can be effected. After detailed consideration of law, the Hon'ble Supreme Court of India has held that no recoveries can be ordered from the employees belonging to Class III and IV and further, no recoveries can be ordered from the employees, who have retired or who are about to retire within a period of one year. In the present case, the husband of the petitioner was working on a Class III post and the pension which has been paid to the petitioner, was in respect of the service which the late husband of the petitioner had rendered on a Class III post. The family pension which was being paid to the petitioner, under the 2006 Rules, have been framed by the respondents for removing the financial difficulties of the dependents of the deceased Government employees. The relevant portion of the aforesaid judgment is reproduced as under:-

> *"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> ***(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).***
>
> ***(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.***

*(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

*(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

***(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.****"*

11. The case of the petitioner will be covered under clause (i), (ii) and (v) of the said judgment. In the present case, if this Court allow the recovery from the petitioner, the same would be harsh and arbitrary as petitioner was not in any way responsible for the receipt of the said excess amount and petitioner being an old aged widow of a Government servant who was working on a Class III post, if made to refund the amount as being asked by the respondents, will suffer prejudice and the same will be oppressive as well.

12. Moreover, the alleged deduction from the family pension of the petitioner has been started by the respondents in violation of the principles of natural justice as neither any show cause notice was issued to the petitioner nor she was granted an opportunity of personal hearing.

13. The facts and circumstances of the present case are totally distinguishable from the judgment relied upon by learned counsel(s) for the respondents as in ***Jagdev Singh's case (supra)****,* the petitioner gave

an undertaking for recovery of any excess amount paid to him whereas in the present case there is no such undertaking given by the petitioner.

14. In view of the above, the present petition is allowed and the petitioner is held entitled to get full family pension for the period in question i.e. upto May, 2019 without any deduction and the respondents are directed to refund the amount, deducted from the family pension, to the petitioner, within a period of 02 months from the date of receipt of certified copy of this order.

**(NAMIT KUMAR)**
**28.08.2024** **JUDGE**
*Kothiyal*

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No