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

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CWP-24858-2022
Date of decision : 06.08.2024

Balbir Kaur …..Petitioner

Versus

State of Punjab and others …..Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Ms. Prerna Malhotra, Advocate
legal aid counsel for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Mr. Arjun Dev, Advocate
for respondents No.2 and 3.

<u>NAMIT KUMAR, J. (Oral)</u>

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 order dated 22.02.2022 (Annexure P-7), whereby an amount of Rs.4,92,128/- has been deducted from the retiral benefits of the deceased husband of the petitioner. Further seeking a writ of mandamus, directing the respondents to refund the abovesaid amount deducted from the retiral benefits of deceased husband of the petitioner along with interest @ 18% per annum.

2. Brief facts of the case, as have been pleaded in the present petition, are that the husband of the petitioner namely Sh. Shiv Charan was appointed as Sweeper with the respondent-department on 03.03.1981. His date of birth was 02.01.1962 and according to the said date of birth, he was to retire on 31.01.2022. However, the respondent-

department had forcefully retired him on 25.10.2021 and unfortunately he died on the very next day i.e. on 26.10.2021 due to heart attack. Thereafter, the petitioner submitted representation dated 25.02.2022 for releasing the retiral/service benefits of her deceased husband. The respondent-department vide impugned order dated 22.02.2022, while making payment of gratuity, leave encashment and C.P.F., made recovery of Rs.4,92,128/- on account of recovery of salary for the period from February, 2021 to September 2021 and of the amount of Rs.49,393/- of medical reimbursement. Further, the department did not pay the salary for the period from 01.10.2021 to 25.10.2021 despite the fact that the petitioner's husband performed duties and worked for the department for this period. Thereafter, the petitioner submitted representation dated 21.09.2022 to the department to refund the abovesaid recovered amount and also requested to consider the candidature of her son Prince for compassionate appointment but no action was taken on the same. Aggrieved against the abovesaid recovery and not appointing the son of the petitioner on compassionate grounds, the present petition has been filed.

3. Learned counsel for the petitioner submits that the department had forcefully retired the husband of the petitioner on 25.10.2021 and he unfortunately died on the very next day i.e. 26.10.2021 due to heart attack. After his retirement, an amount of Rs.4,92,128/-, being alleged salary paid to him from February, 2021 to September 2021, has been recovered from his retiral benefits, vide impugned order dated 22.02.2022. She submits that the abovesaid

recovery has been effected from the retiral benefits of the petitioner, without issuance of any show cause notice or granting any 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.*** She further submits that no recovery can be effected from the legal representatives of the deceased employee.

During the course of hearing, learned counsel for the petitioner restricts her claim for issuance of direction to the respondents to refund the recovered amount deducted from the retiral benefits of the deceased husband of the petitioner along with interest.

4. On the other hand, learned counsel for the contesting respondents No.2 and 3, while referring to the averments made in the written statement filed on behalf of respondents No.2 and 3, submits that there is no illegality or infirmity in the impugned recovery effected, as the date of retirement of the husband of the petitioner was 31.01.2021, however, he continued working with the department till 25.10.2021 and when the department came to know about this fact, the department retired the husband of the petitioner vide order dated 25.10.2021 and recovered the salary given to him for the period from February 2021 to September 2021 from his retiral benefits.

5. I have heard learned counsel for the parties and perused the relevant documents.

6. The stand taken by the respondents-Corporation is that the

date of birth of the husband of the petitioner in the service record is 02.01.1961 instead of 02.01.1962 and as per the said date of birth he was to retire on 31.01.2021, however, he continued working with the department till 25.10.2021 and when the department came to know about this fact, the department retired him vide order dated 25.10.2021 and the salary given to the husband of the petitioner for the period from February 2021 to September 2021 has been recovered from his retiral benefits vide order dated 22.02.2022.

7. The argument raised by learned counsel for respondents No.2 and 3 is not sustainable as even if the retirement date of the husband of the petitioner was 31.01.2021 and he was allowed to work with the department after his date of retirement till 25.10.2021, even then he should have been paid the salary for the excess period he worked with the department and it is also on account of the mistake committed on the part of the department, due to which the husband of the petitioner continued in service after the date of his retirement till 25.10.2021. The salary paid to the husband of the petitioner cannot be recovered.

8. Hon'ble Supreme Court in ***Rafiq Masih's case (supra)*** has laid down circumstances where no recovery can be effected from an employee despite excess payment. The circumstances enumerated in the judgment are not conclusive. The circumstances where the Court has categorically held that no recovery shall be effected are reproduced as below :-

> *"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."*

9. The case of the husband of the petitioner falls under Clause (i) & (ii) of the judgment as indicated above. Further, the husband of the petitioner has already expired on 26.10.2021 and the recovery has been effected from his retiral benefits paid to the petitioner vide order dated 22.02.2022, which is also wrong as in view of the settled law no recovery can be effected from the LRs of the deceased employee. This Court in ***Ex Naik Bhag Chand Vs. Director General of Police, CRPF and others : 2024 LIC 1694*** has held as under :-

> *"9. In the case in hand, as confirmed by counsel for the petitioner, the wife of the deceased employee has already passed away and children being major are not entitled to*

family pension, thus, state is not paying family pension to any family member of the deceased employee. The respondent-UOI has conceded that no recovery can be effected from legal heirs of deceased employee, however, bank is disputing on the ground that deceased employee had furnished undertaking. The undertaking, if any, furnished by deceased employee was binding upon him and in the absence of any statutory provision, it cannot create liability of legal heirs.

The Supreme Court in above-cited judgments has held that even tax cannot be recovered from legal heirs of a proprietorship concern if there is no statutory provision. An employee gets pension under the statutory provisions. The right of pension has been recognised as constitutional right in terms of Article 300-A of Constitution of India. It is apt to notice that prior to omission of clause (f) of article 19(1) of the Constitution of India, it was considered as fundamental right.

10. This Court everyday is getting similar cases where there is excess payment on account of mistake on the part of bank. The employer i.e. Union of India or State Government is not at fault whereas it is bank who is at fault and claiming that excess payment has been made on account of its mistake. There is no case whereas it has been found that mistake was on the part of employee.

In every case, there is mistake on the part of bank. The bank has initiated recovery even against more than 80 years old widow. It ill behoves the banks.

11. In the above backdrop, this Court is of the considered opinion that the present petition deserves to be disposed of with a direction that no further recovery shall be effected from the legal heirs of the petitioner (deceased).”

10. Moreover, the alleged recovery has been effected by the respondents-department in violation of the principles of natural justice as neither any show cause notice was issued to the LRs of the deceased employee nor they were granted an opportunity of personal hearing.

11. Consequently, the impugned order dated 22.02.2022 (Annexure P-7) qua recovery of Rs.4,92,128/- effected from the retiral benefits of the deceased husband of the petitioner is set aside. The respondents-department is directed to refund the abovesaid recovered amount along with interest @ 6% per annum from the date the same was effected till its actual payment and costs of Rs.10,000/- to the petitioner, within a period of 02 months from the date of receipt of certified copy of this order.

12. So far as grievance of the petitioner to consider the candidature of her son for compassionate appointment is concerned, liberty is granted to the petitioner to approach the respondents-authority for redressal of her grievance, in accordance with law.

13. Disposed of in the above terms.

(NAMIT KUMAR)
JUDGE

06.08.2024
Kothiyal

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