

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:047553

(109+269)

CM-5797-CWP-2024 in/and
CWP-72-2024

Date of Decision : April 08, 2024

Dhanpati

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kishan Garg, Advocate, for the petitioner.

Mr. Tapan Kumar Yadav, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance of the petitioner is that a sum of Rs.7,38,300/- is being recovered from the family pension of the petitioner, which act on the part of the respondents is arbitrary and illegal.

2. Learned counsel for the petitioner submits that the family pension was paid by the respondents themselves without there being any misrepresentation on the part of the petitioner and 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***, no recovery of excess amount paid can be done from the class III and IV employee with regard to the incorrect pension paid and that too for more than five years.

3. Learned counsel for the petitioner further submits that even

otherwise, no show cause notice has ever been issued to the petitioner before recovering the amount in question, which act on the part of the respondents is arbitrary and illegal.

4. Learned counsel for the respondents submits that the husband of the petitioner was working with the respondents as an Assistant and he unfortunately died on 20.02.2003 thereafter, the claim of the petitioner for family pension was considered. Learned counsel for the respondents further submits that as enhanced family pension was payable to the petitioner, till the date the husband of the petitioner was to attain superannuation i.e. Rs.2701/- which amount was increased to Rs.6106/- keeping in view the revised pay scale given from 01.01.2006 but, w.e.f. 22.02.2013, the petitioner was to be given the normal family pension of Rs.3899/- but petitioner was paid enhanced family pension upto July 2023 i.e. for a period of 10 years, which amount of family pension paid was beyond her entitlement and the extra money paid was rightly been recovered keeping in view the undertaking given, a copy of which has been appended as Annexure R-4/4.

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

6. It is a settled principle of law that in case there is no misrepresentation to claim excess amount and the same was paid by the authorities concerned, excess amount paid cannot be recovered. Reliance can be placed upon the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022.*** The relevant paragraph of the said judgment is as under:-

“(9) This Court in a catena of decisions has consistently

held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

7. In the present case, the petitioner never misrepresented in order to get any claim beyond her entitlement. As per the reply filed by the respondents also, it is clear that it was the respondents who fixed family pension of the petitioner and continued to pay her the enhanced family pension without there being any involvement of the petitioner. In case, w.e.f. 22.02.2013, the petitioner was to be paid normal family pension, the same was the duty of the respondents and no act can be attributed upon the petitioner for paying the more family pension than the entitlement.

8. As per the judgment of the Hon’ble Supreme Court of India in ***Rafiq Masih’s case (supra)***, in case, any excess amount is paid for a period of more than five years to an employee, no recovery of the excess amount can be done from a retired employee especially working on a class III and IV post. Admittedly, the husband of the petitioner was working on a class

III post and after his death, the petitioner was granted the family pension. The relevant paragraph of the said judgment in **Rafiq Masih's case (supra)** is 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.”

9. Further, the respondents have conceded that the enhanced family pension beyond the entitlement of the petitioner was paid for a period of 10 years. Hence, the claim of the petitioner is squarely covered under para 12 of the judgment in **Rafiq Masih's case (supra)**.

10. At this stage, learned counsel for the respondents submits that there is an undertaking given by the petitioner that in case, any amount is

paid beyond entitlement, the same can be recovered hence, 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*, the excess amount paid to the petitioner can be recovered.

11. A bare perusal of the undertaking would show that there is no date on the same as to when the said undertaking was given by the petitioner. In the absence of any date on the undertaking coupled with the fact that the same is filled in a cyclostyed performa, the said undertaking cannot be made applicable in the facts and circumstances of the present case. Further, nothing has come on record that the said undertaking was given, at the time of getting the family pension or at the time when the recovery was ordered to be done hence, the said undertaking cannot come to rescue of the respondents so as to deny the claim of the petitioner.

12. Keeping in view the above, the recovery of the excess amount which is being done from the petitioner is held to be arbitrary or illegal and contrary to the settled principle of law and the same is set aside. Any amount recovered from the petitioner be refunded back to the petitioner within a period of eight weeks of the receipt of copy of this order.

13. It may be noticed that the entitlement of the petitioner for pension @ Rs.3899/- prospectively is upheld and only the recovery of the excess amount is being set aside.

14. The present writ petition is disposed of in above terms.

April 08, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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