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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 03.05.2024***

+ W.P.(C) 982/2024 & CM APPL. 4096/2024 -Stay.

COMMISSIONER OF POLICE AND ORS PetitionersThrough: Mr. Nitesh Kumar Singh, Adv. for Mrs.
Avnish Ahlawat, Standing Counsel.

versus

SMT KANTA DEVI

..... Respondent

Through: Mr. Ankur Chhibber, Mr. Yogesh,
Mr. Harkesh Parashar and Mr.
Anshuman Mehrotra, Advs.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 21.09.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi [in short "the Tribunal"] in O.A. No. 2335/2022. Vide the impugned order, the learned Tribunal has allowed the original application filed by the respondent herein by setting aside the order dated 06.07.2022 passed by the petitioners vide which the respondent's request for refund of the recovered overpayment of Rs.18,84,463/- as also for waiving the demand for Rs.2,39,756/- on account of remaining overpayment made to her late husband, were rejected.

2. The brief factual matrix as emerging from the record is that the respondent's late husband, Sh. Bhoora Singh [hereinafter referred to as "*late Sh. Bhoora Singh*"], joined the Central Reserve Police Force (CRPF) in 1980 and was thereafter deputed to the Delhi Police where he was finally



absorbed in 1988. It is the common case of the parties that the respondent's late husband continued to serve the petitioners till he was invalidated from service w.e.f. 27.05.2015, whereafter, vide an order dated 10.06.2015, the petitioners regularised his leave period from 07.06.2010 to 26.05.2015. This was only after late Sh. Bhoora Singh, had vide an application dated 13.02.2015 sought invalid pension on the ground that he was 50% permanently disabled. However, even though he was invalidated, he was not paid any invalid pension on the ground that a sum of Rs. 21,24,219/- was recoverable from him. Before any recoveries could be made from him, the respondent's late husband Sh. Bhoora Singh expired on 27.12.2015.

3. After his death, the petitioners instead of releasing his retiral dues to his legal representatives, not only deducted a sum of Rs.13,00,000/- from his retiral dues but also apprised the respondent that neither any family pension will be sanctioned to her nor will the gratuity payable to late Sh. Bhoora Singh be released to her unless she deposited the entire sum of Rs.21,24,210/-. In response to this demand from the petitioners, the respondent deposited a sum of Rs.13,00,000/-, whereafter, a further sum of Rs. 5,84,463/- was also recovered from the retiral dues of late Sh. Bhoora Singh.

4. It appears that the petitioners were still not satisfied with the recovery of a sum of Rs. 18, 84, 463/- and vide their letter dated 25.05.2017 sought to recover the remaining sum of Rs.2,39,756/- from the respondent.

5. It is in these circumstances that the respondent approached the learned Tribunal by way of O.A No. 1612/2022 which was disposed of vide order dated 04.07.2022 with a direction to the petitioners to consider the respondent's representation dated 16.03.2022. Needless to state, the said



representation was rejected by the petitioners. Upon rejection thereof, the respondent again approached the learned Tribunal by way of O.A No. 2335/2022 which has been allowed vide the impugned order.

6. In support of the petition, learned counsel for the petitioners, while not denying that the purported overpayment made to the respondent's late husband was not on account of any misrepresentation by them, submits that the petitioners were justified in making the recoveries as over payments had in fact been made to him. Furthermore, learned counsel submits that the respondent's late husband had himself undertaken to refund the said amount and had requested that the amount be recovered from his retiral dues, for which purpose he draws our attention to the letter dated 07.09.2015 written by late Sh. Bhoora Singh. He, therefore, contends that once the respondent's late husband himself agreed to refund the amount, the respondent cannot now claim that she is not bound to return the said amount. He, therefore, prays that the impugned order be set aside.

7. On the other hand, Mr. Ankur Chhibber, learned counsel appearing on behalf of the respondent supports the impugned order and contends that the petitioners are trying to misread the letter dated 07.09.2015 written by the respondent's late husband who was suffering from various ailments at the time when he wrote the said letter. It is his case that the said Sh. Bhoora Singh had merely stated that he was not in a position to refund the amount due to the pitiable condition of his family at that stage. By no stretch of imagination, can the reference to his gratuity by late Sh. Bhoora Singh imply that he was ready and willing to make the refund. By placing reliance on the decision of the Apex Court in *State of Punjab Vs. Rafiq Masih*, (2015) 4 SCC 334, he contends that the petitioners cannot now be permitted to seek



refund of the purported over payments made to the respondent's late husband in 2015.

8. Having considered the submissions of the learned counsels for the parties and perused the record, it appears that the short issue involved before this Court is whether the recovery of dues from the respondent after the demise of her husband, late Sh. Bhoora Singh, who was serving as a Head Constable, a Group C employee, is permissible or not.

9. Before going into the merits of the controversy involved, first and foremost this Court deems it appropriate to predicate upon the settled legal position of dealing with situations where recoveries on account of erroneous over payments are sought to be made from employees. In this regard, reference may be made to the decision of the Hon'ble Supreme Court in ***State of Punjab v. Rafiq Masih***, (2015) 4 SCC 334. The relevant paragraphs of the aforesaid judgement are reproduced as under:-

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

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10. In view of the afore stated constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State,



ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

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18. *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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, **would be impermissible in law:***

- (i) **Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).***
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the 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.”*

10. Having noted the legal position, we may now turn to the facts of the present case. From the record, we find that the recoveries of the purported



over payments made to late Shri Bhoora Singh pertained to the leave period between 07.06.2010 and 26.05.2015, which period, had been regularised by the petitioner itself vide its order dated 10.06.2015. This Court finds no plausible reason for the petitioners to persist with the said recoveries from the respondent, who is the widow of late Sh. Bhoora Singh, who had served the petitioner for a long period of *twenty seven years* prior to being invalidated from service.

11. In this regard, it may also be apposite to note the relevant extract of the impugned order, which reads as under:

“Admittedly, the husband of the applicant was sick and has died due to his sickness. He had been in receipt of certain amount, for which, the widow of the applicant cannot be held responsible. She has not committed any act of commission or omission, and, therefore, she cannot be held guilty for something she has not done. The recovery has been inflicted without issuing any Show Cause Notice to her and the Gratuity has been deducted from the retiral dues of the deceased husband of the applicant, which is in clear violation of principles of natural justice. Therefore, the impugned order as well as the recoveries so made from the applicant cannot be sustainable in the eyes of law.”

12. From a perusal of the aforesaid, we find that the learned Tribunal has taken note of the fact that the respondent's late husband was ailing and had succumbed to his illness. The learned Tribunal was, therefore, of the opinion that the respondent who is his widow could not be held guilty of having received any over payments. Furthermore, the recoveries were sought to be made without issuing any show cause notice to her. Taking into account this factual matrix, we find no reason to differ with the view taken by the learned Tribunal. Even otherwise, in the light of the admitted position



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that the purported over payment pertains to a period of almost five years, which payments were made to the respondent's late husband without any misrepresentation having been made by him, the action of the petitioners in seeking to make these recoveries would be hit by the ratio of the decision in *Rafiq Masih* (supra).

13. In view of the aforesaid settled position of law as well as the factual position enumerated hereinabove, this Court has no hesitation in agreeing with the learned Tribunal that the recovery of a sum of Rs18,84,463/- and the demand for a further sum of Rs.2,39,756/- from the respondent by the petitioners was wholly unsustainable.

14. For the aforesaid reasons, we find no infirmity in the impugned order. The writ petition being meritless is alongwith the pending application are dismissed.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 03, 2024/SU