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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 7th January, 2025**

+ **W.P.(C) 4817/2023**

SMT BIMLA KOUL HANDOO

.....Petitioner

Through: Ms. Sakshi Mehley, Ms. Harshita
Kumar, Mr. Sajal Manchanda and
Mr. Harsh Chaudhary, Advocates.

versus

UNION TERRITORY OF JAMMU AND KASHMIR & ANR.

.....Respondents

Through: Mr. Rushab Aggarwal, Standing
Counsel with Mrs. Riddhima J.
Aggarwal and Mr. Japnish Singh
Bhatia, Advocates for R-1
Mr. Rajinder Wali, Advocate for
Respondent No.2 (through V.C.)

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. Petitioner, a widow in her seventies, seeks direction to respondents to refund an amount of Rs.11,61,477/- to her which was, arbitrarily and wrongfully, deducted on 14.10.2022 from her Savings Bank Account, being maintained at Jammu & Kashmir Bank, 5, Prithvi Raj Road-5, New Delhi-110011.

2. Broad facts can be summarized as under:-

- (i) The petitioner's husband Sh. Shuban Lal Handoo (since deceased) was an employee of the Forest Department of Government of Jammu and Kashmir.
- (ii) He superannuated on 31.03.2005 and became eligible for payment of pension.
- (iii) Pension Payment Order (PPO) No.125203 was passed on



09.11.2005.

- (iv) Unfortunately, the husband of the petitioner died on 28.09.2005.
- (v) As per *Jammu & Kashmir Family Pension-cum-Gratuity Rules, 1964*, the petitioner became eligible for family pension, being widow of Sh. Shuban Lal Handoo.
- (vi) The petitioner is in receipt of family pension w.e.f. 28.09.2005, which used to be credited in her Savings Bank Account maintained with respondent No.2 Bank in Delhi.
- (vii) According to petitioner, for the first time, in September 2022 i.e. after more than 17 years of the continuous disbursal of family pension, the respondent No.1 raised issue of over payment/excess payment of family pension and directed respondent No.2 to initiate recovery from her Bank Account.
- (viii) According to the petitioner, no reason, much less a justifiable one was provided as to on what basis any excess amount had been credited to her account and as to how the respondent could, after a delay of around 17 years, recover the amount in said manner.
- (ix) According to the petitioner, by virtue of communication bearing No.TRY/ND/2022/357 dated 10.10.2022 and TRY/ND/2022/366/1-4 dated 13.10.2022, issued by the Office of the Treasury Officer, Sub Treasury, Government of Jammu & Kashmir, New Delhi, the respondent No.1



informed respondent No.2 that an amount of Rs. 11,61,477/- had been disbursed in excess in favour of the petitioner for the period from 04.03.2012 to 31.08.2022 and as she was having sufficient amount at the relevant time, deduction was made from her account on 14.10.2022.

3. It is in the above said background that the present petition has been filed under Article 226 of the Constitution of India for issuance of a writ of mandamus or any other appropriate writ, order or direction directing the respondents to refund the above said amount.

4. The petitioner has also strongly relied upon judgment of the Hon'ble Supreme Court given in case of *State of Punjab & Ors vs Rafiq Masih: 2014 SCC OnLine SC 1027*

5. Para 18 of said judgment reads as under:-

“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."

6. The prime contention coming from the side of the respondent No.1/Union Territory of Jammu and Kashmir is to the effect that the present petition is not maintainable before this Court. It is submitted that the petitioner challenges action of recovery of excess pension and mere fact that the Sub-Treasury is located in Delhi, would not confer jurisdiction upon this Court, while also contending that the decision-making Authority is situated in the Union Territory of Jammu & Kashmir. It is argued that since Sub-Treasury had only implemented the directives of the Office of the Accountant General (A&E) situated in the UT of Jammu & Kashmir, this Court has no jurisdiction.

7. Strong reliance has also been placed upon *Ambica Industries Vs. Commissioner of Central Excise* : 2007 SCC OnLine SC 777 contending that the principle of *forum conveniens* is also required to be considered by the bench, before exercising its discretionary powers under Article 226 which was also followed in *Sterling Agro Industries Ltd. and Ors. Vs. Union of India (UOI) and Ors.*:2011 SCC OnLine Del 3162

8. Additionally, it has been contended by learned counsel for the respondent No.1 that the petitioner has no escape from the specific provision contained in *Jammu & Kashmir Civil Service Regulations*,



1956, which clearly lays down that any amount, received in excess to which any pensioner is entitled to, is liable to be returned.

9. Relevant Regulation read as under:-

“291.

(1) *Should the amount of pension granted to a Government servant be afterwards found to be in excess of that to which he is entitled under these regulations, he shall be called upon to refund such excess.*

Note. -For the purpose of this Article, a declaration in Form A (given below) shall be obtained from the retiring Government servant by the authority sanctioning pension, before the pension is sanctioned. Similarly, that authority shall obtain a declaration in Form B (given below) from a member of the family or legal heir or heirs of the deceased pensioner, before sanctioning arrears of pension or gratuity.”

10. Learned counsel for respondent No.1 also submits that the reliance on *Rafiq Masih* (supra) is misplaced as in a subsequent decision given by the Hon’ble Supreme Court in *High Court of Punjab & Haryana and Ors. vs. Jagdev Singh: 2016 SCC OnLine SC 748*, the Hon’ble Supreme Court, while also referring to *Rafiq Masih* (supra), clarified the above said position by holding that such principle against recovery of pension would not be applicable to a case where the officer to whom the pension was paid was clearly *placed on notice in the first instance*.

11. According to learned counsel for respondent No.1, the pensioner was placed on notice in the first instance by virtue of the above said Article 291, as extracted above, and, therefore, the petitioner cannot dig out any advantage from *Rafiq Masih* (supra).

12. It is also contended that, even otherwise, no pension is disbursed without there being any declaration and, therefore, once such



declaration is given, in view of *Jagdev Singh* (supra), the recovery cannot be said to be against the spirit of *Rafiq Masih* (supra). It is also contended that without challenging the vires of Article 291 of the J&K Civil Service Regulations, 1956, no relief can be granted to the petitioner.

13. This Court has given its due consideration to all said contentions.

14. It has already been noticed above that the husband of the petitioner retired on 31.03.2005 and he, unfortunately, died in the year 2005 itself.

15. All along upto October, 2022, the petitioner was getting family pension in her Savings Bank Account and after a gap of around 17 years, the respondents have, abruptly, recovered the above said amount of Rs.11,61,477/- claiming that it was an excess payment for the period from 04.03.2012 to 31.08.2022.

16. As regards the jurisdiction of this Court to entertain the present petition, it is pertinent to refer to Article 226(2) of the Constitution of India which reads as under:-

“(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”
(emphasis supplied)

17. This Court has gone through *Ambica Industries* (supra) and *Sterling Agro* (supra) which have been cited by both the sides.

18. If one goes through *Ambica Industries* (supra), it would become very clear that the Court would have jurisdiction even if a small



fraction accrues within the jurisdiction of such Court. Para 41 of said judgment reads as under:-

“Keeping in view the expression “cause of action” used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter though the doctrine of forum conveniens may also have to be considered.”

19. *Sterling Agro* (supra) further reinforces the view that the maintainability of a writ petition would not stand negated if a minuscule portion of the cause of action transpires within the territorial jurisdiction of any such Court. Moreover, as per said case, while entertaining a writ petition, doctrine of *forum conveniens* and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case.

20. We need not reiterate that cause of action is culled out from bundle of facts and not from any single fact in isolation.

21. In the factual matrix of the present case, even if initial decision was taken by the Government of J&K, it is evident from the aforesaid two communications that the “ultimate” and “eventual action”, being clearly a substantial part of cause of action, arose within the jurisdiction of this Court.

22. The petitioner has, specifically, made reference to the communication bearing No. TRY/ND/2022/357 dated 10.10.2022 and TRY/ND/2022/366/1-4 dated 13.10.2022, both issued by the Office of the Treasury Officer, Sub Treasury, Government of Jammu & Kashmir, New Delhi. These communications are on the letter head of the



Government of Jammu and Kashmir and by virtue of the above said communications, respondent No.2 Bank had been apprised that the excess amount had been deposited in the bank account of the petitioner and, therefore, respondent No.2 Bank was directed to do the needful, under intimation to respondent No.1.

23. The petitioner is, otherwise, a resident of Noida, Gautam Buddha Nagar, Uttar Pradesh and, therefore also, it cannot be said to be a case of *forum conveniens*.

24. Keeping in mind the overall facts and circumstances of the case and, in particular, the above said communications issued by the Government of Jammu & Kashmir, through its Office situated in Delhi, it cannot be said that this Court has no jurisdiction.

25. The facts of *High Court of Punjab & Haryana and Ors. vs. Jagdev Singh* (supra) are distinguishable. In the above case, the issue involved the revision of pension, where the employee, upon opting for the revised pay scale, had provided a declaration, acknowledging the revision. The factual matrix of the present case is, thus, significantly different as in the case in hand, no aspect of revision and consequent declaration is involved.

26. Reference in this regard be also made to *Ravinder Kumar vs Govt. of NCT Delhi through Chief Secretary and Others: 2024 SCC OnLine Del 8288* and *State of U.P. & Others vs Suresh Chandra Asthana: 2023 SCC OnLine All 2222*.

27. Also, when a statutory provision is there in statute book since the year 1956, such provision in itself cannot be equated with “notice”. Therefore, the principles enunciated in the *Jagdev Singh* case cannot be



applied to the present situation, as the factual and legal context diverge, substantially.

28. In the present case, the employee had died in the year 2005 and the action has been taken by the Respondents in the year 2022, i.e. after 17 years of his death.

29. Reference may also be made to *Mst. Raja vs State Of Jammu And Kashmir: 2024 SCC OnLine J&K 362* which also relates to an employee of Jammu & Kashmir and keeping in mind the specific directions contained in *Rafiq Masih* (supra), the State of Jammu & Kashmir was directed by High Court of Jammu & Kashmir to release the pensionary benefits and the letter dated 15.10.2014 for effecting recovery was quashed.

30. Further, in W.P.(C) No. 296/2024 titled as *Jamsheed Ahmad Khan vs Union Territory of J&K and Ors.* dated 28.08.2024, the learned Division Bench had observed as under:-

“ that once the department has made the pay fixation of an employee without any misrepresentation or fraud by the said employee, then the employer cannot reduce the pay by alleging that the pay was fixed wrongly and that too at the fag end of the service of an employee or even after his retirement and that the pension of such an employee is to be fixed on the basis of last pay drawn by such employee and also that no recoveries thereof can be either ordered or effected on account of such alleged wrong fixation at that fag end of that service or after the retirement of the said employee.”

31. It also needs to be highlighted that after the above said judgment given by the Hon’ble Supreme Court in *Rafiq Masih* (supra), an Office



Memorandum was issued.

32. Such Office Memorandum i.e. F.No.18/03/2015-Estt.(Pay-I) issued by Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training was forwarded to all the Ministries/Departments of Government of India as well as to the Governments of all the States and Union Territories and they were advised to deal with the issue of wrongful/excess payments made to Government servants in accordance with the above decision of *Rafiq Masih* (supra).

33. Need we emphasis, the Government of Jammu & Kashmir has to give “due regard” to said Office Memorandum.

34. In view of the foregoing discussion, the writ petition is, hereby, allowed.

35. The respondents are directed to ensure that the amount of Rs.11,61,477/- is refunded within the period of ten weeks from today. If such amount is not refunded within the period of ten weeks, the amount shall then be refunded along with interest @ 8% per annum from the date it was deducted till the date of disbursal.

(MANOJ JAIN)
JUDGE

JANUARY 7, 2025/st