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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-2354-2023 (O&M)

Date of Decision:14.02.2024

Sarvesh Devi

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sunil Garg, Advocate for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *Mandamus* for directing the respondents to pay arrears i.e.the pension of the petitioner from the month of August 2021 to the month of October 2022 alongwith interest.

2. The brief facts of the present case are that the husband of the petitioner was working as Leading Fireman in the office of respondent No.3. Unfortunately the husband of the petitioner died on 25.12.2003 in a road accident while he was in service. Thereafter, the petitioner being the widow was given the pension and pensionary benefits and she started receiving family pension from 26.12.2003 well in time.

3. The grant of family pension is governed by the Family Pension Scheme, 1964 which has been so attached at Annexure R-2 with the reply filed by respondents No.1 and 2 and as per Rule 2(a) of the aforesaid Scheme, in respect of Government employees who die in harness, family pension shall be admissible for the date following the date of completion of period of financial

assistance as per Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 and the family pension is payable at enhanced rate of 50% of pay for 07 years subject to fulfilment of condition of minimum 07 years service at the time of death. Thereafter the family shall be entitled to family pension at the rate of 30% of the pay. The aforesaid Rule 2(a) is reproduced as under:-

“2 (a) In respect of Government employees who die in harness, family pension shall be admissible from the date following the date of completion of period of financial assistance as per Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006. The family pension shall be payable at enhanced rate of 50% of pay for 07 years subject to fulfillment of condition of minimum 7 years service at the time of death [see rule 9.23(a) (ii)]. Thereafter, the family shall be entitled to family pension at the rate of 30% of pay.”

4. In this way the petitioner being family pensioner was entitled for enhanced rate of 50% for 07 years after the death of her husband i.e. till 25.12.2010. However, later on the aforesaid Policy/Scheme was amended by way of a notification dated 17.04.2009 in which the aforesaid period of 07 years was extended to 10 years. Thereafter as per the aforesaid Family Pension Scheme, the petitioner was entitled for enhanced family pension @ 50% till 25.12.2013. Till the aforesaid date i.e.25.12.2013, undisputedly, the petitioner was getting the aforesaid family pension @ 50% and there is no dispute with this regard in the present petition. However, as per the aforesaid policy after a period of 10 years the aforesaid family pension was to be fixed @ 30% of the

pay but the petitioner continued to get the aforesaid family pension @ 50% till July 2021 i.e. for another about 08 years but this mistake was never detected either by department or by any audit department etc. but the petitioner being widow also did not know as to what were the rules and what was the amendment made etc. and therefore she kept on getting the aforesaid amount till July 2021 i.e. when the mistake was ultimately detected. On the detection of the mistake by respondent authorities, they stopped the total family pension of the petitioner and in this way the petitioner was not paid any pension at all from July 2021 onwards for a further period of 15 months. Thereafter, the family pension of the petitioner was refixed in November 2022 wherein an amount of Rs.9000/- was decided to be deducted for a period of 39 months from the family pension of the petitioner and she has now challenged the aforesaid recovery in the present petition on the ground that since the husband of the petitioner was a Class-III employee, as such no recovery could have been effected from the petitioner who is the widow of the employee in view of the Hon'ble Supreme Court Judgment in *State of Punjab Vs. Rafiq Masih, 2015(2) SCC 608* especially in view of the fact that it was mistake of the respondents themselves and was not the result of the misrepresentation on the part of the petitioner.

5. The learned counsel appearing on behalf of the petitioner submitted that in view of the aforesaid facts and circumstances, the financial position of the petitioner went to her detriment especially being a widow. He further submitted that initially after the death of the husband of the petitioner she was receiving an amount of Rs.19027/- per month as a family pension which was at the enhanced rate of 50% as the last drawn pay. However, after a period of 10 years it was the duty of the respondents-department to have

applied their own instructions or policy and could have thereafter reduced the pension @ 30% but this was never done by them with the result that the petitioner continued to get the pension at the enhanced rate of 50% continuously till July 2021.

6. Learned counsel for the petitioner further submitted that the petitioner is not disputing the aforesaid policy or instructions etc. by which the enhanced pension at the initial stages of 10 years is to be paid @ 50 percent and thereafter reduced at the rate of 30% but she is only disputing the fact that the recovery cannot be made from the petitioner in this way. To demonstrate her financial depravity and detriment which the petitioner has suffered, the learned counsel for the petitioner submitted that from the year 2003, the petitioner had been getting the family pension @ 50% which was about Rs.19027/- as the last pay drawn but thereafter suddenly in July 2021, the entire family pension of the petitioner was stopped and for 15 months she was not paid even a single penny and thereafter in November 2022, the pension of the petitioner had been fixed at Rs.4467/- for the purpose of the adjustment of the recovery amount i.e. the amount which is to be recovered by fixing an installment of Rs.9,000/-per month for a period of 39 months. Now the pension which has been fixed for the petitioner is Rs.13467/- and Rs.9,000/- per month is to be deducted and in this way very meagre family pension is paid to the petitioner and she cannot make her both ends meet and it is not an amount for a bare survival of the petitioner. This was done only because of the fault of the respondent-department and without any fault of the petitioner. He has stated that in view of the aforesaid facts and circumstances, recovery which is made from the petitioner and which is sought to be made from the petitioner is in violation of the law laid down by the Hon'ble Supreme Court in **Rafiq**

Masih's case (supra) and is liable to be quashed. He also submitted that recovered amount may be refunded to the petitioner.

7. On the other hand, learned State counsel while referring to the reply filed by the State-respondent submitted that the petitioner was rightly granted family pension after the death of her husband in the year 2003 but by virtue of the said policy and instructions amended from time to time she was entitled only to 50% of enhanced pension for a period of 10 years and thereafter it was required to be reduced 30% which because of the mistake of respondent-department, could not be done and once it was detected, the respondent-State was well within its rights to recover the entire amount from the petitioner because it will amount to undue enrichment of the petitioner in this regard. She also submitted that the aforesaid judgment relied upon by learned counsel for the petitioner in *Rafiq Masih's case (supra)* is distinguishable and is not applicable to the present petitioner and rather on the other hand a subsequent judgment of Hon'ble Supreme Court in *High Court of Punjab and Haryana and others Vs. Jagdev Singh, 2016(4) S.C.T. 286* would apply in the present case in view of the fact that it is a case whereupon the family pension was sanctioned to the petitioner, she had furnished an affidavit which has been attached at Annexure R-1 in which it has so specifically stated that if more amount is given to her by mistake then the petitioner will be bound to return the same. She further submitted that in view of the specific affidavit furnished at the time of the grant of family pension to the petitioner, the respondent-department is now within its right to recover the same because the petitioner was put to notice with regard to fixation of her family pension and therefore the judgment of Hon'ble Supreme Court in Jagdev Singh's case (Supra) will apply in the present case.

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8. I have heard learned counsel for the parties.
9. In the present case, it is not in dispute that after the death of an employee, the dependent being family pensioner was entitled for 50% of the enhanced pension for a period of 10 years to which the petitioner being widow was getting in a rightful manner and even learned counsels for the parties have not disputed the aforesaid factual position. It is also not disputed by learned counsels for the parties that after the expiry of 10 years, the family pension was to be reduced from 50% to 30%. However, the only dispute in the present petition is that despite the aforesaid expiry of 10 years after the death of the husband of the petitioner, the respondent-department did not reduce the family pension from 50% to 30% and continued to pay to the petitioner at the same rate of 50% which was a mistake or fault on the part of the respondent-department and not because of the fault of the petitioner. It is also the case of learned counsel for the petitioner that the petitioner is a widow and she has already received the aforesaid amount and it is to her detriment now and it is not financially practicable for her to survive at a meagre pension of Rs.4467/- which is being paid to her after deduction of the installment of Rs.9000/- per month.
10. The Hon'ble Supreme Court in ***Rafiq Masih's case (Supra)*** had laid down a law that after the retirement of an employee from service and especially who falls in Category C and D, no recovery can be made with regard to an amount which was given to the employee prior to his retirement. However, in the later judgment of Hon'ble Supreme Court in ***Jagdev Singh's case (supra)*** where an employee was put to notice and had furnished an undertaking that in case an excess amount has been paid to him then in that situation the recovery can certainly be made and the judgement relied on ***Rafiq Masih's case*** would

not apply in that situation.

11. In the present case an affidavit has been furnished by the petitioner which is at Annexure R-1 in which it has been specifically stated by the petitioner that if the directorate/bank gives her more amount by mistake then she will be bound to return it. Therefore, this affidavit is certainly in the nature of an undertaking and therefore this Court is of the considered view that the judgment of *Rafiq Masih's case (Supra)* will not apply to the facts and circumstances of the present case whereas the later judgment of Hon'ble Supreme Court in *Jagdev Singh's case (supra)*, will apply to the facts and circumstances of the present case.

12. There is another aspect in the present case pertaining to the submissions made by learned counsel for the petitioner that the petitioner being a widow cannot make her both ends meet when she is being paid only an amount of Rs.4467/- per month and for the period of 15 months i.e.from July 2021 onwards, she was not paid even a single penny because of the aforesaid deduction sought to be made and this has gone to her detriment and therefore the petitioner may be compensated in this regard. This Court is of a considered view that the aforesaid amount of Rs.4467/- which is paid to the petitioner is certainly very less amount and it is not proper for the respondent-department to have recovered an installment of Rs.9,000/-per month. Therefore, it is directed that for the remaining installments which are to be deducted shall be only Rs.4500/- instead of Rs.9,000/- and in this way the installments of family pension which are now henceforth to be paid by the petitioner shall be fixed accordingly after deduction of an amount of Rs.4500/- per month instead of Rs.9,000/-.

13. Apart from the above, it is an admitted position that when the

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petitioner was being paid the pension after the year 2003 and the respondent-department stopped the entire family pension of the petitioner in July 2021 and was not paid a single penny for a period of 15 months and thereafter an amount of Rs.9,000/- per month was fixed for being recovered. This approach of the respondents-department was not only arbitrary but also insensitive and inhuman in nature. A widow has been deprived of her family pension for a period of 15 months without her fault.

14. Therefore, this Court is of the view that considering the totality and the facts and circumstances of the present case, the petitioner shall be entitled for a cost of Rs.1,00,000/-. The respondents-department are directed to pay a cost of Rs.1,00,000/- to the petitioner within a period of three months from today. The aforesaid cost will be paid by the respondents-department at the first instance and thereafter the Additional Chief Secretary, Urban Local Bodies, Haryana, shall fix the accountability of the official/officer(s) with regard to the aforesaid lapse and thereafter shall be at liberty to recover the aforesaid cost from the concerned official/officer(s) by fixing the accountability and in accordance with law.

(JASGURPREET SINGH PURI)
JUDGE

14.02.2024

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