

HIGH COURT OF PUNJAB AND HARYANA**Bench: Hon'ble Mr. Justice Harsimran Singh Sethi****Date of Decision: 27th May 2024**

CIVIL WRIT PETITION NO. 12398 OF 2024

TARAVANTI ...PETITIONER**VERSUS****STATE OF HARYANA AND OTHERS ...RESPONDENTS****Legislation:**

Indian Pension Act, 1871

Subject: Recovery of excess family pension paid to the petitioner without misrepresentation on her part. Examination of the validity of such recovery under the principles of natural justice.

Headnotes:

Family Pension – Recovery of Excess Amount – Petition challenging recovery of excess family pension paid due to administrative error – Husband of the petitioner retired from Haryana Roadways Department and received enhanced family pension for seven years, which continued beyond entitlement due to inadvertence – Respondents initiated recovery of Rs. 6,36,386/- after discovering the error – Petitioner argued against recovery citing no misrepresentation and principles of natural justice.

Principles of Natural Justice – Show Cause Notice and Opportunity to be Heard – Court observed that multiple opportunities were given to the petitioner to respond to show cause notices, which she failed to avail – Petitioner knew about the overpayment and continued to receive the enhanced pension beyond entitlement period – Held, petitioner's failure to object or inform the authorities negates claim of violation of natural justice.

Supreme Court Precedent – Inapplicability – Reference to State of Punjab and others v. Rafiq Masih – Held, precedent does not apply where recipient knowingly received excess payment beyond entitlement – Excess amount lawfully recoverable.

Decision – Recovery Upheld – Petition dismissed – Court held recovery of excess pension justified as petitioner accepted overpayment with knowledge of entitlement limits – No violation of natural justice – Recovery from petitioner’s pension confirmed. [Paras 1-20]

Referred Cases:

- State of Punjab and others v. Rafiq Masih, Supreme Court of India, 18th December 2014

Representing Advocates:

Mr. Ashutosh Kaushik for the petitioner

Mr. Harish Nain, Asstt. AG, Haryana

Mr. Teginder Singh, Advocate with Mr. Gaurav Goel, Advocate for respondents no.3 & 4

HARSIMRAN SINGH SETHI, J (ORAL)

1. In the present petition, the grievance being raised by the petitioner is qua the amount of Rs.6,36,386/- which is being recovered by the respondents from the family pension of the petitioner
2. Certain facts needs to be noticed for the correct appreciation of the facts mentioned.
3. The husband of the petitioner namely Hukam Chand, who was working with the Haryana Roadways Department on the post of Blacksmith retired from service on 31.12.2000, who died on 11.05.2021. The petitioner was being paid the enhanced family pension for a period of seven years, which was to be reduced to the normal family pension. Thereafter, as per the pension payment order, the petitioner was informed that enhanced rate of family pension will be payable from 12.05.2001 upto 11.05.2008 and thereafter, the family pension will be released to the petitioner on normal rates starting from 12.05.2008.RI
3. Inadvertently, the petitioner continued to get the enhanced pension upto 31.08.2021 thereby getting a sum of Rs.6,22,520/- beyond the entitlement.
4. When, the said discrepancy was discovered by the respondents, a legal notice was given to the petitioner for the refund of the excess amount and she was also asked to appear in person but, the said opportunity was not availed by her and ultimately, the recovery of the excess amount for the period from 12.05.2008 to 31.10.2021 amounting to Rs.6,36,386/- was started.

5. When the said recovery was started, the petitioner was aggrieved against the said recovery and the petitioner approached this Court by challenging the said recovery by filing CWP No. 24489 of 2021, which was decided on 01.02.2023 and it was mentioned that as the show cause notice was not received by the petitioner, a fresh show cause notice be issued to petitioner to explain the payment of enhanced pension and after giving her reasonable opportunity, appropriate order be passed.
6. Thereafter, a fresh show cause notice was issued to the petitioner on 06.07.2022 raising the said plea that the petitioner has been paid a sum of Rs.6,36,386/- beyond her entitlement, which is liable to be recovered and no reply was again filed and the respondents started the recovery from the petitioner which recovery is now being challenged in the present writ petition.
7. Learned counsel for the petitioner argues that once excess amount has been paid to the petitioner by the respondents without their being any misrepresentation on the part of the petitioner, keeping in view the judgment of the Hon'ble Supreme Court of India in State of Punjab and others v. Rafiq Masih (White Washer), decided on 18.12.2014, it was stated that no amount can be recovered.
8. Learned counsel for the respondents further submits that no valid opportunity was given to the petitioner to defend herself against the said recovery hence, the recovery being made from the family pension of the petitioner is by violating the principal of natural justice. RI
9. Keeping in view the advance copy given, the respondent bank has appeared and stated that petitioner knew that for a particular period, the petitioner will be paid enhanced family pension which was for a period of 7 years, thereafter normal pension was to be paid and inadvertently the enhanced pension was paid to the petitioner upto the year 2021 which excess payment released to the petitioner is liable to be recovered.
10. Learned counsel for the respondents submits that when the recovery from the petitioner was started initially, a show cause notice was given to the petitioner, who never filed the reply and even to the subsequent show cause notice, no reply was filed hence, the recovery is being done from the petitioner which mean the petitioner cannot retain as the same is beyond her entitlement.
11. I have heard the learned counsel for the parties and have gone through the record with their assistance.
12. The first question whether, in the facts and circumstances of the present case, the recovery is to be done from the petitioner or not. It may be noticed that before the enhanced family pension was given to the petitioner, she was

informed that for a period of 7 years starting from 12.05.2001 till 11.05.2008, the petitioner will be paid the enhanced family pension and thereafter, the family pension will be paid at the normal rate. Once, the said terms and conditions were brought to the notice of the petitioner, she should have objected to the payment of amount beyond her entitlement starting from 12.05.2008 onwards and should have informed the respondents about the same. Despite knowing that she was not entitled for enhanced pension after a period of 7 years, she continued to get the same for further period of 13 years. Every citizen claims rights but no one is ready to discharge the liability. Once a citizen knew that the amount is being paid to her beyond her entitlement, the said excess payment paid to her should have been brought to the notice of the authorities concerned.

13. It is not the case that the petitioner never knew that she is being paid money beyond her entitlement. Once an excess amount was being accepted by the RI petitioner with due knowledge, not only that the said amount can be recovered at the later stage, now objecting to the recovery of the excess amount is not permissible.
14. Reliance being placed by the leaned counsel for the petitioner on the judgment of the Hon'ble Supreme Court of India in State of Punjab and others vs. Rafiq Masih, decided on 18.12.2014, to hold that any amount paid for a period of five years should not be recovered will not be applicable on the facts and circumstances of the present case. The amount which is being paid to a person and the said person further knowing that the amount is being paid is beyond his/her entitlement, the same has to be recovered.
15. The second argument which has been raised that no effective opportunities has been given to the petitioner before effecting the recovery. It may be noticed that a show cause notice was given to the petitioner initially in the year 2021, (a copy of which has been appended as Annexure P-4). The petitioner chose not to file the reply and the recovery of the excess amount being done was challenged and this Court again directed that the petitioner be given an opportunity to explain with regard to the receiving of the amount beyond her entitlement. Another notice was given on 06.07.2023. It is being mentioned by the petitioner that the same was only received by her on 20.07.2023 (Annexure P-11). It may be noticed that the Rules of Natural justice have been brought so that in case a person has a valid explanation to any proposal, the same should be brought to the notice of the authorities concerned for their consideration. The rules cannot be extended to abuse the process of law. In the present case, the only objection taken by the petitioner

even in the present writ petition is that the excess money was paid to the petitioner by the respondent themselves without being asked by the petitioner. The said argument has already been considered herein before and held not to be valid so as to take away the right of the respondents to effect the recovery of the petitioner. Once, the objections have been duly considered by this Court, on the technicalities, the case need not be remanded again.

RI

16. Learned counsel submits that no recovery order has been passed.
17. It may be noticed that in the show cause notice, itself has been mentioned that there is any valid objection, the same be raised otherwise the recovery will be done from the petitioner. The objections which have been raised by the petitioner in the present writ petition qua recovery has already been decided. The recovery has already been done. Keeping in view the facts and circumstances of the present case, as the petitioner failed to file a reply to the notice, the recovery *ipso facto* becomes liable to be done from the petitioner.
18. No other argument is raised
19. No ground is made out for any interference by this Court.
20. Petition is dismissed.

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