

(2024) 10 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 7285 Of 2020

Kanta Devi

APPELLANT

Vs

State Of HP & Others

RESPONDENT

Date of Decision : 01-10-2024

Acts Referred:

Citation : (2024) 10 SHI CK 0010

Hon'ble Judges : Vivek Singh Thakur, J;Ranjan Sharma, J

Bench : Division Bench

Advocate : Abhay Kaushal, Hemant Verma

Final Decision : Allowed

Judgement

Vivek Singh Thakur, J

1. Petitioner has approached this Court seeking the following main reliefs:-

(i) That the directions may be issued to the respondents that recovery/deduction of Rs.1500/- per month from the Pension Account vide Account number 140805069/HP/F(BLPB07L002) may be stayed.

(ii) That the direction may kindly be issued for quashing and setting aside impugned recovery order and the same may be declared null and void and non-operative in the eyes of law.

(iii) That the respondents may kindly be directed to refund the recovery amount with interest @ 12 PA.

(iv) That the respondent may be directed to pay full family pension along with Dearness Allowance/Interim Relief to the applicant till her regularization with interest.

2 In the present case, petitioner was receiving family pension on account of death of her husband who died while serving as Patwari with the respondent-State. Later on, in the year 2012, petitioner was appointed as Class-IV Peon on

compassionate ground as "Daily Wage basis, as per Policy" in Public Works Department. Her services were regularized vide Office Order dated 23.12.2017 as Class-IV Peon.

3 In July, 2018, the respondent Authority opined that the Dearness Allowance has been paid to the petitioner erroneously w.e.f. 1.9.2012 till June, 2018 and, therefore, an amount of Rs. 3,58,652/- was proposed to be recovered for that from the petitioner, and thereafter, petitioner submitted an application to the District Treasury Officer, Bilaspur to recover the amount, if any, to be recovered from her pension at the rate of Rs.1500/- per month.

4 Accordingly, recovery was made by the respondent Department from the petitioner till July, 2019, but it was stayed by the Erstwhile H.P. State Administrative Tribunal vide order dated 19.7.2019 passed in OA No. 3065 of 2019 (present petition) preferred by the petitioner before the Erstwhile Tribunal. On abolition of the Tribunal, the petition was transferred to this Court and registered as CWPOA No. 7285 of 2020 (present petition).

5. It has been stated in reply that after filing of petition by petitioner in the Erstwhile Tribunal, matter was referred to the Finance (Pension) Department for clarification and after examination and receiving the advise from the Finance (Pension) Department, it was decided not to recover the Dearness Relief paid on family pension till the date of regularization of petitioner. Meaning thereby payment of Dearness Allowance on family pension during period of temporary employment/daily wage service was considered to be admissible to the employee and rightly so, because during that period petitioner was not receiving any Dearness Allowance on wages payable to her during that period though she had been appointed on compassionate appointment because the daily waged employee is not entitled for Dearness Allowance for his wages as a daily wager, therefore, during that period, petitioner was receiving the Dearness Allowance and Interim Relief only on family pension but not for the wages payable to her against her appointment on daily waged basis.

6 Accordingly, the amount to be recovered was re-calculated and it was found that Rs.32,060/- only had been paid in excess to the petitioner as Dearness Allowance after her regularization on 1.1.2018.

7 In view of aforesaid decision of the respondent Department, 4th prayer seeking direction to the respondents to pay full family pension along with Dearness Allowance along with interim relief to the petitioner, till her regularization, stands acceded to and redressed by the Department as it was opined by the Finance Department that during the tenure of daily waged service of petitioner, Dearness Allowance and Interim Relief was payable on the family pension but not after the regular appointment of the petitioner.

8 Admittedly, petitioner is a Class-IV employee. The amount in excess, if any, from entitlement of the petitioner, was paid due to unintentional mistake committed by the concerned competent Authority in determining the

emoluments payable to the petitioner, and petitioner was not guilty of furnishing any incorrect information/ misrepresentation/ fraud, which had led the concerned competent Authority to commit the mistake of giving special allowance to the petitioner. The petitioner is as innocent as her employer, in the wrongful determination, due to which employer has made payment of Dearness Allowance/ Interim Allowance to the petitioner.

9 The issue with respect to entitlement of recovery of Rs.32060/- from the petitioner for the period from 1.1.2018 to 30.06.2018 for over payment of Dearness Allowance to her is no longer res-integra and stands finally determined by the Supreme Court in State of Punjab and others vs. Rafiq Masih (White Washer) and others reported in (2015)4 SCC 334, the para 18 whereof 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 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."

10 Case of the petitioner is squarely covered by the Clause (i) of the aforesaid pronouncement of the Supreme Court as, according to the pronouncement of the Supreme Court, the recovery, if any, of the amount paid to her in the present circumstances was and is illegal and impermissible under law. Therefore, recovery already made from petitioner deserves to be refunded to the petitioner.

11 In view of above discussion, impugned order of recovery dated July 2018, regarding the recovery proposed/made from petitioner is quashed and set aside and respondents are directed to refund the amount recovered from the petitioner on or before 31st March, 2025, failing which petitioner shall also be entitled for

interest at the rate of 6% per annum from the date of recovery till the final payment thereof. In such eventuality, after payment of interest to the petitioner, the same shall be recovered from erring official/officer responsible for causing the delay in disbursement and shall be deposited in the Treasury within four weeks thereafter.

With aforesaid observations, present petition stands allowed and disposed of in aforesaid terms, so also, pending miscellaneous application(s), if any.