Sr. No. 35

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on : 05.03.2025
Pronounced on : 13.03.2025

Case No: **LPA No. 37/2022**

Smt. Sudershan Sharma, Age 74 years,
W/o Late Sh. Rajinder Kumar Sharma,
R/o 80, Rehari, Jammu.

…. Appellant(s)

Through:- Ms. Radha Sharma, Advocate.

V/s

1. Union Territory of Jammu and Kashmir
Through Chief Secretary, Govt. of J&K,
Civil Sectt. Srinagar/Jammu.
2. Treasury Officer,
Saddar Treasury, Jammu.
3. Jammu and Kashmir Bank Ltd.
Through its Branch Manager,
Branch Rehari Colony, Jammu.

…..Respondent(s)

Through:- Mr. Akash Gupta, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

PER MOKSHA KHAJURIA KAZMI-J :

1. This intra court appeal is directed against an order and judgment dated 11.02.2022 passed by the learned Single Judge **["the Writ Court"]** in **OWP No. 722/2009** titled **'Smt. Sudershan Shrma Vs. State of J&K and others'**.

FACTUAL MATRIX :

2. The husband of the appellant was serving in Geology and Mining Department, at Jammu. He retired as Drilling Engineer in the said department in the year 1998 and died on 05.07.2002, whereafter the

appellant started receiving family pension under Account No. 16644, with effect from August, 2002 from respondent Nos. 2 & 3. The appellant was receiving pension on month to month basis till June, 2009, but the same was refused by respondent No.3, she was informed that an amount of Rs.2,32,707/- has to be recovered on account of excess amount been received by the appellant.

3. It is stated that no notice of alleged recovery has ever been received by the appellant, as such, she was constrained to file a Writ Petition bearing OWP No. 722/2009 titled **'Smt. Sudershan Sharma Vs. State of J&K and others'**, thereby challenging the order of recovery of Rs. 2,32,707/- and also to seek release of the monthly pension in favour of the appellant, with effect from June, 2009, which is the only source of income of the appellant.

4. Learned Single Bench held as under:-

> "18. Having, regard to the facts and circumstances of the case and the judgments supra including the circular dated 08.01.2013 read with order dated 17.03.2016 of Reserve Bank of India, it is deemed appropriate and in the interest of justice to leave the matter of recovery of the excess amount of pension drawn by the petitioner to be considered and decided by the respondent-Bank keeping in mind the status of the petitioner being a widow and the amount of pension the petitioner may be actually entitled to draw.
> 19. Accordingly, petitioner shall appear before the respondent No.3 who shall take a decision in this regard compassionately, reasonably and rationally.
> 20. It is made clear that no recovery be effected by the respondent-Bank against the petitioner qua the amount in question till a decision taken as directed above."

5. The appellant herein has challenged the judgment/order on the ground that the same is not in consonance with the law. The excess amount of

pension withdrawn by the appellant, was due to the fault on the part of the respondents, as such, they are estopped from recovering the excess amount of pension given to her. Moreover, there was no malafide on the part of the appellant for receiving the excess amount of pension. It is stated that the respondents cannot punish the appellant for their own negligence. There is no misrepresentation or fraud on the part of the appellant in receiving the excess amount of pension as alleged by the respondents. The amount to be recovered from the appellant without any notice has been sought by the respondents after a lapse of about 13 years, the same has not been considered by the Writ Court.

6. It is stated that the appellant is in her advance age and is a renal patient for the last more than 50 years, as such, requires proper medication. In case any amount is curtailed from the family pension, which the appellant is receiving, it will be very difficult for her to sustain, as such, on humanitarian grounds also appellant seeks quashment of the recovery proceedings for the amount sought to be recovered by the respondents.

7. Learned counsel for the appellant has relied upon the judgments of Supreme Court in case titled **'State of Punjab Vs. Rafiq Masih'**, reported as (2015) 4 SCC 334 and in case titled **'Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others',** reported as (2012) 8 SCC 417, wherein it is held that the monetary benefits given to the petitioner(s), in excess to their entitlement, the benefits had flowed to them consequent upon a mistake committed by the concerned authority in determining the emoluments paid to them, cannot be recovered after a considerable delay by the respondents.

8. The appellant is not even an employee but is a family pensioner and her case falls under 5th condition referred to in the judgment (supra) where the court arrives at the conclusion that the 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.

9. Per contra, Mr. Akash Gupta, learned counsel for respondent No.3 has stated that the appellant has over drawn the pension with effect from August, 2005 to April, 2009, on monthly basis which comes to the tune of Rs.2,32,707/-, as such, the Bank had only requested the appellant to make arrangements at her convenience to pay back the over drawn pension only in terms of the order impugned. It is further stated that the appellant was entitled to the payment of pension to the tune of Rs.5943/- along with allowances up to July, 2005. Thereafter she was entitled to receive pension @ Rs.3420/- along with usual allowances from August, 2005. She continued to receive full pension up to the month of May, 2009, though she was entitled to receive full pension only up to 31.7.2005, thereafter she was entitled to the payment of family pension only to the tune of Rs.3420/- along with usual allowances. On discovering the said irregularity during the centralization of database for pensioners, the Bank came to know about the appellant having overdrawn the family pension with effect from 01.08.2005 to 31.05.209 which came to Rs.2,32,707/-.

10. Though the appellant has not placed on record the impugned notice for the recovery of an excess amount of Rs. 2,32,707/-, issued by respondents but the same has been admitted by the respondents before

the writ court as well as before this court by placing on record reminders dated 27.05.2009 and 02.07.2009, whereby the appellant was directed to appear in person before the Bank, so that the excess pension paid to her be recovered by the Bank.

11. Heard learned counsel for the parties and perused the material on record.

12. Learned counsel for respondent No.3, has relied upon the guidelines issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training Estt. (Pay-1) Section, with respect to recovery/waiver of the wrongful/excess payments made to the Government Servants. These guidelines are based upon the judgments passed by the Hon'ble Supreme Court in *'Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors.'* and *'State of Punjab & Ors. Vs. Rafiq Masih'* and ***the procedure to deal with the issue of wrongful/excess payments on the basis of the judgments (supra)*****, wherein in Clause (iv)** it is provided that "**recovery should be made in all cases of overpayment barring few exceptions of extreme hardships.". The guidelines have also been referred to** ***the situations wherein recoveries of wrongful/excess payments by the employers would be impermissible in law*****, whereby under Clause (v)** of the said guidelines provides that **"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."** This is taken on record.

13. Appellant is an elderly lady of 77 years of age and is a renal patient, as such, any harsh order of recovery in such an extreme hardship would make the condition of the patient more miserable. Since the excess amount of pension withdrawn by the appellant is not due to any misrepresentation, collusion, favoritism, negligence or carelessness on the part of the appellant, as such, she cannot be made to suffer because of the negligent act of the respondents. The appellant is ailing and has no other source of income, the amount of pension which she is entitled to as on date, if deducted by the respondents, would not enable her to meet both of ends meet and she would suffer because of the mistake being committed by the respondents.

14. Learned Writ Court has relied upon the Circular dated 08.01.2013 read with Order dated 17.03.2016 of Reserve Bank of India, thereby leaving the matter of recovery of excess amount of pension drawn by the petitioner to be considered and decided by the respondent-Bank; keeping in mind the status of the petitioner being a widow and the amount of pension, the petitioner may be actually entitled to draw. Learned counsel for the appellant has produced Communication dated 21.01.2021, issued by the Reserve Bank of India, whereby the said Circular dated 17.03.2016, has been withdrawn by the Reserve Bank of India. Since the Circular (supra) has been withdrawn, therefore, the claim of the petitioner can't be considered in terms of the said Circular. The same is taken on record.

15. In view of the above, the appeal is allowed and the judgment/order passed by the learned Writ Court dated 11.02.2022 is set aside. We hereby quash notice of recovery along with subsequent reminders dated

27.05.2009 and 02.07.2009. The respondents are directed not to recover an amount of Rs.2,32,707/- from the appellant in terms of Clause V of Guidelines issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training Estt.

(Moksha Khajuria Kazmi)
Judge

(Sanjeev Kumar)
Judge

Jammu:
13.03.2025
Pawan Chopra

Whether the Judgment is speaking: Yes
Whether the Judgment is reportable: No