

**HIGH COURT OF TRIPURA**  
**A\_G\_A\_R\_T\_A\_L\_A**  
**WP(C) No.678 of 2023**

Sri Lal Bahadur Magar Pachbhaiya

.....Petitioner

**-V-E-R-S-U-S-**

The State of Tripura & 3 Others

.....Respondents

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|---------------------|---|-------------------------------------------------------------|
| For Petitioner(s)   | : | Mr. B. N. Majumder, Sr. Advocate.<br>Mr. B. Paul, Advocate. |
| For Respondent(s)   | : | Mr. M. Debbarma, Addl. G.A.<br>Mr. A. L. Saha, Advocate.    |
| For legal reporting | : | <b>YES</b>                                                  |

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**HON'BLE MR. JUSTICE T. AMARNATH GOUD**  
**F\_I\_N\_A\_L\_O\_R\_D\_E\_R**

**02.02.2024**

Heard Mr. B. N. Majumder, learned senior counsel assisted by Mr. B. Paul, learned counsel appearing for the petitioner also heard Mr. M. Debbarma, learned Addl. G.A. and Mr. A. L. Saha, learned counsel appearing for the respondents.

[2] The present petition has been filed under Article-226 of the Constitution of India for setting aside the letter dated 11.01.2023 sent by the respondent No.2 bank to the petitioner intimating recovery of Rs.5,50,000/- by illegally deducted from the petitioner's bank account. Also for directing the respondents to refund the illegally recovered amount of Rs.5,50,000/- by illegally deducted from petitioner's bank account.

[3] The petitioner has prayed for the following reliefs:

- i. Issue RULE NISI.
- ii. Issue Rule calling upon the respondents or each one of them to show cause as to why a writ in the nature of Certiorari quashing, cancelling, and setting aside the impugned letter dated 11.01.2023 shall not be issued.
- iii. Issue Rule calling upon the respondents or each one of them to show cause as to why a writ in the nature of Mandamus shall not be issued mandating, commanding, and directing the respondents to immediately refund the illegally recovered amount of Rs. 5,50,000/ of the Bank account of the petitioner, illegally.

iv. Issue rule calling upon the Respondents/ each one of them to show cause as to why any other appropriate Writ(s), Order(s), Direction(s) shall not be passed for complete and full relief to the Petitioner.

v. Pass necessary Order(s) as may be deem fit and proper.

**AND**

In case, the Respondents show cause or not after hearing your Lordships may be pleased to make the rule absolute in terms of prayers made in para i to iv, as above.”

[4] The case in brief is that the petitioner joined the office of the Directorate of Handloom, Handicrafts and Sericulture, Government of Tripura in the year 1980 as "group D Peon" having PPO number 111819343 and was posted at Agartala. Subsequently he was transferred to New Delhi office of the State respondents wherefrom he had retired voluntarily, on health ground on 31.01.2018, after successfully working under the state for 37 years 9 months and he was paid all the retiral benefits in accordance with the relevant rules.

[5] The state of Tripura there after revised the pension and D.A to all pensioners vide notification dated 06.11.2018, 02.03.2021 and 04.08.2022, respectively. The petitioner approached the authority for such revised pension and D.A but the respondent 3 all on a sudden vide communication dated 11.02.2023 informed the petitioner that an amount of Rs. 7,64,516/- was paid in excess towards pension and as such decided to recover the same and abruptly recovered an amount of Rs. 5,50,000/- against the principals laid down by the Hon'ble Supreme Court reported (2015) 4 SCC 334.

[6] Hence, the present petition has been filed by the petitioner before this Court for redress.

[7] Mr. B. N. Majumder, learned senior counsel assisted by Mr. B. Paul, learned counsel appearing for the petitioner has submitted that the petitioner was turning into his late 60's and decided to step down from his duties and after serving 37 years 9 months as Group-D peon, the petitioner announced his retirement on 31.01.2018. The government of Tripura issued a notification dated 06.11.2018 with regard to revision of pension of pensioners and family pensioners wherein the basic pension amount as on 30.09.2018 was to be divided by 2.25 and the amount of revised pension was to be rounded off to nearest hundred rupees.

[8] The Government of Tripura issued a Memorandum dated 02.03.2021 for grant of dearness relief at the rate of 3% of the basic pension/basic family pension as admissible under Tripura State Civil Services (Revised Pension) Rules, 2017 (Hereinafter referred to as "TSCS") to State Government pensioners/family Pensioners effective from 01.03.2021. After the above notification, again issued a Memorandum dated 04.08.2022 for release of installments of dearness relief as admissible under TSCS.

[9] In compliance of the above notifications, the petitioner on 13.10.2022 wrote a letter to the Head of Centralized Pension Processing Centre (CPPC), SBI & letter dated 17.12.022 to the Pay and Accounts Officer-V (Pension), Tis Hazari, Delhi informing about not receiving the revised pension and dearness relief @ 8% i.e. (3% +5%) as per the notification dated 04.08.2022 and further requesting to release the pension in compliance of notification dated 04.08.2022.

[10] Subsequently, the Pay and Accounts Officer-V (Pension), Tis Hazari, Delhi sent a letter to the Manager of Respondent No.4 bank forwarding the petitioner's representation and to take necessary actions with regards to revised pension and dearness relief of the petitioner. The internal correspondence amongst the bank officials dated 11.01.2023 has infringed the right of the petitioner and the respondent bank straightway without any authority or any demand raised by the parent department has taken steps for recovery of Rs.7,64,516/- in 165 installments @4641/-. In pursuance of the said correspondence dated 11.01.2023 the respondent bank has deducted Rs.5,50,000/- and also some installments as indicated above. The petitioner has also addressed mail to the branch manager of the respondent No.4 bank on 12.01.2023, but the same was not satisfactorily answered showing the authority for the said deduction and the reply mail dated 13.01.2023 only indicated that excesses payment has been made. The State-respondent has filed their counter on behalf of respondent Nos.1 and 2 and the bank respondent Nos.3 and 4 have also filed their counter.

[11] Mr. B. N. Majumder, learned senior counsel appearing for the petitioner has contended that the action of the respondents in deducting the amounts from the account of the petitioner is the one without any authority and violative of principles of natural justice and there was no demand made by the

official respondents addressing the bank to deduct the amounts. If any mistake is committed by the bank in making access payment, it is for the bank to give show cause with detail statement and call for the explanation and also further demand to remit the amount by the petitioner.

[12] Learned Government Advocate appearing for the State respondent has fairly contended that they have not issued any such demand directing the respondent bank to deduct the amounts from the account of the petitioner and pleaded ignorance of the said transaction.

[13] Mr. Saha, learned counsel appearing for the respondent bank in all fairness represented that there was no demand raised by the employer of the petitioner that the respondent No.2 to recover any amount and to that effect no demand was raised addressing the bank. He also submitted that access amount paid by the bank was recovered and the same was without giving any opportunity to the petitioner thus, to pass appropriate order further prayed to protect the interest of the bank since, public money is involved.

[14] It has been further contended that the respondent No.4 bank in pursuance of the above letter deducted an amount of Rs. 5,50,000/- from the petitioner account without petitioner's consent. It is submitted that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the pensioner and the excess payment was made applying the wrong interpretation of a rule or order by the department. Thereafter, the petitioner wrote a letter to the branch manager, demanding the answers of his grievances.

[15] The petitioner received email from the respondent No.2 bank wherein the petitioner was informed that an excess pension payment of Rs. 7,64,516/- was made to the petitioner's account and an amount of Rs. 3,50,000 has been deducted towards recovery of the same. The Hon'ble Supreme Court has held that the relief against the recovery has to be granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. The petitioner again on 09.02.2023 raised his grievances before the Officer, Office of Banking Ombudsman explaining the difficulty which the petitioner has faced because of the conduct of the respondent No.4 bank in

deducting the amount of Rs. 5,50,000/- and further requesting the respondent No.2 bank to refund the amount deducted from the petitioner's saving account.

[16] Mr. Majumder, learned counsel in support of his case has placed reliance on a decision of the Hon'ble Apex Court in *State of Punjab & Others v. Rafiq Masih (White Washer) and Another*, reported in (2015) 4 SCC 334, wherein the Court has held 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.”

[17] The petitioner on 19.02.2023 received an email from the respondent No.3 requesting the petitioner to submit its reply with regards his complaint. The petitioner on 23.02.2023 filed its reply to the above mentioned complaint before the Officer, Office of Banking Ombudsman wherein the petitioner has relied upon a judgment passed by the Hon'ble Supreme Court which states that the recovery of pension from the retired employee is impermissible in law.

[18] The petitioner has been running from pillar to post in order to resolve the issue and to recover the hard earned money deducted from the petitioner's account but the same was of no use. On 05.06.2023, the petitioner because of the undue hardship suffered a brain stroke for which the petitioner was admitted to the Neigrihms, Shillong, Meghalaya wherein it was informed

that the petitioner's right side of the body has been paralyzed. As the petitioner's condition was getting worse, the petitioner was thereafter admitted to ICU in the Health City Hospital, Guwahati, Assam and subsequently, discharged on 17.06.2023 after paying the bill of Rs.3,48,223/-.

[19] The impugned order suffers from material irregularities which will result in miscarriage of justice and hence has been passed without proper application of mind. The respondents have failed to revise the petitioner's pension and dearness relief as admissible under TSCS. The general parlance, recovery is prohibited by Courts where there exists no misrepresentation or fraud on the part of the employee.

[20] In reply to the above submissions made by the learned senior counsel appearing for the petitioner, Mr. A. L. Saha, learned counsel appearing for the respondent-bank has submitted a written argument before this Court wherein, it has been contended that the petitioner used to receive his pension through his account maintained in the State Bank of India, Office of the pay & accounts officer No. 5 (Pension) Govt. of National Capital Territory of Delhi, Treasury Building, Tis Hazari, Delhi-110054 by communication dated 21/11/2022 requested the Branch Manager, State Bank of India, Tis Hazari Court Complex, Delhi- 110054 to revise the petitioner's pension and his Dearness Relief. Accordingly pension and Dearness Relief was calculated by the State Bank of India and same was paid. Subsequently it was unearthed that there was mistake in calculation and excess pension (DR) has been paid to the petitioner. The petitioner is entitled to get DR at the rate of Tripura State Govt. Rules. But, by mistake he was paid pension at the rate of 6<sup>th</sup> CPC applicable to the central Govt. pensioners.

[21] State Bank of India, Centralized Pension Processing Centre, Delhi-110006 has informed to the Branch Manager, State Bank of India, Parliament Street Branch, Regal Building, New Delhi-110001 that pension of the petitioner had been paid with DA rates of 6th CPC without any mandate and therefore recovery of Rs. 7,64,516.00 is to be recovered in 165 installments of Rs. 4,641.00 till the amount recovered fully. Thereafter Rs. 5,50,000/- was debited on 12.01.2023. This was done on the strength of letter of undertaking dated 03.12.2018 received from the petitioner and the remaining amount is being recovered @ Rs. 4,641/- per month.

[22] The relationship between the petitioner and the State Bank of India is that of a banker and customer and as such on the principle of restitution in case of error, mistake the bank can recover the excess amount paid to the pensioner. Section-72 of the Indian Contract Act also mandates that:

"72. Liability of person to whom money is paid or thing delivered by mistake or under coercion or as a result of fraud, etc.

A person to whom money has been paid, or anything delivered, by mistake (whether of fact or law) or under coercion, or who obtains such payment or delivery by fraud or misrepresentation or by the exercise of undue influence, must repay or return it."

[23] The judgments relied upon by the petitioner is not applicable in the instant case. Those cases are has decided the question of recovery by employer from the employees where there is no statutory embargo. But in the instant case relationship is between a banker and a customer. There is also statutory mandate in favour of the bank to recover excess amount paid to the customer.

[24] Now, it is seen from the record that admittedly the petitioner is a pensioner and he is entitled for pension and the respondent bank has released the amounts and the petitioner is entitled for withdrawing the same. It is further seen from the record and also from the pleadings as fairly admitted by the respondents that there is no demand raised from the employer to the bank and also the bank has not issued any demand to the petitioner indicating him about the said action of recovery. Since, it is violative of principles of natural justice, this Court finds fault with the action and the manner in which the respondent bank has taken steps for recovery of the amount by deducting a sum of Rs.5,50,000/- also some other installments as contended by the petitioner. The findings as observed by the Hon'ble Apex Court and in plethora of decisions, more particularly, in **Rafiq Masih** (supra) has consistently held that the excess amount, which is not paid on account of any misrepresentation or fraud on the part of the employee, are not recoverable later on.

[25] Accordingly, the writ petitioner is entitled for the reliefs as sought for and accordingly, the writ petition is allowed directing the respondent bank to remit back the amount that have been withdrawn from the account of the petitioner along with interest @6% and cost of Rs.25,000/- payable to the petitioner as the bank has committed grave error in saying goodbye to the legal requirements. As such, the respondent bank shall, within a period of three

working days refund the amount of Rs.5,50,000/- which has been debited from the account of the petitioner along with interest @6% and also pay a cost of Rs.25,000/- to the petitioner. That apart, any amount that has been debited from the account of the petitioner, the same shall be credited back to the account of the petitioner within the time as stipulated above with interest, since the action of the respondent bank is unauthorized and there is no demand from any government department made or any other authority made any claim as legally enforceable debt against the petitioner and the same be debited from his bank account by the respondent bank. Learned counsel for the respondent bank has placed his reliance on Section-72 of the Indian Contract Act which is, according to this Court, has no relevance to the facts and circumstances of the present case.

[26] However, in the event, if the bank feels that the petitioner is liable to pay back on account of access drawal, it is always open for the bank to provide the petitioner's statement of account and all particulars in this regard and make demand by giving show cause notice and call for his explanation and then to take steps to recovery of amounts, if so advised.

[27] In terms of the above, the present writ petition preferred by the petitioner, stands allowed and disposed of. As a sequel, miscellaneous application(s) pending, if any, shall stand closed.

**T. AMARNATH GOUD, J**

*A. Ghosh*

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