IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 20293 of 2014

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Bhagwan Prasad, Son of Ram Tawakal Prasad, resident of Village- Laxmanpur, P.O.- Daulatpur, Police Station- Arrah Muffasil, District- Bhojpur.

.... Petitioner/s

Versus

1. The Union of India through the Director General, C.R.P.F. Pay and Accounts Office, Home Affairs, Mahabir Nagar, New Delhi.
2. The Deputy Director (A/Cs), C.R.P.F., Home Affairs, Mahabir Nagar, New Delhi.
3. The Pay and Accounts Officer, Central Pension Accounting Office of Finance, Government of India, Trikoot-2, Bhikaji Cama Place, R.K. Puram, New Delhi.
4. The Manager, State Bank of India, Centralised Pension Processing Centre, 4th Floor, Administrative Building, Judges Court Road, Patna.
5. The Manager, State Bank of India, Station Road (Nawada), P.S.- Nawada, District- Bhojpur at Arrah.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Subhas Singh, Advocate.
For the Union of India	:	Mr. Sanjay Kumar, A.S.G.
For the S.B.I.	:	Mr. Rakesh Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

4. 20.08.2015 Heard learned counsel for the parties.

The present writ application has been filed for a direction to the respondents to return the deducted amount from his pension along with interest.

Learned counsel for the petitioner submits that upon superannuation from service in the year 1989, while working on the post of Havildar driver in the C.R.P.F., pensionary benefit was started and the petitioner was getting his monthly pension when suddenly by letter dated 18.04.2013, he was informed that due to excess payment of Rs. 69,300/-, the same would be recovered in 33 monthly installements of Rs. 2,100/- starting from July, 2013. It is submitted that the said deduction has visited the petitioner with penal consequences as being a retired person, he was not prepared for such reduction or recovery from his pension. It is further submitted that there was no contributory negligence or fraud or misrepresentation on the part of the petitioner and even if it is accepted that he had received some excess payment, in view of the decisions of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported in **(2015) 4 SCC 334** and **Syed Abdul Qadir v. State of Bihar** reported in **(2009) 3 SCC 475** as also a decision of a Bench of this Court in the case of **Vijay Kumar Thakur vs. State of Bihar** reported in **2013 (2) PLJR 862**, such recovery was not permissible.

Learned counsel for the respondent State Bank of India relying on the averments made in his counter affidavit submits that the issue at hand is purely of a human error committed at the time when the Bank was transferring the data from its records to the Central Pension Processing Centre (C.P.P.C.) when at the time of such C.V. Migration, erroneously in the column of the date of birth of the petitioner instead of 01.07.1946, incorrect entry was made showing the same to be 01.08.1929. It is submitted that due to such error, since the age of the petitioner was wrongly recorded, a benefit based on the age of the petitioner was given to him resulting in a situation where excess amount of Rs. 69,300/- was paid beyond the entitlement of the petitioner since reckoning his correct date of birth as 01.07.1946 such benefit was not due and payable to him. It is further submitted that once such error was detected, the Bank could very well have recovered it at one go i.e., by stopping the monthly pension till recovery or in the alternative could have called upon the petitioner to repay the same in one installment but taking a sympathetic view it was decided to recover Rs. 2,100/- per month in 33 installments without charging any interest. Learned counsel has referred to Annexure-A to his counter affidavit which is an undertaking given by the petitioner in which he has agreed to make good to the Bank any amount to which he is not entitled and any excess amount which may be credited to his account when demanded by the Bank as due and payable shall be refunded. It is submitted that the Bank is not the employer and rather only the disbursing agent acting on behalf of the employer, which is the Government of India. It is further submitted that the relationship of the petitioner and the Bank is purely contractual and since a human error at the time of feeding of his details during C.V. Migration has resulted in the excess payment made by the Bank, by way of adjustment, the principal amount is sought to be adjusted and that too in easy monthly installments of Rs. 2,100/- only. It is further submitted that the decisions relied upon by learned counsel for the petitioner are of no help to him for the simple reason that the Hon'ble Courts in those cases had held the recovery to be impermissible in the background of the fact that during the service period the employee had been paid erroneously without any fraud or misrepresentation on his part and thus after retirement, the said amount was not recoverable. It is submitted that in the present case, firstly there is no relationship of employer-employee as the petitioner was never in the service of the State Bank and secondly the mistake was only a human error and the reduction was only by way of adjustment. Learned counsel submits that under such circumstances, the recovery through adjustment is permissible. For such proposition learned counsel has relied upon the decisions of the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal v. State of Uttarakhand** reported in **(2012) 8 SCC 417** and **UT, Chandigarh v. Gurcharan Singh** reported in **(2014) 13 SCC 598**.

Upon considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court finds that the stand taken on behalf of the respondents cannot be faulted for the reason that there is no recovery for any excess payment made during the service period of the petitioner or as a result of any mis-interpretation or fraud on the part of the petitioner. In the present case a benefit having accrued to the petitioner on the basis of an erroneous entry in the column of date of birth, excess payment has been made by the Bank which is only a disbursing agent on behalf of the employer, i.e., the

Government of India. The said error having been committed at the time of manual feeding of the data during C.V. Migration, this Court finds that the same is not of a nature which cannot be rectified or adjustment cannot be made. Thus, the decisions relied upon by learned counsel for the petitioner is clearly distinguishable in the facts and circumstances of the present case. Further, the decisions relied upon by learned counsel for the respondents does support the stand taken by them. Accordingly, this Court does not find any error in the action of the respondent Bank.

At this stage, learned counsel for the petitioner submits that from July, 2015 even the monthly reduced pension has not been paid to the petitioner. It is submitted that the petitioner being an old and retired person is facing undue hardship at the last stages of his life. If the contention of learned counsel for the petitioner is correct then this Court finds such act of the respondents to be unjustified and unreasonable. The petitioner may have received excess amount but the same admittedly being due to the error on the part of the officers/staff of the Bank and him having already suffered by facing a monthly reduction in his pension of Rs. 2,100/-, even the remaining amount having been stopped from July, 2015 cannot be justified.

Taking an overall view of the matter, though strictly in accordance with law, the petitioner may not be entitled to any relief but the Court would also not turn a blind eye to the fact that the error has been committed by the respondent State Bank of India at the time of making entry in the records relating to the petitioner and even if certain amounts were paid in excess, for a retired person in the last phase of his life and the monthly pension amount not being such from which any saving could have been made and rather the same may also not be enough to fulfill the basic requirements of an old person and then lateron being informed that there has been excess payment for which recovery is made is definitely iniquitous. Thus, balancing the equity vis-à-vis public money on the one hand and right of a citizen, specially a retired employee, on the other hand, in the considered opinion of this Court, the ends of justice would be served if the State Bank of India pays cost to the petitioner.

At this stage, by way of reply learned counsel for the Bank submits that the petitioner having given an undertaking to refund any excess payment made to him cannot agitate such matter when clearly he has received excess payment. It is submitted that in the present case it is also not equitable to award cost since it is a case of unjust enrichment when the petitioner has accepted the excess amount.

This Court upon considering such submissions of learned counsel is clearly not in a position to accept such contention for the simple reason that the petitioner being a retired person and that too driver is not expected to know as to what is the actual figure of his monthly pension and in the present case he could at best only have been aware that pursuant to the 6^{th} pay revision, he would be getting the pension at an enhanced rate. But actually what would be the actual enhancement was beyond his capacity to be aware of and it is also not the case of the bank that a break-up was sent to him so that he could be aware of how the figures of his monthly pension had been computed. Thus, the Court finds no merit in the objection raised on behalf of the Bank.

Accordingly, the writ application stands disposed off with a direction that the petitioner shall be paid his monthly pension at the reduced rate without break till the 33 installments are completed i.e., March, 2016 whereafter full pension shall be paid to him and he shall also be paid a cost of Rs. 10,000/- which will be credited directly into his account within one month from the date of production of a copy of this order before the respondent no. 5.

(Ahsanuddin Amanullah, J.)

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