IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5570 of 2015

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Santosh Kumar Ghosh S/o Late Bishundev Singh Resident of Village + P.O. - Arap, P.S.- Bikram, District- Patna.

.... Petitioner/s

Versus

1. The Union of India
2. The Pay and Account Officer, Central Pension Accountancy Office Govt. of India, Trikoot-2, Bhikhaji Cama Place, New Delhi- 110066.
3. The State Bank of India, through its Zonal Manager Centralized Pension Processing Centre (C.P.P.C.), 4th floor Administrative Building, Judge Court Road, Patna, Bihar-800001.
4. The Manager, SBI, C.P.P.C., 4th floor Administrative Building, Judge Court Road, Patna, Bihar-800001.
5. The Branch Manager, State Bank of India, Arap Branch, Bikram, Patna.
6. The Director, General, C.I.S.F., Block -13, C.G.O. Complex, Lodhiroad, New Delhi-110003.
7. The R.P.A.O. (C.I.S.F.), Ranchi A.G. Office Complex, P.O. No. 14. Hinoo, Ranchi, Pin-834002.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Dhananjay Kumar Shahi
For the Respondent/s : Mr. Sanjay Kumar(ASG)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT
Date: 25-06-2015

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads as follows:-

> *"---- commanding the respondent authorities, namely, respondents 1st set and 2nd set, to abstain from recovering earlier paid so-called excess amount from the pension of the petitioner retired (constable) from C.I.S.F., Govt. of India and to refund the amount already recovered;"*

Learned counsel for the petitioner, in support of the aforementioned prayer, has submitted that the decision of the respondents to deduct a sum of Rs. 3,83,145/- by way of alleged excess payment of pension to the petitioner and taking recourse of recovery of Rs. 3200/- per month for next 120 months commencing from November, 2012 is wholly arbitrary and illegal.

This Court has carefully perused the materials on record and, having taken into consideration the stand of the respondents, would find that it was a purely clerical/arithmetic error on account of which the petitioner got excess payment of pension. Admittedly, the petitioner has voluntarily retired from C.I.S.F. on 30.4.2003 and since then he is drawing his pension from the State Bank of India. The initial pension for the period 2003 up to February, 2012 was paid in the pre-revised pay-scale and the amount of monthly pension on 28.2.2012 was Rs. 7,184/- per month.

After the implementation of the report of the 6th Pay Revision Committee, when the petitioner was paid both his arrear and revised current pension, he had received a payment of Rs. 2,33,086/- and had been paid the revised pension of Rs. 11,230/- per month substituting the old pension of Rs. 7,184/- per month. Though the petitioner continued to get such benefit from the month of April, 2012 till October, 2012 but later on it was detected that in course of fixation of pension on account of revision of pay-scale to the tune of Rs.

11,230/- per month was erroneous and contrary to the government decision and, as a matter of fact, the petitioner was entitled only for a monthly pension of Rs. 9,693/- per month and, as such, from the month of November, 2012, the petitioner was being paid pension of Rs. 9,693 of-course after deducting a sum of Rs. 3200/- per month which was for the purpose of recovery of Rs. 3,83,145/- paid to the petitioner which was allegedly excess payment of pension.

Learned counsel for the petitioner in presence of all these facts narrated by the petitioner in the representation would not be in a position to question any issue of fact. He, however, has tried to take help of the Supreme Court judgment which lays down that if any excess amount has been paid to an employee while he was continuing in service and thereafter has either retired or is even at the verge of retirement, he should not be subjected to any excess recovery.

This Court would not find that those judgments cannot be made applicable in the case of the petitioner where the petitioner is a pensioner. He was already getting pension from the year 2003 and a question arose as with regard to revision of his pension and certain excess amount of pension was made by the Bank, an authorized agency by the Central Government for making payment of such payment. If those excess amount has been paid to which the petitioner was never entitled in law nor any justification has been given by the petitioner for the same in this writ application, the sanity will depend with the petitioner that he must refund the amount of excess pension drawn by him in the event the petitioner has been paid excess amount of Rs. 3,83,145/-. The recovery also has started from the month of November, 2012 i.e. some more than 2.5 years earlier. Thus, this Court will not find any error in the decision of the respondent in making recovery of the excess amount of pension paid to the petitioner.

The only thing which this Court would find is that the present monthly pension of the petitioner is Rs. 9,693/- and if out of that a sum of Rs. 3200/- is sought to be recovered, he would stand deprived of almost 1/3 of his family pension. It is here that the equity in favour of the petitioner will be next weighed because he claims his wife is seriously ill and that the petitioner has also taken a motorcycle loan for which he has to pay EMI. Thus, equating the balance of both the parties, this Court would find that a sum of Rs. 1600/- out of Rs. 3200/- per month should be recovered from the petitioner for making recovery of the loss sustained by the bank in making excess payment of Rs. 3,83,145/-.

This Court, however, must note that learned counsel for the petitioner had wanted such recovery to be confined to Rs. 1,000/- per month but, then, keeping in view that the relief of deduction of amount of installment from Rs. 3200/- to Rs. 1600/- will itself give a gap of 240 installments instead of 120 installments at present, it is not inclined to reduce the amount further from Rs. 1600/- per month to Rs. 1000/- per month.

That being so, this application is disposed of with a direction to the respondents to recover a sum of Rs. 1600/- per month from the date of production of a copy of this order till the full realisation of excess amount of Rs. 3,83,145/-.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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