

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.164 of 2017**

1. State Bank Of India Collectorate Branch Bilaspur, Through: Its Chief Manager, Bilaspur, District- Bilaspur, Chhattisgarh
2. Centralised Pension Processing Centre, State Bank Of India, Govindpura, Bhopal, Madhya Pradesh

---- Appellants**Versus**

1. State Of Chhattisgarh Through- Secretary, Department Of Mining Mahanadi Bhawan, Mantralaya, New Raipur, District- Raipur, Chhattisgarh
2. Director Zeology And Mining, Suboffice Bilaspur, Chhattisgarh
3. Surendra Singh S/o Late Shri Harnam Singh Aged About 67 Years Rtd Dealer Mechanic Qr. No. C/151, Yadunandan Nagar, Tifra, Bilaspur, Chhattisgarh

---- Respondents

For Appellants : Shri P.R. Patankar, Advocate.
 For Respondent/State : Shri Anurag Singh, Panel Lawyer.
 For Respondent No.3 : Shri Ajay Shrivastava, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge.

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****27/06/2017**

1. This writ appeal is by the Appellant-State Bank of India. We have heard learned counsel for the Appellants.
2. The 3rd Respondent was a diesel mechanic in the service of the Government of Chhattisgarh. He worked under the control of the Director of Geology and Mining. He retired from service on 31.5.2010. The competent authority sanctioned his basic pension with payment of dearness allowance at the rate of 25% of the basic pension as per the recommendations of the 6th Pay

Commission. However, the Appellant-State Bank of India, Bilaspur Branch, while uploading the details of the pensioner, made an erroneous entry as a result of which the component of payment of dearness allowance was as if it is under the 5th Pay Commission. Later, when the Bank noticed that default in January, 2017, it proceeded to rectify the entry and also to recover the over payments made until then, which amounted to more than Rs. 7 Lacs. The writ Petitioner succeeded before the Learned Single Judge in getting a decision to the effect that no recovery shall be effected against him or from his further accruing pension or allowances on account of such over payment, however, that the re-fixation of the pension and payments from the date on which the error was noted, was preserved.

3. Learned Counsel for the Appellant-State Bank of India argued among other things that as per Annexure A/5, issued by the Reserve Bank of India, the Banks have been alerted against such errors and a procedure has been prescribed for tackling such situation. It provides for stoppage of the over payments and also a modality for recovery from the pensioner concerned. The learned Counsel for the Appellant further argued that Annexure A/5 having come into operation from 17.3.2016, the decision for recovery from the pensioner made in January, 2017 is in order.

4. The Learned Single Judge applied the ratio of the decision of the Hon'ble Supreme Court of India in *State of Punjab and others etc. v. Rafiq Masih (White Washer) etc.*, 2015 AIR SCW 501, which has also been quoted in paragraph-6 of the impugned judgment. The said verdict was handed down by the Apex Court classifying the instances of recovery of over paid pension and other retiral benefits, depending on various issues which were relevant to decide whether recovery should actually be effected. Such law having been laid by the Apex Court, we are of the view that the Learned Single Judge was abundantly justified in applying the ratio of *Rafiq Masih (supra)* and in having decided the case of the

writ Petitioner, who was only a diesel mechanic in his favour. The resultant situation is that the revised rate of pension will operate from the date on which it has now been determined by the method of rectification. However, no over paid amount can be recovered.

5. We do not see that the discretionary jurisdiction of the High Court has been exercised in violation of the principles guiding exercise of Article 226 of the Constitution of India. Therefore, we do not see any ground to interfere with the impugned judgment in exercise of the authority under the provisions of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2007 regulating intra-court appeals. This writ appeal therefore fails.

6. In the result, the writ appeal is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE