4 (14.08.2017)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **WP(C) 12204/2016**

Date of decision: 16th August, 2017

LAXMI DATT PATNI ..... Petitioner
Through: Mr.O.P.Agarwal, Adv.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Ms.Bharathi Raju, CGSC for R-1,2,3,5,6&7
Mr.Rajiv Kapur, Ms.Srishti Nigam, Advs. for SBI

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

The matter has been taken up today as 14th August, 2017 was declared a holiday on account of 'Janamashtami'.

2. The petitioner, Laxmi Datt Patni, after rendering 37 years of service retired as Sub Area Organiser from Sashastra Seema Bal (SSB in short) on 31st January, 1987. The petitioner, it is stated, is about 89 years of age.

3. On implementation of the 5th Pay Commission recommendation with effect from 1st January, 1996, the petitioner's pension was fixed in the replacement pay scale of Rs.8000-13500/-

4. On implementation of the 6th Pay Commission, the petitioner had made a representation that the pension being paid was lower than what was payable. This was found to be correct and the pension of the petitioner was increased by Rs.1616/- for the period 1st January, 2006 to 23rd September, 2012 and by another Rs.221/- with effect from 24.9.2012. The monthly pension payable after the said revisions was Rs.8366/-.

5. However, while carrying out the said exercise, the respondents noticed that the petitioner had been paid higher pension to the tune of Rs.299/- per month for the period 1st January, 1996 to 31st December, 2005. On calculation, the total amount over paid to the petitioner on this account found to be Rs.1,99,073/-. Accordingly, the respondents started making recovery @ Rs.7900/- per month from the pension payable. As noticed above, the pension payable to the petitioner was slightly above this figure of Rs.7,900/- i.e. Rs.8,366/- approximately.

6. Aggrieved, the petitioner has filed the present writ petition.

7. We find the petitioner is entitled to succeed in view of the judgment of the Supreme Court in *State of Punjab vs. Rafiq Masih (White Washer) etc.,* AIR 2015 SC 696. The case of the petitioner would be covered by exceptions (ii) and (iii) carved out by the Supreme Court, which are 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(*i*) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(*ii*) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(*iii*) Recovery from the 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."

8. Learned counsel for the respondents submits that decision will not be applicable and has drawn our attention to paragraphs 3 and 4 of the said judgment. She has submitted that the petitioner vide application form (Annexure R-3) had wrongly claimed pension in the replacement pay scale Rs. 8000-13500/-, instead of Rs. 6500-10,500/-.

9. We are not impressed with the said argument of the respondents. The claim of the petitioner in the application form cannot be construed and treated as a misrepresentation or fraud. The application form filled up by the petitioner was only a claim or

prayer made by him on the basis of his understanding of the recommendations made by the 5th Pay Commission. Apparently, several others had also made the similar representations and there was a dispute whether the applicable correct scale would be Rs.6500/- - 10,500/- or Rs.8,000-13500/-. The dispute required adjudication and was decided by the Supreme Court vide judgment dated 23rd November, 2006 in K.S. Krishnaswamy & Ors. vs. Union of India & Ors., CA No.3173-3174/2006 and 3188-3190/2006.

10. This being the position, we do not think it will be fair and just for the respondents to recover the arrears from the meagre pension being paid to the petitioner.

11. The petitioner claims that the entire amount was recovered before the stay order was passed on 7th February, 2017. This is disputed by the counsel for the respondents. This is a matter of calculation and verification. In these circumstances, it is directed that the recovery made by the respondents would be re-paid to the petitioner within a period of 2 months from the date a copy of this order is received. In other words, the amount recovered would be refunded. In case the entire refund is not paid within the said period, the respondents would be liable to pay interest @8% to the petitioner from the day of this order till payment is made.

12. We clarify that the respondents bank is only an agent who is to disburse the amount and is not personally liable.

13. With the aforesaid directions, the writ petition is disposed of, without any order as to costs.

Dasti to all parties.

SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 16, 2017
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