IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5754 of 2016

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Bharat Singh S/o Late Mahanth Singh, Resident of Village- Alakh Tola (Sitab Diyara) P.O. Gorila Tola, P.S.- Revilganj, District- Saran.

.... Petitioner/s

Versus

1. The Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Director, General, Central Industrial Security Force, New Delhi.
3. The Inspector General, Regional Pay & Accounts Office (CISF-Ministry of Home Affairs, Southern Zone Madarsa-90.
4. The RPAO (CISF) Chennai 3rd Dloor, D Wing Rajaji Bhawan, Basant Naga Chennai Pin- 600090.
5. The Manager, State Bank of India, Centralised Pension Processing Canter 4th Floor Administrative Building Judges Road, Patna-1.
6. The Branch Manager, State Bank of India Bazar Branch Chapra.
7. The Central Pension Accounting Office, C.P.A. office Shikaji Cama Palace, New Delhi- 110068.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Tiwary, Advocate
For the UOI	:	Mr. Awadhesh Kumar Pandey, Sr. C.G.C. with Mr. Ravindra Kr. Sharma, Advocate
For the S.B.I.	:	Mr. Kaushlendra Kr. Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 21-03-2018

Heard learned counsel for the petitioner; Union of India (respondents no. 1 to 4 and 7) and State Bank of India (hereinafter referred to as the 'Bank').

2. The petitioner has moved the Court for the following reliefs:

> *"That this application is being filed for directing/commanding the respondent no. 5 and 6 to ensure smooth release of the pension in faovour of the present petitioner which is stopped since June 2015 without any intimation or any show cause to that effect. And further for a direction in favour of same set of respondents to refund the pension amount recovered w.e.f. August 2014 at the tune of Rs-3000/- month alien to law."*

3. The petitioner joined as Constable in C.I.S.F. on 13.07.1972 and proceeded on invalid pension with effect from 31.07.2004. Thereafter, he was getting pension but the same was revised on the basis of Pension Payment Order issued by the respondent no. 7 dated 21.07.2014. The petitioner was getting his pension at the enhanced rate till August, 2014 and thereafter from September, 2014, the pension was reduced by Rs. 3000/-. The stand of the authorities is that as per the revision, initially, in terms of Pension Payment Order dated 21.07.2014, the amount should have been Rs. 5071/- as monthly pension but the petitioner was granted Rs. 7606/- with effect from 1st January, 2006 and, thus, the excess amount drawn by him to the tune of Rs. 3,68,586/- is to be recovered in installments which has been fixed as Rs. 3000/- per month.

4. Learned counsel for the petitioner submitted that he was receiving pension regularly and the same was also enhanced but suddenly it has been reduced by Rs. 3000/- which is arbitrary. He further submitted that the petitioner in nowhere involved in either fixing of his revised pension or its payment and, thus, recovery after a lapse of so many years is impermissible and requires to be interfered with. It was submitted that the entire exercise of revision and payment being made by the respondents, the petitioner is protected under law, especially in view of the decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported as **(2015) 4 Supreme Court Cases 334.** It was further contended that no show

cause was asked from the petitioner prior to such deduction which is clearly arbitrary and impermissible.

5. Learned counsel for the respondent no. 7 submitted that he had only issued order for revision of the pension and what actually has been done, either of the petitioner having got excess payment or the subsequent reduction, has been done by the Bank to which he is not a party. It was submitted that neither there was any direction to pay higher nor to recover and thus the issue involved in the writ petition has to be defended by the Bank.

6. Learned counsel for the Bank submitted that due to mistake, instead of the petitioner's pension being enhanced from Rs. 3500/- to 5071/- with effect from 01.01.2006, the same was enhanced to Rs. 7606/- and only later on when it was detected that the same was incorrect, they have corrected it and further, since excess payment of Rs. 3,68,586/- had been made to the petitioner, the same is being recovered by deducting Rs. 3000/- per month which would continue till 30th October, 2024.

7. Beside the merits, which the Court would deal with later, first it deems it appropriate to deal with the issue which is of a greater importance and is in relation to maintaining the purity of judicial proceedings. Right from the beginning, in the affidavits filed on behalf of the Bank, a clear cut stand was taken that whatever recovery was being made was in terms of the direction of the respondent no. 7. This is reflected from various paragraphs of the

affidavits filed on behalf of the Bank.

8. In the counter affidavit filed on behalf of the Bank on 26.07.2017, which has been affirmed on 14.07.2017 by one Mr. Anil Kumar Anal, the then Chief Manager, State Bank of India, Chapra Bazar Branch, Chapra, the following statements have been made at paragraphs no. 4 to 11:

> *"(4) That this Counter Affidavit is being filed in reply to the writ petition in which the writ petition has sought relief for directing and commanding the Respondent 5 & 6 to ensure smooth release of the pension in favour of the present petitioner which is stopped since June 2015 without any intimation or show cause to that effect and further for a direction in favour of same set of the Respondents to refund the pension amount recovered w.e.f. August 2014 to the tune of Rs. 3000/= per month.*
>
> *(5) That this writ petition is not maintainable and is thus fit to be dismissed. The Respondent no. 5 & 6 have been releasing the his pension in pursuance of the direction made by the Central Pension Accounting office on 17th May 2012 being read with the letter dated 21st July 2014. It is not correct that his pension has been stopped since 15th June 2015 rather the petitioner has been getting his pension Rs. 11,055/= till to date after making deduction of Rs. 3000/= per month for adjustment of Rs. 3,12,582/- which he has already received by him in excess.*
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> *(6) That the petitioner who entered in the service as constable in central Industrial Security Force*

at Ranchi with effect from 13th July, 2012 retired on medical ground w.e.f. 31st July 2004 having rendered his service for 31st years 6th Months and 26 days while he was posted in 06th Reserve Batallion R. Kanam Chenai.

(7) That, after retirement the petitioner had been getting his regular pension after his retirement. Subsequently his pension was revised as per Sixth Pay commission vide the letter issued by RPAO (CISI) Chennai Home Affairs, Channai on 13th February, 2012. This letter was communicated to the State Bank of India.

(8) That, later, the PPO number 238010501057 was issued by the Central Pay Commission, Govt. of India, New Delhi on 07th May 2012. Accordingly pension was fixed at Rs. 5071/= with effect 01st January 2005. This letter was also communicated to the Bank.

(9) That, accordingly, on basis of the aforesaid letter the petitioner had been getting his pension as fixed till August 1014.

(10) That, later, an amendment letter dated 03rd July 2014 was issued being read with the letter dated 21st July 2014 issued by the Central Pension Accounting Office, New Delhi. This letter was communicated both to the Bank and the pensioner. It was noticed interalia that the petitioner was getting the pension in excess than his entitlement due to wrong fixation which came to Rs. 3,12,586/=. This amount was sought to be recovered from him to with effect from 01st September 2015 up to 31st May 2024 in 105 installment @ Rs. 3,000/= for adjustment of Rs.

> *3,12,586/=.*
> *(11) That on basis of the aforesaid letters and direction, the pension slip was issued by the Bank. At the relevant period, the petitioner had been getting Rs. 14,055/= but the same after deduction of Rs. 3,000/= his payable pension was fixed at Rs. 11,055/= per month which would continue as such till 31st May 2014."*

9. Thereafter, in the counter affidavit filed on behalf of the Bank on 25.01.2018 which was affirmed on the same day by Mr. Sudhir Kumar, the then Deputy Manager, State Bank of India, Chapra Bazar Branch, Chapra, the following statements have been made at paragraphs no. 6 and 7.

> *"6. That it is stated that the Respondent Bank received the Authority letter dated 2151 July 2014 of the Central Pension Account office issued under the signature of pay and accounts officer in which some changes had been pointed out. It was also suggested therein for recovery of Rs. 3,68536/- the basic salary 5071/- 76606/-.*
> *7. That on basis of two letter the chart was prepared is which the Bank sought to recover the amount Rs. 3,68,586/- O/A Down ward Revision of basic to Rs. 5071/vide SSA/1657 328/A2 dated 21st July 2018."*

10. From the above, it is clear that Bank was consistently taking a categorical stand on oath that even the order of recovery was in terms of the endorsement made by the respondent no. 7. On the

other hand, in the counter affidavit filed by the respondents no. 1 and 2, the categorical stand taken at paragraph no. 4 was as under:

> "4.*That respondent No. 1 and 2 have no connection with stoppage of pension of the petitioner w.e.f. June 2015 and recovery of pension w.e.f. August, 2014."*

11. Thereafter, in the counter affidavit filed on behalf of the respondent no. 7 on 22.12.2017, at paragraphs no. 6, 9, 16 and 18, the following statements have been made:

> *"6. That after the receipt of pension sanction order from the concerned Pay & Accounts Officer under Special Seal, Central Pension Accounting Officer's Respondent No. 7 herein, role is to create Central Pension date and forward the pension Authorizing Authority to Central Pension Processing Centre of the paying bank under sign and special seal of an officer specially authorized for this purpose.*
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> *x x x x x*
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> *9. That in reply to the averments made in Para-1, it is stated that the Respondent No. 7 has not issued any authority relating to deductions being made from the pension by the bank. Authorities issued by the answering Respondent are marked as Annexure R-I & II.*
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> *x x x x x*
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> *16. That in reply to the averment made in Para 7, it is stated that the Answering Respondent has not issued any direction to the bank to make recovery @ Rs. 3,000/- per month from the pension of the*

petitioner or to stop the pension.

x x x x x

18. That the Deponent humbly submits that the Answering Respondent No. 7 has no role in stopping the pension of the Petitioner since June, 2015 or passed any order/direction to recover the pension amount with effect from August, 2014. Thus, the name of the Answering Respondent No. 7 may be deleted from the list of the Respondents. It is also humbly prayed before your lordship that the costs impose on this officer may also be waved off (which has been deposited vide DD No. 101563 dated 12.12.2017) as the answering respondent is not the competent authority to file the written statement. Answering respondent has requested vide letter dated 21.11.2017 to the Administrative Ministry i.e. Directorate General, CISF, New Delhi who is the respondent No. 1 in this case to file the written statement. A copy of the letter dated 21.11.2017 is marked as Annexure-R-III."

12. Thereafter, in the supplementary counter affidavit filed on behalf of respondent no. 7 at paragraph no. 5, which has been affirmed on 25.01.2018, the following statement has been made:

" 5. That respondent no. 7 has no connection with stoppage of pension of the petitioner w.e.f. June, 2015 and recovery of pension w.e.f. August, 2014."

13. The Court had recorded the following order on 15.01.2018.

"2. Learned counsel for the Union of India has

reiterated his stand that there is absolutely no order by him with regard to recovery, which is the grievance of the petitioner. It has been submitted that whatever has to be done is by the State Bank of India and thus, it has to explain its action."

14. Again on 25.01.2018, in view of the conflicting stand taken by the Union of India and its authorities on the one hand and the Bank on the other hand, the Court had recorded the following order on 25.01.2018.

" Learned counsel for the petitioner; Union of India and the State Bank of India have assisted the Court.

2. Counter affidavit has been filed on behalf of the State Bank of India and also a supplementary counter affidavit has been filed on behalf of the respondent no. 7.

3. In view of the averments made in both the affidavits, as prayed for by learned counsel for the concerned respondents, the matter be listed on 20th February, 2018."

15. In terms thereof as well as the order dated 26.02.2018, supplementary counter affidavit has been filed on behalf of respondent no. 7 today and third counter affidavit has also been filed on behalf of the Bank today which is affirmed by Mr. Sunil Kumar Singh, Deputy Manager, State Bank of India, Chapra Bazar Branch, Chapra.

16. In the supplementary counter affidavit filed on behalf

of the respondent no. 7, the following statement has been made at paragraph no. 4.

> *"4. That it is pertinent to mentioned here that bank has stated in their counter affidavit that recovery is being made on the basic of the endorsement made on the authority letter dated 21.07.2014, in this regard it is humbly submitted that this office has not mentioned any endorsement on the said authority and the genuineness of endorsement may also be vetted by the signature and dated marked on the said authority and endorsement."*

17. However, very surprisingly, in the third counter affidavit filed on behalf of the Bank, the authorities have taken a U-turn and the following statement has been made at paragraph no. 9, which is quoted hereinbelow:

> *"9. That in this view of the matter, it is reiterated that the Bank is not making recovery of the excess amount of their own rather on the advised earlier. The endorsement made in the Authority letter dated 21st July 2014 is the calculation made by the Bank. However, it is stated and made clear that the endorsement of Authority letter dated 21st July 2014 was not made by the Central Revision Authority rather by the Bank. This, however, was not made clear, in the early hearing due to misapprehension misunderstanding and misconception which is deeply regretted and the Bank humbly seeks apology for it."*

18. From the stand of the Bank, it is admitted that a

wrong statement has been made before the Court on oath by the Bank but the explanation being given is that in the early hearing due to misapprehension, misunderstanding and misconception, the same was done.

19. The Court cannot accept the said excuse as it is totally unworthy of belief for the reason that despite repeated stand taken by other authorities before the Court in the present proceeding that they had nothing to do with regard to such enhancement/reduction/recovery, still the same was being justified and in fact a categorical stand was taken that it was in terms of the communication dated 21.07.2014, where some changes had been pointed out and it was also suggested for recovery of Rs. 3,68,586/-. It was further stated in the affidavit, which has also been quoted hereinabove, that on the basis of the two letters the chart was prepared by the State Bank of India to recover the amount of Rs. 3,68,586/-. From the aforesaid, it is clear that the statement made on oath both by Mr. Anil Kumar Anal and Mr. Sudhir Kumar, officers of the Bank, who have filed counter affidavits in the present proceedings, false statements have been made, which have been proved to be incorrect. The Court would indicate that the same was also with the deliberate purpose to mislead the Court and to create an impression that it was also as per the direction of the respondent no. 7 that such reduction/recovery was being made and the endorsement on the P.P.O. dated 21.07.2014 was of respondent no. 7, which is absolutely

false, as the same was made by an officer of the Bank. It was the duty of the Bank to gracefully accept its fault and then only it could have justified its action of recovery/reduction. Only when the Court had got the respondent no. 7 made a party and he had filed affidavit before the Court, it was revealed that the aforesaid officers of the Bank had made patently false statement before this Court in the present proceeding and when such falsehood was exposed, in the affidavit filed today, regret is expressed and apology sought.

20. Such apology, tendered only upon exposure and clearly with the objective to get over the adverse consequences of the same, is clearly a sham apology unworthy of being accepted. Accordingly, the same is rejected.

21. In view thereof, the Registrar General of the Court is directed to lodge a complaint before the Competent Court against Mr. Anil Kumar Anal, the then Chief Manager, State Bank of India, Chapra Bazar Branch, Chapra as well as Mr. Sudhir Kumar, the then Deputy Manager, State Bank of India, Chapra Bazar Branch, Chapra for having stated falsehood on oath in the present proceeding. The Court would also indicate that such affidavits were misleading the Court to accept that the endorsement made on the Pension Payment Order dated 21.07.2014 was by the respondent no. 7 himself, though later on it has been admitted, both in the affidavit and by learned counsel appearing for the Bank that it was made by the officers of the Bank and not by the respondent no. 7.

22. Registry shall communicate the order to the Registrar General. He shall get copies of the relevant pleadings and shall attest them for filing the complaint before the Court of competent jurisdiction at Patna.

23. Coming to the merits of the matter, a categorical stand has been made in the affidavit filed on behalf of the Bank dated 25.01.2018 at paragraph no. 5. The same is quoted hereinbelow:

> " *5. That in this context it is stated and submitted every pensioner gives an undertaking in written to the Bank whose pension is paid by Bank under the Scheme of payment of pensions by public section Banks. This petitioner has also give such undertaking to the Bank in which he has agreed and undertaken to refund or make good to the Bank any amount to which he was not entitled or any excess amount which has been credited in his account."*

24. Copy of the counter affidavit was served on learned counsel for the petitioner on 25.01.2018 but no rejoinder to the same has been filed. On this issue, learned counsel for the petitioner submitted that there is a printed form on which a pensioner has to sign and thus, the same has been done, but it would not create any disadvantage or liability on the petitioner and the issue is covered by a decision of the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra).

25. Having considered the matter on merits, though the

Court finds that the authorities have acted in a very casual manner, despite the fact that the respondent no. 7 had communicated the rate of monthly pension, upon revision, still, in view of the fact that the petitioner had given a undertaking to the authorities that any amount which would be paid in excess would be refunded or made good, the amount paid to the petitioner being from the public exchequer, the Court finds that recovery is permissible. The Court is fortified in its view by the decision of the Hon'ble Supreme Court in the case of **High Court of Punjab and Haryana v. Jagdev Singh** reported as (**2016) 14 Supreme Court Cases 267** in which, after noticing the judgment in the case of **Rafiq Masih,** it has bee held that if the officer had furnished the undertaking while opting for revised pay scale that he would refund the excess amount paid, he was bound by that undertaking. The same analogy would apply in the facts of the present case. Paragraphs no. 10 and 11 of the judgment being relevant are reproduced hereunder:

> *"10. In State of Punjab vs. Rafiq Masih this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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."

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale.

He is bound by the undertaking."

26. Moreover, as the petitioner is now receiving Rs. 11,055/- instead of Rs. 14,055/-, the Court is further of the view that no extreme hardship has been imposed on the petitioner to warrant any interference.

27. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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