IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4655 of 2018

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Kamrul Nesha, Wife of Late Rasul Miya, Resident of Village- Giddha, P.O.- Chaubey Tola, P.S.- Chanpatia, District- West Champaran.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The District Education Officer, West Champaran at Bettiah.
4. The District Treasury Officer, West Champaran at Bettiah.
5. State Bank of India, Centralized Pension Processing Centre (CPPC), Administrative Office Building 4th Floor, Judges Compound Road, Patna through the General Manager.
6. The Assistant General Manager, State Bank of India Centralized Pension Processing Centre (CPPC), Administrative Office Building, 4th Floor, Judges Compound Road, Patna.
7. The Branch Manager, State Bank of India, Chanpatia Branch, P.S.- Chanpatia, District- West Champaran.

.... Respondents

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Appearance :

For the Petitioner : Mr. Md. Anis Akhtar
For the Respondents : Mr. Prabhakar Jha -GP27

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 10-08-2018 Heard the parties.

Following reliefs have been sought for in the present writ application on behalf of the petitioner:

> "(A) For issuance of an appropriate writ quashing the Letter No. CPPC/AGM/29 dated 29-01-2018 (Annexure-P-5) issued by the Assistant General Manager, State Bank of India, Centralized Pension Processing Centre (CPPC), Administrative Office Building, 4th Floor, Judges Compound Road, Patna whereby family pension Account of the

> petitioner has been HOLD for recovery of Rs. 5,03,391/- access payment made to her husband and further offer has been made to the petitioner, for refund of said amount petitioner may avail various loan scheme provided by the Branch, is illegal and issued in very arbitrary manner.
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> (B) For issuance of an appropriate writ, order or direction, directing the respondent authorities to restore current full family pension of the petitioner as well as to make payment of full family pension of May and June, 2016 which has not been paid to the petitioner alongwith arrears accrued pursuant to revision of family pension with penal interest @ 18% and litigation cost".

On behalf of the petitioner, it has been submitted that the case of the petitioner is squarely covered by the Full Bench judgment of this Court reported in ***2007(3) PLJR 398 (Ram Binod Singh & Ors. Vs the State of Bihar & Ors.)***. The petitioner has relied upon paragraph 26 of the said judgment, which is as follows:-

> *"26. The relevant provisions of the Indian Contract Act, particularly Section-72 covers cases of mistake of fact as well as law and provide for recovery. The principle of restitution in case of unjust enrichment is also an accepted principle for ensuring justice in appropriate case. Hence, in law, the position appears to be clear that there is no legal bar in ordering for recovery from retired employees where*

they have received money benefits on account of mistake at the ministerial level in the matter of fixation of pay, grant of increments or time bound promotion when the conditions precedent for such promotions were clearly non est. However, it has been correctly submitted on behalf of the petitioners that the theory of simple mistake or error to justify recovery will not hold good where the grant did not suffer from patent illegality or perversity so as to attract the Wednesbury Principle or the vice of mala fide in law. For example, where two interpretations of a provision were possible and one was consciously approved and adopted by the competent authority meant to be applied generally to all concerned, any error in such decision of the competent authority if corrected at a later stage may be ordered to apply only prospectively. Moreso, if the decision has been followed for many years. In other words, if on reinterpretation or adjudication the earlier view permitting the grant of monetary benefits is found to be by a competent authority and bonafide but wrong, mistaken or erroneous, then ordinarily no recovery should be made unless the excess payment already made is covered by the two exceptions pointed out in the case of ***Madan Mohan Prasad*** *(supra). But if the grant was by way of undue favour, arbitrary, malafide, ultra vires and/or void ab initio, recovery of public money should be the normal course. In such cases of clear disobedience of policy or rules by ministerial action or clear dishonest decision causing undue loss to public money, action against the concerned authority may also be justified to prevent and discourage plunder of public money by* *sheer disregard of clear law. The constitutional schemes of rule of law and fairness in public action support recovery in such cases unless law of limitation or waiver etc. are successfully invoked to show that they prevent such a course in the facts of any particular case".*

The petitioner is directed to file a representation before the State Bank of India, Centralized Pension Processing Centre (CPPC), Administrative Office Building 4th Floor, Judges Compound Road, Patna through the General Manager (Respondent No. 5) for redressal of her grievance. The State Bank of India, Centralized Pension Processing Centre (CPPC), Administrative Office Building 4th Floor, Judges Compound Road, Patna through the General Manager (respondent No. 5) is directed to consider the representation of the petitioner in the light of the order referred above and, pass a consequential order in accordance with law within a period of three months from the date of filing of such representation.

With the aforesaid observation/direction, the present writ application stands disposed of.

(Sudhir Singh, J)

A.K.V./-

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