IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 178 of 2015

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Md. Fazlur Rahman, Son of Late Md. Abdul Wari, Resident of Mohalla- Mikyana, P.O.+P.S.- Phulwari Sharif, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Primary Education, Human Resources Department, Government of Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Program Officer (Establishment), Patna.
4. The Headmaster cum Drawing & Disbursing Officer, Nagar Palika Middle School, Khagaul, Patna.
5. The Accounted General, Government of Bihar, Patna.
6. The District Treasury Officer Patna, Government of Bihar, Patna.
7. The Branch Manager, Main Branch, State Bank of India, Gandhi Maidan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dheeraj Kumar, Advocate
For the Accountant General	:	Mr. Binod Kumar Labh, Advocate
For the State	:	Mr. Lala S. N. Rais, A.C. to G.P. 2
For the S.B.I.	:	Mr. Rakesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 19-06-2018

Heard learned counsel for the petitioner; State; Accountant General and State Bank of India.

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

> *"i. To issue a writ in the nature of mandamus commanding the respondent to stop the recovery from pension of the petitioner forthwith who is under treatment of heart Diseases.*
>
> *ii. To direct the respondent to refund the recovered amount to the petitioner immediately.*
>
> *iii. Also for any other relief/ reliefs for which petitioner four entitled in the eye of law.*
>
> *iv. To direct the respondent authority to the extent the payment of pension to the petitioner*

forthwith and also activate the account of the petitioner which was held w.e.f. 25.07.2015."

3. It appears that the petitioner was initially getting monthly pension of Rs. 7,714/-, but pursuant to the 6^{th} Pay Revision Commission Recommendation, though his monthly pension was revised, but because of excess benefit given to persons, who attain the age of 80/90/100 years, due to wrong feeding of the date of birth of the petitioner, without being entitled to such further benefit, the petitioner was paid the amount which was not due to him. The same continued for a few years with effect from 01.04.2007 till 30.04.2013, when such mistake was detected. This resulted in the petitioner being saddled with monthly deductions for recovery of excess amount paid to the tune of Rs. 7,48,409/-.

4. Assailing the order, learned counsel for the petitioner submitted that he is an old person being almost 76 years of age and at this juncture, recovery being made from his pension is iniquitous, for the reason, that it is pension and further, he having availed whatever pension was credited into his account, recovery from him from the monthly pension has led to great hardship as he is also suffering from various ailments. It was further submitted that there was absolutely no contributory fault or laches on the part of the petitioner for having received any excess amount as he has never made any false

representation before the authorities, including the State Bank of India and, thus, the order for recovery should be interfered with.

5. Learned counsel for the State Bank of India submitted that it accepts the responsibility for this mistake but the same was without any *mala fide* and was a pure human error for the reason that instead of correct date of birth of the petitioner, which is 09.02.1941, being entered, it was wrongly fed in the system as 28.02.1903. Learned counsel submitted that this resulted in the petitioner being automatically credited an amount which was much higher to his entitlement as he had not crossed the age of 80/90/100 years and only due to the wrong entry of the date of birth, such benefit was automatically passed on to the petitioner. Learned counsel submitted that at the time of completing the formalities, a pensioner has to sign an undertaking that if any wrong or excess payment has been made, he shall accept the adjustment/ recovery of the same and the petitioner has also signed the said undertaking. It was further submitted that even as per the Reserve Bank of India guidelines, such recovery can be made and the modalities have been prescribed and in the case of the petitioner, 1/3rd of the amount payable is amenable to recovery per month. Learned counsel further submitted that it was equally the duty of the petitioner to be aware of the sudden unusual increase in his monthly pension and he was

required to come and verify from the Bank authorities but him not having done so also shows that there has been contributory lapses on his part also in the mistake not being earlier detected.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that due to an error at the time of uploading of data on the system, a mistake has been committed on account of wrong entry of the date of birth, but the money coming from public exchequer, cannot be allowed to be unaccounted for or paid in excess to the entitlement of any person, including the petitioner. Thus, *per se*, the act of adjusting by partial recovery from the monthly pension cannot be faulted. However, this is one aspect of the matter.

7. The other equally important aspect of the matter is the conduct of the Bank authorities where such mistake remained undetected for several years. The Courts finds that such conduct cannot be justified or condoned for the reason that every year a pensioner has to submit a life certificate before the authorities and only upon the same being uploaded on the system, the monthly pension continues to be credited into his account. Thus, the authorities admittedly, get an opportunity to correct the mistake, at least once every year and they not being able to do so for almost 4 years cannot be said to be a simple human error and points to

negligence also. In that view of the matter the Court deemed it appropriate to impose cost on the State Bank of India for having continued with the mistake and error for such a long period before detecting the same, leading to hardship to a retired person who already is in the last stage of his life.

8. At this juncture, learned counsel for the State Bank of India submitted that the Court may take a lenient view for the mistake committed on the part of the State Bank of India.

9. In the aforesaid background, and in view of the submissions of learned counsel for the petitioner also that he would be agreeable to deductions but at a lesser rate, the Court, balancing the equities moreso in view of the fact that the petitioner is advanced in age and suffering from various ailments, in proof whereof, he has brought on record various medical certificates, is of the opinion that deduction of Rs. 5,000/- per month from the pension would serve the purpose. On a query to learned counsel for the State Bank of India, as to whether he would be agreeable to the same, he submitted that the order of the Court shall be duly complied with.

10. In view thereof, for the ends of justice, the Court in exercise of its extraordinary and prerogative jurisdiction considers it to be a fit case where it should interfere to the extent that recovery being made of about Rs. 7,000/- be reduced to Rs. 5,000/- from the

monthly pension of the petitioner, especially as the petitioner is almost 76 years old and suffering from various ailments and the amount which he is getting is only about Rs. 14,000/- per month.

11. Accordingly, direction is issued to the State Bank of India to deduct Rs. 5, 000/- per month from the monthly pension of the petitioner till the amount which has been paid in excess is recovered/adjusted.

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

(Ahsanuddin Amanullah, J.)

P. Kumar

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