

IN THE JUDICATE OF MADRAS HIGH COURT

DATE : 03.08.2018

CORUM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.12158 of 2003

M. Kandan

... Petitioner

Vs.

1. Indian Bank,
rep by its Chairman,
Managing Director,
31, Rajaji Salai,
Chennai - 600 001.

2. The Assistant General Manager,
(Personnel),
Indian Bank,
Personnel Department,
31, Rajaji Salai,
Chennai - 600 001.

3. The Assistant General Manager,
IR & HRD,
Indian Bank,
31, Rajaji Salai,
Chennai - 600 001.

..... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the Third Respondent's communication dated 21.08.2002 ref:HO.PRNL.IRC / C45 /2002, calling upon the Petitioner to pay Rs.2,38,959.56, the same having allegedly been over paid to the Petitioner and to quash the same as illegal and invalid.

For Petitioner : Mr.Ashok Menon for M/s.Menon
Goklaney Associates

For Respondents: Ms.Rita Chandrasekar
for M/s.Aiyar & Dolia

ORDER

The Petitioner, who was an ex-serviceman, had joined the services of the Respondent Bank as Clerk-cum Staff with effect from 27.01.1984. The pay of the Petitioner, in terms of the IV Bipartite Settlement, ought to have been fixed at Rs. 520/-, but the Petitioner was erroneously allowed to draw Rs. 650/-. When the excess payment was sought to be recovered from the Petitioner, he filed the Writ Petition bearing W.P. No.4476 of 1985 before this Court on the ground that the aforesaid decision to recover had been taken without issuing notice. This Court, by order dated 12.09.1984 allowed that Writ Petition holding that the Petitioner should have been granted an opportunity to represent against the reduction of pay, and the Respondent was directed to issue notice to the Petitioner and then determine the pay scale. Consequent to the said direction, the Respondent issued show cause notice dated 16.12.1994. The Petitioner was required to produce certain documents which was also complied with. The Respondent by order dated 12.03.1995 confirmed the decision to re-fix the Petitioner's salary with a basic pay of Rs.520/- with other permissible allowance from 18.09.1994 and recover the excess amount paid from 18.09.1994 till that date. The Petitioner challenged the said order dated 12.03.1995 before this Court in the Writ Petition bearing W.P. No.5311 of 1995. This Court by order dated 13.06.2001 held that since none of the points raised by the Petitioner had been dealt in the order which was impugned in that Writ Petition, the same was set aside and the Respondent was at liberty to pass a detailed and reasoned order afresh after meeting all the points raised by the Petitioner in his representation. In pursuance thereof, the Respondent issued a detailed order dated 21.08.2002 and in the said order, the fixation of pay for the Petitioner has also been explained in the following tabular statement:-

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ast Drawn Salary in Air Force	Correct Fixation of pay as per Govt. guidelines under 4 th Bipartite Settlement (B.S.) to be given effect from 01.07.1983	Salary wrongly fixed under 3 rd B.S. then in force on 27.01.1984 and later restricted upto 30.06.1986 on 4 th B.S made on 17.09.1984 coming into effect retrospectivel y from 01.07.1983	Fitment as per 4 th BS wrongly given at Rs.650/- correspondding to Rs.405/- under 3 rd Bipartite Settlement
Basic 384.00	Pay 520.00 ** 384.00	405.00*	650.00*
Good conduct Badge pay 15.00			
—	289.00 **	556.71	351.00
399.00	809.00 **	961.71	1001.00
D.A 201.00			
TOTAL 600.00			

* Only last drawn Basic Pay had to be protected as per erstwhile fixation formula.

** As per revised fixation formula, last drawn Basic Pay + D.A in the Defence services has to be protected.

It is necessary here to point out that in view of the interim orders passed in the aforesaid Writ Petitions that were filed by the Petitioner, the Respondent had not made any recovery from the salary of the Petitioner for the excess payment. Since the Petitioner had been relieved from the service under Voluntary Retirement Scheme, 2000, before the Writ Petition bearing W.P. No 5311 of 1995 was disposed

on 13.06.2001, the details of the excess amount paid had been shown in that order dated 21.08.2002 as follows:-

S.No	Recovery details	Amount
1	Salary to be recovered	Rs. 1,73,883.08
2	Excess Gratuity paid	Rs. 10,200.00
3	Excess Ex-gratia	Rs. 39,885.00
4	Excess Commutation	Rs. 10,522.00
5	Difference in Pension already paid & payable	Rs. 4,469.48
	Total amount recoverable	Rs. 2,38,959.56

The Petitioner was required by that order to remit the aforesaid sum of Rs.2,38,959.56 within ten days, failing which it had been informed by the Respondent that the said amount would be appropriated from the remaining amount of ex-gratia which is due to be paid to the Petitioner under Voluntary Retirement Scheme.

2. In response to the said order dated 21.08.2002 issued by the Respondent, the Advocate appearing for the Petitioner is reported to have informed the Respondent that a full fledged reply would be sent by the Petitioner by 15.09.2002 and the Respondent was requested to bear with the same till then. However, as the Respondent had not received any reply from the Petitioner or through his counsel, it was informed by the Respondent to the Petitioner by a letter dated 16.10.2002 that the sum of Rs.2,38,959.56/- was appropriated from the available sum of Rs.2,64,000/- lying as bond portion and the balance amount of Rs.25,040.44/- was credited to his Savings Bank account and his pension has been re-fixed. At that stage, the Petitioner had challenged the order dated 21.08.2002 issued by the Respondent in this Writ Petition.

3. Though various contentions have been raised in this Writ Petition, the learned Counsel for the Petitioner submits that the only grievance of the Petitioner that now remains for consideration is that the Petitioner is put to grave hardship if such recovery is effected as he has already retired from service. In other words, there is no

dispute by the Petitioner on the amount claimed from him as excess payment by the Respondent, which has been properly explained in the impugned order. The decision of the Hon'ble Supreme Court of India in State of Punjab and Others vs Rafiq Masih (White Washer) and Others [(2015) 4 SCC 334] has been relied to contend that it would be inequitable and harsh to recover the amount excessively paid to a person, who has retired from service, at a distant point of time.

4. It requires to be pointed out here that the aforesaid decision passed by the Two Judges Bench of the Hon'ble Supreme Court of India, relied by the learned Counsel for the Petitioner, is a consequential order to the earlier order passed by a Three Judges Bench of the Hon'ble Supreme Court of India in the same case in State of Punjab vs. Rafiq Masih (White Washer) [(2014) 8 SCC 883], in which it has been ruled that there is no principle that any excess payment to employees could not be recovered and the earlier decisions in Registrar of Co-operative Societies, Haryana vs Israil Khan [(2010) 1 SCC 440] and Chandi Prasad Uniyal vs State of Uttarakhand [(2012) 8 SCC 417], supporting that view have been approved. It has also been explained therein that directions issued by the Hon'ble Apex Court in the exercise of powers under Article 142 of the Constitution, relaxing the application of law, was in view of the peculiar circumstances which do not comprise the ratio decidendi and therefore, do not make binding precedent. Viewed from that perspective, it can be seen that the subsequent judgment in State of Punjab and Others vs Rafiq Masih (White Washer) and Others [(2015) 4 SCC 334], were only containing illustrations where the Court had exercised its power under Article 142 of the Constitution and the same could not be taken as any ratio decidendi unconditionally exempting recovery from retired persons from the rigour of the law recognised in Section 72 of the Indian Contract Act, 1872, that a person to whom money has been paid by mistake must repay it.

5. In the light of the aforesaid legal position, it could be seen that the excess payment made to the Petitioner was brought to his notice as early as 20.04.1985 and was sought to be recovered, but in view of the Writ Petitions filed by the Petitioner challenging the aforesaid recovery in W.P. Nos.4476 of 1985 and 5311 of 1995, in which interim orders of stay had been passed, the Respondent was unable to effect the recovery. This disablement caused to the Respondent at the instance of the Petitioner, cannot lead

to absurd consequences of depriving the Respondent of its right to recover the excess payment from the terminal benefits of the Petitioner, who had voluntarily retired from service, before the earlier litigation had come to an end on the species plea of hardship caused.

6. Hence, there are no grounds to interfere with the impugned proceedings of the recovery and the same is confirmed. The Writ Petition shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

vjt
To

1. The Chairman and Managing Director,
Indian Bank,
31, Rajaji Salai,
Chennai - 600 001.
2. The Assistant General Manager,
(Personnel),
Indian Bank,
Personnel Department,
31, Rajaji Salai,
Chennai - 600 001.
3. The Assistant General Manager,
IR & HRD,
Indian Bank,
31, Rajaji Salai,
Chennai - 600 001.

+1cc to M/s.Aiyer & Dolia , Advocate SR.No. 53511
W.P.No.12158 of 2003

ASK(17/09/2018)