

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.41076 of 2016 and
W.M.P.Nos.35064 & 35065 of 2016

M/s.Rukmani Ramanujam

... Petitioner

Vs.

1. The Secretary to Government of India,
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training,
New Delhi.
2. The Chief Manager,
Indian Bank,
Centralized Persioned Processing Centre,
4th Floor, 66 Rajaji Salai,
Chennai - 600 001.
3. The Branch Manager,
Indian Bank,
R.A.Puram Branch,
R.A.Puram, Chennai - 600 028.

.... Respondents

PRAYER: Writ Petition filed under Articles 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records under reference SIVA/CPPC/APR-2016 dated 22.04.2016 of the 2nd respondent for recovery of excess amount of Rs.14,95,446/- from the petitioner, holder of PPO.8602204122, from her SB A/c No.469653683 maintained with the 3rd respondent and quash the same and consequently direct the 3rd respondent to refund the amount recovered from the petitioner.

For Petitioner : Mr.A.E.Ravichandran

For 1st Respondent : Mr.P.Ayyasamy
Central Government Standing
Counsel

For 2nd &
3rd Respondent : Mr.K.V.Subramaniam, Senior Counsel
for Mr.R.Jagadeesan

O R D E R

The order of recovery issued by the 2nd respondent in proceedings dated 22.04.2016 in respect of the recovery of excess family pension paid to the Writ Petitioner is under challenge in this Writ Petition. In respect of the recovery of excess family pension paid to the Writ Petitioner is under challenge in this Writ Petition.

2. The Writ Petitioner is a family pensioner and her husband namely, late K.V.Ramanujam, was employed in Southern Railway and passed away during the year 1995. Thereafter, the Writ Petitioner is receiving the family pension as per the fixation done by the respondent.

3. The learned counsel appearing on behalf of the Writ Petitioner made a submission that the impugned order of recovery, has been issued without issuing any show cause notice and without providing any opportunity. Thus, the impugned order passed by the 2nd respondent is in violation of principles of natural justice.

4. This apart, the Writ Petitioner is the family pensioner and even at the time of filing of the Writ Petition, she was aged about 92 years and she was not aware of the details of the fixation or re-fixation of the pension done by the respondent. Further, there was no misrepresentation or otherwise, on the part of Writ Petitioner in respect of the fixation the family pension. In the absence of any misrepresentation, the excess amount paid to the Writ Petitioner cannot be recovered after the lapse of many years. Now, the respondent issued the impugned order for recovery on the ground that excess family pension has been disbursed in favour of the Writ Petitioner from the year 2006 onwards. The recovery has been now imposed after the lapse of about 10 years and more specifically, without issuing any show cause notice and without any opportunity, thus, the impugned order is liable to be scrapped.

5. The learned Senior Counsel appearing on behalf of the respondents strenuously opposed the contentions raised on behalf of the Writ Petitioner by stating that the Writ Petitioner was aware of the excess family pension paid to her. This apart, the excess payment of family pension was traced out during the audit inspection and therefore, there is no irregularity in imposing the recovery.

6. The learned Senior Counsel contended that it is an unlawful enrichment and therefore, recovery is permissible under law. This apart, the husband of the Writ Petitioner, who was the pensioner, undertakes that whenever there is an excess payment, the recovery can be imposed. The undertaking was given on 10.10.1971 at the time of sanctioning the pension in favour of the husband of the Writ Petitioner.

7. The learned Senior Counsel relied on the judgment of the Hon'ble Supreme Court rendered in the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others reported in (2012) 8 SCC 417. It is contended that the excess payment, if any, shall be recovered as if caused financial loss to the State. The relevant portion of the judgment is extracted as follows:-

14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

8. The judgment of the Bombay High Court in the case of Dr. Ravindra Vs. the State of Maharashtra, in W.P.No.6191 of 2016 dated 10.03.2017 is cited. In the above-said judgment, the Bombay High Court held that the excess payment of salary paid to the Civil Judge can be recovered and the principles laid down by the Hon'ble Apex Court in the case of State of Punjab Vs.

Rafiq Masih reported in (2015) 4 SCC 334 is inapplicable.

9. In respect of the Bombay High Court, this Court is of the opinion that in paragraph No.11, it is stated that "the principle enunciated in the case of State of Punjab Vs. Rafiq Masih cannot be applied 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".

10. As far as the the present Writ Petition is concerned, the Writ Petitioner being the family pensioner had not given any such undertaking at the time of granting revision of family pension. The undertaking given by the husband of the Writ Petitioner, at the time of sanctioning the pension, cannot be applicable in respect of the family pension fixed after the lapse of more than four decades. Thus, the judgment delivered by the Bombay High Court cannot be relied upon in respect of the facts and circumstances of the present case.

11. With regard to the earlier judgment cited by the learned Senior Counsel in the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others reported (2012) 8 SCC 417, the same judgment was cited in the case of State of Punjab Vs. Rafiq Masih. When the subsequent judgment delivered by the Hon'ble Supreme Court has referred the judgment delivered earlier in the year 2012 need not be followed as this Court is bound to follow the later judgment for the purpose of considering the legal principles settled in the matter of recovery.

12. The learned counsel appearing on behalf of the Writ Petitioner referred an Office Memorandum issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi, dated 2nd March, 2016. In the said Circular, the judgment of the Hon'ble Supreme Court, in the case of State of Punjab Vs. Rafiq Masih has been referred and the subordinate officials were directed to follow the judgment, whenever the recovery proceedings are initiated.

13. Thus, it is made clear that even as per the Office Memorandum, which was issued by the Government of India, the recovery cannot be imposed on the family pensioner in view of the judgment of the Hon'ble Supreme Court of India.

14. It is relevant to extract paragraph No.18 of the judgment of the Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih cited supra. The said paragraph reads as follows:-

"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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

15. Taking note of all the earlier judgments in the matter of recovery, the Hon'ble Supreme Court has laid down the legal principles in respect of the recovery of excess payment, more specifically from the pensioner and the family pensioner in respect of retired employees.

16. The Hon'ble Supreme Court, in paragraph No.18, clause (ii), has stated that "recovery from retired employees, or employees who are due to retire within one year, of the order of recovery cannot be effected" and further in clause (iii), it is stated that 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, is impermissible.

17. In respect of the facts and circumstances of the present case, both the clauses would be applicable. In the present case, the Writ Petitioner is the family pensioner and more specifically, she was aged about 92 years at the time of filing of the Writ Petition. Now, she would be aged about 94 years. Thus, clause (ii), is certainly applicable and recovery cannot be imposed. Further, the alleged excess amount paid to the Writ Petitioner in the year 2006 onwards. Thus, the principles laid in clause (iii) also applicable in respect of the facts and circumstances of the present case.

18. Though the learned Senior Counsel has contended that even as per the Regulation of the Reserve Bank of India read with Section 35-A of the Banking Regulation Act, the respondents are empowered to recover, if any excess amount paid to the family pensioner also. This Court has to adopt a pragmatic approach in respect of the family pensioner, more specifically when the Writ Petitioner, is aged about 94 years, the excess amount made if recovered at this length of time will affect her normal life as a Senior Citizen. More specifically, during the old age, the family pensioner requires more money for her medical expenses and for her livelihood. This Court is of an opinion that the principles of equity and good conscience are also to be applied in the case of the Writ Petitioner.

19. Accordingly, the order of recovery impugned in the Writ Petition issued by the 2nd respondent in proceedings dated 22.04.2016 is quashed and the Writ Petition stands allowed. The amount already recovered on account of the recovery proceedings is directed to be reimbursed within a period of 12 weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

To

The Secretary to Government of India,
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training,
New Delhi.

+1 CC to Mr.A.E. Ravichandran, Advocate sr 38576.
+1 CC to Mr.P. Ayyaswamy, Advocate sr 38801.
+1 CC to Mr.K.V. Subramanian, Advocate sr 39189.

W.P.No.41076 of 2016 and
W.M.P.Nos.35064 & 35065 of 2016

MR (CO)
SP(06/07/2018)



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