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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.02.2018

PRONOUNCED ON: 01.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.19822 of 2014

and

M.P(MD)No.1 of 2014 and W.M.P(MD)No.1395 of 2016

C.Jebamani

... Petitioner

Vs.

1.The Branch Manager,
State Bank of India,
Madurai Branch (0869),
Sangam Tower, 7-A, West Veli Street,
Madurai 625 001.

2.The Assistant General Manager,
State Bank of India,
Centralised Pension Processing Centre,
(Code No.4470),No.112/4, Kaliamman Kovil Street,
Virugambakkam, Chennai 600 092.

3.The Senior Divisional Finance Manager
(Sr.DFM), Southern Railway,
Madurai 625 016.

4.The Divisional Railway Manager (DRM)/P,
Southern Railway, Madurai Division,
Madurai 625 016.

5.The Finance Advisor and Chief Audit and
Accounting Officer (FA & CAO),
Central, Southern Railway,
Madras Park Town, Chennai 600 003.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned letter No.MISC/Recvy-86878 dated 19.05.2014 issued by the second respondent and quash the same and directing the respondents to issue pension (P.P.O.No.0608213393 and SB A/c.No.0828724463 maintained with the 1st respondent bank) without any deduction within the period that may be stipulated by this Court.



For Petitioner : Mr.K.Sureshkumar
For 1st and 2nd Respondents : Mr.Pala.Ramasamy
For Respondents 3 to 5 : Mr.A.Haja Mohideen

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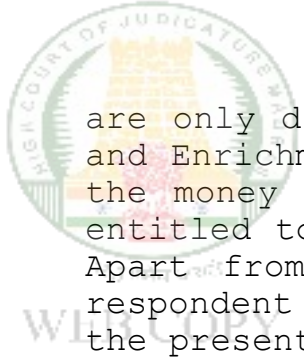
ORDER

This writ petition has been filed against the order passed by the second respondent for recovery of excess amount of pension paid to the petitioner.

2.According to the petitioner, he was working as Senior Ferro Printer at Engineering Department of Southern Railways, Madurai from 1972 to 2007 and retired on 31.08.2007. After retirement, he is getting pension as per the Pension Payment Order (P.P.O) No.0608213393 through the second respondent bank in his Savings Bank Account No.10828724463. Now, the second respondent is deducting a sum of Rs.2,500/- from his pension amount of the petitioner from May 2014. The second respondent, without issuing any notice to the petitioner and without conducting enquiry whatsoever has passed the impugned order. The only reason assigned in the impugned order is that there is an error in calculating the dearness allowance eligible to the petitioner and it is rectified now and except that no other particulars were given.

3.According to the petitioner, he is a senior citizen and he is suffering from various ailments and he is also having unmarried daughter and his entire family is depending on the meagre pension received by him and the recovery sought to be made only due to the mistake committed by the respondents 1 and 2 and not by the petitioner and if the amount is deducted, he and his family will be put to great hardship. In the above circumstances, the present writ petition has been filed.

4.The first and second respondents filed counter affidavit stating that the petitioner is one among the railway pensioners availing pension benefit through their Madurai Branch and the pension has been disbursed through his savings bank account. While depositing the pension, the dearness allowance payable to the petitioner was wrongly taken as Rs.5,480/- instead of Rs.2,431/- from 01.04.2011 and the excess amount of Rs.1,39,615/- was paid from 01.04.2011 to 30.04.2014 and after coming to know about the same, the respondents have advised the petitioner and demonstrated him about the excess amount but he did not reimburse the excess amount received by him. In the above circumstances, the deduction was made at the rate of Rs.2,500/-. Since the petitioner has given irrevocable authority to recover the excess amount due by way of letter of undertaking dated 04.12.2007, the bank is entitled to recover the same. Apart from that the excess amount has been inadvertently paid not from and out of the employer's money, namely, the Southern Railways but from the funds of the respondent bank they



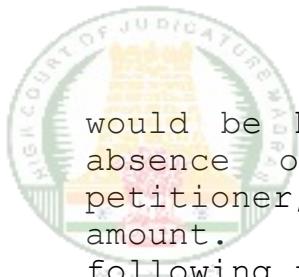
are only disbursing agent and it is against the Doctrine of Unjust and Enrichment. As per Section 72 of the Indian Contract Act, 1872, the money paid by mistake should be repaid and hence, the bank is entitled to recover the money which was paid from public deposits. Apart from that after given an undertaking affidavit before the respondent bank, now it is not open to the petitioner to maintain the present writ petition challenging the order passed by the second respondent.

5. It is further contended that the respondents 1 and 2 only disbursing agent and the excess amount is not paid by the employer and the amount has been paid from and out of the funds of the bank during the course of giving credit and no additional burden can be placed on disbursing authority, namely, the respondents 1 and 2. The bank has also not sought recovery of the entire amount by charging interest on the excess amount credited but they have ordered recovery of the excess amount paid by deducting 1/3rd from the pension amount in easy installments. Apart from that the petitioner is having alternative statutory remedy before the Railway Tribunal and without availing such remedy, the petitioner cannot maintain this writ petition.

6. The respondents 3 to 5 filed counter affidavit stating that after retirement of the employees, the railway administration will send original copy of the pension payment order to the concerned bank and the bank will remit the pension amount every month in their account and deduct the same from the railway funds. The basic pension and eligible dearness allowance will be advised to all the banks through which the pensioners are receiving their pension and bank will revise the pension then and there in terms of the advice given by the railway administration. But the railway administration did not aware about the wrong payment made to the petitioner.

7. Heard Mr.K.Sureshkumar, learned counsel appearing for the petitioner, Mr.Pala.Ramasamy, learned counsel appearing for the respondents 1 and 2 and Mr.A.Haja Mohideen, learned counsel appearing for the respondents 3 to 5.

8. Learned counsel appearing for the petitioner would submit that the petitioner is a pensioner and is receiving pension through the respondents 1 and 2 regularly. Now, all of a sudden, without any reason whatsoever, the second respondent issued a notice for recovery of dues. Now, it is an admitted case that the excess payment was made neither due to any mistake committed by the petitioner nor any misrepresentation or fraud on the part of the petitioner and the petitioner has no knowledge about the payment received in excess and only due to the mistake of the bank, excess amount has been paid for which now the petitioner cannot be penalised. Apart from that the petitioner is a senior citizen and eking out his livelihood from the meagre amount of pension received by him and the entire family is only depending on the pension amount and if the amount is deducted, the petitioner and his family members



would be highly prejudiced. He would further submit that in the absence of any misrepresentation or fault committed by the petitioner, the respondents 1 and 2 are not entitled to recover the amount. In support of his contentions, he would rely upon the following judgments:-

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- "(i) In Shyam Babu Verma Vs. Union of India reported in 1994 SCC (2) 521
- (ii) In Syed Abdul Qadir and others Vs. State of Bihar and others reported in 2009 3 SCC 475 and
- (iii) In State of Punjab and others Vs. Rafiq Masih (White Washer) reported in 2015(5) CTC 455."

9. Per contra, learned counsel appearing for the respondents 1 and 2 would vehemently contend that the excess pension amount has been paid only due to wrong calculation in dearness allowance payable to the petitioner and the petitioner is fully aware of the excess payment and his dearness allowance eligibility. Apart from that the amount is not paid from and out of the funds of the southern railways but it has been paid from and out of the funds of the bank which is only a disbursing agent. That apart, the petitioner has also given irrevocable authority to recover the excess amount due by way of letter of undertaking dated 04.12.2007. The bank is entitled to adjust the excess payment made against the entitlement amount and they have got right of lien and set off to adjust the due amount paid in excess. He would further submit that as per Section 72 of the Indian Contract Act, the bank is always entitled to recover the amount which is paid wrongly and they have statutory right to do so, which cannot be deprived. In support of his contentions, he would rely upon the following judgments:-

- (i) In Vijay Kumar Singh and others Vs. State of Bihar and others (MANU/BH/0854/2002)
- (ii) In Sahdeo Yadav Vs. State of Bihar and others (MANU/BH/0467/2002)
- (iii) In Senior Manager (Services) Indian Bank Vs. Hemavathy Rajan (MANU/BH/0542/2009)
- (iv) In Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others in Civil Appeal No. 5899 of 2012, dated 17.08.2012

and contend that any amount paid/received without 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.

10. I have considered the rival submissions made on either side and perused the entire materials available on record carefully.

11. It is an admitted case that excess amount has been paid to the petitioner only due to the mistake of the respondents 1 and 2



and they have wrongly calculated the dearness allowance payable to the petitioner and based on the wrong calculation, the excess amount has been paid to the petitioner and the petitioner is not attributed with any misrepresentation or fraud.

12. Now, the question is whether the excess amount paid to the petitioner by the respondents bank can be recovered from the petitioner. To answer the above question, it is useful to refer few judgments of the Hon'ble Supreme Court:-

13. In Syed Abdul Qadir case (supra), a three Judge Bench of the Hon'ble Supreme Court has held that the relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. The relevant portion of the said order reads as follows:-

"27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

28. Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment



made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made".

14. In another judgment in Shyam Babu Verma case (supra), a three Judge Bench of the Supreme Court has also taken a similar view and held that no steps should be taken to recover or adjust any excess amount paid to the employees due to the fault of the respondents. The relevant portion of the said order reads as follows:-

"11. Although, we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of Third Pay Commission w.e.f January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

15. In yet another judgment in Rafiq Masih case (supra), after considering all the judgments, the Hon'ble Supreme Court has held as follows:-

"12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the Employers, would be impermissible in law:-

(i) Recovery from Employees belong to Class III & IV service (or Group C & 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. (emphasis supplied)"

16. Even the judgment referred by the learned counsel for the respondents 1 and 2 in Chandi Prasad Uniyal case (supra), the Hon'ble Supreme Court, after referring all the judgments held that any amount paid can be recovered barring few exceptions of extreme hardships but not as a matter of right. The relevant portion of the said order reads follows:-

"16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. 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 Government officers, may be due to various reasons like negligence, carelessness, collusion, favoritism etc., because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and 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 / received without 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."

17. The basic principle laid down in all the above judgments is that if the amount paid in excess not due to the misrepresentation or fraud on the part of the employee but due to the mistake committed by the authorities, normally, it is not recoverable. Even though the employee cannot resist recovery as a matter of right but in equity, while exercising judicial discretion, the Court should see that the recovery is iniquitous or harsh and causing hardship to the employee, then the Court can exercise discretion and stop the recovery.



18. Keeping the above principles laid down by the Hon'ble Supreme Court in mind, this Court has to consider the instant case. The petitioner is a retired employee and eking out his livelihood from the meagre pension received from his employer and he is also having an unmarried daughter and a big family to maintain. Admittedly, it is only due to the mistake committed by the respondents bank, the amount has been paid in excess that too from 2011 to 2014. In the above circumstances, at this stage, if the amount is sought to be recovered from the petitioner, it will definitely cause hardship to the petitioner. That apart the respondents 1 and 2 also cannot order for recovery without any notice to the petitioner which is in violation of principles of natural justice.

19. So far as the contention of the learned counsel appearing for the respondents 1 and 2 that it is contractual liability between the petitioner and the respondents 1 and 2 and the petitioner is bound to repay the amount paid in excess, if the respondents 1 and 2 claim that it is a contractual liability, their remedy is only before the Civil Court for recovery of the amount paid in excess and they cannot pass an order arbitrarily for recovery that too without any notice to the petitioner. In the above circumstances, the impugned order passed by the second respondent is liable to be set aside and accordingly, it is set aside. The second respondent is directed to refund the amount already deducted from the petitioner's pension forthwith.

20. For the foregoing reasons, the writ petition stands allowed. No costs. Consequently, M.P(MD)No.1 of 2014 and W.M.P(MD) No.1395 of 2016 are closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Branch Manager,
State Bank of India, Madurai Branch (0869),
Sangam Tower, 7-A, West Veli Street, Madurai 625 001.
 2. The Assistant General Manager,
State Bank of India, Centralised Pension Processing Centre,
(Code No.4470), No.112/4, Kaliasman Kovil Street,
Virugambakkam, Chennai 600 092.
- +1CC TO M/S.K.SURESH KUMAR, ADVOCATE, SR NO.52803
+1CC TO M/S.A.HAJA MOHIDEEN, ADVOCATE, SR NO.52402

Order made in
Writ Petition (MD) No.19822 of 2014 and
M.P(MD)No.1 of 2014 and W.M.P(MD)No.1395 of 2016
01.03.2018