

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4156 of 2018

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Akhileshwari Devi Wife of Late Rama Nand Prasad, Resident of Village-
Manopali, P.O. and P.S.- Sahajitpur, District- Saran.

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Mines, Government of India, New Delhi.
2. The Controller of Accounts, Ministry of Mines, Central Accounts Office, G.S.I. 16A, Brabourne Road,
3. The Sr. Accounts Officer, O/O the CA, CAO, Ministry of Mines, G.S.I., Kolkata- 01.
4. The Assistant General Manager, State Bank of India, Centralised Pension Processing Centre, 4th Flo
5. The Manager, State Bank of India, Sahajitpur Branch, Code No. 6023, P.O. and P.S.- Sahajitpur, Dist

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Singh, Adv.
For the Vigilance	:	Mr.Awadhesh Kumar Pandey, CGC
For SBI	:	Mr. Abbas Haidar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 01-07-2019

The present writ petition has been filed for quashing the letter dated 01.02.2018 issued by the Assistant General Manager, State Bank of India, whereby and whereunder a sum of Rs. 7, 65, 207/- has been directed to be recovered from the petitioner on the ground of excess payment of pension having being made to her.

2. The learned counsel for the petitioner has submitted that the husband of the petitioner, namely, late Rama Nand Prasad, was an employee of the Government of India and he



superannuated on 31.08.2001, after serving for more than 38 years, whereafter the pension of the husband of the petitioner was fixed by the office of the Controller of Accounts, Ministry of Mines i.e. the respondent no.2 vide P.P.O. No. 366990101797 and the Branch Manager, State Bank of India, Sahajitpur Branch was authorized as Pension Disbursing Authority. The husband of the petitioner is stated to have died on 01.09.2001, whereafter the family pension was being paid to the petitioner herein, however, suddenly the petitioner has received a letter dated 01.02.2018 issued by the respondent no.4 wherein the petitioner was informed that her family pension has been wrongly fixed as Rs.8967/- and consequently excess payment of Rs.7,65,207/- has been made, hence the same is required to be recovered, as such it was directed to recover a sum of Rs. 5000/- per month. It is submitted by the learned counsel for the petitioner that the petitioner or her husband had neither misrepresented any fact nor committed any fraud so as to warrant excess payment of pension to them whereas on the contrary, if at all, the excess payment has been made, which the petitioner is not in a position to clarify, the same has been made on account of laches and negligence on the part of the respondent- authorities.

3. The learned counsel appearing for the respondent



no.3 i.e. the Senior Accounts Office of the Central Accounts Office, Ministry of Mines, G.S.I., Kolkata, has submitted by referring to the counter affidavit filed on behalf of the respondent no.3 that the office of Controller of Accounts, Central Accounts Office, Ministry of Mines, Kolkata issued the proposal of authority for payment of pension to the pensioner to Central Pension Accounting Office, New Delhi who in turn authorized the CPPC of the Bank by SSA to make payment of pension to the petitioner through the paying Branch. The learned counsel for the respondent no.3 has further submitted by referring to Annexure-2 to the writ petition i.e. the letter dated 01.02.2018 issued by the State Bank of India to the petitioner herein that in light of the audit report dated 11.07.2017, the CPAO, New Delhi has revised the monthly payable pension from Rs. 8967 to Rs. 5391/- and a sum of Rs. 7,65,207/- has been paid in excess, hence recovery of the said amount is being made from the petitioner herein.

4. I have heard the learned counsel for the parties and perused the materials on record and I find that according to the well settled principles of law laid down by the Hon'ble Apex Court in a catena of decision reported in (2009)3 SCC (Syed Qadir vs. State of Bihar); (1995) Suppl.1 SCC 80 (Sahib Ram



vs. State of Haryana); (1994) 2 SCC 52 (**Shyam Babu Verma vs. Union of India**); (1997) 6 SCC 139 (**B.Ganga Ram vs. Regional Joint Director**); (2006) 11 SCC 492 (**Purshottam Lal Das vs. State of Bihar**); (2000) 10 SCC 99 (**Bihar State Electricity Board vs. Bijay Bhadur**); (2006) 11 SCC 7089 (**B.J. Akkara vs. Government of India University**) and (1995) suppl. 1 SCC 18 (**Sahib Ram vs. State of Haryana**) and the one reported in (2015) 4 SCC 334 (**State of Punjab vs. Rafique Masih**), no recovery can be effected either from the husband of the petitioner, who had not only attained the age of superannuation but has also expired long back, or from the petitioner herein who is getting meager sum of family pension since there has been no misrepresentation or fraud committed either by the husband or the petitioner herein leading to payment of excess amount of pension whereas on the contrary it is the negligence and the laches on the part of the respondent authorities which has led to excess payment of pension, if at all, any excess payment has been purportedly made, to which the widow petitioner has no answer on account of her helplessness and defenseless situation.

5. The present case is squarely covered not only by a catena of judgments rendered by the Hon'ble Apex Court,



referred to herein above, but also by the latest judgment rendered by the Hon'ble Apex Court in the case of **Rafique Masih** (supra), paragraph-18 whereof is reproduced herein below:-

“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).

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

6. Having regard to the facts and circumstances of the case as also considering the fact that the instant case is squarely



covered by the law laid down by the Hon’ble Apex Court in the case of **Rafique Masih** (supra), as aforesaid, the writ petition is allowed and the order dated 01.02.2018 passed by the respondent no.4 to the extent recovery of a sum of Rs. 7.65,207/- has been directed to be made from the petitioner is quashed.

7. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
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