IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7025 of 2017

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Nityanand Lal Karn Son of Late Dashrath Lal Karn, Resident of Mohalla-Budhanagar Colony, Ward No. 30, Near Parisadan, P.S.- Madhubani, District-Madhubani.

... ... Petitioner/s

Versus

1. The Manging Director Cum C E O Canara Bank, Head Office, 112 JC Rajendra Road, Bangalore-560002.
2. The Divisional Manager, Canar Bank, Employees' Pension Fund, Human Resources Wing, 14 M.G. Road, Bangalore-560001.
3. The Senior Manager, Canara Bank Employee Pension Fund, Head Office, Annexe Naveen Complex, 14 M.G.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vishwanath Pratap Sinha, Sr. Advocate
	:	Mr. Sanjay Kumar Singh, Advocate
For the Respondent/s	:	Mr. Ratnesh Nandan Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT
Date : 06-07-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Vishwanath Pratap Sinha, learned senior counsel along with Mr. Sanjay Kumar Singh, learned counsel, for the petitioner and Mr. Ratnesh Nandan Sinha, learned counsel for the Canara Bank (hereinafter referred to as 'Bank').

3. The Petitioner has moved the Court for the following reliefs:-

> *"That this is an application for issuance of a writ in the nature of Mandamus directing the respondent authorities to stop them from deducting the pension amount of the petitioner*

and to refund the amount recovered from the pension of the petitioner and the pension of the petitioner may kindly be restored and/or passing any other order or direction for which the petitioner is found legally entitled"

4. Learned counsel for the petitioner submitted that he superannuated on 31.07.2009 and after a pension scheme was introduced in the Bank, he opted for the same and the pension was paid to him on 29.01.2011 but w.e.f. 27.11.2009. It was submitted that suddenly by letter dated 01.10.2015, he was directed to refund an amount of Rs. 3,90,000/- showing it to be excess payment. Learned counsel submitted that the said order is unsustainable in law for the reason that the petitioner has not got any payment due to fault on his part and the said recovery being sought to be made after more than six years of his superannuation. Learned counsel submitted that when an employee has no role in such payment, even if it is accepted to be excess, recovery cannot be made from him. For such proposition, he relied upon the decision of the Hon'ble Supreme Court in **State of Punjab vs. Rafiq Masih (2015) 4 SCC 334]**, the relevant being at paragraph no. 18, in which categories have been enumerated in which recovery cannot be effected. Learned counsel also drew the attention of the Court to an order of the Madras High Court (Madurai Bench) dated 19.06.2019 in **M. Janki vs. the District Treasury Officer and**

Anr. [W.P. (MD) No. 23541 of 2015 and M.P. (MD) No. 1 of 2015], in which it has been held that the decision in **Rafiq Masih** (supra) has binding precedent.

5. Learned counsel for the Bank, who has filed counter affidavit, submitted that when the petitioner had superannuated, there was no pensionary scheme and only later a scheme came into force and the petitioner was given the benefit of the same. It was submitted that the said scheme under which the petitioner was covered was the 9th Bipartite Settlement (BPS). It was submitted that due to inadvertence, the calculation of Dearness Relief was made on the basis of 8th BPS instead of 9th BPS, which resulted in excess payment of Rs. 3,90,000/- to the petitioner. Learned counsel submitted that the petitioner was communicated the details along with the full calculation chart as to show such mistake, but he never replied or objected to the same or controverted the correctness of such calculation. It was further submitted that the amount which was excess has also been recovered from the pension to the petitioner from September, 2015 till 31.12.2017. It was submitted that thereafter, the petitioner is being paid his full and correct pension of Rs. 36,811/- per month. Learned counsel drew the attention of the Court to the undertaking given by the petitioner in which he had agreed that if in future any mistake is detected and excess payment made, the Bank would be free to

recover the same. It was, further, submitted that there was a *bona fide* mistake on the part of the Bank which has now been rectified. Learned counsel submitted that in **Rafiq Masih** (supra) the Hon'ble Supreme Court has clearly categorized and held that basically in the case of persons where the payment has been made for a period in excess of five years, which is relevant in the present case, the petitioner was paid his pension on 29.01.2011 and on 01.10.2010 it was communicated to him with regard to the excess payment made to him, which was within five years of such excess payment being made and, thus, the present case does not automatically stand covered by **Rafiq Masih** (supra).

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that, no doubt there has been no contributory factors attributable to the petitioner, but the moot point is that he was paid in excess of his entitlement. The reason given is that the calculation of Dearness Relief had to be made in terms of the 9th BPS but was made in terms of the 8th BPS has not been controverted. The calculation chart has also been submitted with regard to the excess payment. Thus, the admitted position, on facts, is that the petitioner was paid an amount of Rs. 3,90,000/- beyond of his entitlement, which clearly comes under the category of excess payment, though not due to any fault or laches on the

part of the petitioner. However, the Bank proceeded with such recovery from the monthly pension and finally the amount was also lastly adjusted on 31.12.2017, whereafter the full entitled pension amount has been restored.

7. At this stage, it is useful to reproduce paragraph no. 18 of the Judgment of the Hon'ble Supreme Court in **Rafiq Masih** (supra), which reads as under:-

> *"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 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 belonging to Class-II and Class-IV service (or Group 'C' and Group '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."*

7. In the said paragraph various situations are enumerated where recovery would be impermissible. In the present case, the condition at (v) would be relevant, i.e., 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.

8. Having considered the aforesaid, the Court finds that now when full recovery has been made and full pension has also been restored from January, 2018, whatever hardship the petitioner may have faced was till December, 2017, but from January, 2018 the full amount is now being received by him. Thus, as of now, the Court does not find it to be a case of such a glaring nature where recovery, which has already been effected more than two and half years back, should be directed to be refunded, more so, when the amount being paid to the petitioner as monthly pension is about Rs. 37,000/-. Thus, in the present case, due to efflux of time, which is a relevant factor, when the period of hardship is already over more than two and a half years ago, coupled with the fact that

the pension scheme itself was introduced much after the superannuation of the petitioner and still he had got the benefit under it, and that it was a *bona fide* and genuine mistake, the money which basically is public money, whatever happened on account of excess payment being made to the petitioner now being in the public exchequer, in the opinion of the Court it would now be inequitable to direct for its refund, more so, keeping in mind that the Court should also balance equitably the employer's right to recover, as has also been indicated by the Hon'ble Supreme Court in **Rafiq Masih** (supra). Thus, the Court refrains from doing so.

9. However, since the cause espoused by the petitioner was *bona fide*, the Court finds that he should be compensated for the expenses incurred in pursuing the present litigation.

10. Accordingly, the writ petition stands disposed off with cost, quantified at Rs. 30,000/-, be paid to the petitioner by the Bank, within a period of four weeks from today by crediting it in his pensionary account.

(Ahsanuddin Amanullah, J)

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