

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6324 of 2020

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Shobha Kant Mishra, Male, aged about 77 years, Son of Late Chandra Mohan Mishra, Resident of C/4, Vijay Nagar (Hanuman Nagar), District- Patna - 800020 (Bihar).

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Communication, Department of Telecommunication, 914, Sanchar Bhawan, Ashoka Road, New-Delhi-110001.
2. The Controller of Communication Accounts, Office of the CCA, Bihar Telecom Circle, 2nd Floor, C.T.O. Annexie Building, Patna- 800001.
3. The Chief Accounts Officer (PRC), Bihar Telecom Circle, Office of the CCA, 2nd Floor, C.T.O. Annexie Building, Patna- 800001.
4. The Chief Manager, State Bank of India, CPPC, Judges Court Road, Patna- 800001.
5. The Manager, State Bank of India, Hanuman Nagar Branch, Patna- 800020 (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Munna Pd Dixit (M.P. Dixit), Adv.
For the Bank	:	Mr. Rakesh Kumar Singh, Adv.
For the UOI	:	Mr. Kumar Sachin, CGC

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)

Date : 20-07-2021

Heard learned counsel for the petitioner and learned counsel for the respondents through video conference. Learned counsel for the petitioner hereby undertakes that all the defects pointed out by the stamp reporter shall be removed, and compliance with the conditions of the notices of this Court with regard to acceptance of e-filing shall be made, without delay



immediately upon resumption of normal physical functioning of the Court, and in any event within one month thereof.

2. The present writ petition has been filed for the following reliefs as formulated by the petitioner-

“F. For issuance of Writ in the nature of Certiorari for quashing/setting aside the orders dated 11.02.2020 passed by the Learned Central Administrative Tribunal, Patna Bench, Patna herein after CAT in Original Application No. 050/00174 of 2017 as contained in Annexure-2 of the writ application whereby and whereunder the prayer of the Petitioner for quashing and setting aside the Order dated 13.03.2016 issued by the Respondent No.3 served on 10.03.2017 by the respondent No.5 as contained in Annexure-A/1 to the writ application, has been rejected/dismissed illegally without application of judicious mind, facts available on record and also by misinterpreting the order passed in the case of Jagdev Singh.

G. For issuance of Writ in the nature of Certiorari for quashing/setting aside the Order dated 13.03.2017 passed by the Respondent No.3 served upon the petitioner on 10.03.2017 by the respondent No.5 as contained in Annexure-A/1 to the writ application, whereby and whereunder the revised basic pension of Rs. 22,899/- fixed as on 01.01.2006 under 6th Pay Commission recommendation, subsequently been revised and fixed as Rs. 58,851/- as on 01.01.2016 under 7th Central Pay Commission Recommendation, has suddenly been reduced to Rs.



*12,565/- with retrospective effect from 01.01.2006 after more than 10 years from the date of superannuation even without any show-cause notice although there is neither any misrepresentation on the part of Petitioner nor even any wrong while fixing his pension as Rs. 22899/- and Rs 58851/- as on 01.01.2006 and 01.01.2016 respectively which the petitioner has received without any dispute, thus the impugned order dated 13.03.2016 as contained in **Annexure-A/1 to the writ application is highly unconstitutional**, against the Principles of Natural Justice, contrary to the Office Memorandum dated 02.03.2016 issued by DOPT as contained in **Annexure-A/3 to the Paper Book** and also against the various judicial pronouncements of Hon'ble Supreme Court of India including the Order dated 18.12.2014 passed in the case of State of Punjab V/s Rafique Masih vide C.A. No. 11527 of 2014 arising out of S.L.P. (Civil) No. 11684 of 2012.*

*H. For issuance of an appropriate writ(s)/ orders)/ direction(s) in the nature of Mandamus commanding the Respondents to refund the entire amount which has already been recovered on the basis of impugned order dated 13.03.2016 as contained in **Annexure-A/1 to the writ application** henceforth alongwith statutory interest.*

I. That your Lordships may further be pleased to direct/command the Respondents to grant all consequential benefits in favour of the Petitioner.

J. Any other appropriate relief(s) for which the Petitioner may be entitled to be granted."



3. The short facts of the case according to the petitioner are that he superannuated from service on 31.12.2003 while serving as Executive Engineer (Electrical), Department of Telecom, Patna. After retirement, his basic pension was fixed at Rs. 6,755/- w.e.f. 1.1.2004 vide Pension Payment Order dated 11.5.2004. Thereafter, pursuant to the 6th Central Pay Commission recommendation, the basic pension of the petitioner was calculated by the respondent Bank at Rs. 22,899/- w.e.f. 1.1.2006. Upon the 7th Central Pay Commission recommendation being implemented with effect from 1.1.2016, his basic pension was then calculated at Rs. 58,851/- by the Bank. The petitioner thereafter became aware that a lower amount of pension was being credited into his account. The Bank then came out with a copy of the order dated 13.3.2016 as passed by the Telecom Department and served on 10.3.2017 which is impugned herein, showing the revised amount of basic pension at Rs. 12,565/- as on 1.1.2006 in place of Rs. 22,899/- earlier calculated by the Bank. The petitioner accordingly filed the instant Original Application No. 050/00174 of 2017 before the learned Central Administrative Tribunal, Patna Bench challenging the aforesaid order dated 13.3.2016, which was however dismissed by its order dated 11.02.2020 (Annexure 2).



4. Learned counsel for the petitioner has advanced several submissions to assail the impugned order. At the outset, it is submitted that the impugned order of recovery has been passed without any prior show-cause notice, and hence the action for recovery is contrary to the principles of natural justice. It is further submitted that the pension of the petitioner was originally fixed at Rs. 6,755/- soon after his superannuation. Thereafter, a revised pension slip was issued by the State Bank of India and the basic amount of pension was calculated at Rs. 22,899/- as on 01.01.2006 consequent upon the 6th pay revision. Similarly, the basic pension was again enhanced to Rs. 58,851/- as on 01.01.2016 under the 7th pay revision. Such calculation was done by the Bank without informing the basis to the petitioner who, therefore, had no occasion to doubt the correctness of the same. The pension amount continued to be paid to the petitioner on the basis of the amount revised from time to time as aforesaid for more than ten years until the impugned order dated 13.03.2016 was passed, reducing the pension of the petitioner to Rs. 15,267/- (net Rs. 12,565/-) in place of Rs. 22,899/- as on 01.01.2006. It is submitted that the respondent Bank had been making payment of the pension for over a decade but the same has been curtailed even though there was no fraud or misrepresentation on the part of the petitioner.



5. Reliance has been placed by the petitioner on ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc.*** reported in ***AIR 2015 SC 696***, in paragraph 12 whereof the Hon'ble Supreme Court has categorized certain situations where recovery by the employer would be impermissible in law-

“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 belonging to Class-III 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.”

6. It is stated that the petitioner is now a man of advanced age of about 78 years from whom a substantial amount has already been recovered.

7. Learned counsel for the respondent State Bank of India appears and opposes the writ petition. He refers to the counter affidavit to submit that the petitioner had duly filed an undertaking with the Bank at the time when his pension was fixed at Rs. 6,755/- as on 01.01.2004, *inter alia*, in which the petitioner had categorically committed as follows-

“In consideration of the State Bank of India having agreed at my request to credit to my Saving Bank/Current account in my single name the amount of pension, payable to me from time to time by the Government of India, as it falls due, under the Scheme for payment of civil pensions of Central Government Pensioners by Public Sector Banks, I, the undersigned, Shri Shobha Kant Mishra S/o Shri Aged 60 Yrs. 6 months of C-4, Vijay Nagar (Hanuman Nagar) (address) Patna- 800020 agree and undertake to refund or make good to the Bank any amount to which I am not entitled or any excess amount which may be credited to my account over that to which I am or would be entitled and agree that the amount of money when demanded by the Bank from me as due and payable to the Bank in respect thereof shall be conclusive as to the amount and shall be binding on me. I also hereby so as to bind myself and my heirs, executors



administrators agree and undertake to indemnify the Bank from from and against any loss costs, charges, damages and expenses, suffered or incurred by the Bank in so crediting my pension to my account under the Scheme and to forthwith pay the same to the Bank and also irrevocably authorise the Bank to recover the amount in respect thereof by debit to my said account of any other deposit belonging to in the hands of the Bank.”

8. Learned counsel for the respondent Bank has relied on a judgment of the Hon'ble Apex Court in ***High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh passed in Civil Appeal No. 3500/2006*** which was a case of a judicial officer who was compulsorily retired on 12.2.2003 and recovery was sought to be made by letter dated 18.2.2004 in respect of the amount erroneously paid to the employee relating to pay scale revision with effect from 01.01.1996, amounting to Rs. 1,22,003/-. In that case as well, the employee had submitted an undertaking and it was held that mere retirement of an employee would not come in the way of recovery “*where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted*”. While opting for the benefit of the revised pay scale, the respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made. It was further



held that the principle enunciated in proposition (ii) of paragraph 12 of Rafiq Masih's case (supra) cannot apply to such situation, inasmuch as the employee was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. It was categorically held that the employee was bound by the undertaking. As held in the case of Jagdev Singh's case (supra), therefore, the petitioner is bound by his undertaking to refund any excess amount calculated and credited to his account.

9. It is submitted that reliance placed by the petitioner on Rafiq Masih's case (supra) is misplaced and misconceived. That was a case involving error committed in fixation of pension whereas in the present case, the revised pension as on 01.01.2006 has been fixed at Rs. 12,565/- to which the petitioner has not objected and has not challenged the same to be lower than his entitlement. His only grievance is that the higher amount has been paid in excess of his entitlement for no fault of his own and such excess amount ought not to be allowed to be recovered by the Bank after more than a decade.

10. It is thus submitted by the Bank that Rafiq Masih's case (supra) involving fixation of revised pension by the employer is not applicable and the benefit thereof would not be available to



the petitioner. The present case is merely one of calculation of pension by the Bank in which a clerical error was subsequently detected, and that too only at the time when the revised pension was fixed by the Department by order dated 14.03.2016, the correctness whereof has not been questioned by the petitioner. It is not a case of over-payment by the employer to the petitioner on account of wrong fixation of pension by the employer rather it is a case of excess amount credited to the account-holder owing to erroneous calculation.

11. It is stated that the process of fixation of revised pension by the Department concerned takes time. Accordingly, the Bank calculates the anticipated amount to be paid to the account-holder and makes payment by crediting the account-holder's account, so that he is not put to hardship in the meantime. Since such calculation is done by the Bank before the revised pension is fixed by the Department, an undertaking is obtained from the account-holder who agrees to indemnify the Bank in case over payment is made on account of clerical error. In the instant case, the anticipated revised pension on the basis of 6th Pay Revision was correctly calculated but inadvertently by reason of error of calculation, the amount of dearness allowance as earlier being paid to the petitioner was also continued. This was however not



detected for a long time, nor did the petitioner come forward as a bonafide citizen to point out the unduly high amount being paid to him.

12. In reply, learned counsel for the petitioner submits that Jagdev Singh's case (supra) has been misinterpreted and is being misapplied by learned counsel for the respondent Bank, inasmuch as that was a case of revision of pay-scale, unlike the present one involving revision of pension. It is further submitted that in Jagdev Singh's case (supra), recovery was sought to be made only after about a year in February, 2004 after the judicial officer had been compulsorily retired from service in February, 2003. In the present case, it is reiterated that the petitioner is about 78 years of age and he has been receiving his pension for more than 10 years before recovery is sought to be made.

13. We have heard learned counsel for the parties and considered the materials on record. It is not in dispute that the respondent Bank calculated the pension at Rs. 22,899/- as on 01.01.2006 after 6th Pay Revision and at Rs. 58,851/- as on 01.01.2016 after 7th Pay Revision. Payments were accordingly made by credit to the petitioner's account for more than a decade before the clerical errors on the part of the Bank were detected upon receiving the letter dated 13.06.2016 from the Telecom



Department. It is on that basis that recovery of the excess amount credited to the account of the petitioner was sought to be made. It is also borne out that a total amount of Rs. 7,53,108/- has already been deducted till October, 2020. It is the stand of the Bank that deductions would continue to be made till 31.08.2026 from out of the monthly pension of the petitioner, which, incidentally, are being made without charging interest.

14. The present case is not one where an error has been committed by the Telecom Department in fixation of revised pension, rather the petitioner has received excess payment for more than a decade owing to a clerical error in calculation by including dearness relief to which the petitioner was not entitled. It is true that the petitioner has submitted an undertaking to indemnify the Bank in case of over payment. At the same time, we are also mindful that the petitioner is now a man of advanced age of about 78 years and has received excess payment without misrepresentation or fraud on his part. Even if Rafiq Masih's case (supra) is not strictly applicable on facts as submitted on behalf of the Bank, the spirit in which the four categories have been formulated in Para-12 of that judgment in respect of which recovery has been held to be impermissible, cannot be lost sight of. We are of the view that the benefit of category 3 and 4 can well



be made available to the petitioner from whom recovery is being sought to be made after an inordinate delay of more than 12 years after his retirement.

15. We, therefore, direct in order to balance the equities between the parties, that the Bank shall refrain from making any further recovery from the petitioner henceforth. We however make it clear that to the extent recovery has already been made from the monthly pension of the petitioner, the same need not be refunded.

16. The writ petition stands disposed of with the aforesaid observations and directions.

17. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by the petitioner within the stipulated time provided in para 1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Vikash Jain, J)

(Anjani Kumar Sharan, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.07.2021
Transmission Date	

