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HIGH COURT OF CHHATTISGARH BILASPUR

Writ Appeal No.46 of 2019

Branch Manager, Allahabad Bank, at Branch Office, Tilda Road, Simga, District Baloda Bazar – Bhatapara, Chhattisgarh

---- Appellant

Versus

1. Smt. Sangita Mishra, Widow of Late Shri Baldau Prasad Mishra, aged about 55 years, resident of Mahamaya Para, Ward No.15, Simga, District Baloda Bazar – Bhatapara, Chhattisgarh
2. State of Chhattisgarh through the Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellant	: Mr. Harishankar Patel, Advocate
For Respondent No.1	: Mr. Ajay Shrivastava, Advocate
For Respondent No.2	: Mr. Ishan Verma, Panel Lawyer

Date of hearing	: 17.11.2021
Date of Judgment	: 16.12.2021

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Goutam Bhaduri, Judge

C A V Judgment

Per Arup Kumar Goswami, Chief Justice

Heard Mr. Harishankar Patel, learned counsel for the appellant; Mr. Ajay Shrivastava, learned counsel appearing for respondent No.1 and Mr. Ishan Verma, learned State counsel appearing for respondent No.2.

2. This writ appeal is presented against an order dated 25.10.2018 passed by the learned Single Judge in Writ Petition (S) No.6996 of 2018, whereby the learned Single Judge set aside the order dated 01.10.2018 and directed the respondent No.1 (appellant herein) to refund back the amount recovered, if any, forthwith while reserving liberty to the respondents to make rectification of the erroneous fixation of pension of the petitioner.

3. For the sake of convenience, respondent No.1 in this appeal will be referred to as the petitioner and respondent No.2 in the appeal as respondent No.2.

4. The husband of the petitioner was a Head Master, who retired on superannuation on 30.06.2010. He died in harness on 12.06.2012 and consequent thereto, the petitioner was granted family pension.

5. The proximate cause for approaching this Court under Article 226 of the Constitution of India is the order dated 01.10.2018, which came to the challenged in the petition. The order reads as follows :

"**SIMGA 01.10.2018**

Smt. Sangita Mishra
W/o Baldeu Prasad Mishra,
Mahamaya Para, Ward No.15
Simga
Dist.-Baloda Bazar

Dear Sir/Madam,

RECOVERY IN PENSION ACCOUNT

Please refer to our letter dated 01.10.2018 wherein you have been advised to deposit excess pension payment amounting to Rs.369486. As you have not deposited the required amount we have deducted Rs.15337/- from the pension for the month of September 2018 and hold Rs.200000/- in the account No.50060648233 for remittance of Government in the month of October 2018. For balance amount of Rs.154149, Rs.5600 pm will be deducted wef Nov 2018 Pension till final recovery.

Please acknowledge receipt.

Your's faithfully

Sd/-

Sr Manager"

6. The learned Single Judge observed that wrong fixation was made by the respondents, for which the petitioner cannot be blamed in absence of any allegation of misrepresentation or fraud and in that circumstance, all that the State can do is to rectify the error. It was held that the State cannot recover the amount which has already been paid to the employee. While holding so, the learned Single Judge relied on a judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and Others v. Rafiq Masih (White Washer) etc.***, reported in

2015 AIR SCW 501 [(2015) 4 SCC 334].

7. Mr. Harishankar Patel, learned counsel for the appellant-Bank submits that without affording any opportunity of hearing to the appellant, order under challenge had been passed and therefore, on that ground alone, the order of the learned Single Judge is liable to be set aside and quashed. Placing reliance on a memo dated 21.07.2019 filed in the present proceedings, the learned counsel submits that excess amount of the pension was paid to the petitioner inadvertently. As per Pension Payment Order ('PPO'), the petitioner was entitled for basic pension of Rs.10,385/- up to 15.06.2015 and thereafter from 16.06.2015, the basic pension ought to be reduced to Rs.6,231/-. However, the pension amount was being paid @ Rs.10,385/- up to 31.08.2018 and this fact was first time detected at the time of fixation of pension as per new salary revision of the State. It is submitted that excess payment made to the pensioner was not questioned by the State authorities and when the excess payment was detected, recourse was taken for recovery of the amount as per the circular dated 17.03.2016 issued by the Reserve Bank of India, which permitted recovery of over payment / excess payment made to pensioner. He has submitted that the learned Single Judge committed error in law in relying on the decision of Hon'ble Supreme Court in the case of ***Rafiq Masih*** (supra) inasmuch as the petitioner had undertaken to refund or make good any excess amount paid at the time of applying for family pension. It is also contended by him that the petitioner also knew that she was being paid excess payment and therefore, it cannot be said that the Bank alone was responsible for

excess payment. In support of his contention, the learned counsel relies on the decision of the Hon'ble Supreme Court in ***Chandi Prasad Uniyal and Others v. State of Uttarakhand and Others***, reported in ***(2012) 8 SCC 417*** as well as in the case of ***High Court of Punjab & Haryana and Others v. Jagdev Singh***, reported in ***(2016) 14 SCC 267***.

8. Per contra, Mr. Ajay Shrivastava, learned counsel for the petitioner, while supporting the impugned order of the learned Single Judge, has contended that the petitioner is an illiterate lady and she knew only how to sign and that the Bank had taken number of signatures to release the pension and it is on the basis thereof, a so-called letter of undertaking was also signed. He submits that the original undertaking is not readable and no reference of PPO was given, the relevant portion having been kept blank and therefore, no action can be taken on the basis of such an undertaking. In this connection, he has referred to the undertaking brought on record by the appellant at page-34 of the appeal papers, which is original as well as to the one at page-40 of the appeal papers, which is a photocopy, wherein the PPO number is recorded. Apparently, PPO number was inserted therein, later on, he submits. It is contended that in the attending facts and circumstances, the basic issue raised in the writ petition being a legal question, when opportunity is granted by this Court in the writ appeal, the appeal may not be allowed only the ground that the notice was not issued to the appellant herein at the time of disposal of the writ petition.

9. We have considered the submissions of learned counsel appearing for the parties and have perused the materials on record.

10. The writ petition was filed on 08.10.2018 and the same came to be disposed of on 25.10.2018. Perusal of the order dated 25.10.2018 goes to show that names of the counsel for the petitioner as well as for the State counsel are only recorded. Evidently, the appellant, which was respondent No.2 in the writ petition, was not heard at the time of passing of the order.

11. Though appellant was not heard before the learned Single Judge, since as rightly submitted by learned counsel for the petitioner that this Court is basically confronted with a legal question as to whether recovery can be effected in the present fact situation, we are of the considered opinion that on the ground of violation of principles of natural justice, the order of the learned Single Judge need not to be interfered with as the appellant is granted full opportunity of hearing in the writ appeal.

12. Relevant portion of circular dated 17.03.2016 issued by the Reserve Bank of India is extracted hereinbelow :

> "**Recovery of excess payments made to pensioners**
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> a) As soon as the excess/wrong payment made

to a pensioner comes to the notice of the paying branch, the branch should adjust the same against the amount standing to the credit of the pensioner's account to the extent possible including lumpsum arrears payment.

b) If the entire amount of over payment cannot be adjusted from the account, the pensioner may be asked to pay forthwith the balance amount of over payment.

c) In case the pensioner expresses his inability to pay the amount, the same may be adjusted from the future pension payments to be made to the pensioners. For recovering the over-payment made to the pensioner from his future pension payment in installments 1/3rd of net (pension + relief) payable each month may be recovered unless the pensioner concerned gives consent in writing to pay a higher installment amount.

d) If the over payment cannot be recovered from the pensioner due to his death or discontinuance of pension then action has to be taken as per the letter of undertaking given by the pensioner under the scheme.

e) The pensioner may also be advised about

> the details of overpayment/wrong payment and mode of its recovery."

13. In ***Chandi Prasad Uniyal*** (supra), Hon'ble Supreme Court observed that it has not laid down as a principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to such irregular / wrong fixation of pay can be recovered. The Hon'ble Supreme Court further observed that any amount received by the recipient without the authority of law can always be recovered barring a few exceptions of extreme hardships but not as a matter of right and taking note of the facts of the case, as presented, it was held that the case of the appellants therein did not fall in any of the exceptional categories and that apart, there was a stipulation in the fixation order that in case of irregular / wrong pay fixation, the institution in which the appellant were working would be responsible for recovery of the amount received in excess from the salary / pension.

14. In ***Rafiq Masih*** (supra) at paragraphs-6 & 7, the Hon'ble Supreme Court observed as follows :

> "6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend

to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise

> of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

15. It was further held in ***Rafiq Masih*** (supra) that an action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. It is also held that recovery from employees in lower rung of service, would result in extreme hardship to them as it is considered that the employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer.

16. After a detailed analysis of the case law on the subject, Hon'ble Supreme Court in ***Rafiq Masih*** (supra) at paragraph-18 observed 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 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."

17. In ***Jagdev Singh*** (supra), recovery was sought to be effected from a Civil Judge, Junior Division, who was placed under suspension and who was eventually compulsorily retired. The Hon'ble Supreme Court took note of the fact that when the Civil Judge had opted for the revised pay scale, he furnished an undertaking as required under the relevant Rules to the effect that he would be liable to refund any excess payment made to him. In view of the above position, the Hon'ble Supreme Court in ***Jagdev Singh*** (supra) held that proposition (ii) of ***Rafiq Masih*** (supra) would not apply as the person 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 and as the officer had furnished an undertaking while opting for the revised pay scale.

18. The undertaking at page-34 of the appeal papers produced by the appellant is not readable. While in the said document, PPO number is not reflected, in the letter of undertaking at page-40 of the appeal papers, PPO number is incorporated. While page-34 appears to be original, page-40 is, decidedly, a photocopy. If the Bank wants to rely on an undertaking given by the pensioner, least to be expected is that the same is readable and comprehensible. We are of the considered opinion that even though the petitioner acknowledges her signature in the said document, on the basis of such a document,

appellant cannot act upon for the purpose of recovery of any excess amount.

19. No doubt, there is a guideline issued by the Reserve Bank of India dated 17.03.2016, but such guideline has to be considered in the light of the judgments pronounced by the Hon'ble Supreme Court with regard to the permissibility or otherwise of recovery of amount from the employees.

20. Perusal of the PPO indicates that from 16.06.2015, amount of pension is reduced to Rs.6,231/-. It is on the basis thereof, the contention is advanced by the learned counsel for the appellant that the petitioner is also aware that she is being paid pension beyond what is her entitlement. When the petitioner, as noted earlier, is an illiterate lady, we are of the considered opinion that such a stipulation in the PPO may not lead to the conclusion that in spite of being aware of the factual situation, the petitioner did not inform the Bank about the excess payment being made to her.

21. The basic question that arises is whether in terms of the judgments as noted above, recovery was at all permissible in respect of the petitioner.

22. Assuming that the undertaking given by the petitioner is applicable, then also, in our considered opinion, as her husband indisputably belonged to Class-III service, recovery from the petitioner is not permissible in terms of proposition No. (i) in paragraph 18 of the judgment rendered in ***Rafiq Masih*** (supra). It is also to be recorded that in ***Jagdev Singh*** (supra), in the context of an undertaking given by an

employee, the proposition No. (ii) was only held to be not applicable.

23. In that view of the matter, we find no good ground to interfere with the order of the learned Single Judge and accordingly, the writ appeal is dismissed. No costs.

Sd/-	**Sd/-**
(Arup Kumar Goswami)	**(Goutam Bhaduri)**
Chief Justice	**Judge**

Anu