NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3396 of 2020

1. State Bank of India Through It's Branch Manager, Railway Colony, Bilaspur, Chhattisgarh
2. Chief Manager Centralized Pension Payment Cell, Govindpura, Near ITI, Bhopal (M.P.) PIN-462023

---- Petitioners

Versus

1. Smt. G. Kusumamba W/o Late G.S.N. Rao, Aged About 63 Years, R/o Sairam Nilayam, Devri Khurd, Near JBC Sunrise School, District Bilaspur, Chhattisgarh
2. Union of India, Through General Manager, South East Central Railway, New GM Building, Bilaspur, Chhattisgarh, PIN 495004
3. Chief Personal Officer South East Central Railway, Divisional Office, Personal Branch, Bilaspur (Chhattisgarh) PIN 495004
4. Senior AFA/Pension South East Central Railway, Bilaspur, Chhattisgarh, PIN 495004

---- Respondents

For Petitioner	: Shri Sachin Singh Rajput, Advocate
For Respondent No.1	: Shri Ashutosh Pandey, Advocate on behalf of Shri A.V. Shridhar, Advocate
For Respondent/Railways	: Shri H.S. Ahluwalia, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Order on Board

Per P. R. Ramachandra Menon, Chief Justice

08.02.2021

1. Correctness and sustainability of the order dated 21.11.2009 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting, Bilaspur in Original Application No.203/00152/2018 interdicting the recovery proceedings pursued by the Petitioner-Bank against the 1st Respondent in respect of the alleged excess payment of the family pension/old-age pension is the subject matter of challenge in this writ petition.

2. Heard Shri Sachin Singh Rajput, the learned counsel appearing for the Petitioner, Shri Ashutosh Pandey, the learned counsel representing the 1st Respondent and Shri H.S. Ahluwalia, the learned counsel appearing for the Respondents No.2 to 4 in detail.

3. The husband of the 1st Respondent, by name, Shri G.S.N. Rao was a Group-D employee working in the capacity of TLM in the Respondent-Railways. He retired from service on attaining the age of superannuation on 30.06.1987, who later took his last breath on 05.01.1991. Pursuant to the demise of the husband, the 1st Respondent was being paid family pension/old-age pension in accordance with law, which was being credited to the account with the Petitioner-Bank.

4. While so, in the year 2016, the 1st Respondent was served with Annexure A/1 notice dated 30.08.2016 informing that there was an excess payment to the tune of Rs.1,18,652/- covering the period from 01.06.2009 to 31.08.2016 which was sought to be recovered. The recovery was stated as being made in terms of the Reserve Bank of India guidelines attributing Rs.3,000/- per month (1/3rd of the gross pension). This was challenged by filing Original Application by the 1st Respondent, contending that no such recovery was possible from the family pension, in view of the law declared by the Apex Court in **State of Punjab and Others v. Rafiq Masih (White Washer) and Others** reported in **(2015) 4 SCC 334**. It was also pointed out that, as per RBE No.72/2016, the Respondents before the Tribunal had adopted the Circular issued by the DoPT dated 02.03.2016, whereby it was decided that the issue of wrongful/excess payment ought to be dealt with in accordance with the declaration of law by the Apex Court in **Rafiq Masih** (supra).

5. The Respondent-Railways contended before the Tribunal that, the dispute was originally between the Bank and the Pensioner; adding that, there was no illegality in the deduction of the said amount, which was in accordance with the 'undertaking' submitted by the Applicant. The Petitioner-Bank (who were Respondents No.4 and 5) filed reply-statement pointing out that, the Applicant was receiving the old-age pension with effect from 01.06.2009 w.r.t. date of birth as '02.06.1929'; which in fact was the date of the birth of the deceased regular pensioner Shri G.S.N. Rao (husband of the 1st Respondent). Since the date of birth of the Applicant was not mentioned in the PPO, they reckoned it by mistake, leading to excess payment. It was further contended that the Bank was entitled to recover the excess payment in view of the law declared by the Apex Court in **Chandi Prasad Uniyal v. State of Uttarakhand** reported in **AIR 2012 SC 2951** and in view of the 'undertaking' given by the Applicant that, if any excess payment was effected, it could be recovered, as held by the Apex Court in **High Court of Punjab and Haryana v. Jagdev Singh** reported in **(2016) 14 SCC 267**.

6. After hearing both the sides, the Tribunal extracted the conclusion as given by the Apex Court in **Rafiq Masih** (supra) of the said judgment specifying the circumstances under which, the recovery was impermissible. Observing that, recovery from the family pension of the Applicant, in respect of the benefits being derived by virtue of the death of the husband, who was only a 'Group-D' employee and further that, the recovery notice was issued on 30.08.2016 for the excess payment in the year 2017 i.e. after about 7 years from the date of alleged excess payment, it was held that the matter was squarely covered by the Apex

Court in **Rafiq Masih** (supra). It was also held that the earlier verdict in **Chandi Prasad Uniyal** (supra) was not applicable to the case in hand and so was held in respect of **Jagdev Singh** (supra) which was involving recovery from a Civil Judge, and situated on the much higher pedestal than the Applicant. It was accordingly, that Annexure A/1 was held as not sustainable and was set aside; simultaneously directing to cause refund of the amount recovered pursuant to Annexure A/1 to the Applicant within 60 days.

7. Shri Sachin Singh Rajput, the learned counsel appearing for the Petitioner-Bank submits that, since there cannot be any doubt with regard to the legal position as declared in **Jagdev Singh** (supra) (after referring to the law declared in **Rafiq Masih** (supra)), the recovery of excess payment is possible where an 'undertaking' is given by the employee. In the instant case also, such an 'undertaking' is stated as given and as such, the attempt of the Petitioner is only to save the public money, which hence ought not to have been interdicted by the Tribunal. The learned counsel also made a reference to the verdict passed by this Court on **02.12.2019** in **Writ Appeal No.376 of 2019** where such a view has been taken even in the case of a 'Class-III employee', placing reliance on **Jagdev Singh** (supra).

8. Shri Ashutosh Pandey, the learned counsel representing the 1st Respondent submits that the case of the 1st Respondent-widow of deceased employee stands on a different footing. The said Respondent is only drawing the family pension/old-age pension and the recovery steps being pursued by the Petitioner-Bank are quite harsh causing utmost hardship. It is also pointed out that, there is no fault on the part of the deceased pensioner/her husband or on her part with regard to the

alleged excess payment and that the recovery steps pursued with reference to the alleged excess payment from 01.06.2009, after a period of about 7 years, is not legally sustainable.

9. After hearing both the sides and going by the judicial precedents, it remains a fact that the declaration of law made by the Apex Court in **Rafiq Masih** (supra) still stands; though an exception has been carved out in the subsequent judgment in **Jagdev Singh** (supra), where an 'undertaking' is given by the employee concerned. In the instant case, a copy of the 'undertaking' stated as given has been produced by the Petitioner-Bank before the Tribunal, which forms part of the file (having produced copy of the Original Application, reply statement and the documents concerned). The contents of the said 'undertaking' do not reveal the name of the 'party' who made the undertaking or the 'date' on which it was executed. It does not bear the signature as well. The said 'undertaking' is as follows :

Typed Copy

34-A

LETTER OF UNDERTAKING

To,

The Chief/Branch Manager L.F. No. 01/90007730
State Bank of India A/C No. old 15993
Bilaspur (C.G.)

Dear Sir,

Payment of pension under P.P.O. No. Peo/BSP/314/4/99 through you office.

In consideration of you having at my request agreed to make payment of pension due to me every month by credit to my account with you I, the undersigned agree and undertake to refund or make good any amount to which I any nt entitled of any amount which may be credited to my account in excess of the amount to which has per would be entitled. I further hereby undertake and agree to bind myself and my heirs successors executors and administrators to indemnity the bank from and against any losssufered or incurred by the Bank in as crediting my pension to my account under the scheme and to forthwith pay the same to the bank and also irrevocably authorized the bank to recover the amount due by debit to my said account or any other deposit account belonging to me in the possession of the Bank.

Dated .... your Faithfully
Witness :- Signature of Pensioner

1. A. Signature : Sd/
B. Name
C. Account No. 01190012210
SB LF No. 9/28/18
2. A. Signature : Sd/-
B. Name : A Bhaskar Rao
C. Account No. 01100305036
SB LF No.

TRUE COPY

It does not mention anything with regard to the payment of family pension or old-age pension, but for mentioning the payment of 'pension' to the credit of the account holder. Whether this was signed/executed by the original pensioner (deceased husband of the 1st Respondent) or by the 1st Respondent herself and under what circumstance, is not clearly revealed therefrom.

10. The recovery to be made from the 'family pension/old-age pension' given to a person is different from the recovery to be made from the regular pensioner who may be still enjoying the full pension. In the instant case, insofar as the 1st Respondent, who is not a regular pensioner and is having only 'family pension/old-age pension', the possible hardships which would be caused to her if the recovery steps are permitted to be pursued, require to be looked into. This is more so, in view of the specific observations made by the Apex Court in paragraph-18 of the **Rafiq Masih** (supra) pointing out that the situations where recovery of the employee is impermissible. Paragraph-18 is extracted below for easy reference :

> “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**."

Even though the above judgment stands considered and explained with reference to the scope of interference in a case where 'undertaking' is given as held by the Apex Court in **Jagdev Singh** (supra), the fact remains that the scrutiny to be made is by comparing the comparative hardships w.r.t. the impact caused on the employee and the right of the employer to effect the recovery. Considering the facts and circumstances, we are of the firm view that the recovery, if made from the 1st Respondent who is the widow of the deceased employee and a drawee of the family pension/old-age pension, it would be iniquitous, harsh and arbitrary in all respects and it will far out-weigh the equitable balance of the employee's right to recover.

11. In the above circumstances, we hold that the verdict passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting, Bilaspur does not warrant any interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The writ petition fails and it is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Anu