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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 3836 OF 2021

• Smt. Bharti Devi Thakur, W/o Late Shri Ram Singh Thakur, aged about 51 years, Resident of House No.12, Ward No.03, Village Kodoguda, Post Putka, Block Saraipali, District Mahasamund (CG)

... Petitioner

versus

1. State of Chhattisgarh, through Secretary, Department of Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, New Raipur, District Raipur (CG)
2. Branch Manager, Central Bank of India, Saraipali, Distt. Mahasamund (CG)

… Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate.
For Respondent No.1	:	Ms. Akanksha Jain, Dy. G.A.
For Respondent No.2	:	Mr. Anand Shukla, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/08/2021

1. Ignoring the defaults pointed out by the Registry in the instant case, heard the matter finally at admission stage itself with the consent of learned Counsels appearing for their respective party.

2. Matter pertains to the alleged recovery initiated from June, 2021 onwards from the pension payable to Petitioner.

3. Brief facts relevant for the disposal of the present Writ Petition are that the husband of Petitioner was working as an Upper Division Teacher under the Respondent-State and who died in harness on 7.1.2013. Pursuant to the death of her husband, the Petitioner i.e. the widow was paid the family pension. Erroneously, the Petitioner was paid the pension of an amount of Rs.29,692/- per month. According to Respondent No.2-Bank, the said amount of Rs.29,692/- was payable only up till January, 2020 and thereafter the family pension payable to Petitioner was Rs.17,815/- per month. However, erroneously the old pension of Rs.29,692/- was paid to Petitioner up till May, 2021 to which she was otherwise not entitled for and that she was entitled for the actual pension of an amount of Rs.17,815/- per month. Pursuant to this erroneous fixation of pension which was detected, the impugned action of recovery has been initiated for total amount of Rs.2,05,930/- and the Respondent-Bank has started recovery of an amount of Rs.9896/- per month from the monthly pension payable to Petitioner. It is this action of recovery which is under challenge in the present Writ Petition.

4. Contention of learned Counsel for Petitioner is that the alleged excess payment, if any, paid to Petitioner is not on account of any fault or act of misrepresentation on the part of Petitioner, but is on account of an error on the part of Respondent-Bank themselves. Therefore the Petitioner should not be penalized by recovering from her monthly pension which she is otherwise entitled to for her sustenance. Learned Counsel for Petitioner in support of his contentions has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of “State of Punjab and others etc. *Vs.* Rafiq Masih (White Washer) etc.”, 2015 (4) SCC 334, stating that recovery in the instant case thereby becomes impermissible under law.

5. Shri Anand Shukla, learned Counsel for Respondent-Bank, however, contends that it is a case where an erroneous pension was paid to Petitioner not long ago but only from January, 2020 onwards. It is also the contention of learned Counsel for Respondent-Bank that undoubtedly the Petitioner has been paid something which she otherwise is not legally entitled for. According to him, another fact which needs appreciation is the fact that the recovery is being made not of some amount which was paid erroneously to the husband of Petitioner, i.e., the deceased employee, but it is a case where erroneous payment was made to Petitioner herself and that too in the recent past. He thus justified the act on the part of Respondent-Bank.

6. Having heard the contentions put forth on either side and on perusal of record, the undisputed factual matrix of the case is that the husband of Petitioner was working as an Upper Division Teacher under Respondent-State and who died in harness on 7.1.2013. Thereafter, the Petitioner became entitled for receiving the family pension. She was given the pension of an amount of Rs.29,692/- per month which under the Family Pension Rules she was entitled for up till January, 2020. Respondent-Bank, however, could not carry out the necessary rectification of family pension amount beyond the period January, 2020 and the amount of Rs.29,692/- got continued to be paid up till May, 2021. It was then that the error was detected and rectification was ordered and the recovery proceeding was initiated from the family pension payable to Petitioner from the month of June, 2021 onwards. Undisputedly, the Petitioner has not been granted an opportunity of hearing before the rectification was carried out by Respondent-Bank, nor is there any order of recovery passed by Respondent-Bank.

7. From the afore given undisputed factual matrix of the case, what is revealed is that the said erroneous pension was paid to Petitioner from January, 2020 till May, 2021 that is immediately preceding 15 months from the date of the impugned action of recovery. It is not a very old recovery proceeding or a very old erroneous fixation which is ordered to be recovered. Learned Counsel for Petitioner has not made out a case in the present petition that the Petitioner was entitled for the family pension of Rs.29,692/- per month which she has received up till May, 2021. Petitioner seems to have accepted the fact that there has been erroneous pension paid to her from January, 2020 onwards. It is here that the judgment of the Hon'ble Supreme Court rendered in the case of **“State of Punjab and others etc. *Vs.* Rafiq Masih (White Washer) etc.”**, reported in **2015 (4) SCC 334**, which has to be minutely considered. In the said judgment, in paragraph 18, the Hon'ble Supreme Court has clearly spelt out the situations under which the recoveries have been made impermissible under law. For ready reference, the situations enumerated in paragraph 18 of the said judgment are quoted herein below:-

> ***“(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.”***

8. In the case in hand, the situation which needs to be considered is clause (*v*) of paragraph 18 of the aforesaid judgment. What is to be appreciated is whether the action on the part of Respondent-Bank can be brought within the ambit of it being iniquitous, harsh or arbitrary to the extent of it outweighing the equitable balance of the employer's right to recovery. Given the factual matrix of the case where there is no challenge to the erroneous payment made to Petitioner beyond January, 2020, what needs to be considered is whether in the given situation it would be equitable for Respondent-Bank to recover the said amount. In the instant case, from the pleadings, the widow seems to be only 51 years of age. The amount of excess payment was made immediately for the preceding 15 months before the recovery was actually initiated. In the instant case, even after rectification the Petitioner would be entitled for an amount of Rs.17,815/- as monthly pension. The pension amount of Rs.17,815/- is also otherwise the actual amount which the Petitioner is entitled for towards family pension. The only thing which can appear to be harsh is the quantum of recovery made by Respondent-Bank not the action of recovery. The action cannot be said to be arbitrary, for the reason that there is no challenge by Petitioner that she is otherwise entitled for pension of Rs.29,692/- per month which she was receiving earlier, except the fact that she has not been given an opportunity of hearing, and this perhaps may be the reason for that there was no intimation or an order issued by Respondent-Bank intimating the Petitioner about this fact.

9. Under the circumstances, this Court is of the opinion that the recovery so being made by Respondent-Bank cannot be said to be either iniquitous or arbitrary. The amount of Rs.9,896/- which has been ordered to be recovered per month seems to be harsh considering the actual payable amount which after rectification is Rs.17,815/- per month and the total amount of recovery also being Rs.2,05,930/-. This Court therefore is of the opinion that ends of justice would meet if the amount of recovery which has been ordered by Respondent-Bank of Rs.9,896/- per month is reduced to an amount of Rs.5000/- per month till the entire excess amount of Rs.2,05,930/- is recovered.

10. As regards the fact that Petitioner has not been given opportunity of hearing, true it is that Respondent-Bank ought to have intimated this fact of a sudden reduction in the monthly pension which the Petitioner has been receiving till May, 2021. Respondent-Bank is therefore directed that let a correspondence in this regard be made to Petitioner giving the details of the action with the actual calculation also reflected both in respect of the actual pension that the Petitioner is otherwise entitled for and the period of excess pension which has been received and on receipt of the said intimation from Respondent-Bank, the Petitioner would be at liberty to challenge the same in case she still is of the view that the reduction in the pension and the recovery initiated was illegal and arbitrary.

11. With aforesaid direction/observation, the Writ Petition stands partly allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
JUDGE

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