S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 906 OF 2021

Manohar Hiru Porte .. Petitioner
**Versus**
Assistant General Manager
Bank of India (CPPC) & Ors. .. Respondents

..................

- Mr. Yogendra P. Singh for the Petitioner
- Mr. Neel G. Helekar for Respondent Nos.3,4,5

..................

CORAM : K.K. TATED &
R. I. CHAGLA, JJ.

DATE : APRIL 8, 2021

**P.C.:**

**1.** Heard the learned counsel for the parties.

**2.** By this Petition under Article 226 of the Constitution of India, Petitioner is challenging the letter-cum-order dated 09.03.2020 issued by the Bank of India informing the Petitioner that the Respondent – Union of India paid him a sum of Rs.5,29,282.00 in excess of pension amount and therefore they had to recover the same in 34 equal installments of Rs. 15,966.00 each starting from March-2020.

**3.** Learned counsel for the Petitioner submits that the Petitioner is a retired military personnel. He submits that the Respondents without giving any show cause notice and/or intimation started deducting sum of Rs.15,966.00 per month from his pension amount for a recovery of sum of Rs.5,29,282.00. He submits that as per his calculation, there is no question of refund of any amount.

**4.** Learned counsel appearing on behalf of the Petitioner submits that before taking the decision for deduction of amount from pension amount, the Respondents had not considered the office memorandum dated 02.03.2016 passed by them. He relies on para 4 and 5 of the said Memorandum which reads thus :

> "4. The Hon'ble Supreme Court while observing that 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 has summarized the following few situations, where recoveries by the employees 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 in 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.
>
> 5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the

> Department of Legal Affairs. The Ministries / Departments are advised to deal with the issue of wrongful / excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No. 11527 of 2014 (arising out of SLP (C) No. 11684 of 2012) in State of Punjab and others etc. Vs. Rafiq Masih (While Waster) etc. However, wherever the waiver of recovery in the above-mentioned situation is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No. 18/26/2011-Estt(Pay-I) dated 6th February, 2014.

**5.** He further submits that in any case in the interest of justice, this Hon'ble Court be pleased to set aside the letter-cum-order dated 09.03.2020 and direct the Respondent - Union of India to hear the Petitioner and then pass necessary orders, if any. He submits that as on today near about Rs.1,80,000.00 is recovered by the Respondents.

**6.** At this stage, learned counsel appearing on behalf of the Respondent Nos. 3,4 and 5 submits that the present Petition filed by the Petitioner under Article 226 of the Constitution of India is not maintainable. He submits that the Petitioner has an alternate efficacious remedy available i.e. Arm Force Tribunal. He submits that in any case the main grievance of the Petitioner is that the letter-cum-order dated 09.03.2020 issued by them is without issuing any show cause notice to Petitioner. He makes a statement on instructions that that they are ready and willing to hear the Petitioner before passing any fresh order. He submits that whatever amount is recovered by them that should be subject to the final order if any passed by them.

Hence by consent of both the parties, the following order is passed :

(a) Order cum letter dated 09.03.2020 issued by the Bank of India for recovery of monthly installment of Rs.15966.00 each starting from March-2020 is quashed and set aside;

(b) Respondent - Union of India is permitted to issue show cause notice to the petitioner for the same cause of action and after hearing the petitioner pass fresh order to the effect, if any;

(c) Liberty is granted to the Respondents to pass appropriate order as early as possible as per their convenience.

(d) Whatever amount is recovered by the Respondents, the same should be subject to the outcome of the further order if any passed by the Union of India;

(e) Till the further order is passed by the Respondent – Union of India and communicated to the Petitioner in writing, they are restrained from recovering any amount from the Petitioner on the basis of this letter cum order dated 09.03.2020.

**7.** The Writ Petition stands disposed of with the above directions.

**8.** No order as to costs.

[ R. I. CHAGLA J. ] [ K. K. TATED J. ]