IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.4552/2019

Mahadeo Waghmare V Bank of India and others

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

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Mr. B. Lahiri, Advocate for petitioner.
Mr. R.S. Kale, Advocate for respondent no.1.
Mrs. M.R. Chandurkar, Advocate for respondent nos.2 and 3.

CORAM : DIPANKAR DATTA, CJ &
V.M.DESHPANDE, J.
DATE : July, 27,2021.

1. The petitioner is a retired teacher of a school administered by the Ordnance Factory. Pursuant to his retirement from service sometime in the year 1992, the petitioner has been receiving pension as per his entitlement. However, the petitioner was surprised when an amount of Rs. 82,232/-(Rupees Eighty two thousand two hundred and thirty two) was debited from the pension account maintained by him in the respondent no.1 Bank towards alleged recovery of excess sum paid to him. Such recovery was made by the respondent no.1 Bank without putting the petitioner on notice. The petitioner has, accordingly, presented this Writ Petition seeking a direction on the respondent no.1 Bank to refund Rs. 82,232/-(Rupees Eighty two thousand two hundred and thirty two) together with interest @ 9%.

2. Reply affidavits have been filed by the respondent no.1 Bank as well as the General Manager of the Ordnance Factory and the Controller of Defence Accounts (Pension). What we find from the reply affidavit of the respondent no.1 Bank is that the petitioner as a pensioner at the relevant time was drawing basic pay of Rs. 9030 (Rupees Nine thousand thirty) + Rs. 1806/-(Rupees One thousand eight hundred six), totaling Rs.

10,836/- (Rupees Ten thousand eight hundred thirty six). The sum of Rs. 1806/-(Rupees One thousand eight hundred six) constituted 20% extra allowance on the petitioner attaining 80 (eighty) years of age. Due to a wrong entry of Rs. 10,836/- (Rupees Ten thousand eight hundred thirty six) as his basic pay in the system, the petitioner was paid pension in excess of his entitlement. Such excess payment continued between January, 2006 and January 2016. As soon as the mistake in releasing pension to the petitioner in excess of his entitlement was detected, the process of recovery was started. In pursuance thereof Rs. 28,232/-(Rupees Twenty eight thousand two hundred thirty two) was recovered in lump-sum on 25-04-2016 and the balance Rs.54,000/-(Rupees Fifty four thousand) recovered in 6(six) monthly installments of Rs. 9000/-(Rupees Nine thousand) from March, 2016 to August, 2016.

3. Extensive arguments have been advanced by Mr. Lahiri, learned advocate appearing for the petitioner based on the decisions of the Hon'ble Supreme Court to the effect that recovery should not be effected from the retiral benefits of pensioners if such recovery would work out hardship to them.

4. At this stage, we need not examine the contentions raised by Mr. Lahiri on its merits, for, we are of the considered view that the respondent no.1 Bank having recovered Rs, 82,232/-(Rupees Eighty two thousand two hundred and thirty two) from the pension account of the petitioner without putting him on notice as well as without granting him any opportunity to persuade it that there has been no excess payment in his favour, a post- decisional hearing would meet the ends of justice and take care of the interest of the petitioner for the present. After all, if indeed the petitioner is unable to persuade the respondent no.1 Bank to change its decision of recovery and consequently refund

the amount that has been debited/recovered illegally, as claimed by the petitioner, it would be open to him to pursue appropriate legal proceedings against such decision of the respondent no.1 Bank. In such view of the matter, we direct the competent officer of the respondent no.1 Bank to grant post-decisional hearing to the petitioner as early as possible but not later than 4 (four) weeks of receipt of a copy of this order.

5. We also direct that the petitioner or his authorized representative, as the case may be, will be heard, whereupon the respondent no.1 Bank shall pass a fresh order upon looking into the documents that may be placed by the petitioner. If it is found that the petitioner is correct in his contention that there has been no excess payment, the respondent no.1 Bank shall refund Rs. 82,232/-(Rupees Eighty two thousand two hundred and thirty two) together with interest @ 9% per annum. Per contra, if the respondent no.1 Bank maintains its earlier decision of recovery, it shall issue a reasoned order and communicate the same to the petitioner.

6. With the above directions, the Writ Petition stands disposed of. No costs.

7. All contentions raised in this Writ Petition are left open.

(**V.M.DESHPANDE, J.)** **(CHIEF JUSTICE)**