

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8386 of 2021

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Raj Kali Devi @ Raj Kali Kuar Wife of Late Rameshwar Singh @ Ramaishwar Singh Resident of Village- Manorpur, P.S. - Amnaur, District- Saran.

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Road Construction Department then Public Works Department (P.W.D.), Govt. of Bihar, Patna.
2. The Principal Secretary, Road Construction Department then Public Works Department (P.W.D.), Government of Bihar, Visheshvaraiya Bhawan, Bailey Road, Patna - 800001.
3. The Executive Engineer, Road Construction Department then Public Works Department (P.W.D.), Saran at Chapra.
4. The State Bank of India, through its Manager, Centralised Pension Processing Centre, 4th Floor, Administrative Office (Anta Ghat), J.C. Road, Patna - 800004.
5. The Manager, State Bank of India, Marhowrah Branch (Branch Code No. - 3211), P.S. - Marhowrah, District- Saran.
6. The Accountant General, Bihar, Patna, A.G. Office, Beerchand Patel Path, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Singh, Adv.
For the State	:	Mr.Sushil Kumar , GP-22
For the SBI	:	Mr. Chitaranjan Sinha, Sr. Adv. Mr. Rakesh Kumar Singh, Adv.
For the Respondent No. 6	:	Mrs. Ritika Rani, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 30-09-2022

The present writ petition has been filed for restraining the respondent authorities from making any recovery from the amount of family pension, being paid to the widow-petitioner and for setting aside the decision of the respondent authorities to



recover a sum of Rs. 3,43,792/- from the monthly family pension of the petitioner as also to direct the respondent authorities to refund the amount, which has already been recovered from the family pension of the petitioner. Lastly, it is prayed to revise the family pension of the petitioner on the basis of 7th Pay Commission Report.

2. The brief facts of the case are that the deceased husband of the petitioner, namely, late Rameshwar Singh, retired on 30.6.1982 while working as Road Mazdoor in Public Works Department, Saran at Chapra, whereafter pension was being paid to him with effect from 01.07.1982 regularly, however, he died on 09.01.1988.

3. It is the further case of the petitioner that she was drawing her family pension from the State Bank of India, Marhowrah Branch, however, suddenly, she received a notice dated 04.02.2019, intimating her that a sum of Rs. 3,43,792/- has been paid in excess to her, hence, the same be returned to the Respondent-State Bank of India (hereinafter referred to as "the Bank"). Thereafter,



the monthly family pension being paid to the petitioner at the rate of 15,445/- was abruptly reduced to a sum of Rs. 7,196/- with effect from the month of December, 2018 and at the moment, a sum of Rs. 7,916/- is being credited in the account of the petitioner. It is also submitted that the petitioner is an illiterate widow lady and she has no knowledge as to how the pension / family pension was fixed and as to under what circumstances, recovery is being made. However, it is submitted that no recovery can be made from a retired person, especially from a widow in case there is no misrepresentation on the part of the pensioner. In this connection, reliance has been placed by the learned counsel for the petitioner on a judgment dated 01.07.2019, rendered by this Court, in the case of **Akhileshwari Devi vs. The Union of India & Ors.** (CWJC No. 4156 of 2018), as upheld by the learned Division Bench of this Court, by a judgment dated 19.07.2022, passed in L.P.A. No. 270 of 2021. The learned counsel for the petitioner has also relied upon a judgment, rendered by the



Hon'ble Apex Court ,in the case of ***Thomas Daniel vs. State of Kerala & Ors.***, reported in 2022 SCC Online SC 536, as also the one rendered by this Court, vide judgment dated 09.07.2019, passed in CWJC No. 4050 of 2019 (***Kalawati Devi vs. The Union of India & Ors.***).

4. Per contra, the learned Senior Counsel for the Respondent- Bank has submitted that the deceased husband of the petitioner had opted to avail banking services of the Respondent-Bank to receive his due pension from his employer i.e. the Government of Bihar by opening an account with the Respondent-Bank and upon death of the husband of the petitioner, the petitioner also opted for availing the banking services of the Respondent-Bank to receive her due family pension in the account in question and she had also executed an undertaking by putting her thumb impression whereby she had undertaken to refund / make good to the Bank any amount to which she is found to be not entitled or any excess amount which may have been credited to her account as also had agreed



that such amount when demanded by the Bank, as due and payable to the Bank, shall be conclusive / binding and refundable by her.

5. It is the case of the Respondent-Bank that on account of clerical mistake on the part of the Bank, the nature of pension was uploaded in the system as regular pension in place of family pension, the date of birth of the petitioner was wrongly fed in the system of the Bank as 02.03.1922 and even after revision of pension under the 6th CPC, the old age benefit was also being credited as per the date of birth fed in the pension portal on the basis of entitlement as a regular pensioner, resulting in payment of excess amount of Rs. 3,51,020/- to the petitioner for the period 01.04.2007 to 30.11.2018. Subsequently, the said mistake was detected and correction was made with regard to the nature of pension i.e. from regular pension to family pension, however, since the date of birth of the petitioner was not in the record of the Bank, the same could not be rectified, nonetheless, the Respondent-bank, vide letter dated 17.12.2018, gave a notice to the



petitioner with regard to wrong entry of her date of birth as also with regard to excess pension paid to her to the tune of Rs. 3,51,020/-, with a request to refund the same, however, the petitioner did not respond, leading to the Respondent-Bank debiting a sum of Rs. 3,614/- per month from the month of December, 2018 onwards, from the future amount payable to the petitioner towards her family pension, in lieu of restitution of the excess amount credited to her account. It is submitted that the full family pension of the petitioner totals to a sum of Rs. 11,530/- and after debiting a sum of Rs. 3,614/-, the balance amount of Rs. 7,916/- is being credited in the account of the petitioner every month on the head of family pension. It is also submitted that upto to the month of July, 2021, a sum of Rs. 1,12,024/- has already stood restituted.

6. The Ld. Senior Counsel for the Respondent-Bank has further submitted that the decision of the Hon'ble Supreme Court of India, rendered in the case of **State of Punjab vs. Rafiq Masih**, reported in (2015) 4 SCC 334, is not applicable in



the present case and on the contrary, the judgment, rendered by the Hon'ble Apex Court in the case of **High Court of Punjab and Haryana & Ors. vs. Jagdev Singh**, reported in (2016) 14 SCC 267, covers the present case inasmuch as the judgment, rendered by the Hon'ble Apex Court in the case of **Rafiq Masih** (supra), has been distinguished and it has been held that the principles laid down therein will have no application to a situation where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted.

7. At this juncture, the learned counsel for the petitioner has submitted that the judgment relied upon by the learned counsel for the Respondent-Bank, rendered by the Hon'ble Apex Court in the case of **Jagdev Singh** (supra), is distinguishable in the facts and circumstances of the present case inasmuch as firstly, the recovery sought to be made in the said case was regarding excess salary



paid to the officer on account of revision of pay-scale whereas the present case pertains to excess payment of family pension, not only ranging over a period of few months but ranging over a period of about 12 years, allegedly made solely on account of laches and fault on the part of the officials of the respondent-Bank, without there being any misrepresentation or fraud having been committed on the part of the petitioner herein. It is further submitted that the case of Jagdeo Singh (supra) was not a case of retirement or grant of excess family pension but the officer in the said case had been compulsorily retired whereas in the present case the petitioner is the widow of the deceased employee/pensioner. Thirdly, it is submitted that much before passing of the judgment in the case of Jagdev Singh (supra), the Hon'ble Apex Court, in the case of Paras Nath Singh vs. the State of Bihar & ors., reported in 2009(6) SCC 314, has already held that in the case of illiterate persons, not knowing the implications of giving an undertaking and in absence of any fraud or misrepresentation



attributable to the employee in question, a lenient view should be taken and the amount already paid by the State authorities in excess should not be recovered. In this connection, the learned counsel for the petitioner has referred to paragraph nos. 2 to 6 of the said judgment rendered in the case of Paras Nath Singh (Supra), which are reproduced herein below:-

“2. On 15-4-1995, the appellant was given provisional first time-bound promotion with effect from 13-6-1984. After about 10 years, more precisely on 19-9-2005, the first time-bound promotion granted to the appellant was cancelled. In view of such cancellation of promotion, direction was issued by the State/respondent to recover Rs. 1,01,529.50 from the salary of the appellant at the rate of Rs 5000 per month. Aggrieved by the aforesaid order directing recovery, the appellant filed a writ petition before the High Court of Judicature at Patna contending that since the time-bound promotion given to him was at the fag end of his employment and that the appellant, once having worked in the time-bound promotional post, recovery against him was not justified.



3.The writ petition, however, was dismissed by a Ld. Judge of the High Court and affirmed by a Division Bench of the High Court in a letters patent appeal. Feeling aggrieved, the appellant has filed this special leave petition, which on grant of leave, was heard in the presence of the Ld. counsel for the parties.

4. Having heard the learned counsel for the parties and considering the fact that the State authorities had allowed the appellant to work for about 10 years and paid the salary at the enhanced rate, in which the appellant had no role to play except that he had given an undertaking to the authorities that in the event his first time-bound promotion was cancelled, in that case, he would be bound to refund the same.

5. Having considered the fact that the appellant was only a Class IV employee in the State of Bihar and almost an illiterate person & did not know the implications of giving such undertaking & in the absence of any fraud and misrepresentation attributed to the appellant and the amount being not so excessive, in particular Rs 1,01,529.50, out of which certain amount has already been recovered from the salary of the appellant by the State authorities, we are of the view that a lenient



view should be taken and the amount already paid by the State authorities to the appellant shall not be recovered. However, whatever amount that has already been recovered, shall not be paid back to the appellant.

6. In view of the above, the impugned judgments of the High Court are set aside and the writ petition filed by the appellant stands allowed. For the reasons aforesaid, the appeal is allowed to the extent indicated above. There will be no order as to costs.”

8. The learned counsel for the petitioner has thus submitted that the law laid down by the Hon’ble Apex Court in the case of Paras Nath Singh (supra) would be applicable in the present case as also the same squarely covers the present case, hence no recovery can be made from the petitioner herein. It is further contended that the law laid down by three Judges Bench of the Hon’ble Apex Court in the case of Rafiq Masiah (supra) holds the field and squarely covers the case of the petitioner.

9. I have heard the Ld. counsel for the parties and perused the materials on record from which this Court finds that admittedly, on account of



mistake committed by the officials of the Respondent-Bank, excess amount of family pension has been paid to the petitioner due to feeding of wrong data in the pension portal of the Respondent-Bank inasmuch as the nature of pension was fed as regular pension instead of family pension, resulting in payment of an excess amount of Rs. 3,51,020/- for the period 01.4.2007 to 30.11.2018 i.e. for a period of almost 11 years and 8 months approximately & it is only then that the officials of the Respondent-Bank woke up from their deep slumber and found that on account of the aforesaid erroneous entry made in the pension portal by the officials of the Respondent-Bank, excess amount of Rs. 3,51,020/- has been paid to the petitioner.

10. This Court finds that according to the well settled principles of law laid down by the Hon'ble Apex Court in a catena of decision reported in (2009) 3 SCC (Syed Qadir vs. State of Bihar); (1995) Suppl.1 SCC 80 (Sahib Ram vs. State of Haryana); (1994) 2 SCC 52 (Shyam Babu Verma



vs. Union of India); (1997) 6 SCC 139 (B.Ganga Ram vs. Regional Joint Director); (2006) 11 SCC 492 (Purshottam Lal Das vs. State of Bihar); (2000) 10 SCC 99 (Bihar State Electricity Board vs. Bijay Bhadur); (2006) 11 SCC 7089 (B.J. Akkara vs. Government of India University) and (1995) suppl. 1 SCC 18 (Sahib Ram vs. State of Haryana) and the one reported in (2015) 4 SCC 334 (State of Punjab vs. Rafique Masih), no recovery can be effected from the petitioner who is getting meager family pension since there has been no misrepresentation or fraud committed by her leading to payment of excess amount of family pension whereas on the contrary it is the negligence and the laches of the officials of the respondent-Bank which has led to excess payment of family pension, to which the widow petitioner has no answer on account of her helplessness and defenseless situation.

11. The present case is squarely covered not only by a catena of judgments rendered by the Hon'ble Apex Court, as referred to herein above, but also by



the latest judgment rendered by the Hon'ble Apex Court in the case of Rafique Masih (supra), paragraph No. 18 whereof is reproduced herein below:-

“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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the 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".

12. Now coming to the judgment referred to by the learned Senior Counsel for the Respondent-Bank, rendered by the Hon'ble Apex Court in the case of **Jagdev Singh** (supra), it would be apt to reproduce paragraph nos. 10 to 12 herein below:-

"10. In *State of Punjab v. Rafiq Masih* [(2015) 4 SCC 334] this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.

(emphasis supplied)

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer 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. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable installments. We direct that the recovery be made in equated monthly installments spread over a period of two years.

13. It is apparent from paragraph no. 11 of the judgment rendered by the Hon'ble Apex Court in the case of **Jagdev Singh** (supra) that the Hon'ble Apex Court was referring to non-applicability of principle enunciated in proposition (ii) of the judgment rendered in the case of **Rafiq Masih** (supra), in cases where undertaking has been furnished by an officer to refund payment of salary, made in excess, which reads as follows:-

“(ii) recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.”

Thus, this Court finds that the Hon'ble Apex



Court had referred to the non-applicability of the principles enunciated by the Hon'ble Apex Court in the case of **Rafiq Masih** (supra) as far as retired employees or employees who are due to retire within one year of the order of recovery, are concerned, however, in the present case, this Court is concerned with the case of a widow of the deceased retired employee and not with the case of a retired employee himself. Secondly, this Court finds that the Hon'ble Apex Court had taken a view that excess payment of salary made on account of revised pay scale should be recovered since the employee in question was an officer, who had stood compulsorily retired, however, this is not the case here. In fact, the Ld. Division Bench of this Court has also considered this aspect of the matter in a judgment dated 19.07.2022, rendered in the case of **Assistant General Manager, State Bank of India & Ors. vs. Alkhileshwari Devi & Ors.** (LPA No. 270 of 2021), paragraphs no. 7, 8, 11, 13 to 18 whereof are reproduced herein below:-

“7. It is further submitted that due to error



committed by the Bank officials in not noticing that the deceased- Rama Nand Prasad died on 01.02.2005, it is only a bonafide mistake in not noticing that the deceased employee died on 01.02.2005 and proceeded to remit full pension in his account from 01.02.2005 to 01.02.2018. Therefore, it is only a sheer mistake which could be rectified by the appellant-Bank and ordered for recovery of excess payment made in favour of Rama Nand Prasad from his wife Akhileshwari Devi-Respondent. In support of the aforesaid contention, learned counsel for the appellant has cited following decisions:

(i) High Court of Punjab & Haryana Vs. Jagdev

Singh reported in 2016(4) PLJR (SC) 78.

(ii) Chandi Prasad Uniyal and Others vs. State of Uttrakhand and Others reported in 2012(8) SCC 417

(iii) Union of India Vs. Sri Bijoy Kumar reported in 2022(1) PLJR (182)

Apex Court has taken note of some of the decisions in respect of recovery of excess payment. The latest being the case of Thomas Daniel Vs. State of Kerala & Ors passed in Civil Appeal No. 7115 of 2010 and



decided on 2nd May, 2022 reported in 2022, Live Law (SC) 438.

8. Learned counsel for the appellant submitted that Apex Court has not taken note of constitution Bench decision of the Apex Court in the case of Sales Tax Officer Vs. Kanhaiya Lal reported in AIR 1959 SC 135 (Para 24 and 31).

11. Undisputed facts are that the deceased employee- Rama Nand Prasad retired from the Ministry of Mines on 31.08.2001 and he died on 01.02.2005. The deceased employee-Rama Nand Prasad was getting pension through the appellant-Bank from 1st September, 2001 onwards. The appellant-Bank by oversight remitted full pension even after death of the deceased employee- Rama Nand Prasad during the period from 01.02.2005 to 01.02.2018. In the guise of rectifying the error committed by the appellant-Bank, the appellant-Bank calculated excess payment made in favour of deceased- Rama Nand Prasad as a sum of Rs. 7,65,207/-. Further, such recovery is on monthly installment @ Rs. 5,000/- per month was ordered.

13. In the light of these facts and circumstances, preliminary objection raised by the appellant-Bank in respect of



maintainability of writ petition stands rejected.

14. Payment of excess amount, i.e. full pension in the name of deceased- Rama Nand Prasad even after his death from 01.02.2005 till 01.02.2018 is due to sheer mistake. At the same time, one has to take note of the fact that appellant-Bank have noticed after thirteen years from the date of death of the deceased- Rama Nand Prasad. The appellant-Bank should have noticed payment of excess amount in the year 2005 for the reasons that Government of India has a policy decision that in respect of retired employee who is earning pension he is required to furnish live certificate every year in a particular month to the respective Branch, Bank so as to extend pension to such person who has attained age of superannuation and retired from service. The appellant-Bank have not obtained live certificate of the deceased- Rama Nand Prasad from the year 2005 to 2018. This is a serious lapse on the part of the officials of the appellant-Bank in not obtaining live certificate from the pensioner from the year 2005 to 2018. Further, if the excess payment is made in favour of the deceased- Rama Nand Prasad, the same cannot be recovered from his wife



Akhileshwari Devi who is a family pensioner.

15. The cited decision do not assist the appellant for the reasons that the Constitution Bench decision cited (supra), para 24 and 31 reads as under:

“(24) We are of opinion that this interpretation put by their Lordships of the Privy Council on S.72 is correct. There is no warrant for ascribing any limited meaning to the word ‘mistake’ as has been used therein and it is wide enough to cover not only a mistake of fact but also a mistake of law. There is no conflict between the provisions of S. 72 on the one hand and Ss. 21 and 22 of the Indian Contract Act on the other and the true principle enunciated is that if one party under a mistake, whether of fact or law, pays to another party money which is not due by contract or otherwise that money must be repaid. The mistake lies in thinking that the money paid was due when in fact it was not due and that mistake, if established, entitles the party paying the money to recover it back from the party receiving the same.

(31) We do not agree with these observations of the Nagpur High Court. No such equitable considerations can be



imported when the terms of S. 72 of the Indian Contract Act are clear and unambiguous. We may, in this context, refer to the observations of their Lordships of the Privy Council in 30 Ind App 114 (Supra) at p. 125. In dealing with the argument which was urged there in regard to the minor's contracts which were declared void, viz., that one who seeks equity must do equity and that the minor against whom the contract was declared void must refund the advantage which he had got out of the same, their Lordships observed that this argument did not require further notice except by referring to a recent decision of the Court of Appeal in *Thurstan v. Nottingham Permanent Benefit Building Society*, (1902) 1 Ch 1 since affirmed by the House of Lords and they quoted with approval the following passage from the judgment of Romer L. J. at p. 13 of the earlier report:-

“The short answer is that a Court of Equity cannot say that it is equitable to compel a person to pay moneys in respect of a transaction which as against that person the Legislature has declared to be void.”



The aforesaid issue is relating to other than the pension matter. Apex Court time and again have rendered decision that if any excess payment made due to error the same cannot be recovered unless an employee had misrepresented its employer. The aforesaid principle is not applicable in the present case. The appellant-Bank have committed glaring error in not obtaining live certificate of the pensioner from 01.02.2005 to 01.02.2018. Further the Bank is conducting audit on yearly basis. In such an audit, appellant-Bank must have noticed what was the pension/family pension is remitted by the concerned Government to the appellant-Bank during the period from 01.02.2005 to 01.02.2018 and anomaly should have noticed. The official of the appellant-Bank have also not noticed that in the audit the amount remitted by the concerned Government is not tallying with the amount disbursed by the appellant-Bank. If it is a case of one year, one could understand that there is an error or a mistake and it could be rectified. On the other hand, from 01.02.2005 to 01.02.2018 for these many years, the



appellant have not taken note of error committed by the officials of the Bank. The alleged excess payment of pension was in favour of deceased Rama Nand Prasad. In such an event Bank-appellant should have resorted in filing suit and not in ordering recovery from respondent.

16. The latest decision viz., Thomas Daniel would assist the respondent's case.

17. In the light of these facts and circumstances, appellant have not made out a case.

18. Accordingly, the present Letters Patent Appeal stands dismissed while affirming the order of the learned single Judge dated 01.07.2019."

14. Having considered the arguments advanced by the learned counsel for the petitioner as also by the learned Senior Counsel for the Respondent-bank, having gone through the materials on record and having perused various judgments referred to by the learned counsel for the parties, this Court finds favor with the arguments advanced by the learned counsel for the petitioner and considering the well-settled law laid down by the Hon'ble Apex Court in the case of **Rafiq Masih** (supra), **Thomas Daniel** (supra) and a catena of judgments on this aspect of the matter, as referred to hereinabove in the



preceding paragraphs, apart from considering the law laid down by this Court in the case of **Kalawati Devi** (supra) and **Akhileshwari Devi** (supra), as upheld by the Ld. Division Bench of this Court, by a judgment dated 19.07.2022, passed in L.P.A. No. 270 of 2021, this Court has no option but to quash the decision of the Bank to recover a sum of Rs. 3,51,020/- from the petitioner, which is accordingly quashed. Consequently, letters dated 17.12.2018 and 30.12.2021, issued by the Assistant General Manager, Centralized Pension Processing Centre, State Bank of India, Patna, with regard to refund of excess amount of pension / family pension, paid to the petitioner is also hereby quashed. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	22.9.2022
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Transmission Date	NA

