IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.270 of 2021

==

1. The Assistant General Manager State Bank of India Centralized Pension Processing Centre, 4th Floor, Administrative Office, Judges Court Road, Patna (64476).
2. The Manager, State Bank of India, Sahajitpur Branch, Code No. 6023, P.O. and P.S.- Sahajitpur, District - Saran.

... ... Appellant/s

Versus

1. Akhileshwari Devi Wife of Late Rama Nand Prasad, Resident of Village - Manopali, P.O. and P.S. Sahajitpur, District - Saran.
2. The Union of India through Secretary, Ministry of Mines, Government of India, New Delhi.
3. The Controller of Accounts, Ministry of Mines, Central Accounts office, G.S.I. 16A, Brabourne Road.
4. The Sr. Accounts Officer, O/o the CA, CAO, Ministry of Mines, G.S.I, Kolkata - 01.

... ... Respondent/s

==

Appearance :
For the Appellant/s : Mr.Rakesh Kumar Singh
For the Respondent/s : Mr.

==

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 19-07-2022

I.A. 01 of 2021 for condonation of delay in filing L.P.A. for about one year and 236 days reveals that appellant-Bank is not so serious in contesting the matter. However, for the reasons stated in the application and affidavit delay of about one year and 236 days is condoned.

2. In the instant L.P.A., appellant-Bank has questioned the validity of the order of the learned single Judge

dated 01.07.2019 passed in C.W.J.C. No. 4156 of 2018.

3. Respondent- Akhileshwari Devi is the legal heirs of the deceased employee, late Rama Nand Prasad. The deceased, Rama Nand Prasad while working in the Ministry of Mines, Government of India attained age of superannuation and retired from service on 31.08.2001. He died on 01.02.2005. In this background, respondent- Akhileshwari Devi, wife of deceased- Rama Nand Prasad was entitled to family pension. The pension and family pension payment is arranged by the respective Government through the nationalized Bank. In the present case pension payment was made to the deceased- Rama Nand Prasad was through the State Bank of India of its Branch, Sahajitpur Branch. The appellant-Bank proceeded to remit pension of the deceased- Rama Nand Prasad as if he was alive, even after 01.02.2005 the date on which he died and keep on remitting pension amount in his account. On 01.02.2018, appellant-Bank noticed that despite the fact that deceased- Rama Nand Prasad died on 01.02.2005 full pension is being remitted in favour of deceases Rama Nand Prasad from 01.02.2005 to 01.02.2018.

4. In this background, the Bank proceeded to order for recovery of excess payment remitted in the deceased employee account and further proceeded to order recovery from wife of the deceased- Rama Nand Prasad, namely, Akhileshwari Devi. The

excess amount stated to have been paid to the deceased- Rama Nand Prasad is a sum of Rs. 7,65,207/-. Thus an order has been passed in respect of recovery of the aforesaid amount on monthly installment @ Rs. 5,000/- per month. In the light of the aforesaid decision of the Bank, respondent Akhileshwari Devi questioned the action of the appellant-Bank in C.W.J.C. No. 4156 of 2018. The learned single Judge allowed the petition with reference to various decisions of the Apex Court including a decision rendered in the case of ***State of Punjab and Others V. Rafiq Masih and Others*** reported in ***(2015) 4 SCC 475*** and held that excess payment made in favour of the deceased- Rama Nand Prasad cannot be recovered from his wife, respondent- Akhileshwari Devi.

5. Feeling aggrieved and dissatisfied with the order of the learned single Judge dated 01.07.2019 passed in C.W.J.C. No. 4156 of 2018, appellant-Bank presented this appeal.

6. Learned counsel for the appellant vehemently submitted that Writ Court has no jurisdiction since respondent's husband, deceased- Rama Nand Prasad was a Central Government employee, therefore, she has to approach to the Central Administrative Tribunal under Section 19 of the Administrative Tribunal Act, 1985 in respect of questioning the recovery action by the appellant-Bank. The same has not been considered by the

learned single Judge.

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) SCC417***

(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).***

9. In the light of these facts and circumstances, the order of the learned single Judge is to be set aside while upholding the order of recovery from the respondent- Akhileshwari Devi.

10. Heard learned counsels for the appellant-Bank.

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.

12. The contention of the learned counsel for the appellant that Writ Court has no jurisdiction in respect of challenge to the appellant-Bank's action in so far as the recovery

of excess payment made to the deceased- Rama Nand Prasad from his wife Akhileshwari Devi-Respondent herein. On the count that deceased- Rama Nand Prasad was a government servant, therefore, remedy for respondent- Akhileshwari Devi was to invoke Section 19 of the Administrative Tribunal Act, 1985 and approach jurisdictional Administrative Tribunal and not invoking jurisdiction of this Court under Article 226 of the Constitution. The aforesaid contention cannot be appreciated for the reasons that the deceased employee died on 01.02.2005. Therefore, master and servant's relationship between the deceased employee and government of India ceases. Further the respondent- Akhileshwari Devi has not questioned any action of the Government/Department so as to contend that she has remedy before the Administrative Tribunal in respect of service conditions of a government servant. In the present case, appellant-Bank is not government and so also Akhileshwari Devi is not a Government Servant. Therefore, it is not related to any service conditions of the deceased employee. Moreover, the action of the Bank is subject-mater. Action taken by the appellant-Bank cannot be questioned before the Administrative Tribunal.

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.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.07.2022
Transmission Date	