IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19965 of 2021

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Thakni Devi @ Thakani Devi Wife of Late Keval Jha @ Kewal Jha, Resident of Village - Muraliyachak Bajraha, P.S.- Bisfi, District - Madhubani.

... ... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary Home Department, Patna.
2. The Govt. of India through its Principal Secretary Home Department, New Delhi.
3. The Chief Manager Punjab National Bank Central Pension Processing Center 2nd Floor Maharaja Complex Near New Market, Patna.
4. The Regional Manager Punjab National Bank Darbhanga Zone, Darbhanga.
5. The Branch Manager Punjab National Bank of Belaunja Branch Madhubani namely Mr. Balbant Kumar.
6. The Principal Controller of Defence Accounts (Pension) Allahabad.
7. Ministry of Personel, Public Grievances and Pension department of Personal and Training New Delhi through its Secretary.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Jha, Advocate.
For the Respondent Bank:		Mr. Mritunjay Kumar, Advocate.
	:	Mr. Ram Ganesh, Advocate.
		Ms. Shilpi Singh, Advocate.
		Mr. Vibhuti Kumar, Advocate.
For the Respondent/s	:	Dr. Mankeshwar Tiwari, AC to AAG 3.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 07-12-2022

Heard Mr. Sanjeev Kumar Jha, learned counsel for the petitioner, Mr. Mritunjay Kumar, learned counsel for the respondent Punjab National Bank duly assisted by learned counsels Mr. Ram Ganesh, Ms. Shilpi Singh, and Mr. Vibhuti

Kumar and Dr. Mankeshwar Tiwari, learned AC to AAG 3 for the State.

2. The present writ application has been filed for the following reliefs:-

> *"(i) For issuance of direction to the respondents concern to immediate start the proper family pension of the petitioner without making any delay after considering her age group as well as her disability.*
>
> *(ii) For issuance of direction to the authority concerned to redeem the fixed deposited amounts of Rs. 3 lacs of the petitioner, deposited in the branch of respondent no.5 vide A/c No. 239800DP00010504, by the sons of petitioner for her maintenance, quickly for her interest.*
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> *(iii) For issuance of direction to the authorities to provide the entire benefit of family pension to the petitioner for which she is entitlement in accordance with law."*

3. Shorn of unnecessary details, it is submitted that the husband of the petitioner, namely, Kewal Jha, was appointed as 4th grade employee on 01.05.1965, under the Indian Military Engineer Service and after serving for about 38 years, he superannuated from the post of MATE of the Office of Military Engineer Service Garrison Engineer Missamari of Sonetpot, District of Assam. He further submits that after having found unblemished satisfactory service no dues certificate was issued and he has been allowed the

monthly pension, which he was getting from Punjab National Bank, Belaunja branch of District Madhubani, vide old PPO No. DENG0194332002 and new PPO No. 403200202301, since the date of his superannuation. He further submits that the husband of the petitioner died on 23.04.2021 and thereupon the petitioner, hapless widow of late Kewal Jha, submitted her application for family pension. On receipt of the aforesaid application, necessary papers, were asked for, and accordingly the petitioner submitted all the requisite documents, including original Pass book, death certificate etc., to the bank and on verification, her family pension has been fixed @ Rs.9,000/- per month on 05.07.2021.

4. By the time the family pension of the petitioner could be started, in the meantime the respondent no.5 came out with a letter dated 24.08.2021 that the husband of the petitioner was paid excess amount of Rs.4,44,713/-, since 01.07.2014 and a direction has been given to recover the excess payment from the family pension of the petitioner. Apart from the aforesaid order of recovery the bank has also freezed the fixed deposit of an amount of Rs.3,00,000/- which was kept in the account of the petitioner by her son for her maintenance.

5. Basing upon the aforesaid facts the learned counsel for the petitioner vehemently contended that the husband of the

petitioner superannuated way back on 30.04.2003 and died on 23.04.2021 but surprisingly enough at no point of time any show cause notice or any cause has been served upon him with regard to the excess fixation of a pension but all of a sudden after the sad demise of late husband of the petitioner, the bank has came out with a letter directing for recovery of the alleged excess payment of an amount of Rs.4,44,713/-, which is not only unjustified, arbitrary rather in the teeth of various judgment passed by the Apex Court. He further contended that admittedly it is not the stand of the Bank that the wrong fixation has been made on account of fraud or misrepresentation on the part of the erstwhile employee rather the same has been done at the level of concerned Official/Bank respondents for which neither the erstwhile employee nor the petitioner can be blamed in any manner.

6. Learned counsel for the petitioner also drawn the attention of this court towards the office memorandum dated 02.03.2016 issued by the Government of India in the Department of Personnel & Training, (as contained in Annexure-8 to the writ petition) wherein after taking note of the judgment rendered by the Hon'ble Supreme Court of India in the case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & others**, a direction has been given to all the concerned to ensure the mandate of the Apex

Court; Deprecating the actions of recovery from the class III and IV employees, who have either due to superannuate within one year or already superannuated and when the excess payment has been made for the period in excess of five years before the order of recovery was issued, apart from the other conditions.

7. On the other hand, a counter affidavit has been filed on behalf of the bank and by referring to the statements made in the counter affidavit, it is submitted that mistakenly excess payment was made to the pensioner. He was retired from defence service as civil employee and not as defence employee, and as such the scheme of Government of India (one rank one pension) was not applicable to the case of the petitioner, but he was wrongly allowed pension in such scheme, hence excess payment made to him was required to be recovered. He further relied upon the judgment rendered by the Apex Court in the case of **Chandi Prasad Uniyal & others Vs. State of Uttarakhand & others,** since reported in **2012 (8) SCC 417** that any payment paid/received without authority of law could always be recovered barring few exception of extreme hardships but not as a matter of right, in such situation law implied an obligation on payee to repay money, otherwise it would amount to unjust enrichment.

8. He further submits that during the pendency of the writ application the fix deposit amount of the petitioner has already been defreezed by the concerned Bank authorities.

9. Having considered the submissions made on behalf of the parties and the materials available on record, this court in its considered view observe that time without number the Hon’ble Supreme Court has deprecated the recovery form Class 3^{rd} and 4^{th} employees, who was either due to superannuate in a year or already superannuated and where the recovery, if made from the employee would be iniquitous, harsh or arbitrary to such an extent as would far outweigh the equitable balance of the employee’s right to recover.

10. It is needless to say that this is not the case of the bank that the husband of the petitioner had any way involved or instrumental in getting the excess payment/pension on account of wrong fixation of the pay. Any recovery after the death of a pensioner, who is no more even survived to place any defence is not only harsh, arbitrary but wholly without application of mind. The action of the respondent authorities in passing any order of recovery per se illegal and in the teeth of the order passed by the Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & others, reported in 2015 (4)**

SCC 334, it would be apt and proper to quote paragraph nos. 8 and 18 of the said judgment which reads as follows:-

> ***"****8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.*
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> ***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:*
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> *(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."

11. In view of the aforesaid facts and the settled legal proposition of law, the impugned action of the recovery is per se illegal, and as such the letter issued by the authority concerned dated 24.08.2021 directing for recovery is hereby set aside. The respondent bank authorities are directed to ensure the family pension of the petitioner forthwith.

12. It is needless to say that the petitioner would also be entitled to all the arrears of the family pension with effect from the date when she became entitled. The entire exercise must be completed within a period of four weeks from the date of receipt/production of a copy of this order, failing which the

petitioner would be entitled to get 12 per cent interest over the due amount of family pension till actual payment is made and the same would be recovered from the erring bank officials.

13. Accordingly, the writ application is hereby allowed with the aforesaid direction.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.12.2022.
Transmission Date	NA