

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23756 of 2019

Meena Devi, Wife of Late Ramjee Prasad, Resident of Village Chak Hussain,
P.O. + P.S.- Khusrupur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Education Officer, Patna.
4. The Assistant General Manager, State Bank of India, in the Office of Centralised Pension Processing Centre, Administrative Office Building, 4th Floor, J.C. Road, Patna.
5. The Branch Manager, State Bank of India, Khusrupur, Patna.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs. Pravina Kumari, Advocate
For the Respondent/s	:	Mr. Kameshwar Kumar (GP-17)
For the State Bank of India	:	Mr. Anjani Kumar Mishra, Advocate
		Mr. A. Bhardwaj, Advocate
For the Accountant General:		Mr. Dr. Anand Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 20-12-2022

Heard Mrs. Pravina Kumari, learned counsel for the petitioner and the learned counsel for the respondents.

2. The husband of the petitioner, who was initially appointed as Assistant Teacher on 02.08.1950 in Dayanand Boys Middle School, Khusrupur, Patna and superannuated on 30.09.1991 had filed the present writ application seeking quashing of the order dated 26.08.2019, passed by respondent no.4 whereby the original petitioner was put to notice and a demand was raised



for restitution of the excess amount received and further sought a direction for payment of pension, which has been stopped by the Bank officials upon the sad demise of the pensioner. The petitioner being the wife of the pensioner filed an interlocutory application, bearing I.A. No. 01 of 2021, for substituting her in place of the original petitioner, which interlocutory application stands allowed by the order of this Court.

3. The relevant facts for consideration of the issue involved in the present writ application is that on being superannuated on 30.09.1991, the husband of the petitioner was allowed pension with effect from 01.10.1991 at the rate of Rs.160/- per month and lastly he was getting Rs.4750/- per month from April, 2014 to June 2018 without D.A. and Medical allowance. The original petitioner had filed writ petition, bearing C.W.J.C. No. 16620 of 2016, for revision of pension/enhancement of pension by giving due consideration of old age benefit having possess 80-85 years age in view of the Government policy decision and sought a direction to pay the arrears of the same from the date of entitlement. The aforesaid writ petition was duly considered by this Court and having found that the original petitioner had retired at the age of 62 years and he was under the Triple Benefit Scheme (hereinafter referred to as 'TBS') and, therefore, in his case, there was no provision of grant of family



pension to his wife. So far the non-payment of Dearness Allowance is concerned, a counter affidavit was filed by the State Bank of India, which clearly explained that there is minimum interest and the pension has been paid to the petitioner and, therefore, the dearness allowance has been merged in his minimum basic pension. The Court having found no merit in the writ application, dismissed the same vide order dated 17.07.2019, as contained in Annexure-2 to the writ petition.

4. The petitioner on being aggrieved, preferred L.P.A. No. 1136 of 2019, which also stood dismissed on being found no infirmity or error in the order passed by the learned Single Judge.

5. It would be apt and proper to state here that the original petitioner was the beneficiary of retiral benefits under the TBS and according to this scheme the employees is only entitled for three benefits i.e. Employees Provident Fund, Life Insurance and Pension. There is no provision for payment of family pension, as such, the wife of the employee is not entitled for family pension and the same was not sanctioned by the Accountant General and the office of the Accountant General had authorized pension having PPO No. 15155/TBS as per Triple Benefit Scheme in favour of late employee.

6. In the earlier round of litigation counter affidavit was filed on behalf of the Accountant General, Bihar, Patna. In the said



counter affidavit it was submitted that there is no order of Finance Department/ Primary Education Department for revision of pension under TBS scheme like the general pensioner. It was also submitted that in terms of letter no. 2701 dated 03.12.1996, pension revision order issued in favour of the retired government servant time to time is not admissible to the pensioner under triple benefit scheme, hence the rate of pension under 5th, 6th and 7th pay commission has not been changed by the Government of Bihar.

7. In the light of the aforesaid stand of the Accountant General, Bihar, Patna, the respondent Bank vide impugned letter no. 89/2019-20 dated 26.08.2019 raised a demand for restitution of excess amount from the pensioner and the petitioner being aggrieved filed the present writ application.

8. A counter affidavit has also been filed on behalf of the respondent Bank justifying the impugned letter and submitted that the pensioner was not entitled to get enhanced pension under 5th, 6th and 7th CPC and he was erroneously paid the excess enhanced pension, as no separate category of TBS was available in the pension processing software and the system paid the enhanced pension, as applicable to other State government pensioners, who are entitled to pension revision. He further submits that a pensioner undertakes through an undertaking to refund or make good any amount to which he was not entitled and also authorizes



the Bank to realise the amount to which he is not entitled. He also relied upon the judgment rendered by the Hon'ble Supreme Court in the case of **High Court Punjab and Haryana and others Vs. Jagdev Singh**, reported in **(2016) 14 SCC 267** and submits that 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.

9. In response to the aforesaid submission, learned counsel for the petitioner vehemently submits that so far the recovery from the pensionary benefit is concerned, the issue has already stands settled by the catena of judgments rendered by the Apex Court. She further submits that in any case, the petitioner is entitled to the pensionary benefit till her husband died on 26.12.2020.

10. This Court heard the parties at length and considered the materials available on record. So far the issue with regard to recovery of pensionary benefit is concerned, the same has dealt with in many of the cases by this Hon'ble Court as well as Hon'ble Supreme Court on number of occasions by various judgments held that no recovery of excess payment can be made in absence of any misrepresentation. Reliance may be taken note of the judgment



rendered in the case of **Syed Abdul Qadir and others Vs. The State of Bihar and Others**, since reported in (2009) 3 SCC 475 as well as the **State of Punjab & Others Vs. Rafiq Masih (White Washer)**, reported in (2015) 4 SCC 334.

11. For proper appreciation of the issue in question, it would be apt and proper to quote para 27 and 28 of the judgment rendered by the Hon'ble Supreme Court in the case of **Syed Abdul Qadir** (supra).

27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.



See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.

28. Undoubtedly, the excess amount that has been paid to the appellants- teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants- teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants- teachers, we are of the view that no recovery of the



amount that has been paid in excess to the appellants-teachers should be made.”

12. Further, the Hon’ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer)**, reported in **(2015) 4 SCC 334** dealing with the similar issue relating to recovery of amount paid in excess without fault of recipient, after his superannuation, has been pleased to hold that “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 concerned employee. If the effect of the recovery from the concerned employee 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.”

13. The Hon’ble Supreme while parting with the judgment has been pleased to postulate certain situations of



hardship wherein recovery by the employees would be impermissible in law. For the proper appreciation, para. 18 whereof is quoted 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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.”



14. It would also be proper to observe that as the original petitioner has already died on 26.12.2020 and it is well settled that after the death of Government servant recovery is only permissible by getting a decree of competent jurisdiction else it is violative of principles of natural justice and fair play because it is not possible for the widow of the deceased employee to dispute such recovery on merit for want of proper opportunity. Reliance may be taken of the judgment passed by a learned coordinate Bench of this Court in the case of **Smt. Indu Devi Vs. State of Bihar and others**, since reported in **2004 (1) PLJR 162**.

15. In view of the aforesaid settled proposition of law, the impugned order of recovery is not sustainable and the same is fit to be quashed. It is also made clear that the petitioner would also be entitled to the arrears of pension, as her husband was getting, till the date her husband died, i.e. on 26.12.2020.

16. Accordingly, the writ application stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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