Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.442 OF 2022

Smt. Meera A D'Souza ...Petitioner
W/o Late Shri Anthony (Tony) D'Souza,
Aged 85 years, Indian National, Widow, Service,
r/o. 403, Atlantis 1, Above SBI, Caranzalem,
Goa-403 002.

Versus

1. State Bank of India
Panaji Secretariat Branch,
Fazenda Building, Panaji,
Goa 403 001.

2. State of Goa
Government of Goa, Secretariat,
Alto Porvorim, Goa.

3. Ministry of Home Affairs
(FFR Division – WZ Session)
2nd Floor, NDCC-II Building,
Jai Singh Marg, New Delhi- 110 001.

Correction carried out as per order dated 16/11/2022
Sd/-

4. Union of India, New Delhi ... Respondents

Mr Vishnuprasad Lawande, with Mr Kapil Naik, Advocates for the Petitioner.

Mr S.N. Joshi, Advocate for respondent No.1.

Mr G. Shetye, Additional Government Advocate for respondent No.2.

Mr P. Faldessai, Deputy Solicitor General of India, for respondents No.3 and 4.

CORAM: M. S. SONAK & BHARAT P. DESHPANDE, JJ.

DATED: 10th OCTOBER, 2022.

ORAL JUDGMENT : (Per M.S. SONAK, J.)

Heard Mr Lawande, learned Counsel for the Petitioner. Mr S.N. Joshi, learned Counsel for respondent No.1, Mr G. Shetye, Additional Government Advocate for respondent No.2. Mr P. Faldessai, learned Deputy Solicitor General of India for respondents No.3 and 4.

2. Rule. The Rule is made returnable immediately at the request and with the consent of the learned Counsel for the parties.

3. The Petitioner's husband was a freedom fighter and in receipt of a pension from the Central Government and the State Government under the respective schemes for the said purpose. Moreover, the Petitioner's husband was also a member of the Legislative Assembly and, as such, received a pension from the State Government on account of these circumstances.

4. Upon the demise of the Petitioner's husband, the Petitioner began to receive the family pension, both from the Central Government and the State Government. However, in 2020, the State Bank of India, where the Petitioner had a Pension Account, began deducting an amount of ₹13,500/-per month, purportedly under directions from the Central Government, for a total recovery of ₹22,02,823/-. This recovery was from the family pension amount being received by the Petitioner from the State Government.

5. The Petitioner has placed on record some correspondence with the Central Government and the State Bank of India concerning this deduction. The relevant correspondence is as follows:

1 Communication dated 22/05/2020 addressed by the Central Government to the State Bank of India (Page No.50 of the paper book)

2 Communication dated 07/07/2021 addressed by the State Bank of India to the Petitioner (page No.57 of the paper book)

3 Communication dated 09/12/2021 addressed by the State Bank of India to the Petitioner (page No.60 of the paper book)

4 Communication dated 19/07/2022 addressed by the Central Government to the State Bank of India (Page No.68 of the paper book)

5 Communication dated 28/07/2022 addressed by the State Bank of India to the Petitioner (page No.71 of the paper book)

6. The correspondence between the Central Government and the State Bank of India, based on which the State Bank of India addressed certain letters to the Petitioner and even commenced the deduction, was entirely behind the back of the Petitioner. Neither the Central Government nor the State Bank of India issued any Show Cause Notice to the Petitioner nor granted her any opportunity before concluding that there was some overpayment and proceeding with the recovery to the extent of ₹1,89,000/- up to date. Mr Lawande has submitted that there was no overpayment, mainly because the Petitioner did not have any independent income source except the family pension under the freedom fighter scheme formulated by the State Government and the family pension because her husband was a member of the Legislative Assembly.

7. At this stage, we do not propose to go into the issue of whether the Central Government or the State Bank of India were justified in concluding that there was any overpayment to the Petitioner. However, we are satisfied that any finding as to overpayment or recoveries should have been preceded by minimum compliance with the principles of natural justice and fair play. The decision and the consequent recoveries undoubtedly visit the Petitioner with serious civil consequences. But, before she was made to suffer such civil consequences, the minimum expected was compliance with the principles of natural justice and fair play.

8. We quash and set aside the above communications on the above short but fundamental premise. However, we grant the Central Government liberty to issue to the Petitioner a Show Cause Notice explaining the tentative reason why according to it, there was an overpayment and, further, the necessity for recoveries. Such Show Cause Notice may be issued within a month from today, failing which, the Petitioner would be entitled to insist upon the restoration of the amount of ₹1,89,000/- to her pension account and the payment of family pension by the Central Government as before. The Show Cause Notice must be disposed of within three months from the date the Petitioner responds to the same. The Petitioner must respond to the Show Cause Notice within the time indicated therein, which, we are sure, will be some reasonable time of about 15 to 20 days.

9. Until the Show Cause Notice is issued and disposed of, there shall be no further recoveries from the Petitioner's Pension Account or any other account. Depending upon the outcome of the Show Cause Notice, the amounts already deducted may or may not have to be restored to the Petitioner. Again, depending upon the outcome of the Show Cause Notice, the Central Government will have to restore the pension, which they have abruptly stopped without compliance with the principles of natural justice. However, suppose the Central Government makes an adverse order. In that case, the State Bank of India should desist from making any recoveries for at least one month from the date such order or decision is communicated to the Petitioner. The Petitioner is an elderly widow of a Freedom Fighter. This minimum is undoubtedly due.

10. As indicated earlier, we are not going into the merits of the rival contentions. Therefore, all contentions of all parties on merits are left open for adjudication by the Central Government in the first instance.

11. Suppose the decision of the Central Government aggrieves the Petitioner. In that case, the Petitioner will have the liberty to question the same following the law, including by raising the grounds that have now been raised in this petition.

12. Accordingly, we quash the above communications based on which the Central Government and SBI commenced deductions and restrain further recoveries. We grant liberty to issue show cause notice within one month. However, suppose no show cause notice is issued to the Petitioner within one month. In that case, the Central Government shall restore the deducted amounts to the Petitioner's pension account at the earliest and commence pension payment from when the same was stopped. The arrears must be deposited in Petitioner's pension account within two months.

13. Further, if a show cause notice is issued within a month, the same must be disposed of within three months of the response from the Petitioner. If the decision is adverse, the recoveries must not commence for a month from communication. Finally, suppose the decision favours the Petitioner. In that case, the deducted amounts and pension arrears withheld must be credited to Petitioner's pension account with interest @7% per annum within two months of such decision.

14. The Rule is made absolute in the above terms. Accordingly, there shall be no order as to costs.

15. All concerned to act based on an authenticated copy of this order.

BHARAT P. DESHPANDE, J **M. S. SONAK, J**