IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13166 of 2017

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Nagendra Prasad Son of Late Devi Dayal Bhagat, Resident of Village- Sakkadi-via- Koilwar, District- Bhojpur.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi 11.
2. The Director General of Police (Administration), CRPF, CGO Complex, New Delhi- 110003.
3. The Senior Accounts Officer, PAO, CRPF, MHA Zonal, Bhikaji Cama Place, Delhi- 110066.
4. The Inspector General of Police, CRPF, Bihar Sector, Patna, Bihar.
5. The Chief Manager, Punjab National Bank, Chanakya Palace, R. Block, Patna- 800001.
6. Branch Manager, Punjab National Bank, Koilwar Branch, Koilwar, District- Bhojpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Ghosarvey, Advocate Mr.Madhurendu, Advocate
For the Union of India	:	Ms. Punam Kumari Singh, CGC
For the Respondent/s	:	Mr.Mritunjay Kumar, Advocate Mr.Ram Ganesh, Advocate Ms. Shilpi Singh, Advocate Mr.Viphuti Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 24-03-2023

Heard Mr. Sanjay Kumar Ghosarvey, learned counsel appearing on behalf of the petitioner, Mr. Mritunjay Kumar, learned counsel appearing on behalf of the respondents and Ms. Punam Kumari Singh, learned counsel appearing for the Union of India.

2. The brief facts of the case are that the petitioner has sought quashing of order dated 03.10.2015 passed by the Senior

Accounts Officer, PAO, CRPF, MHA, New Delhi and the entire calculation chart (Annexure 7 series) prepared for the purpose of deduction of Rs.5,96,339/- from the pension amount of the petitioner, allegedly paid in excess to the petitioner by the respondent bank, along with other prayers.

3. The petitioner had retired from the post of S.I./G.D. on attaining the age of superannuation on 31.07.2004. The pension of the petitioner was fixed on the basis of the last pay drawn by him at Rs.9,166.25/-. The pension of the petitioner has been fixed on the pay scale of Rs.5500-175-9000/- and after 5th CPC comes in the corresponding pay scale of Rs.9300-34800/- with grade pay of Rs.4,200/- from 1.1.2006 but the grade pay has been only shown and the mandatory benefit has not bee given to the petitioner. After the 6th Pay Revision, the pension of the petitioner was further revised and fixed at Rs.10,305/- along with dearness allowance, the commuted amount of pension was credited in the passbook of the petitioner after the revision of pension, but after the calculation of the pension by the respondent bank, less amount was being credited in the account of the petitioner, as allegedly the bank realized that due to mistake on their part, the excess pension amount had been credited in the account of the petitioner.

4. The bank has come with two figures of recovery amount firstly Rs.5,96,339/- as on 30.5.2016 and secondly Rs.5,77,220/- as on 12.12.2016, therefore, it appears that bank authorities themselves are in confusion as to how much amount should be recovered from the petitioner and from which period, though the recovery has been started from 30.07.2016.

5. That the petitioner who is an old person and he is suffering from various diseases and due to paucity of money the proper treatment could not be possible to the petitioner and despite the request the respondent bank authority continue to making recovery from the pension amount without any information to the petitioner which is unfair, improper and justify in the eye of law at this belated stage.

6. Learned counsel appearing on behalf of the petitioner submitted that even though the bank had taken an undertaking on 26.10.2004 from the petitioner to the effect that in case of any excess pension payment, the bank has right to adjust/recover the excess amount from the pension amount of the petitioner but in such condition, the petitioner must have been informed by the bank about the said excess payment made to him and such recovery. In absence of any communication to petitioner giving reasons for recovery and without giving opportunity to him in that

regard, the action of the bank in realizing the total amount, which according to the bank is Rs.5,96,339/-, is penal in nature. However, as per the petitioner's own calculation based on statement of passbook, the excess amount, in fact, which has been recovered from the account of the petitioner in total is Rs.6,24,000/-.

7. The petitioner has substantiated his claim by referring to the pass book entries to show that no extra amount of the pension has been credited in the account of the petitioner. The petitioner submitted that action of the respondent bank is illegal and not in accordance with law for this reason that without giving any information and giving any opportunity to accept his explanation that the entries made in the pass book of the petitioner issued by the respondent bank (Punjab National Bank of Koilwar Branch) reveals that no excess amount was paid into account of the petitioner.

8. Learned counsel further submitted that the petitioner was informed about deduction of the amount from his account on 3.10.2015. The respondent bank continued to recover the amount at the fag end of his life. The recovery is penal in nature and an opportunity to explain must have been provided to him in connection with the recovery order earlier. Further submitted that

the pension is the only means to sustain his daily needs for livelihood and to meet any unfortunate eventuality. The petitioner had made commutation to the the Manager of the Punjab National Bank, Koilwar Branch, as contained in Annexure-6 (series) to give him information as to why his pension has been reduced w.e.f. 1.1.2006 by the sanctioning authority but no information was provided to him. The amount of pension credited in the account of the petitioner was reduced from Rs.21,864/- to Rs.9,611/-

9. Learned counsel further submitted that the controlling authority of the petitioner i.e. CRPF from where the petitioner has retired, had not passed any order of recovery from the amount of pension and the bank can not reduce the pension amount payable to him.

10. The learned counsel further submitted that a counter affidavit has been filed on behalf of respondent no.5 referring paragraph no.5, which is reproduced as under : -

> "5. That the Answering Respondent humbly states that the averment made in para no.1 (I) to (v) are the prayer of the petitioner before this Hon'ble Court, however it is stated and submitted that initially pension of the Petitioner was revised @ Rs. 8,023/- P.M wef 01.01.2006 and Rs. 8,145/- P.M wef 24.09.2012 but pension of the Petitioner revised again @ Rs.18,145/- PM wef 01.01.2006 in the corresponding Pay Band 9300-34800 with Grade Pay Rs. 4,200/- vide letter dated 15.09.2015. The Pension of the Petitioner had never been authorized Rs. 12,036/- by the PAO, CRPF, New Delhi and

> subsequently no any recovery orders amounting Rs. 5,75,432/issued by the PAO, CRPF, New Delhi. Hence actual reasons regarding recovery of Amount from the Petitioner is required to be filed by either the respondent No. 6 and 7 or by the concerned CPPC or PDA of Punjab National Bank."

11. The learned counsel submitted that a clear statement has been made by the respondent no.5 that the pension of the petitioner has never been authorized to Rs.10,305/- by the PAO, CRPC, New Delhi and subsequently. The actions of the respondent bank is not sustainable with respect to recovery of Rs.5,96,339/-.

12. Learned counsel in these backgrounds submitted that in absence of any actual reason assigned for recovery, the action of the respondent nos.5 and 6 is not sustainable in the eye of law and he prays that illegally deducted amount is required to be credited back in the account of the petitioner by respondent nos. 6 and 7.

13. He further submitted that no recovery could be made from him especially after a lapse long time even in case where the recovery is on account of pay fixation or on promotion during service period, could be made by the Apex Court as well as Patna High Court in ***Sheo Kumar Thakur Vs. The State of Bihar & Others in CWJC No.5326 of 2013, 2014 (2) PLJR (HC) 41, LPA No.16 of 2005 (Chairman Bihar State Electricity Board Vs. Mostt. Snehlata Prasad) 2007 (1) PLJR 586.***

14. Per contra, learned counsel appearing on behalf of the respondent nos. 5 and 6 (Bank) submitted that the petitioner is an account holder in the branch of respondents bank and he is recipient of pension from their hands also.

15. Learned counsel further submitted that so far as the order/judgment are relates to salary matter and there was mistake on the part of the employer/Government Official itself, whereas in the present case as per counter affidavit of Union of India, it is apparent that there is no mistake on their part rather due to miscalculation/wrong calculation of the PPO amount, wrong amount was being credited by the bank, which was rectified in the year 2016 upon receipt of revised pension in favour of the petitioner issued by the Government of India.

16. The petitioner/pensioner during the course of documentation of pension payment submitted "letter of undertaking" dated 26.10.2004 duly signed by two witnesses, to the bank, hence in case of any excess pension payment the bank has the right to adjust/recover the excess pension amount. It is submitted that the controlling organization of the bank, "Reserve Bank of India as also issued circular with regard to excess payment of pension amount and its recovery and in this regard, the learned counsel has referred to certain circulars to emphasize his

stand that refund/recovery or other payment of pension is required to be recovered and the branch of the banks must adjust the same against the amount credited to the account of the petitioner and in support the respondents have brought on record Annexures R-6/H to R-6/J to clarify the account statement of the petitioner for the period from January 2006 to December, 2016. A communication was also made to that effect with the petitioner and now the bank is paying full pension amount to the petitioner. Some of the relevant clause of circulars issued by the Reserve Bank of India from time to time with regard to excess payment of pension amount and its recovery are being mentioned -

> **"i. Circular of July 1, 2014 (updated up to May 07, 2015);**
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> **ii. Circular of July 1, 2015 (updated as on March 17, 2016) at Clause (g) 11 (c);**
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> In case the pensioner expresses his inability to pay the amount, the same may be adjusted from the future pension payments to be made to the pensioners. For recovering the over-payment made to pensioner from his future pension payment in installment 1/3rd of net (pension + relief) payable each month may be recovered unless the pensioner concerned gives consent in writing to pay a higher installment amount."
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> **"iii. Circular of July 1, 2017 at clause 12 (c);**
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> In case the pensioner expresses his inability to pay the amount, the same may be adjusted from the future pension payments to be made to the pensioners. For recovering the over-payment made to pensioner from his future pension payment in installment 1/3rd of net (pension + relief) payable

each month may be recovered unless the pensioner concerned gives consent in writing to pay a higher installment amount."

"iv. Circular July 2, 2018 at clause 13 (c) and clause 10;

In case the pensioner expresses his inability to pay the amount, the same may be adjusted from the future pension payments to be made to the pensioners. For recovering the over-payment made to pensioner from his future pension payment in installment 1/3rd of net (pension + relief) payable each month may be recovered unless the pensioner concerned gives consent in writing to pay a higher installment amount."

17. Learned counsel appearing on behalf of the Union of India has supported the reliefs as prayed for by the petitioner as it would reflect from the counter affidavit filed on their behalf.

18. The question which arises for determination before this Court is firstly whether the respondent bank is entitled to recover any amount, as claimed by them, after twelve years of making payment, which was credited in the account of the petitioner as pension.

19. The record shows that the respondent bank deducted Rs.8,000 per month from the pension amount of the petitioner on account of alleged excess amount paid by them the petitioner.

20. Secondly, in view of the undertaking given by the petitioner dated 26.10.2004 to that effect that in case of excess payment or for any other reason, the bank is at liberty to recover the said amount from the account of the petitioner.

21. The fact which has emerged in the present case is that a total sum of Rs.6,24,000/- has been deducted as claimed by the petitioner, whereas the respondent nos. 6 and 7 have admitted in the counter affidavit that only an amount of Rs.5,96,339/- has been deducted by the bank. The petitioner is aggrieved by action of the respondent bank, which has put him to suffer both financially and mentally. The petitioner was not able to meet his daily needs due to price rise of the essential commodities from time to time. The petitioner had requested several times to the bank authorities to provide for the reasons as to why without informing him the recovery has been made and less amount has been credited in his pension account contrary to the fact that petitioners was being credited Rs.21,864/- till June, 2016. The record further reveals that the petitioner and his family members had undergone treatment from time to time and at the same time, recovery of substantial amount of pension from his account every month subjected the petitioner to face great hardship and destitute. The petitioner has admitted that after deduction only a meagre amount was paid for the period of seven years and eight months to the petitioner.

22. All the circulars, which have been brought on record by the respondent bank issued by the Reserve Bank of India from

time to time in the year, 2015, 2016, 2017 and 2018, recommend recovery of the over-payment made to the pensioner from his future pension payment in installment subject to the consent of the pensioner in writing to pay higher installment amount. In the present case, action of the respondent bank is contrary to the procedure prescribed in the relevant circular, which was applicable at the time of recovery of over-payment from the account of the petitioner.

23. No doubt, in terms of the undertaking given by the petitioner, the bank is entitled to recover excess amount but at the same time putting the petitioner to due hardship by recovery made after a period of twelve years the action of the bank in recklessly recovery of excess pension amount from the account of the petitioner is not sustainable.

24. The law as on date is well settled that the pension is not a bounty or a gratis that is granted to the pensioner or the spouse of the pensioner as a family pension. In the present case, the bank has not disclosed the amount what has been earmarked by the respondent no.5 during the aforesaid period about how much pension had been credited in the account of the petitioner.

25. This Court finds that the bank has not only breached the agreement entered into between the Union of India

and the bank but also at the same time has put the petitioner in great destitute by their illegal action.

26. This Court would rely upon the judgment of the ***High Court of Karnatka passed in WP No.20321 of 2021 dated 27th of October, 2022 in the case of Smt. Vimala Ramanath Pawar Vrs. Senior Manager, Centralized Pension Processing Centre, General Administration Wing, Canara Bank, Bengaluru.*** The Hon'ble Court has observed inter alia at paragraph no.11 as unde: -

> ***"11. For the aforesaid reasons, I pass the following***
>
> ***O R D E R***
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> ***(I) Writ Petition is allowed.***
>
> ***(ii) A mandamus shall issue to the respondent/Bank to re-credit the amount that is recovered i.e., Rs.6,40,000/- or whatever, from the account of the petitioner, within two weeks from the date of receipt of a copy of this order and also pay appropriate pension without any deductions on this issue.***
>
> ***(iii) The Bank is at liberty to recover Rs.1,000/- every month from the family pension of the petitioner till the alleged excess amount deposited in the account of the husband of the petitioner gets cleared."***

27. It is made clear that the only fact, which has been found to be different from the present case is that the case which has been referred hereinabove the bank had recovered the entire

amount allegedly excess amount from the account of the writ petitioner of the said case at one stroke.

28. This Court finds that the fact of the present case is similar to the above case, in which, in paragraph no.11, the Court has observed :

> ***"That the petitioner is not an employee of the bank, he has only his account in the bank and the pension is deposited rightly in the CPPC and Union of India has not paid any excess pension to the husband of the Petitioner. It is the irresponsibility of the officers of the bank, which has led to such over payment. Therefore, generating balance in the facts and circumstances of the case becomes necessary"***.

29. This Court finds that apart from the mandamus which has been issued in paragraph no.11 of the aforesaid judgment, the petitioner must be credited back the amount in his Account No.0725000300158832, which he has been received as pension from his employer respondent no.5 taking into account the pass book of the petitioner showing the details of the amount credited in the Account No.0725000300158832 issued by the Punjab National Bank, Koilwar Branch, Koilwar.

30. If the petitioner finds it proper, he may make detailed representation in support of his claim before the authority concerned of the respondent bank, who is required to credit the amount in the account of the petitioner, as mentioned above within

a period of two weeks from the date of receipt of the order of this Court.

31. Accordingly, this writ petition is disposed of.

(Purnendu Singh, J)

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AFR/NAFR	AFR
CAV DATE	24.03.2023
Uploading Date	12.04.2023
Transmission Date	12.04.2023