

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6861 of 2023

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1. Ranju Devi Wife of Late Lal Babu Singh, Resident of Baba Road, Below Bus Depot, Ganganagar, P.S.- Pali, District- Patna.
 2. Guriya Kumari Daughter of Late Lal Babu Singh, Resident of Dibri Sikaria, Sikaria, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar New Secretariat, Patna.
2. The District Education Officer, Patna.
3. The District Programme Officer (Establishment), Patna.
4. The Treasury Officer, Patna Treasury, Kumhrar, Patna.
5. The Accountant General (A and E), Beer Chand Patel Path, Patna, Bihar.
6. The Assistant General Manager, State Bank of India, Centralized Pension Processing Cell, Administrative Office Building, 4th Floor, J.C. Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Advocate Mr. Ganesh Singh, Advocate
For the State	:	Mr. Arbind Kumar, AC to GP-17
For the S.B.I.	:	Mr. Rakesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 13-07-2023

Heard Mr. Shivendra Kishore, learned Senior Counsel assisted by Mr. Ganesh Singh, learned counsel appearing on behalf of the petitioners; Mr. Arbind Kumar, learned AC to learned GP-17 appearing on behalf of the State and Mr. Rakesh Kumar Singh, learned counsel for the State Bank of India.

2. Learned senior counsel appearing on behalf of the petitioners submitted that petitioners are aggrieved by



communication dated 16.01.2023 by which they have been informed that excess payment made to the petitioners are required to be recovered from their family pension without giving any opportunity of hearing and without seeking any show cause. Pursuant to the said notice, the Bank has started to recover Rs. 3000/- per month from the family pension with effect from December, 2022. The deceased employee was Assistant Teacher and had died in harness on 03.05.2002.

3. Learned counsel submitted that the above communication which is in the form of the order is against the direction and circular of the Reserve Bank of India. The Reserve Bank of India time and again has issued that before penalizing any pensioner, notices are required to be issued even considering the fact that the petitioners have undertaken at the time of agreement with the bank while their pension account was being opened with the bank. He further submitted that no recovery could be made from the family pension of petitioners especially after a lapse of long time, even in such cases where the recovery is on account of incorrect pay fixation and promotion which was given to the deceased employee.

4. Mr. Rakesh Kumar Singh, learned counsel appearing on behalf of the Bank submitted that the bank has



acted as per the direction of the Treasury Officer.

5. Learned counsel appearing on behalf of the Accountant General, Bihar informs this Court that after receiving the sanction letter to reduce the pension, the steps were taken to issue fresh P.P.O. in accordance with law.

6. Having heard learned counsel for the parties and the facts which have emerged in this case on the basis of the pleadings made by the petitioners in the writ petition. The petitioner no.1 is the wife of deceased employee namely, Lal Babu Singh, who had expired on 03.05.2002 while he was in service. The petitioner no.2 is the daughter born out of matrimonial relationship of the deceased wife. The petitioners were getting family pension for nearly two decades after the death of the deceased employee. Rajkunwari Devi is the first wife and out of wedlock they have one married daughter namely, Anu Kumari. There are two daughters namely, Guriya Kumari and Khusboo Kumari from the second wife. The family pension of Rs. 13,420/- has been credited into the joint account of the petitioners every month till November, 2022. The family pension of petitioners was reduced to Rs. 6,722/- from the month of December, 2022 and thereafter at the same rate the family pension was being credited every month till the date of



filing of present writ petition. Petitioners are aggrieved by the reduction of family pension which has been done without disclosing any reason. A communication was made by the State Bank of India DRM Branch, Khagaul vide Letter dated 16.01.2023 that since the petitioners have given undertaking for such recovery and the recovered amount has been deposited in the Government treasury. The bank record of the petitioners also reveals that nearly Rs. 1,00,000/- has been recovered on account of excess pension having been paid to the petitioners.

7. Certain amount on account of arrears of pension for the period May 2002 till August, 2015 was incorrectly calculated by the District Programme Officer (Establishment), Patna and was credited in the joint account of the petitioners on 28.09.2017. It is also admitted that the first wife had died on 04.02.2022 and her daughter namely, Anu Kumari has already been married.

8. The law regarding recovery of excess payment made to an employee is well settled as on date. The Supreme Court, in the case of *Sahib Ram v. State of Haryana and Others* reported in *1999 Supp (1) SCC 18*, restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the authority



concerned, without any misrepresentation on part of the employees. It was held thus :

“5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.”

9. In ***Col. B.J. Akkara (Retd.) v. Government of India and Others*** reported in **(2006) 11 SCC 709**, the Supreme Court held as under:

*“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/ understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide *Sahib Ram v. State of Haryana* [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], *Shyam Babu Verma v. Union of India* [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], *Union of India v. M. Bhaskar* [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and *V.Gangaram v. Regional Jt. Director* [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]): (a) The excess payment was not made on account of any misrepresentation or fraud on the*



part of the employee. (b) 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.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been



upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.”

10. In ***Syed Abdul Qadir and Others v. State of Bihar and Others*** reported in **(2009) 3 SCC 475** excess payment was sought to be recovered which was made to the appellants—teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Supreme Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The Court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/ understanding of a Rule or Order. It was held thus:

“59. Undoubtedly, the excess amount that has been paid to the appellant 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 appellant 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 appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

11. In the decision in **State Of Punjab & Others**

Vs. Rafiq Masih (White Washer) and anr. reported in [(2015)

4 SCC 334], the Supreme Court has dealt the issue of right of

employer to recover the amount paid in excess to the employee

without any fault of employee. The Supreme Court in paragraph

no. 18 of its judgment has held as under:-

"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:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from the 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.”

The above preposition of law has been recently reiterated by the Apex Court in the case of ***Thomas Daniel vs. State of Kerla & Ors.*** reported in (2022) SCC OnLine SC 536.

12. It is admitted that the discrepancy in making excess payment on account of family pension was reported in the year 2017 and the recovery pursuant to the said decision without informing the petitioners from her family pension started from 24.12.2022. In the present case where the deceased employee died in the year 2002 while he was in service. Now, nearly after two decades and after almost six years of the alleged incorrect fixation of family pension found to be recovered after six years has been asked to consent for recovery of excess amount paid from the family pension. The family pension of Rs. 13,420/- per month which is already 50% of the original pension whereas excess amount of Rs. 1,00,000/- has



been recovered.

13. Considering the fact that the deceased employee died in his early days of service leaving behind two widows and children. After time gap of nearly two decades when the amount has been sought to be recovered that quantum of recovery amount and the amount of family pension it is iniquitous and harsh to effect the recovery from the family pension of the petitioner who is the widow and entirely dependent on family pension. Though an undertaking was given to the bank with respect to the fact that on account of any incorrect payment made by the bank officials and not on account of any incorrect amount which has been made in excess found by the District Programme Officer (Establishment), Patna.

14. Considering the aforesaid fact any direction of recovery having been passed and pursuant direction has been issued by the District Programme Officer (Establishment), Patna- Respondent No.3 pursuant to which there has been reduction in the family pension of the petitioner no.1 is deprecated. The authority cannot take any decision unilaterally. The reduction from the family pension is hereby set aside.

15. This Court finds that the petitioners were never communicated by the District Programme Officer



(Establishment) regarding reduction in the family pension being provided to the petitioner. The recovery being penal in nature, the District Programme Officer (Establishment) was required to noticed to the petitioners and provided an opportunity to explain before passing the recovery order. Considering the fact that the pension is the only means to sustain his daily needs for livelihood and to meet any unfortunate eventuality. Recovery of a sum of Rs. 1,00,000/- appears to be harsh after long span of time from the petitioners.

16. This Court holds that the communication contained in letter dated 16.01.2023 by which the family pension of the petitioners have been reduced substantially by reducing Rs. 3,000/- per month to be without authority of law.

17. The Treasury Officer, Patna, is directed to release the entire recovered amount into the account of the petitioner forthwith.

18. The Treasury Officer, Patna, must forthwith communication to the Branch Manager of the Bank not to recover any amount till any further action is taken by the District Programme Officer (Establishment) Patna, in accordance with law.

19. The petitioner, if so advised, may file a detailed



representation before the District Programme Officer (Establishment) Patna, along with circulars as well as the law laid down by the Apex Court and this Court in support of her claim.

20. The District Programme Officer (Establishment), Patna, is directed to obtain all the records relating to the deceased employee and must depute a competent officer to visit the house of the petitioner no. 1 on the address mentioned in the present writ petition as well as mentioned in the service book of the deceased employee and get the birth certificate that the two daughter as informed on behalf of the petitioner no. 1 by learned Senior Counsel and it is found that they are unmarried/ or divorced irrespective of the fact that it has not been pleaded in the present writ petition.

21. This Court leaves it open the factum of number of heirs of the deceased employee namely, late Lal Babu Singh, who had died on 03.05.2002. A statement has been made in the writ petition that first wife late Ram Kumari Devi of the deceased employee had died on 04.02.2022 and after her death, the petitioner no.1 becomes entitle for receiving family pension and the same is required to be decided in accordance with law. The retiral benefits which have not already been paid till date,



the same is to be paid equally among biological sons/daughters of the deceased employee in accordance with law.

22. The District Programme Officer (Establishment) Patna, must ensure that if the petitioners are entitled for family pension and any retiral dues, the same be paid to them in accordance with law and he must ensure to sanction for fixation of pension to the Accountant General, Bihar for making regular payment of family pension to the petitioner. The Treasury Officer must ensure to credit the amount into the account of the petitioner no.1 just forthwith, who receives the authority slip.

23. The above exercise must be done within a period of six weeks.

24. With above observation and direction, the present writ petition is disposed of.

25. There shall be no order as to cost.

(Purnendu Singh, J)

Niraj/Nilmani

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	20.07.2023
Transmission Date	N.A

