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W.P.A. 6644 of 2023

Basana Ganguly
Vs.
Union of India & Ors.

Mr. Mrinmoy Kumar Sahu
..For the petitioner
Mr. Kaustav Chandra Das
…For the U.O.I.
Ms. Parna Roy Choudhury
…For the PNB

The petitioner's case is that she is entitled to payment of family pension since her husband retired as an employee of Ordinance Factory, Dumdum in 1999. Prayer for revision of his pension was made on July 28, 2017. The petitioner's husband passed away on May 1, 2021. Thereafter, the petitioner immediately informed the factum of death to the Manager, PNB on May 7, 2021. The petitioner was a joint holder in the pension account of her husband. The petitioner informed the Manager to take necessary steps in the matter.

By a letter dated June 16, 2021, the petitioner wrote to the General Manager, Ordinance Factory/respondent no. 8 to look into the matter regarding revision of pension of her husband. She prayed that new basic pension from 2016 should be paid to her husband along with arrears thereof.

The petitioner again wrote to the Manager, PNB on June 16, 2021 and informed that she was residing with her daughter at Nagpur. She prayed for the pension slips to be sent to her from January 2021 till June 2021. Thereafter, the petitioner on February 15, 2022 informed the Chief Manager, CPPC, PNB, Kolkata that she has made the necessary application for conversion of the pension of her husband to payment of family pension to her. Despite several requests, she was unable to put in the necessary documents required for such disbursal due to lack of cooperation on the part of the staff of the Bank. She received no help from the Assistant Manager. On March 13, 2022, she again informed the Branch Manager, PNB that she had not got any cooperation from the staff at all.

On March 24, 2022, she was informed by the Senior Branch Manager, Dumdum, PNB that for disbursal of family pension, certain documents were required along with a deposit of Rs.2,38,186/- being the excess amount of pension that has already been deposited in the joint account. On April 10, 2022, the petitioner raised objection to the recovery of the said amount of Rs.2,38,186/- transmitted by the bank in the joint account maintained with her husband. She claimed that nothing in excess has been paid in the joint account maintained with her husband, since deceased. It was alleged that since the calculation of pension was done by the bank itself there is nothing, that is due and payable by her to the bank.

By a letter dated May 6, 2022, the Senior Branch Manager again informed the petitioner that in order to start disbursal of the family pension, the petitioner was required to refund the excess pension credited in her account between the period of May 1, 2021 and April 10, 2022.

Thereafter, again the petitioner wrote to the Senior Branch Manager on May 29, 2022 claiming disbursal of family pension. However, she was not willing to refund the excess amount of pension paid from May 2021 till April 2022.

Mr. Sahu, learned counsel appearing on behalf of the petitioner submits that since there was no misrepresentation on the part of the petitioner, the bank-in-issue was not entitled to recover any overdrawn amount by her. He relied on various judgments of the Apex Court. He relied on a judgments reported in (1994) 2 SCC 521 (**Shyam babu Verma & Ors. vs. Union of India & Ors.**), (2006) 11 SCC 492 (**Purshottam Lal Das & Ors. vs. State of Bihar & Ors.**), (2006) 8 SCC 647 (**Punjab National Bank & Ors. vs. Manjeet Singh & Anr.**), (1996) 4 SCC 416 (**Union of India & Ors. vs. M.

Bhaskar & Ors.), 1995 Supp (1) SCC 18 (**Sahib Ram vs. State of Haryana & Ors.**) and (2000) 10 SCC 99 (**Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr.**) in support of his contentions that in the event excess payment was not made on account of fraud or misrepresentation, the same could not be recovered from the pensionary benefits of the petitioner.

Ms. Choudhury, learned counsel appears on behalf of the bank and submits that the petitioner had an excess sum of Rs.2,38,186/- as on March 24, 2022 due to the disbursal of entire pensionary benefits that her husband was entitled to. The petitioner was entitled to family pension since May 2, 2021. However, the petitioner received the entirety of pension amount that her husband was entitled to prior to his death for the period of May 2021 till April 2022.

Therefore, there is no infirmity in the decision making process of the bank in requiring the petitioner to ask for refund of the said amount. She relied on by an Office Memo dated May 16, 2018 to contend that any wrong payment made to a pensioner can be adjusted by the bank against the amount standing to the credit of the petitioner's account to the extent possible, including lumpsum arrears as soon as the wrong/excess payment comes to the notice of the bank.

Considering the rival submissions of the parties and the materials placed on record, this Court finds no merit in the petitioner's claim. The petitioner in the various letters addressed to the bank never mentioned that she was getting the pensionary benefits due and payable to her husband and the same was being deposited month by month in their joint account.

The case of **Shyam Babu** (supra) is not applicable to the facts of the case since it relates to payment in a higher scale of pay which was later directed to be withdrawn by the authorities. In that circumstances, the Apex Court held that the petitioners due to no fault of their own received the higher scale of pay, which the authorities sought to recover. Therefore, the Apex Court directed that no step should be taken to recover the excess amount from the petitioners.

In **Purshottam Lal Das** (supra), the Apex Court in *peculiar* circumstances of the case directed no recovery should be made from the petitioners, from an amount paid in respect of promotional posts. In that case, the petitioner without any fault of their own were given promotional benefits of a higher post without the Promotional Committee according approval, not being properly constituted.

In **Manjeet Singh** (supra), the question was whether the petitioners who were mini deposit collectors employed by the bank were eligible to their commission or what relief were they entitled to. Keeping in view the *peculiar* facts and circumstances of the case, the recovery was stalled from the respondents/writ petitioners to avoid undue hardship to them.

In **M. Bhaskar** (supra), the issue related to the scale of pay that the Apprentices were entitled to. The Apprentices laid their claim for a higher scale of pay on the basis of 1987 Memorandum. Even though the Apex Court was of the view that the Apprentices were not entitled to higher scale of pay still considering the hardship that the petitioners will be made to suffer the Apex Court directed its Officers not to recover the amount already paid.

In **Sahib Ram** (supra), the issue was whether the appellant being a Librarian was entitled to a higher scale of pay as granted by the University Grants Commission, without having the requisite qualification.

In the circumstances, the Apex Court held that the appellant without possessing the required educational qualifications would not be entitled to the relaxation under UGC. The Principal of the College erred in granting him such relaxation and paying him at the revised scale. However, since the revised scale was paid to him not due to any misrepresentation on his part, the amount already paid may not be recovered from the appellant.

In **Bijay Bahadur** (supra), the Apex Court held that since payments were made without any representation/misrepresentation on the part of the petitioners, the appellant/Board could not deduct or recover the excess amount that was paid by way of increments at an earlier point of time.

All the cases cited on behalf of the petitioner do not aid the petitioner's case in any manner as the petitioners in the aforesaid cases were not aware that they were not entitled to higher pay.

This Court finds that the petitioner was aware that she was receiving the pension that her husband was entitled to but decided not to bring it to the notice of the authorities concerned. The petitioner continued to receive such pension without any protest or demur. The petitioner pressed her claim for family pension without bringing the material facts on record. Such non-disclosure, to the mind of this Court amounts to **suppression** of materials of facts. This Court has not appreciated the conduct of the petitioner at all. However, considering the fact that she is a widow and her advanced age, this Court is not imposing any costs on the petitioner, which it was otherwise minded to do.

Therefore, there is no infirmity in the decision making process of the bank. Either the petitioner refunds the amount claimed by the bank or the excess amount paid by the bank shall be adjusted month by month from the amount of family pension payable to her till such time the entirety of the excess amount is liquidated prior to monthly payment of family pension to the petitioner.

Accordingly, **W.P.A. 6644 of 2023** is **dismissed.**

All parties shall act on the server copy of this order duly downloaded from the official **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(**Lapita Banerji, J.**)