IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Krishna Rao

And

The Hon'ble Justice Supratim Bhattacharya

WPA 10545 of 2020

Renuka Sarkar

-vs

The State of West Bengal & Ors.

With

FMA 511 of 2021

With

IA No. CAN 1 of 2020

(Old No. CAN 2531 of 2020)

State of Bank of India & Ors.

-vs

Sumita Bhadra & Anr.

With

WPA 18830 of 2022

Jharna Chakraborty

-vs

State Bank of India & Ors.

For the petitioner in WPA 10545 of 2020	: Mr. Indrajit Dasgupta Mr. Shamik Chatterjee Mr. Aditya Bikram Mahata Mr. Sahil Kabir
For the respondent nos. 7 to 11 in WPA 10545 of 2020	: Mr. Arabindo Chatterjee Mr. Surajit Auddy Ms. Swapnalekha Auddy Ms. Reshma Sharma
For the Respondent No.4 in WPA 10545 of 2020	: Mr. Sandip Kumar Bhattacharyya
For the State in WPA 10545 of 2020	: Mr. Debashish Ghosh Mr. Prantik Garai
For the appellant in FMA 511 of 2021	: Mr. Subrata Kumar Sinha Mr. Debasish Saha
For the Respondent/ writ petitioner in FMA 511 of 2021	: Mr. Ayan Banerjee Mr. Arijit Bhowmick Ms. Debasree Dhamali Ms. Riya Ghosh
For the petitioner in WPA 18830 of 2022	: Mr. Sanjib Bandyopadhyay Mr. Ashok Kumar Singh
For the respondent nos. 1,3,4 and 5in WPA 18830 of 2022.	: Mr. Surajit Addy Ms. Swapnalekha Auddy Ms. Reshma Sharma

Heard On : 12.05.2023

Judgement Delivered On : 30.06.2023

Supratim Bhattacharya, J.:-

1. The instant lis has arisen because of reference being made in WPA 10545 of 2020 and WPA 18830 of 2022 and an appeal being preferred against the Judgement and order passed by an Hon'ble Single Bench in writ petition No. 22759 (W) of 2019 dated 19.02.2020.
2. In the WPA 10545 of 2020 excess amount has been paid to the petitioner namely Renuka Sarkar who was posted as Assistant Commercial Tax Officer under Bengal circle being an employee of the Government of West Bengal. She has retired from service on 30.06.2012. Her pension was being credited in her account maintained with the respondent State Bank of India, Sarsuna Branch. It is the contention of the respondent bank that since July 2012 to December 2015 excess amount has been calculated and paid due to mistake in assessing the dearness allowance while from January 2016 to January 2019 excess amount has been paid because of mistake in calculation in the basic amount. The total excess amount paid to her as pension amounts to Rs. 5,22,830/-. By a letter dated 30.8.2019 the respondent bank informed the pension holder as regards to the fact of excess payment made. She was also informed that in terms of circular a monthly deduction of Rs. 6,887/- has been made in respect of pension account and the said amount of deduction is 1/3rd of

the gross pension amount. The writ petitioner preferred the said writ petition before the Hon'ble Court being aggrieved by the fact of recovery of the said excess amount. After the exchange of affidavits in the said writ petition the Hon'ble Bench *vide* order dated 07.07.2022 was pleased to dispose of the matter and has been pleased to send the record along with the judgement to be placed before the Hon'ble the Chief Justice for constitution of larger bench for examination of the following issue:

> *"As in the present case when bank, where the pension account of the retiree is lying, proposes to recover the excess amount paid to the retiree by mistake whether the ratio of Rafiq Masih (supra) applies in order to protect the retiree from the rigor of recovery as decided by the said bank authority?"*

3. In the second writ petition being WPA 18830 of 2022 which has been referred, the writ petitioner namely Jharna Chakraborty is the wife of Suman Chandra Chakraborty since deceased, who was an employee of the State Government. The employee retired on 30.6.2000 and had been obtaining pension till his expiry on 13.10.2002. After the intimation of death of the employee since deceased on 28.10.2002, the petitioner started to receive family pension and the pension account is with the State Bank of India. The family pension continued till December 2021 and thereafter from January 2022 the said family pension was stopped. The bank authority informed the petitioner that due to miscalculation excess of payment amounting Rs. 9,71,184/- has been made to the petitioner during the period 06.06.2007 to 31.12.2021. The writ petitioner thereafter on 29.01.2022 had gone to the bank where she had to sign on a form being compelled, otherwise her survival was at stake. The respondent bank thereafter on 15.02.2022 requested the writ petitioner to repay the excess amount. It was also intimated that such excess is on account of wrong calculation of the basic pay which has crept in inadvertently. The bank authority decided that the pension amount is to be Rs. 9410/-. The bank authority started deducting Rs. 9,135/- towards recovery and writ petitioner is being credited the paltry amount of Rs. 275/- as pension in her account. Being aggrieved by such decision of the bank authority the said petitioner preferred a writ petition. On 08.12.2022 an Hon'ble Single Bench of this Court directed the respondent bank authority to pay family pension to the petitioner at the rate calculated by the SBI every month as was being paid from October 2002 till December 2021. The respondent bank is now crediting Rs. 6534/- as family pension and deducting Rs. 3,135/- towards recovery. Along with the aforesaid order the Hon'ble Single Bench also passed the following:

> *"Whether a Bank, being the disbursing authority of pension to a retired employee or his family member, can be brought within the fold of the Supreme Court decision in State of Punjab vs. Rafiq Masih (White Washer); (2015)*

4 SCC 334, more specifically under Paragraph 18 of the decision?"

4. As such the aforesaid two matters have come up before this Bench in reference.

5. In this instant lis an appeal has been preferred against the Judgement and Order dated 19.2.2020 passed by an Hon'ble Single Bench in writ petition WP no. 22759 (W) of 2019 in the case between Sumita Bhadra Vs. State Bank of India and ors. wherein the Hon'ble Single Bench has passed the following:

> *"52. If seen in proper perspective, apart from the aforesaid reasons, the Impugned memorandum dated September 24, 2019 as well as the deduction made by the bank were, in any event, time barred as a money claim, at least as far as the payments made from September 24, 2012 to August 31, 2016 were concerned, being beyond three years from when such excess payments were made. In such view of the matter, the deduction for the said period, even without going into the principles of Rafiq Masih (supra) and Jagdev Singh (supra), was not tenable in the eye of law.*
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> *53. Even if the communication by the Reserve Bank of India, dated March 17, 2016, is taken into consideration (although such scope is extremely limited since the same was not relied upon at the time of the initial reply of the Respondent-Bank), clause a) thereof says that as soon as the excess/wrong payment made to a pensioner comes to the notice of the paying branch, it should adjust the same against the amount standing to the credit of the pensioner's account. However, such clause highlights the gross negligence on the part of the Respondent-Bank, since the alleged excess payment was detected by the Bank for the first time in the year 2019, that is, seven long years after it commenced in the year 2012.*

54. That apart, the said circular is squarely against the law laid down in Rafiq Masih (supra), which renders it bad in the eye of law.

55. In view of the aforesaid reasons, the respondents acted illegally and de hors the law in issuing the notice dated September 24, 2019 and in deducting the total amount of Rs.6,50,000/- from the two bank accounts of the petitioner, and thereafter further amounts from the monthly pension of the petitioner as mentioned in the writ petition.

56. Accordingly, W.P. No.22759(W) of 2019 is allowed on contest, thereby setting aside the memorandum dated September 24, 2019 issued by the respondents, being annexure P-10, at page 41, of the instant writ petition and directing the respondents to refund the amount of Rs.6,50,000/- , as well as any other subsequent amount of money, deducted illegally from the petitioner's Account No.10527253143 and Account No.10527200418 as excess payment, immediately to the said accounts in the proportions in which they were deducted from such accounts, latest within a fortnight from date, by reversing the deductions and depositing back such amounts to the accounts of the petitioner held with the respondent no. 4-bank.

57. The respondents are further restrained from deducting any further amount from the pension being credited regularly to the account of the petitioner, held with the respondent no.1 bank, as deduction due to alleged excess payment having been made.

58. There will be no order as to costs."

6. The Ld. Counsel appearing on behalf of the private petitioners/pensioners has submitted that in the case between *State of Punjab and Ors. Vs. Rafiq Masih (white washer) and ors.* REPORTED in *(2015) 4 SCC 334* has dealt the entire aspect as regards to payment and receipt of pension and has further submitted that the criteria laid down in the Paragraph no. 18 of the said Judgement sets out the guidelines in respect of recovery of excess amount being paid as pension.

7. The Ld. Counsel appearing on behalf of the State Bank of India has submitted that the disbursing authority bank does not fall within the category of employer, it is only any agent disbursing the pension amount. Banking upon the said fact the Ld. Counsel has submitted that the guidelines laid down in the Judgement passed in in the case of Rafiq Masih (*supra*) does not entangle the agent bank. So the bank is entitled to recover the entire excess amount paid as pension.

8. The Ld. Counsel appearing on behalf of the State has submitted that in the case of Rafiq Masih (*supra*) the Hon'ble Apex Court has dealt in respect of excess payment of pension being made by the employer to the employee. The Hon'ble Apex Court has laid down in the said judgement the criterias wherein recovery of excess pension amount paid cannot be recorded and those are in respect of persons facing immense hardship.

9. Now the moot points for consideration is as to whether the bank authority, being the disbursing authority in respect of pension of a retired employee or in respect of family pension in favour of family member of the employee, is to be guided by the decision of the Hon'ble Supreme Court passed in the Judgement between State of Punjab and Ors. Vs. Rafiq Masih (white washer) and ors. Reported in *(2015) 4 SCC 334.*

As to whether the Judgement passed by the Hon'ble Single Bench in WPA 22759 (W) of 2019 is in accordance with law.

10. In the case between State of Punjab and Ors. Vs. Rafiq Masih (white washer) and ors. Reported in *(2015) 4 SCC 334* the Hon'ble Apex Court has summarized the following few situations, wherein recoveries by the employers, would be impermissible in law which are laid down as follows:

> *"(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
> *(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
> *(iii) Recovery from the 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."*

11. In the case between State of Punjab and Ors. Vs. Rafiq Masih (white washer) and ors. Reported in *(2015) 4 SCC 334* the Hon'ble Apex Court in Paragraph 18 has laid down that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly be made by the employer in excess of their entitlement. Therein the Hon'ble Apex Court has taken care of the hardships being faced by the recipients. Through the said entire judgement the Hon'ble Apex Court has taken into consideration the hardships which has to be borne by the family of the person receiving the pension. In the said Judgement on several occasions the Apex Court has mentioned about the fact of difficulties to be faced by the person receiving pension in case of deduction, to provide for the needs of his family. It has been elaborately stated that besides food, clothing and shelter an employee has to cater not only to the education needs of those dependent upon him but also their medical requirements and a variety of sundry expenses. The Hon'ble Apex Court has considered the hardships not only of the person receiving the pension but also the hardships to be faced by his or her dependents.

The Hon'ble Apex Court has also discussed in Paragraph 8 the fact that we are residing in a truly welfare state. It has also been stated that as between two parties, if a determination is rendered in favour of a 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 Hon'ble Bench has also discussed in Paragraph 9 the doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality can be found in Articles 14 to 18 contending part of the Constitution of India, dealing with "fundamental rights". These

Articles of the Constitution besides assuring equality before the law and equal protection of the laws, also disallow discrimination with the object of achieving equality in matters of employment; abolish untouchability to upgrade the social status of an ostracised section of the society and extinguish titles, to scale down the status of the section of the society with such appellations. The Hon'ble Apex Court has also considered the fact of doctrine of equality laid down in Articles 38, 39, 39-A, 43 and 46 contained in Part IV of the Constitution of India.

The Hon'ble Apex Court in Para 10 of the said Judgement has also laid down in Paragraph 10 that in view of the aforesaid constitutional mandate equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. The Hon'ble Apex Court has also stressed upon the point that an action of the State, ordering a recovery from an employee, would be in order so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount.

The Hon'ble Apex Court has taken into consideration in the said case the earlier decisions dealt by the Hon'ble Apex Court in respect of similar matters of recovery. Through the said Judgement the Hon'ble Apex Court has time and again considered the fact of balance of convenience and inconvenience taking into consideration the hardship not only of the pensioner but also has taken into consideration the hardships to be faced by the family members of the pensioner.

From the entire Judgement it is clear that the Hon'ble Apex Court has kept in mind the aspect of equity and justice.

Though in the said Judgement under consideration it has not been specifically dealt with as regards to the role of the disbursing authority that is the bank and that of the family members of the employees who are receiving family pension but on going through the entire judgement it is apparent that the Hon'ble Apex Court has not only considered the specific relation between employer and employee but has taken a panoramic view as regards to disbursal of pension and receipt of pension.

The Hon'ble Apex Court in Paragraph 13 of the said Judgement has stated as follows:

> *"All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses."*

12. From the above discussion this Court feels that the disbursing authority that is bank and the family members of the employees who are receiving family pension are also embodied within the ambit of this Judgement. The said Judgement has not only restrained itself within a narrow aspect but has taken bird's-eye view of the entire fact of payment and receipt of pension.

13. Thus the ratio decidendi of the judgement passed by the Hon'ble Apex Court in the case between State of Punjab and Ors. Vs. Rafiq Masih (white washer) and ors. reported in *(2015) 4 SCC 334* encompasses the employer that is the State, the disbursing authority bank and also the employees/ pensioners and their family members that is those receiving family pension.

14. This Court also takes into consideration a letter dated 17.03.2016 issued by the Deputy General Manager Reserve Bank of India addressing the Chairman/ Chief Executive Officer of all agency banks as regards to recovery of excess payments made to pensioners; an office Memorandum dated 16.05.2018 issued by the Assistant Controller of Accounts, Department of Expenditure Central Pension Accounting Office, Ministry of Finance, Government of India regarding recovery of excess payments made to pensioners; a circular issued by the Chief General Manager Reserve Bank of India dated 21.1.2021 addressing the Chairman/ Chief Executive Officer of all agency banks stating withdrawal of circulars- on recovery of excess pensions made to pensioners and an office

Memorandum issued by the Under Secretary of the Government of India Ministry of Personnel, Public Grievances and Pensions Department of Personnel & Training, Government of India dated 03.10.2022 regarding recovery of wrongful/ excess payments made to Government servants. Through the office Memorandum dated 03.10.2022, it reveals that the Government has instructed the Ministries/ Departments /offices to exercise extreme caution and take suitable measures while handling pay fixation of the employees and also in other cases involving payments so as to ensure that such lapses/ mistakes do not occur. The said office Memorandum has mentioned about an order passed by an Hon'ble Tribunal wherein the Judgement passed by the Hon'ble Apex Court in the case between State of Punjab and Ors. Vs. Rafiq Masih (white washer) and ors. Reported in *(2015) 4 SCC 334* has been taken into consideration.

In this context it would be not inappropriate to mention that the office Memorandum dated 16.5.2018 issued by the Assistant Controller of Accounts, Central Pension Accounting Office, Department Of Expenditure, Ministry of Finance, Government of India has sent a copy of the said office Memorandum to the General Manager Reserve Bank of India among others. The office Memorandum dated 03.10.2022 issued by the Under Secretary to the Government of India, Ministry of Personnel Public Grievances and Pension Department of Personnel and Training has sent a copy of the said office Memorandum to the Department of Pension and Pensionsers' Welfare among others.

Thus it is apparent that all the concerns of the Government dealing with pension whether it be in respect of pension to retired employee or in respect of family pension are within the ambit of the said Judgement of the Hon'ble Apex Court.

15. Let us now consider as to whether the Judgement and order passed by the Hon'ble Single Bench in the case between Sumita Bhadra and State Bank of India and Ors. dated 19.2.2020 is correct or not.

16. In the case in hand it reveals that the respondent No.1/writ petitioner being a wife of a Wing Commander since deceased then having a minor son was receiving her family pension. Suddenly on 21.9.2019 she received an information that her pension account having Rs. 50,000/- as well as savings account having Rs. 5,20,000/- have been put on hold as recovery, in view of excess payment being made to her as pension. On 25.9.2019 the said respondent also received an information about the transfer of Rs. 39,706/- to her pension account which was significantly less than the amount she was receiving till August 2019. She found that 1/3rd of the amount which she was receiving till the month of 2019 is being deducted from her pension. The respondent was intimated by the bank that she has received Rs. 26,05,664/- in excess which is required to be recovered. The respondent wife had worked as a teacher in a private school and has retired from service and she has no other income apart from the family pension. Rs. 6,50,000/- had already been deducted from the account of the petitioner by the respondent bank.

17. In the Judgement and order passed by the Hon'ble Single Bench the Hon'ble Single Bench has come to the finding that in the said case under consideration the petitioner is not covered by Clause 2 alone but by Clauses 3 and 5 of Paragraph No. 18 of Rafiq Masih (supra) as well.

Considering the judgement passed by the Hon'ble Supreme Court, in the case between High Court of Punjab and Haryana and ors. Vs. Jagdev Singh, comprising of Hon'ble Justice Dr. T.S. Thakur and Hon'ble Justice Dr. D.Y. Chandrachud, wherein the Hon'ble Apex Court has come to the finding that the principal enunciated in proposition 2 of the *Rafiq Mashi* case cannot apply to a situation such as in the said case. In the present case the officer to whom the payment is made in the first instance was clearly placed on notice that any payment found to have been made in excess could be required to be refunded. The officer has furnished an undertaking while obtaining for the revised pay scale and he is bound by the undertaking as such the said respondent had not come within the purview of the provisions of exemption laid down in the case of Rafiq Masih.

In the instant appeal the husband of the respondent was not serving as an employee belonging to Class III or Class IV service (or

Group C or Group D service) instead was working as a wing Commander. In this context, it would not be inappropriate to mention that the respondent herself was serving as a teacher.

So, in the instant appeal considering the facts and circumstances of the case including the onerous situation of the appellant/writ petitioner the authority is requested to pass reasoned order in respect of the recovery of the excess pension so that no hardship is caused to the respondent and her family.

18. In respect of reference this Court feels that the Judgement of the Hon'ble Apex Court passed in State of Punjab and Ors. Vs. Rafiq Masih (white washer) and ors. Reported in *(2015) 4 SCC 334* encompasses all the interested parties in respect of payment of pension and receipt of pension. Thus, the bank that is the disbursing authority and all the pensioners including the persons receiving family pension are fall within the ambit of the ratio decidendi laid down in the aforesaid Judgement. In so far as the appeal which arises out of the Judgement and order of the Hon'ble Single Bench dated 19.2.2020 passed by an Hon'ble Single Bench in writ petition WP no. 22759 (W) of 2019 in the case between Sumita Bhadra Vs. State Bank of India and ors.

Apropos, the above discussion, at Paragraph Nos. 56 and 57 of the Judgement of the Hon'ble Single Bench, the order impugned of the Hon'ble Single Bench stands set aside.

The *Reference* stands thus answered.

19. In the backdrop of the above discussion

i) *Reference* connected to WPA 18830 of 2022 is answered as follows: That the bank falls within and/or is required to act in terms of Paragraph 18 of the State of Punjab Vs. Rafiq Masih since the condition enumerated therein cover all stakeholders associated with the sanction, disbursement and receipt of pension.

ii) With regard to *Reference* arising out of WPA 10545 of 2020 the same principle as enunciated above in answering the *Reference* WPA 18830 of 2022 (*supra*) shall apply to all stakeholders and the rigors of recovery shall be guided by the principle laid down at Paragraph 18 of Rafiq Masih(*supra*).

iii) With regard to appeal, this Court holds that considering the facts and circumstances of the case particularly the onerous situation faced by the appellant/writ petitioner, the Bank is requested to pass reasoned order in respect of the recovery of the excess pension.

WPA 10545 of 2020 with **FMA 511 of 2021** with **IA No. CAN 1 of 2020 (Old No. CAN 2531 of 2020)** ***with*** **WPA 18830 of 2022** stand accordingly **disposed of.**

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree, **(Subrata Talukdar,J.)**

I agree, **(Krishna Rao, J.)**

(Supratim Bhattacharya, J.)