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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7514-2017 (O&M)
Date of Decision: 09.02.2023

Mahipal Singh Dhayal

....Petitioner(s)

Versus

Chief Manager, Punjab National Bank and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R.S. Sangwan, Advocate, for the petitioner.

Mr. Deepak Kohli, Advocate, for
Mr. D.K. Gupta, Advocate, for the respondents.

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<u>JASGURPREET SINGH PURI, J. (Oral)</u>

The present petition has been filed under Article 226/227 of the Constitution of India seeking a writ in the nature of *Certiorari* for quashing of impugned order dated 20.03.2017 (Annexure P-4) and also a writ in the nature of *Mandamus* commanding the respondents not to effect the recovery from the pension of the petitioner in pursuance of the impugned order Annexure P-4.

Mr. Deepak Kohli, Advocate has appeared on behalf of Mr. D.K. Gupta, Advocate who is the counsel for the respondent-Bank and has submitted that the learned counsel is not available today. However, this Court is of the view that the present petition was filed in the year 2017 and reply has already been filed by the Bank and the relief sought is only against the Bank who is the party in the present case and therefore, this

Court does not find any reason to adjourn the case since reply filed by the Bank can be taken into consideration.

Learned counsel for the petitioner submitted that it is a case where the petitioner retired in the year 2006 as a Subedar from Indian Army and thereafter his pension was to be paid through nationalized bank which is the respondent-Punjab National Bank and they started paying his pension. However, in the year 2012 suddenly the petitioner started receiving some more amount in his account and which was in view of disability pension which was to the tune of Rs. 2982 + DA. The petitioner being an Ex-serviceman and even otherwise also was duty bound to inform the Bank that more amount has been credited to his pension account and therefore immediately on 08.01.2013, he informed the respondent-Bank by stating that his pension after deducting the commuted pension is Rs. 5985+72% DA i.e. Rs. 8618/- and therefore his total pension is Rs. 14603 but he has started getting Rs. 19,733/- which is credited to his account which may be checked up and that he will not be responsible for any interest and recovery. The translated version of the aforesaid letter Annexure P-2 is reproduced as under:-

> *"To*
>
> *The Bank Manager,*
> *Punjab National Bank, Bhiwani, Loharu Road.*
>
> *Sir,*
>
> *It is submitted that my account No. is 0053000300478703. I am getting pension from this account. My basic pension is Rs.11970 and out of it 50% is commutation. Remaining pension Rs. 5985+72% DA i.e Rs.8618. Total pension is Rs.8618+5985 =Rs.14603. I am getting Rs.19733 which is credited to my account. It may be checked. This pension is for month of Oct, Nov, Dec, 2012. I shall not be responsible for any interest and*

recovery.

Received application

Sd/- Bank Official 08.01.2013 *Sd/- Applicant*
Mahipal Singh Dhayal
A/C 00530000300478703

Learned counsel submitted that despite the fact that he promptly informed the Bank that he is getting more amount than his requisite pension amount and it should be checked up by the Bank but the Bank did not pay any heed to the same and they kept on crediting the amount in his pension account and even the bank authorities were warned by him that he will not be responsible for any interest or recovery. However, the said extra amount was kept on being credited in the account of the petitioner till the year 2016 and in this way, the Bank erroneously paid to the petitioner an extra of Rs. 3,02,136/- w.e.f September, 2012 till October, 2016. He further submitted that after the year 2016 the Bank started recovery proceedings against the petitioner for the aforesaid amount and wrote a letter to him vide impugned order Annexure P-4 that since he has overdrawn an amount w.e.f. September, 2012 to October, 2016, the said amount will be recovered from him according to Government Rules and RBI Rules and was asked to deposit the excess amount withdrawn by him as per his undertaking submitted to the Bank. He submitted that the petitioner retired as a Subedar which falls in Category/Group-C and it was not a case that the petitioner has committed any fraud or misrepresentation for the purpose of getting the aforesaid amount but it was rather the other way round. He submitted that once it came to his knowledge that more amount has been credited in his pension account, he immediately informed the bank authorities but it was due to the negligence of the bank authorities that they did not stop the excess amount which thereafter calculated as Rs. 3,02,136/- for a period of about four years. He submitted that in the peculiar facts and circumstances the Bank could not have recovered the amount which already was paid to the petitioner in view of law laid down by the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SCC 334.*** He has also submitted that before filing of the present petition some amounts stood recovered from his pension account but thereafter the interim order was granted by this Court on 25.09.2017 whereby further recovery was stayed. He further submitted that recovery would cause extreme hardship to petitioner as the petitioner retired as Subedar and his case is also covered under sub para (v) of concluding para of the judgment in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.(Supra).***

On the other hand, Mr. Deepak Kohli, proxy counsel for Mr. D.K. Gupta, Advocate has referred to the written statement filed by the respondent-Bank.

This Court has also perused the written statement filed by the respondent-Bank.

As per the stand taken by the Bank, the aforesaid amount was wrongly credited to the account of the petitioner and therefore, the petitioner was liable to repay the same. It has been so stated in the affidavit that the petitioner was erroneously paid disability element of Rs. 2,982/- per month with DA w.e.f. 01.09.2012 to 31.10.2016 with resulted in overpayment of Rs. 3,02,136/- and when the matter came to the notice of the Bank on 24.10.2016, the same was taken up with the Centralized Pension Payment

Centre of the Bank which immediately stopped the disability pension from November, 2016 and thereafter only normal pension was credited in the account of the petitioner. It was because of this reason that now recovery has been started against the petitioner for the excess amount which was wrongly credited in his account on account of disability pension. It has been further so stated that the petitioner has also furnished an undertaking vide Annexure R-1 whereby he has undertaken that in case any excess amount is credited in his account, then the Bank was authorised to recover the same. Therefore, the recovery was in accordance with law. It has been also stated in para No.10 of the reply that the judgment of Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.(Supra)*** is not applicable in the present case because the petitioner was not an employee of the respondent-Bank and the Bank is only recovering the unauthorised credit which was inadvertently made in the account of the petitioner and that the petitioner was duly aware about this wrong credit in his account to which he was not entitled.

I have heard the learned counsel for the petitioner, learned counsel appearing on behalf of Mr. D.K. Gupta who is the counsel for the respondent-Bank and have also perused the pleadings.

The petitioner retired as a Subedar from Indian Army in the year 2006 and he falls in Category/Group-C. He was getting normal pension from the year 2006 onwards alongwith DA and there is no dispute with regard to the same but after six years of his retirement i.e. in the year 2012, the Bank suddenly started granting him disability pension and started crediting an amount of Rs. 2982/- in his account monthly and this continued till October, 2016. A perusal of Annexure P-2 shows that immediately on receiving the excess payment for the month of October, 2012, the petitioner wrote a letter to the respondent-Bank on 08.01.2013 by categorically stating that his total pension is Rs. 14,603/- but he is getting Rs. 19,733/- and the Bank should check up the same and also warned the Bank that he will not be liable for any interest or recovery. A perusal of vernacular of Annexure P-2 would show that the same has been so received by the Bank and there are initials which can be seen on the vernacular of Annexure P-2. Even otherwise also the petitioner in the petition has specifically mentioned in para No.4 that since he started getting more payment for the months October, November and December, 2012, he informed the Bank by written application immediately about the same and specifically pleaded in para No.4 of the petition regarding the same by also stating that a copy of the aforesaid application dated 08.01.2013 has been attached with the present petition as Annexure P-2. However, a perusal of the aforesaid para No.4 of the reply which was filed on merits by the respondent-Bank would show that it is so stated by the Bank that in letter dated 08.01.2013 the petitioner never informed that in future such excess amount may not be made in his account and nowhere it has been so specifically denied by the Bank that they did not receive the aforesaid letter. Rather a perusal of the last three lines of para No.4 of the reply would show that the Bank has specifically admitted the receipt of aforesaid letter dated 08.01.2013 vide Annexure P-2. The relevant portion is reproduced as under:-

> *"The petitioner visited the branch on 08.01.2013 and also submitted the answering respondent a hand written letter dated 08.01.2013 (Annexure P-2 of CWP)".*

One of the objections which has been taken by the respondent-Bank that the petitioner was not entitled for the disability pension which has been given to him and it was erroneously credited in his account to which the Bank was entitled for recovery. Another objection which has been taken by the respondent-Bank in the reply was that the petitioner himself had given an undertaking to the Bank that in case any excess amount is given to him, then the same can be recovered by the Bank.

The aforesaid first objection now which has been taken by the Bank is that if an amount has been erroneously credited in the account of the petitioner, then the same can be recovered by the Bank is rather contrary to the law laid by the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc. (Supra)***. It was held by the Hon'ble Supreme Court that when a person has retired from Group-C and D, an amount which has been inadvertently given cannot be recovered from the employee thereafter. The relevant portion of the aforesaid judgment reproduced 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 retired employees, or the 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."

Therefore so far as the aforesaid objection taken by the respondent-Bank in the reply is concerned, the case of the petitioner is fully covered by the aforesaid judgment in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc. (Supra)*** and the respondent-Bank is not entitled for recovery of the amount. So far as the second objection as aforesaid taken by the respondent-Bank that the petitioner has given an undertaking that in case any excess amount is made, then the same can be recovered can be considered in the light of the undertaking which the Bank has annexed alongwith its reply as Annexure R-1. A perusal of the aforesaid Annexure R-1 would show that such a letter of undertaking was given by the petitioner immediately after his retirement for the purpose of payment of pension and was given on 08.11.2006 which is clear from Annexure R-1. The relevant portion of the undertaking is reproduced as under:-

"*In consideration of your having at my request agreed to make payment of pension due to me every month by credit to my account with you, I the undersigned agreed and undertake to refund or make good any amount to which I am not entitled or any amount*

> *which may be credited to my account in excess of the amount to which I am or would be entitled. I further hereby undertake and agree to bind myself and my heirs, sucessors and administrators to indemnify the bank from and against any loss, suffered or incurred by the bank in so-crediting my pension to my account under the scheme and to forthwith pay the same to the bank also irrevocably authorise the bank to recover the amount due by debit to my said account or any other account/deposits belonging to me in the possession of the bank."*

A perusal of the same would show that this undertaking was given by the petitioner immediately on his retirement and was pertaining only to the payment of pension because at that point of time he was entitled for pension and it was so undertaken by him that in case any excess amount is given to him, then the Bank may recover the same but that undertaking was only pertaining to the amount pension and pensionary benefits which he got at the time of retirement whereas in the present case the excess payment has been given to the petitioner after six years of his retirement i.e in the year 2012 and therefore by no stretch of imagination can it be said that the aforesaid undertaking can entitle the Bank for recovery of the amount. The Hon'ble Supreme Court in the case of ***High Court of Punjab and Haryana and others Versus Jagdev Singh, 2016(14) SCC 267*** while referring to the earlier judgment in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.(Supra)*** observed that in certain cases when an employee gives an undertaking and therefore he is put on notice with regard to any excess payment, then the judgment of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.(Supra)*** will not apply but the present case is distinguishable from the judgment of

Hon'ble Supreme Court in the case of ***High Court of Punjab and Haryana and others Versus Jagdev Singh (Supra)*** because of the reason that undertaking was not pertaining to the grant of disability pension which has been paid in the year 2012 whereas undertaking is pertaining to general undertaking at the time of retirement of the petitioner in the year 2006 and therefore, the law laid down by the Hon'ble Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.(Supra)*** will be applicable in the present case. This Court is also satisfied that since petitioner retired as Subedar, recovery from him will cause undue hardship and it will be inequitable to recover from him and therefore his case also falls under sub para (v) of concluding para of the judgment in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.(Supra).***

So far as the objection raised in the reply by the Bank that judgment of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.(Supra)*** will not apply to the Bank because Bank is not the employer of the petitioner is also misconceived. The proposition of law which has been laid down by the Hon'ble Supreme Court is pertaining to the right of recovery and in such circumstances such recovery was impermissble especially the cases like the present case.

So far as the disbursement of pension and pensionary benefits is concerned, the same is done by the Bank which is an internal arrangement between the Bank and the employer which is the Government of India and therefore, such an objection taken by the respondent-Bank is not sustainable.

In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 20.03.2017 (Annexure P-4) is hereby set aside.

It is directed that no recovery can be effected from the petitioner pertaining to an amount of Rs. 3,02,136/-. The amount which has already been recovered by the Bank shall be refunded back to the petitioner alongwith interest @ 6% per annum within a period of three months from today.

09.02.2023 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

Whether speaking : Yes/No
Whether reportable : Yes/No