244 **2023:PHHC:166979**

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 05.09.2023

(1) CWP-103-2021 (O&M)

Rajiv Soi **Petitioner**

Vs

**Punjab Gramin Bank, Kapurthala
and others** **Respondents**

(2) CWP-568-2021

Amarjit Singh Ghotra **Petitioner**

Vs

**Punjab Gramin Bank, Kapurthala
and others** **Respondents**

(3) CWP-758-2021

Mukhwinder Singh and others **Petitioners**

Vs

**Punjab Gramin Bank, Kapurthala
and others** **Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Gagneshwar Walia, Advocate
for the petitioner in CWP-103-2021 and
CWP-568-2021.

Mr. Parveen Gupta, Advocate for
Mr. Vipin Mahajan, Advocate
for the petitioners in CWP-758-2021.

Mr. Bhushan Bhatia, Advocate
for the respondent-Bank.

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DEEPAK MANCHANDA J.(Oral)

1. This judgment shall decide the aforementioned three writ petitions as the issue involved in all the petitions is common and similar facts have been stated in all the petitions. The facts of writ petition i.e. CWP-103-2021 are being extracted for the purpose of adjudication.

2. This writ petition has been filed under Article 226 of the Consitution of India for issuance of writ of certiorari for quashing the impugned recovery notice dated 17.11.2020 (Annexure P-3) whereby an amount of RS. 6,55,289/- has been ordered to be deposited on account of erroneous payment of leave encashment paid to the petitioner at the time of his voluntary retirement and impugned recovery notice dated 15.12.2020 (Annexure P-6) received on 20.12.2020 whereby an amount of Rs.2,77,000/- has been recovered by the bank from the pension/savings account of the petitioner and has also been directed to deposit the balance amount of Rs.3,78,289/- by 31.12.2020 with further prayer for issuance of writ of mandamus directing the respondents to immediately refund of recovered amount along with interest @ 18% per annum. A further prayer is for de-freezing the pension account of the petitioner and for removal of lien created on the FDRs of the petitioner linked with his bank account.

3. Facts emanated from the pleadings of the present case are that the petitioner joined the services of Punjab Gramin Bank as Clerk/Cashier on 31.03.1986, who voluntarily retired from services of the respondent-bank from the post of Officer Scale-1 on 17.03.2020 and was granted his retiral benefits, including leave encashment, and was getting his monthly pension after his retirement. On 17.11.2020, when the petitioner tried to withdraw some amount from his pension account on account of his daily needs and medical requirements,

he was surprised to note that his pension account has been frozen and a debit balance of Rs.3,29,540.84 was being shown in his account. The petitioner sent a representation dated 23.11.2020 to respondents No.3 and 4 i.e.Chief Manager (HRD) and the Branch Manager with regard to the said unauthorized act and also requested them to de-freeze the pension account at the earliest being the only source of income and livelihood after his retirement. Subsequently, he received a notice dated 17.11.2020 (Annexure P-3) issued by respondent No.3 with regard to recovery of leave encashment amount and asking the petitioner to deposit Rs.6,55,289/- on the premise that leave encashment was erroeously granted whereas employees/staff of Regional Rural Banks (RRBs), who were voluntarily or compulsorily retired, is pending with Director Financial Services (DFS), Government of India for appropriate decision at their level and the decision is awaited. Petitioner gave a representations dated 23.11.2020 and 26.11.2020 (Annexure P-2 and P-4) in response to the notice of recovery requesting for de-freezing of his pension account and not to debit any amount from the said pension account, but to no avail. Since, no action was taken on his aforesaid representations, the petitioner sent a legal notice dated 05.12.2020 (Annexure P-5) again requesting the respondents to de-freeze the bank account, to remove the lien on the FDRs and to withdraw the impugned recovery notice. However, no reply was received. Rather petitioner received yet another impugned recovery notice dated 15.12.2020 (Annexure P-6) on 20.12.2020 through E-mail mentioning therein that he was earlier directed to refund an amount of Rs.6,55,289/- as recovery of leave encashment erroneously paid to him and he has not deposited anything, therefore, the bank has recovered the total amount as reflected in his savings account i.e., Rs.2,77,000/- and further directed him to deposit the balance amount of Rs.3,78,289/- by 31.12.2020 or else the balance amount will be recovered from his pension. The respondent bank has also created lien of more than Rs.7 lacs on the FDR account No.86563100002417 and has forzen the said FDR account also. The said FDR was for an amount of Rs.10 lacs and the bank on the basis of speculation and apprehension has also created a charge of more than Rs.7 lacs on the said FDR and has frozen the withdrawal even after deducting an amount of Rs.2,77,000/- from the pension account. Thus, vide impugned recovery notices (Annexures P-3 and P-6), petitioner was directed to deposit an amount of Rs.6,55,289/- out of which recovery of Rs.2,77,000/- was made from the pension account and frozen the account of the petitioner and created lien on the FDR. Hence this writ petition.

4. Learned counsel for the petitioner contends that as per Regulation 55 and 61 of the Punjab Gramin Bank (Officer and Employees) Service Regulations, 2010, which deals with the entitlement of privilege leave to an officer or employee of the respondents-bank, the petitioner was entitled for the grant of leave encashment which has been rightly granted to him in view of the Regulations of 2010. Further, as per Regulation 27 which deals with the pension of voluntary retirement where petitioner completed 20 years of qualifying service was entitled for the benefit of leave encashment and also draws attention of this Court by referring to the Punjab Gramin Bank (Employees) Pension Regulations 2018 read with Punjab Gramin Bank (Officers & Employees) Regulation 2010 submits that there is no difference between employee retired on attaining the age of superannuation or an employee voluntarily retired or compulsarily retired from services for the purposes of grant of voluntary retirement i.e. pension, PF and leave encashment but vide impugned recovery notice which had been issued in

violation of the Regulations, the respondents have illegally recovered the amount of Rs.2,77,000/- from the hard earned money of the petitioner and have also issued direction to deposit the balance amount of Rs.3,78,289/- which was stayed vide order dated 06.01.2021 passed by this Court.

5. Learned counsel further argues that there is no specific direction from the NABARD as well as from the Government of India with regard to the non-admissibility of leave encashment to the staff of the RRBs who are retiring from the services voluntarily or compursaliry retired. The petitioner has been stopped from operating his pension account which is the only source of income/livlihood, he being the retired employee and unilateral freezing of his account is uncalled for where petitioner is facing great financial difficulties and hardship where also a lien has been created on the same. To support his contention he has relied upon Hon'ble Apex Court judgment in case of ***State of Punjab Vs. Rafiq Masih 2015(4) SCC 334.***

6. Learned counsel for the respondents has filed written statement dated 08.02.2021 wherein it is stated that the petitioner took voluntary retirement from services of the bank from the post of Officer Scale 1 on 17.03.2020 but there are no specific directions in the pension regulations as to whether leave encashment is permitted in case of voluntary retirement or not. However, the petitioner has been given leave encashment amounting to Rs.6,55,289/- along with other dues at the time of voluntary retirement erroneously. He further submits that on receipt of letter No.RRB/268/316 (Pension) 2020-21 dated 12.11.2020 from NABARD, the respondent bank was left with no alternative but to advise the petitioner vide letter dated 17.11.2020 (Annexure P-3) to refund the amount of Rs.6,55,289/- already paid towards leave encashment to the petitioner at the time of voluntary

retirement, along with other dues payable to him wherein it has been specifically mentioned in the said letter dated 17.11.2020 (Annexure P-3) that "*decision on encashment of privilege leave accumulated by you at the time of voluntary retirement would be accordingly dealt with, immediately on receipt of clarification/decision from NABARD/DFS, GOI*". Accordingly, the lien was marked for a sum of Rs.6,55,289/- to the petitioner after informing the petitioner about the recovery. Since the balance outstanding in saving account was less than the amount demanded for which lien was marked, no further balance was available in the account for withdrawal by the petitioner. The petitioner was advised to refund the amount giving reference to the instructions received from NABARD, but petitioner did not refund the amount. Thereafter, vide letter dated 15.12.2020 (Annexure P-6), the petitioner was again directed to refund the amount, but when petitioner failed to refund, a sum of Rs.2,77,000/- was debited from account of the petitioner on 15.12.2020. However, the said amount of Rs.2,77,000/- has not been finally appropriated towards recovery pending the clarification from NABARD and the same has been kept in sundries account of the bank.

7. Heard and perused the material available on record.

8. In the present bunch of cases, the petitioners are not guilty of providing any incorrect information which had led the concerned competent authority to commit the mistake of making payment to the petitioner. It is to be noted that the payment made to the petitioner was not on account of any misrepresentation made by him nor was it on account of any fraud committed by him. Any participation of the petitioner in the mistake committed by the respondent in extending the undeserved monetary benefits to the petitioner is

totally ruled out and perusal of the record does not show that the same has resulted into wronful determination of emoluments granted to the petitioner, the only stand taken by the respondents-bank by filing their reply is that petitioner after voluntarily retiring from services in absence of any specific directions in the pension regulations with regard to leave encashment in case of voluntary retirement an amount of Rs.6,55,289/- had been erroneously released to the petitioner.

9. Learned counsel for the petitioner has raised an objection that the NABARD vide letter dated RRB-268-316 (Pension) 2020-21 dated 12.11.2020 informed the respondent-bank that admissibility of leave encashment to the staff of respondents-bank who have retired from services voluntarily and retired compulsarily is under consdieration where decision is awaited. Accordingly, lien was marked on the bank account of the petitioner for a sum of Rs.6,55,289/- till the instructions are received from the NABARD. Same is the stand taken by respondent-Bank till today that untill and unless said issue is decided the Bank has opposed the release of leave encashment and has questioned the entitlement of the petitioner. Further, no specific stand in the reply has been taken in this regard by giving justifiable reasons. There is nothing on record to show that whether the said issue is pending consideration or even progressed further, hence in absence of the same the stand of the respondents is not tenable.

10. As per Regulation 11 of Punjab Gramin Bank (Officers & Employees) Service Regulations, 2010, the retirement of the officer or employee is on the completion of 60 years of age. The Regulation 11 of Service Regulation, under: 2010 is reads as under:

> 11. Superannuation and Retirement. (1) An officer or employee shall retire on completion of 60 years of age:
>
> Provided that the Chairman may, on recommendation by the Special Review Committee constituted under sub-regulation(3). retire an officer or employee at any time after completion of the 55 years of age or after the completion of 30 years of the total service in the Bank, whichever is earlier:
>
> Provided further that no officer or employee shall be retired under this sub-regulation unless notice in writing has been served on him at least three months in case of an officer and one month in case of an employee in advance or an amount equivalent to three months pay in case of an officer and one month pay in case of an employee shall be given to such officer or employee in lieu thereof:
>
> Provided also that if an officer or employee aggrieved by an order passed by the Chairman, he may within one month from the date of passing of such order, give in writing a representation to the Board against the decision of the Chairman and on receipt of such representation the Board shall take a decision within a period of three months.
>
> (2) Where the Board decides that the order passed by the Chairman is not justified, the concerned officer or employee shall be reinstated as if the Chairman had not passed the order.
>
> (3) The Chairman shall constitute a Special Review Committee consisting of not less than three members of the Board to review whether an officer or employee should be retired in accordance with the sub-regulation (1).
>
> (4) The Special Review Committee shall, from time to time, review the case of each of the officer or employee and make recommendation to the Chairman.
>
> Explanation:- For the purposes of this regulation, the officer or employee, -
>
> (i) whose date of birth is first day of month retire on superannuation on the last day of the previous month on which he completes the age of superannuation;
>
> (ii) who attains the age of superannuation on a day other than the first day during a calendar month, shall retire on the last day of that month.

11. Further, in exercise of the powers conferred by section 30 read with section 17(1) of the Regional Rural Banks, 1976 (21 of 1976) read with Section 17 (1) thereof, the Board of Directors of Punjab Gramin Bank after consultation with Punjab National Bank being the Sponsor Bank and the National Bank and with the previous sanction of the Central Government made the Regulations, namely: Punjab Gramin Bank (Employees') Pension Regulations, 2018,

12. Regulation 2 (x) of Punjab Gramin Bank (Employees') Pension Regulations, 2018, deals with retirement and reads as under:-

> "retirement" means cessation from Bank's service.-
>
> (1) on attaining the age of superannuation as specified in the service regulations,
>
> (ii) on voluntary retirement in accordance with provisions contained in regulation 28;
>
> (iii) on premature retirement by the Bank before attaining the age of superannuation in accordance with provisions contained in regulation 30:

13. Regulations 27 and 28 of Punjab Gramin Bank (Employees') Pension Regulations, 2018 deals with Pension on Voluntary Retirement, which read as under:-

> *27. Pension on voluntary retirement.-*
> *(1) On or after the effective date, at any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service:*
> *Provided that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or a company or institution or body, whether incorporated or not, to which he is on deputation, at the time of seeking voluntary retirement.*
> *(2) The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority:*
> *Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.*
> *(3) (a) An employee referred to in sub-regulation (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons thereof*
> *(b) On receipt of a request under clause (a), the appointing authority may, subject to the provisions of sub regulation (2), consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.*
> *(4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority,*

shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for such withdrawal shall be made before the intended date of his retirement.
(5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty- three years and it does not take him beyond the date of superannuation:

Provided that the increase in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension
28. Invalid pension.-
(1) Invalid pension may be granted to an employee who, -
(a) has rendered minimum ten years of service; and
(b) retires from the service on or after the effective date on account of any bodily or mental infirmity, which permanently, incapacitates him for the service.
(2) An employee applying for an invalid pension shall submit a medical certificate of incapacity from a medical officer approved by the Bank.
(3) Where the medical officer approved by the Bank has declared the employee fit for further service of less laborious character than that which he had been doing, he may, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.
(4) No medical certificate of incapacity for service may he granted unless the applicant produces a letter to show that the competent authority is aware of the intention of the applicant to appear before the medical officer approved by the Bank.
(5) The medical officer approved by the Bank shall also be supplied by the competent authority in which the applicant is employed, with a statement of what appears from official records to be the age of the applicant.

14. That by going through both the Regulations of Bank, it is unequivocally clear that both the Regulations are independent of each other.

15. As per Section 27 of the **Punjab Gramin Bank (Employees) Pension Regulations 2018** which deals with the pension of voluntary retirement, an employee is entitled for the pension after completing 20 years of qualifying service where after issuing notice of voluntary retirement by the employee under Sub-Regulation (1) requires acceptance by the appointing authority where if the appointing authority does not refuse to grant permission for retirement before the

expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period. As per Regulation 27(3)(A) an employee referred to in Sub-Regulation (1) shall make a request in writing to the appointing authority except notice of voluntary retirement of less than three months giving reasons thereof and if the appointing authority is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of notice of three months. As per Regulation 2(x) of the Punjab Gramin Bank (Employees) Pension Regulation 2018, the retirement means cessation from bank service as per Clause (ii) on voluntary retirment in accordance with provisions contained in Regulation 28. Regulation 28 deal with the invalid pension where certain conditions have been enumerated but respondents-bank has failed to point out any violation committed by the petitioner in reference to Regulations 27 and 28 of Punjab Gramin Bank (Employees) Pension Regulations 2018.

16. A perusal of the Punjab Gramin Bank (Employees) Pension Regulations 2018 read with Punjab Gramin Bank (Officers & Employees) Service Regulations 2010 makes it abundantly clear that the said Regulations and statutory rules makes no difference between an employee retired on attaining the age of superannuation or an employee voluntarily retired or compulsarily retired from the service for the purposes of grant of retiral benefits i.e. pension, PF and leave encashment. Thus, no artificial dicrimination can be made between the officers/employees who retired on attaining the age of superannuation vis-a-vis

officers/employees who have voluntarily retired. Both of them are entitled to be paid same retiral/pensionary benefits including the leave encashment.

17. A perusal of impugned recovery notices show that there is no specific direction or order from NABARD or as well as from the Government of India with regard to the non-admissibility and consequent recovery of the leave encashment to the employee or staff of the RRBs who are retiring from services voluntarily or retired compulsarily. The petitioner, is a retired employee, the unilateral freezing of his pension account without his consent, or knowledge and such order behind his back is totally uncalled for which has caused financial difficulties with regard to the non-operating of the said account and he is being forced into penury by the respondent-bank. The Hon'ble Apex Court has held in catena of judgment that the pension is not a bounty but a hard earned right of the employee which cannot be taken away without proper justification.

18. In light of the above reference made to the settled proposition of law in ***State of Punjab Vs. Rafiq Masih 2015 (4) SCC 334*** wherein it is held that even where the payments have been mistakenly made by the employer to an employee in excess, the recovery of the same by the employer would be impermissible in law and the Hon'ble Apex Court has depicted the following situation even if entitlement of an employee with regard to the said payment is not made out:-

> "**Recovery from employee-** Payment mistakenly made in excess of entitlement in the following situations recovery held to be impermissible:-
>
> > *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 employees who are due to retire within one year, of the order of recovery*

> *iii. Recovery from employees, when 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 another 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 for outweigh the equitable balance of the employers right to recover."*

19. The petitioner falls under Clause (ii) and (v) in view of the same the impugned notices dated 17.11.2020 and 15.12.2020 (Annexures P-3 and P-6) are not legally sustainable. Moreover, before issuance of impugned recovery notices the respondent-bank has never raised any doubt or objection with regard to voluntary retirement of the petitioner, who superannuated on 17.03.2020 (Annexure P-1) which talks about the notice of the voluntary retirement where the respondent-bank had sought information in reference to the acceptance of three months notice dated 17.12.2019 for seeking voluntary retirement by the petitioner which attained deemed approval by the respondents as nothing has been placed on record to show that the request of the petitioner for seeking voluntary retirement was ever objected or denied which also draws force from the Annexure P-3 dated 17.11.2020 where even amount of leave encashment was first paid at the time of VRS and was duly credited in the account of the petitioner and it is only after receiving the letter from NABARD No.RRB-268-316 (Pension) 2020-21 dated 12.11.2020 the respondents raised hue and cry and started illegally recovery of the amount. Even for utmost surprise after the gap of more than three and a half

years, the respondents are singing the same song for deciding the issue pending adjudication with the NABARD which has not been decided till today. Even otherwise, the said plea with regard to consideration of the issue pending with the NABARD does not help the respondents who themselves accepted the prayer for voluntary retirement of the petitioner in view of their own Regulations and released the leave encashment amount accordingly for which he was entitled to. Now initiating illegal recovery only by making reference of instructions issued by the NABARD cannot be accepted and the impugned orders dated 17.11.2020 and 15.12.2020 (Annexure P-3 and P-6) being illegal and arbitrary are not sustainable and are liable to be set aside.

20. In light of the foregoing discussion and the settled prepositions of law, the present petition is allowed. The impugned recovery notices dated 17.11.2020 (Annexure P-3) and 15.12.2020 (Annexure P-6) are hereby quashed. Respondents are directed to refund the amount of Rs.2,77,000/- which was illegaly recovered from the pension/saving account of the petitioner with interest @ 6% per annum from the date of recovery till its realization. The respondents are further directed to remove the lien created on the FDRs/account of the petitioner linked with his saving account within two months from the date of receipt of certified copy of this order.

21. Pending application(s) if any, also stand(s) disposed of.

(DEEPAK MANCHANDA)
JUDGE

05.09.2023
Sapna/vanita

Whether speaking/reasoned Yes/No
Whether reportable Yes/No