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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-36101-2019 (O&M)
Date of Decision: 19.01.2023

Rajender Prakash

..... Petitioner

Versus

State Bank of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Harish Mehla, Advocate for
Mr. Athar Ahmed, Advocate,
for the petitioner.

Mr. Vikas Chatrath, Advocate,
for respondent No.1-Bank.

Mr. P.S. Miglani, Advocate,
for respondent No.2.

Mr. Rajesh Gupta, Advocate,
for respondent No.3.

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JASGURPREET SINGH PURI, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ, order, direction specially in the nature of Certiorari for quashing of the impugned demand notice (Annexure P-1) dated 05.08.2019 vide which the recovery of an additional amount of Rs.9,600/- per month (besides the deduction of Rs.5,362/- per month on account of commutation) is being deducted due to the act of negligence on the part of the respondent No.1 themselves.

Brief facts of the present case are that the petitioner retired on 31.12.2011 as Telecom Technical Assistant from respondent No.3-Nigam. At the time of his retirement, he opted for commuted pension of Rs.4,87,942/- and for that purpose an amount of Rs.5,362/- per month was to be deducted from his salary for a period of 15 years. However, the respondent No.1 i.e. the State Bank of India for the reasons best known to them did not deduct the said amount from the pension of the petitioner which continued till the year 2019. As per the Bank, the mistake was detected in the year 2019 and vide Annexure P-1, a Demand Notice for recovery of excess pension given to the petitioner was served to the petitioner. In the said Demand Notice, it has been so stated that a recovery of @ Rs.9,600/- per month will be initiated against the petitioner.

Learned counsel for the petitioner has submitted that in the present petition, he has challenged the action of the respondents in recovering the amount which has been paid to him after retirement but he confines the scope of the present petition only to the extent that the amount of Rs.9,600/- which is sought to be recovered from the petitioner henceforth is an exorbitant installment amount which affects his right to life and livelihood. So far as the action of the respondent-Bank in recovering the amount in view of the judgment passed by the Hon'ble Supreme Court's in "***State of Punjab and others Vs. Rafiq Masih***", ***2015(4) SCC 334*** is concerned, he does not press the same because in the facts and circumstances of the present case, the law laid down by the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih's case***

(supra) will not apply because it is not a case where an amount has been paid to the petitioner in excess by way of an incentive and therefore, so far as the right of recovery is concerned, he is not disputing the same. He also submitted that the consequence of the recovery is sought to be made from the petitioner is that from now onwards, an amount of Rs.5,362/- plus Rs.9,600/- which comes out to be Rs.14,962/- per month will be deducted from the petitioner and he will be left with only Rs.27,000/-. He further submitted that the petitioner is a retired person and it is not possible for him to make both the ends meet on the aforesaid amount of Rs.27,000/- which is to be paid to the petitioner after deducting Rs.5,362/- plus Rs.9,600/- from him only because of the fault and negligence on the part of the respondent-Bank. He also submitted that the aforesaid amount of Rs.9,600/- which is sought to be recovered from the petitioner may be reduced to some reasonable extent so that at least he can make his both ends meet.

Mr. Vikas Chatrath, learned counsel appearing on behalf of respondent No.1/Bank has submitted that he has sought instructions from the Bank to state that they will reduce the aforesaid amount of Rs.9,600/- per month to Rs.7,500/- keeping in view the peculiar facts and circumstances of the present case and also keeping in view of the fact that earlier for 9 years, the amount was not recovered from the petitioner by the Bank itself. He has specifically stated that in terms of the recovery order which is to be recovered from the petitioner it does not include any interest in the same.

I have heard the learned counsel for the parties.

During the course of arguments, the learned counsel for the petitioner has confined the scope of the present petition only to the extent that now an amount which is sought to be recovered to the extent is Rs.9,600/- per month and the net result of the same is that he will be receiving the pension of only Rs.27,000/- which will not make his both ends meet, may be considered.

After hearing the learned counsel for the parties and a perusal of the record would show that the petitioner had retired in the year 2011 and he opted for commutation of pension for which the Bank was required to deduct Rs.5,362/- per month from his pension but for about 8 years the Bank did not do so with the result that the petitioner had availed the aforesaid amount and utilized the same being a pensioner. Now although the petitioner has categorically submitted that he does not wish to challenge the action of the respondent for now recovering the aforesaid amount but from henceforth the Bank is now proposing to deduct Rs.5,362/- as a normal installment deduction and Rs.9,600/- as a back log recovery and total amount comes to Rs.14,962/- per month with the result that he will receive net pension of Rs.27,000/- only which cannot make his both ends meet as he has to feed his family as well. The reasoning given by the learned counsel for the petitioner seems to be just and reasonable. In the present case, mistake has been committed by the respondent/Bank with the result that the amount of Rs.5,362/- was not deducted from the pension of the petitioner and after 8 years, the Bank has rectified its mistake. The petitioner is not disputing the right of recovery but it is only pertaining to the quantum by way of reasonable installments which should be recovered.

This Court is of the view that although the learned counsel for respondent No.1/Bank has offered after taking instructions from the Bank that they will reduce the installment from Rs.9,600/- to Rs.7,500/- but the same seems to be unreasonable. Therefore, this Court is of the view that considering the aforesaid facts and circumstances, the recovery if any which is to be made from the petitioner by the respondent/Bank which is not opposed by the learned counsel for the petitioner should be optimum and reasonable and according to this Court, an amount of Rs.6,000/- per month should be recovered as a back-log installment and not Rs.9,600/-.

Although in normal circumstances, this Court would not go into the quantum of fixation of installments but considering the aforesaid peculiar facts and circumstances where the petitioner has pleaded that he is not able to meet his both ends meet because of the fault of the respondent/Bank, this Court has, therefore, exercises its jurisdiction under Article 226 of the Constitution of India in the light of Article 21 of the Constitution of India.

The present petition is, therefore, disposed of with the aforesaid observations.

19.01.2023 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes
2. Whether reportable: Yes