IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5395 of 2021

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Shairun Nisha, Wife of Late Md. Shadique, resident of Village- Ghirshindi, Post Office- Gosaidih, Police Station- Nabi Nagar, District- Aurangabad.

... ... Petitioner/s

Versus

1. The Union of India.
2. The Accounts Officer, Central Pension Accounts Office (C.P.A.C), Ministry of Finance, Government of India, Trikoot- 2, Bhikaji Cama Place, New Delhi.
3. The Chief Manager, State Bank of India, Main Branch, Aurangabad, Bihar.
4. The Branch Manager, Nabi Nagar Branch, State Bank of India, District- Aurangabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar, Advocate
For the Union of India	:	Mr. Amarendra Nath Verma, Sr. Advocate Mr. Rakesh Kumar Singh, CGC
For the S.B.I.	:	Mr. Rakesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

11 23-09-2024 Heard the parties.

2. The writ petition has been preferred, seeking a direction upon the respondent authorities to revise and pay full share of family pension to the petitioner as she has been getting since 2003 or earlier till February, 2020 and also to ensure the payment of arrears of family pension which is deducted from the month of March, 2020 without any notice or any information.

3. The short facts of the case are that the husband of the petitioner was a Head Constable who died in harness on

29.12.1996 leaving behind two wife. The petitioner being first wife after the death of her husband found entitled for 50% of family pension in terms of the prescription of rule 54(7)(a)(i) of CCS(Pension)Rules, 1972. Accordingly, P.P.O. was issued and the petitioner has been receiving family pension till the month of February 2020. But all on a sudden from March, 2020, the pension of the petitioner has been slashed down to Rs. 5,040/- from Rs. 11,730/- without there being any notice or opportunity of hearing.

4. Learned Advocate for the petitioner contended that so far the grievance of the petitioner to the restoration of family pension is concerned, the same has already been done during the pendency of the writ petition; however, on account of alleged wrong calculation in according the family pension, excess payment was credited in the account of the petitioner. Thus, the bank has taken a decision to recover the excess amount to the tune of Rs. 5,94,038/-.

5. Assailing the action of the respondent bank, learned Advocate for the petitioner vehemently contended that admittedly the present is not the case wherein the allegation has been leveled that the excess amount paid to the petitioner was on account of any misrepresentation or fraud. The mistake or error in the calculation, if any, is attributable to the bank. Hence,

any recovery from the account of the petitioner who is a hapless widow lady, would be iniquitous or harsh. Reliance has also been placed on a judgment rendered by the Apex Court in the case of **State of Punjab vs. Rafiq Masih [(2015) 4 SCC 334]**.

6. *Per Contra* learned Advocate for the bank countering the afore-noted submission has said that the issue with respect to recovery of excess money paid to the pensioner by the bank who has been ensuring the pension to the pensioners only in the capacity of disbursing authority has been duly considered by this Court in case of **Rameshwar Ram vs. The Union of India & Others,** [**CWJC No 288 of 2023** and other analogous case]; and the order of recovery has been found sustainable.

7. Having considered the submissions advanced on behalf of the learned Advocate for the respective parties and taking note of the order passed in the afore-noted case, this Court doesn't find any merit in the writ petition to the extent whereby the action of the bank in directing recovery has been put to challenge.

8. This court in the case of **Rameshwar Ram (supra)** while dealing with identical issue has held as follows:-

> *"20. This Court has heard the learned counsel for the respective parties and also examined the materials on record*

meticulously. One thing it is admitted that the role of the respondent Bank is only limited to the extent of drawing and disbursing authority, who ensure payment of pension on the basis of authority letter issued by the competent authority, i.e., the Accountant General (A&E), Bihar, Patna on being sanctioned by the concerned Department/institution/authority under which the employees had rendered their services. Thus, there is no relationship of the employer and employee between the Bank and the pensioner. That apart, the function of the Bank is being regulated by the master circular(s) issued from time to time by the higher authorities of the Bank empowering the Bank to recover the excess amount, which is paid on account of mistake or miscalculation, after giving proper demand notice.

21. After careful examination of the judgments rendered by the Apex Court in the case of ***Sahib Ram Vs. The State of Haryana [1995 supp (1) SCC 18]; Syed Abdul Kadir Vs The State of Bihar [(2009) 3 SCC 475], Rafiq Masih*** *(supra)* ***as also the Thomas Daniel*** *(supra), it goes without saying that the mandate of the Supreme Court not to recover the excess amount is based upon equity, in case the excess payment was not made on account of misrepresentation or fraud on the part of the employee or made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous or where court arrives at the conclusion that the 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.*

22. Taking note of the aforenoted settled proposition of law, this Court feels it apt and proper to quote paragraph nos. 13 and 14 of the judgment rendered in the case of Chandi Prasad Uniyal (supra) where the learned Apex Court has observed as follows:

> *"13. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.*
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> *14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide*

> *mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc., because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."*

23. Further in the case in hand before making payment of pension the petitioners were put to notice and the petitioners had already furnished undertaking that they would refund the excess amount paid and thus they are bound by the undertaking. The aforesaid proposition has well explained and propounded by a 3-Judge Bench of the Hon'ble Supreme Court in the case of ***Jagdeo Singh*** *(supra) wherein the Hon'ble Court taking note of the earlier judgment rendered in the case of* ***Rafiq Masih*** *(supra) has held that in case where officers to whom payment was made in the first instance was* *clearly placed on notice that any payment found to have been made in excess would be required to be refunded, the officer furnished an undertaking while opting for the revised pay scale, he is bound by the undertaking.*

24. In view of the afore-noted settled legal position and the fact that the petitioners have been accorded excess payment on account of wrong calculation or miscalculation and thus, in no stretch of imagination the same cannot be recovered, otherwise certainly it would amount to unjust enrichment, for which the petitioners are not legally entitled to receive. Any person who receives an excess amount more than to his entitlement owes a duty to repay the same as the amount is not of the officer/department but of the common man/tax payer."

9. In view of the facts and the position obtaining in law this Court does not find any reason or occasion to interfere with the order/action of the bank whereby the recovery directed for the total excess amount to the tune of Rs. 5,94,038/- in 339 installments by deducting only Rs. 1,755/- from the monthly family pension of the petitioner.

10. The writ petition stands dismissed.

(Harish Kumar, J)

supratim/-

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