

Civil Writ Jurisdiction Case No.6865 of 2020

- Appellant/s

1. Md. Aslam Son of Late Md. Akhtar, resident of House No. 72, Near - Pond, Bishanpur, Hakimabad, P.S. - Muffasil, P.O. - Bishanpur and District-Samastipur.
2. Zonal Railway Manager (Appointment) East Central Railway, Samastipur, Bihar.
3. Financial Advisor and Chief Account Officer, East Central Railway, Hajipur, Vaishali, Bihar.
4. Accounts Officer, Railway Unit, East Central Railway, Samastipur, Bihar.

Appearance :

For the Respondent/s : Mr. Mohammed Abu Haidar

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

10 28-06-2024 The present L.P.A. No. 198 of 2021 was filed in the
year 2021. For removal of office objections, the matter was
listed in the year 2024. Appellants have removed office
objections in the form of filing two interlocutory applications;
one interlocutory application for condonation of delay in filing

the L.P.A. and another application for extension of time to remove office objections.

2. Having regard to the fact that there is a delay of about 39 days in filing L.P.A No. 198 of 2021, for the reasons stated in the application read with the affidavit, I.A. No. 2 of 2024 for condonation of delay stands allowed. Consequently, I.A. for extension of time to remove the defects is allowed.

3. With the consent of the learned counsels for the respective parties, L.P.A is heard.

4. The appellants have assailed the order of the learned Single Judge dated 23.12.2020 passed in C.W.J.C No. 6865 of 2020. Respondent Md. Aslam was a railway employee and he had attained the age of superannuation and retired from service. His pension account was in the Bank of India. Respondent-Bank of India have paid excess pension with reference to the remittance of pension amount on behalf of the railways. In this regard, whether excess payment made to the respondent could be recoverable or not is the subject matter of litigation. The learned Single Judge proceeded to allow the petition in part on 23.12.2020. It is necessary to reproduce Para 11 to 15 of the order dated 23.12.2020, which reads as under :

“11. It has been stated at the bar that the petitioner has received altogether a sum of Rs.

9,38,000/- (Approx.) over and above the amount of pension, which he was legally entitled to.

12. Learned counsel for the petitioner has agreed that the petitioner shall not resist if 1/3rd of the said amount is allowed to be recovered by the Bank instead of the entire amount.

13. Since there is admitted mistake on the part of the Bank, in the peculiar facts and circumstances of the case as noted above, it is directed that the Bank shall recover only 1/3rd of the amount said to have been credited in the petitioner's account erroneously, out of mistake. For its own fault, the Bank will have to bear their loss.

14. In order to bring finality to the present dispute, it is directed that no party including the Railway Administration shall raise any further dispute with the Bank, in this regard. The Bank shall revise the rate of recovery from the petitioner's pension, accordingly, in terms of the present order.

15. This application stands disposed of."

5. The appellants have assailed the order of the learned Single Judge to the extent that even remaining portion is required to be recovered. In support of the same, we are under the impression that respondent had given an undertaking to that effect. We have sought documents from the appellant. They have filed documents along with the supplementary on 01.05.2024. These are all documents relating to prior to

claiming/settlement of pension. However, there is a Form No. VI, it is relating to undertaking. Para 3 of Form No. VI reads as under:

“3... I agree to undertake that any amount of excess/ wrong payment of pension if credited to my above S.B. Account may be recovered or withdrawn from the said Savings Bank Account by the said Post Master/Sub-Post Master.”

6. This form has not been obtained from the respondent on behalf of appellants. Had they obtained undertaking under Form No. VI then in that event it was binding on the respondent. Therefore, there is no infirmity in the order of the learned Single Judge dated 23.12.2020. However, respondent has not filed L.P.A against the order of the learned Single Judge. It is learnt that Civil Review has been filed against the order dated 23.12.2020 passed in C.W.J.C No. 6865 of 2020. Our order would not come in the way of deciding Civil Review petition .

7. With the above observation, the present LPA stands dismissed.

8. At this stage, learned counsel for the appellant-Bank of India submitted that they have taken an undertaking from the respondent in a different mode, however it is not

authenticated for the reason that it is undated. Consequently, we have to draw inference that undertaking given by the respondent to the bank is not admissible. Moreover, Form No. VI is the prescribed format, in particularly Para 3 cited supra is crystal clear with reference to the present subject matter. In the absence of such undertaking in Form No. VI, appellants cannot twist the issue with reference to any other document. Even the cited document of undertaking is incomplete.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

U			
---	--	--	--