IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9663 of 2021

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Reshmi Devi @ Smt. Reshmi Devi, Gender-Female, Aged 80 years, Wife of Late Shobhi Singh, Resident of Amarapura, Makhmilpur, P.S. - Paliganj, District - Patna.

... ... Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Human Resources Department, Government of Bihar, Patna.
2. The District Superintendent of Education, Patna.
3. The State Bank of India through it's Chairman, State Bank Bhawan, M.C. Road, Nariman Point, Munbai, Maharashtra - 400021.
4. The Assistant General Manager, State Bank of India Centralized Pension Processing Center, Administrative Office Building, 4th Floor, J.C. Road, Patna.
5. Branch Manager, State Bank of India, Paliganj Branch, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.K. Lal, Adv.
	:	Mr. Pritish Kumar Lal, Adv.
	:	Mr. Arbind Kumar Shrivastava, Adv.
For Bank	:	Mr. Rakesh Kr. Singh, Adv.
For the State	:	Smt. Binita Singh (Sc28)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
Date : 08-05-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following reliefs:-

> *"(a) An appropriate writ (s), order (s), direction(s) to quash the Letter No. CPPC/AGM/RECOVERY/S 20-21 dated 10-11-2020 issued by the Respondent No. 4 where under by a vague and unspeaking order he had asked the petitioner to deposit the sum of Rs. 9,74,458/- (Nine Lakh, Seventy Four Thousand Four Hundred and Fifty Eight) at once failure whereof would attract penal consequences.*

(b) An appropriate writ (s), order (s), direction (s) commanding the respondent to restrain the respondents from giving effect to the Letter No. CPPC/AGM/RECOVERY/ S 20-21 dated 10-11-2020 by debiting any amount from the saving bank Account No. 11428486458 of petitioner with the State Bank of India, Paliganj Branch, Patna.
(c) By an appropriate order(s), restrain the respondent bank to put hold over the amount of the petitioner under saving bank Account No. 11428486458 with the State Bank of India, Paliganj Branch, Patna.
(d) Any other relief(s) to which the petitioner is found entitled to for giving complete justice to her."

3. The brief facts for the purpose of deciding the issue in the present case are that the petitioner is a widow of one late Shobhi Singh, who retired as an assistant teacher on 31.01.2001. After the retirement of the said Shobhi Singh, the regular pension was fixed by the office of the Accountant General, Bihar with effect from 01.02.2001. The said Shobhi Singh died on 27.06.2002, thereafter, the petitioner is being paid the family pension which is credited to her savings account every month. The petitioner received a letter dated 10.11.2020 issued by the respondent No. 4 i.e., the Assistant General Manager, State Bank of India Centralized Pension Processing Centre, through the Bank Manager Paliganj Branch, Patna stating that she has been paid an excess pension of amount of Rs. 9,74,458/-(Rupees Nine Lakh Seventy Four

Thousand Four Hundred and Fifty Eight) and that she is required to return the excess amount. Thereafter, the Bank authorities started deducting some amount from her pension amount every month.

4. Learned counsel appearing on behalf of the petitioner has stated that the petitioner is an eighty year old widow lady who does not have any other means of sustenance except the family pension. That the authorities for their own lapses or mistakes cannot punish the petitioner by trying to recover the excess amount paid after a period of more than 18 years. Learned counsel has stated that the petitioner at no point of time has given any wrong information or played fraud with the Bank authorities in the fixation of the family pension. That the family pension was fixed by the authorities themselves and in case they have credited an excess amount due to their own miscalculations or lapses, the petitioner cannot be blamed or made liable for the said mistakes. Further, it is said that the amounts which were credited to the account of the petitioner were already spent and at this point of time, it cannot be recovered more so, after lapse of more than 18 years. Learned counsel counsel for the petitioner has prayed for allowing the

present CWJC and directing the respondent-Bank to refund the amount deducted from the pension amount of the petitioner.

5. *Per contra,* learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that irrespective of the mistake committed by the Bank authorities, they are entitled to recover the excess amount paid. The petitioner was only entitled to family pension only but by mistake, the full pension was paid to her. That the Bank authorities on realising their mistake have decided to recover the same through monthly equated installments and that to without charging any interest. That the Bank authorities have already started the process of deducting one third amount from the pension every month and the same will continue till the entire excess amount paid to the petitioner is fully recovered. Learned counsel has stated that there is no undue hardship caused to the petitioner as the excess amount paid to her is being recovered in monthly instalments that too not exceeding one third of the family pension of the petitioner. Even though, the counsel for the respondents has stated that

the petitioner has given an undertaking to the authorities that in case any excess amount is paid, but no proof of the said undertaking has been filed before this Court. Learned counsel has relied on the judgement passed in CWJC No. 13932 of 2021 dated 18.04.2024 to buttress his case.

6. At the time of admission, this Court vide order dated 30.08.2022 has directed the respondents to maintain *status quo* with regard to the deduction from the pension. However, it is stated across the bar that the deductions from the family pension of the petitioner have been continued till April, 2024. This Court on an earlier occasion under similar circumstances had passed a judgment in favour of the family pensioners duly taking into consideration the various judgments of the Hon'ble Supreme Court which have been relied by the counsel for the respondent. The facts in the present CWJC are similar to the facts in the earlier case i.e., CWJC No. 13932 of 2021, as a matter of fact, the present petitioner is better placed as she has not given any undertaking to the Bank to refund, if any, excess money is paid.

7. This Court duly taking into account the judgement of the Division Bench passed in CWJC No. 6324 of 2020 dated

02.07.2021 has disposed of the earlier writ petition holding that the Bank authorities shall confine the recovery of the excess money paid to the petitioner to the one already made i.e. recovery made till April, 2024.

8. This Court in CWJC No. 13932 of 2021 passed 18.04.2024 has held as under;

> *"A Division Bench of this Court, in the case of Shobha Kant Mishra Vrs. the Union of India & Ors.) (C.W.J.C. No. 6324 of 2020), dated 02.07.2021, held as under*
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> *""14. The present case is not one where an error has been committed by the Telecom Department in fixation of revised pension, rather the petitioner has received excess payment for more than a decade owing to a clerical error in calculation by including dearness relief to which the petitioner was not entitled. It is true that the petitioner has submitted on undertaking to indemnify the Bank in case of payment. At the same time, we are also mindful that the petitioner is now a man of advanced age of about 78 years and has received excess payment without misrepresentation or fraud on his part. Even if Rafiq Masih's case (supra) is not strictly applicable on facts as submitted on behalf of the Bank, the spirit in which the four categories have been formulated in Para-12 of that judgment in respect of which recovery has been held to be impermissible, cannot be lost sight of. We are of the view that the benefit of category 3 and 4 can well made available to the petitioner from whom recover is being sought to be made after an inordinate delay of more than 12 years after his retirement.*
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> *15. We, therefore, direct in order to balance the equities between the*

parties, that the Bank shall refrain from making any further recovery from the petitioner henceforth. We however make it clear that to the extent recovery has already been made from the monthly pension of the petitioner, the same need not be refunded.

6. Further, the Hon'ble Supreme Court in State of Punjab & Anr. Vrs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334, has held 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 impressive in law :

(i) Recovery from the employees belonging to Class II and Class I service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

iii) Recovery from the 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.

19 : We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four

> *categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."*

9. Having regard to the fact that in this particular case, there is no allegation of fraud or misrepresentation against the petitioner herein and duly taking note of the earlier judgements of this Hon'ble Court and also the judgements of the Hon'ble Supreme Court, this Court is of the opinion that the ends of justice would be met and equities balanced, if a direction is given to the Bank authorities to confine the recovery of the excess amount paid to the petitioner herein to the one already made i.e., the amounts deducted till the end of April, 2024. The authorities shall not make any future deductions either by way of monthly installments or by any other means nor shall they seek to recover the balance of the excess amount paid to the petitioner. Consequently, the letter dated 10-11-2020 issued by the respondent No. 4 i.e., the Assistant General Manager, State Bank of India Centralized Pension Processing Centre, through the Bank Manager Paliganj Branch, Patna which is impugned in the present writ petition is quashed. It is also made clear that the petitioner is

not entitled to seek the refund of the amounts that have already been deducted by the Bank.

10. With the above direction the great petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.05.2024.
Transmission Date	N/A