IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13932 of 2021

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Raishu Devi W/O Late Ram Prit Thakur R/O Vill - Dhaukal Rai Ke Tola, P. S. - Athmalgola, Dist. - Patna ... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Defense, Government of India, New Delhi.
2. The Controller of Accounts, Ministry of Defense, Central Accounts Office, New Delhi.
3. The Assistant General Manager, State bank of India, Centralised Pension Processing Centre 4th floor Administrative Office, Patna.
4. The Branch Manager, State Bank of India, Athmalgola, Patna.
5. The District Magistrate, Patna.
6. The Certificate Officer Bardh, Patna. ... Respondents

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Appearance :

For the Petitioner	:	Mr.Dr. Kamal Deo Sharma, Adv.
For the State	:	Mrs. Anuradha Singh GP XXIV with Ms Nutan Kumari Sharma, AC to GP XXIV
For the UOI	:	Mr.Dr. K.N. Singh, ASG

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

8 18-04-2024 Heard the parties.

2. The present writ petition has been filed for the following relief(s) :

i) For quashing the letter dated 30.09.2019 issued by the Assistant General Manager, State Bank of India, where by and where under a sum of Rs. 499917/-has been directed to be recovered from the petitioner on the ground of excess payment of pension having made to her.

(i) For quashing the Notice dated 12.02.21 under section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914 here in after referred to as the PDR Act issued by Certificate Officer Bardh in the

name of petitioner informing that Rs.5,06,667/- amounts were dues against Certificate Debtors viz. petitioner in the Certificate Case No. 36/2021 on account of dues for excess payment of Pension to the petitioner.

(iii) For the issuance of other appropriate writ/writs, direction/directions, order/order as may be deem fit and proper.

3. Learned counsel for the petitioner has stated that the respondent-Bank have issued a letter, dated 30.09.2019, seeking to recover the excess family pension paid to the petitioner. Learned counsel has stated that the husband of the petitioner was working as an Army Soldier. He was appointed on 16.09.1980 and retired from service on 01.04.2003. Further, it is stated that the husband of the petitioner died on 11.06.2004. That after the death of the husband of the petitioner, the family pension of the petitioner has been fixed and the same was being paid. However, in the year 2018 the Bank authorities have issued a letter stating that the family pension fixed by the authorities was wrongly calculated and as a matter of fact the petitioner is presently entitled for a family pension of only Rs.14,545/- per month. That in total an excess amount of Rs.4,99,917/- was paid to the petitioner and the same was

sought to be recovered at the rate of Rs.4,000/- per month. That the authorities without issuing any notice or seeking any explanation from the petitioner or giving an opportunity of hearing have started deducting an amount of Rs.4,000/- per month. Learned counsel has stated that it is not a case where the petitioner has played any fraud or misled the authority themselves in fixing the family pension and the petitioner cannot be punished for the lapses committed by the authority concerned. That it is not a case where the petitioner has played any fraud or misled the authorities concerned in fixing the family pension of the petitioner. That the authorities have fixed the family pension and for no fault of the petitioner she cannot be punished at this old age by reducing the family pension and seeking to recover the excess amount paid. Learned counsel has stated that the petitioner is a widowed old lady aged 61 years and she cannot be put to financial trouble by deducting the pension amounts or reducing the family pension. Learned counsel has relied on the following judgment to buttress his case.

4. Per contra the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present Writ Petition. Learned counsel

has stated that at the time of fixing the pension, the petitioner herself has given an undertaking to the authority concerned stating that if any excess amount of Rs.5,43,917/- is paid, shall be refunded by the petitioner. That after the superannuation of the husband of the petitioner the pension was fixed and paid. After the death of the husband, the pension account was migrated to Centralized Pension Processing Centre, Patna, and the same was migrated as a regular pension instead of family pension. That the authorities having found that the family pension was not fixed by mistake have rectified the same and are only seeking to recover the excess amount paid to the petitioner. Learned counsel has, further, stated that there is no undue hardship caused to the petitioner, therefore, the excess amounts paid to the petitioner are being deducted without calculating any interest and are being recovered in monthly installments with maximum of 1/3rd of the family pension received by the petitioner. That the deduction of the monthly installments started in the year 2018 and will end on 28.02.2030. That a total excess amount of Rs.5,43,917/- has being paid to the petitioner by mistake. That the petitioner was put on notice before the deduction were made. Therefore, this is no violation of any principles of natural justice and equity as contended by the petitioner. Learned counsel has stated that the petitioner having given an undertaking to the authorities that she will refund if any excess amount are paid cannot now turn around and say that the excess amount paid to the petitioner cannot be recovered. The learned counsel has relied on the following judgments :

1. State of Punjab & Anr. Vrs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334.
2. The Sales Tax Officer, Banaras & Ors. Vrs. V. Kanhaiya Lal Makund Lal, reported in AIR 1959, SC, 135
3. Shobha Kant Mishra Vrs. the Union of India & Ors. (C.W.J.C. No. 6324 of 2020), dated 20.07.2021
4. Bhuneshwar Prasad Singh Vrs. The State of Bihar & Ors. (C.W.J.C. No. 13085 of 2021), dated 02.02.2023
5. Rameshwar Ram Vrs. The Union of India & Ors. (C.W.J.C. No. 288 of 2023), dated 05.01.2024
6. Civil Appeal No. 5899 o 2012 (Arising out of Special Leave Petition (C) No. 30858 o 2011) and I.A. Nos. 2 and 3, dated 17.08.2012
7. The Assistant General Manager, State Bank of India & Ors. Vrs. Akhileshwari Devi & Ors. (LPA No. 270 of 2021), dated 19.07.2022

5. Admittedly, in the present case the family pension

of the petitioner was not fixed by the authorities after the death of the husband of the petitioner on 30.09.2019. It is not a case where the petitioner has given any false information or has misled the authorities concerned. The authorities have committed a mistake by not fixing the family pension and are now seeking to recover the excess pension amount paid. The question that arisen for consideration before the Court is as to whether the petitioner can be made to suffer due to the mistakes committed by the authority concerned or not. Even though the counsel for the respondents has relied on the above mentioned judgments to buttress his case, the said judgments are distinguishable from the facts of this case. In this particular case, the petitioner is an old widow, aged 61 years and is an illiterate person. More over, there is no allegation of fraud nor any misrepresentation attributed against the petitioner. 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 :

> *"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 an undertaking to indemnify the Bank in case of over 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 recovery is being sought to be made after an inordinate delay of more than 12 years after his retirement.

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).*
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> *(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."

7. Having regard to the peculiar facts and circumstances of the case and the fact that the petitioner is an old widow lady aged 61 years, that no fraud of misrepresentation is made by the petitioner and it was a mistake committed by the authorities, the petitioner cannot be blamed and also taking into account the judgment of the Division Bench in the case of Shobha Kant Misha Vrs. the Union of India & Anr. (C.W.J.C. No. 6324 of 2020), this Court is of the opinion that the ends of justice would be met and equities balanced if a direction is given to the authorities to confine the recovery of the excess amount paid to the petitioner to the one already made, i.e., recovery made till April, 2024. The authority shall not make any future deduction by way of monthly installments nor shall seek to recover the balance excess amount paid to the petitioner by any other means. Consequently the proceedings

before the Certificate Officer, Barh, in Certificate Case No. 36 of 2021 are also quashed.

8. With the above direction, this Writ Petition stands **disposed of**.

(A. Abhishek Reddy , J)

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