IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10873 of 2023

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Hrishikesh Singh @ Rishikesh Singh, Son of Late Kedar Nath Singh, Resident of C-66 Birla Colony, Phulwarisharif, P.S Phulwarisharif, District-Patna-801505.

... ... Petitioner/s

Versus

1. The State of Bihar represented through the Additional Chief Secretary, Education Department, Government of Bihar, Patna
2. The District Education Officer, Patna.
3. The District Programme Officer (Establishment), Patna.
4. The Headmaster of High School, Amarpura, Naubatpur, District Patna, Bihar.
5. Senior Treasury Officer, Treasury Office, Patna.
6. Indian Bank (earlier known as Allahabad Bank) through its General Manager, Main Branch, Patna.
7. The Branch Manager, Indian Bank, Phulwarisharif Branch, Patna.
8. The Accountant General (A and E) Bihar, Veerchand Patel Path, Patna-800001.
9. Reserve Bank of India, South Gandhi Maidan, Patna 800001, Bihar through the Regional Director.
10. The Additional Chief Secretary, Finance Dept. Govt. of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Ravish, Advocate
		Ms. Siddhi Aashana, Advocate
For the Respondent/s	:	Mr. Madan Jeet Kumar, GP- 20
For the Indian Bank	:	Mr. Dr. B. K. Jha, Advocate
For the R.B.I.	:	Mr. Rajesh Ranjan, Advocate
For the Accountant General:		Mr. Prabhat Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

Date : 19-01-2024

This Court has heard Mr. Kumar Ravish, learned counsel for the petitioner, Mr. Madan Jeet Kumar, learned GP-20 for the State, Dr. B. K. Jha, learned counsel for Indian Bank and Mr. Rajesh Ranjan, learned counsel for the Reserve Bank of India.

2. The petitioner who was initially appointed as an Assistant Teacher on 20.02.1970, after reaching the age of superannuation, has retired from the service on 31.03.2006, from the post of Assistant Teacher (TGT), High School, Amarpura, Naubatpur, Patna, Bihar, has filed the present writ petition for the following reliefs:

> *"a. To direct Respondents particularly the Indian Bank i.e. the bank responsible for paying pension to the petitioner - to stop the recovery of Rs. Fifteen Thousand or any other amount per month that is being done from the month of May 2023 from the monthly pension amount/account of the petitioner with the Indian Bank A/c No. 20956904920 as a result of which the petitioner is getting a significantly reduced pension.*
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> *b. To direct Indian Bank, the pension paying Bank to refund the arrears of recovered pension amount that has been deducted / recovered from the pension amount of the petitioner.*
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> *c. To restore the pension of the petitioner as was being paid to him in July 2022 inasmuch as from August 2022 the pension of the petitioner has been reduced.*
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> *d. To direct the respondents to pay interest on the recovered amount at the rate of 18% compound interest.*
>
> *e. To direct the respondents and*

the Pension Paying Authority i.e. Indian Bank -to raise / restore the commuted pension amount of the petitioner as the petitioner retired from service on 31.03.2006 and since then he has completed 15 years of receiving (commuted) pension amount, hence he is eligible to receive enhanced pension amount.

f. Any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case.

3. It is submitted on behalf of the petitioner that having been superannuated on 31.03.2006, the Treasury Officer, Patna forwarded his pension payment order, bearing no. 434691, issued by the Accountant General, Bihar to the respondent Bank with advice to pay the pension to the petitioner in his Bank Account No.20956904920 of Indian Bank, Phulwarisarif Branch, Patna. Accordingly, as per the Pension Payment Order (PPO), the petitioner was sanctioned his basic pension @ Rs. 8235/- per month and the respondent Bank, Phulwarisharif started paying basic pension plus admissible D.A. Further, after the implementation of the 6th Pay Revision Commission, as also in the light of Resolution dated 23.09.2009, issued by the Government of Bihar wherein instructions were given to revise the pension of the eligible pensioner with effect from 01.01.2006, the petitioner’s pension was revised to Rs.18,815/-. In view thereof, the petitioner was being paid revised pension of

Rs.18,815/- per month plus admissible D.A. till the implementation of 7th Pay Commission. However, after implementation of 7th Pay Commission, as per Resolution No. 381 dated 23.05.2017 of the Finance Department, Government of Bihar, the pension of the petitioner was further revised to Rs.48,355/- per month and, accordingly, the revised basic pension of Rs.48,355/- + admissible D.A. was being paid to the petitioner.

4. On 09.05.2022, the petitioner submitted a detailed representation to the Treasury Officer, Patna for restoration of his commuted portion of pension, as he has already completed 15 years after his retirement and also requested therein to advise respondent Bank to enhance the pension. Accordingly, the Treasury Officer, Patna vide his letter no. 866 dated 15.06.2022 send the representation of the petitioner to the respondent Bank after due verification at their end. In the light of the aforenoted letter of the Treasury Officer, Patna, the Indian Bank, Phulwarisharif Branch, Patna made a request to the Central Processing Centre (CPC) Indian Bank, Head Office, Chennai to consider the petitioner's request for addition of commuted pension of the petitioner.

5. While processing the petitioner's request for

restoration of commuted pension, the Head office of respondent Bank at Chennai, CPC found that the petitioner was being paid an excess amount of pension over his eligible pension. Thus, they corrected his pension and started paying the corrected basic pension amount of Rs.32,236/- plus DA thereon and other payable allowances, which amounts to a total sum of Rs.45,486/- per month. While restoring the commuted amount, the respondent Bank calculated the excess paid amount of Rs.22,99,673/- as on February, 2023 after adjustment of commuted amount of pension.

6. It is submitted on behalf of the petitioner that before the reduction, the petitioner was getting an amount of Rs.62,466/- as a monthly pension. However, all of a sudden without any intimation or any sort of any notice made to the petitioner that his pension was going to be reduced, the petitioner's pension was reduced to Rs.44,197/- in the month of August, 2022, out of which Rs.32,236/- was paid as pension, Rs.10,961/- as Dearness Relief and Rs.1,000/- as Medical/other allowances, the total of which comes to Rs.44,197/-. The petitioner on being apprised, whose pension was being reduced to a significant amount to the tune of Rs.22,000/-, sent a letter to the Branch Manager, Indian Bank, Phulwarisharif regarding

reduction in pension highlighting his inabilities and physical disability as a senior citizen, but even after repeated request and reminders his pension amount was not restored. Moreover, on 03.05.2023, the pension amount of the petitioner was further reduced to a sum of Rs.31,776/-.

7. Being aggrieved by repeated deductions from his pension amount, the petitioner sent another letter on 01.07.2023 to the Branch Manager, Indian Bank, Phulwarisharif, but to no effect, thus the present writ petition.

8. Mr. Kumar Ravish, learned counsel representing the petitioner while challenging the action of the respondent Bank as well as the State authorities and the Accountant General, Bihar submits that the pensions are not the nature of reward, rather they are binding obligation on the Government, which can be claimed as a right. The petitioner has also a right to receive his pension and it cannot be forfeited or reduced after 17 years of retirement. Moreover, no sanctions were imposed on the petitioner during his service period that would reduce his pension amount, so arbitrarily reducing the petitioner’s pension amount after 17 years of retirement is not only bad in the eyes of law, but also contrary to the rights of the petitioner. He further submits that master servant relationship between the

petitioner and his employer ended way back in the year 2006 and that there cannot be any recovery from his pension amount after such a long period of time, all the more he has never been put to any notice regarding this sudden and arbitrary recovery of pension and such unilateral decision is wholly without jurisdiction. He next submitted that there is no fraud/ misrepresentation or foul from the side of the petitioner, yet the drastic decision has been taken by the respondents to recover the huge amount from the petitioner. Heavy reliance has been made on the judgment rendered by the Apex Court in the case of **State of Punjab Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334** and further on a subsequent judgment on the similar issue in the case of **Thomas Daniel Vs. State of Kerala and Ors, reported in 2022 SCC OnLine 536**.

9. Per contra, the respondent Bank by filing counter affidavit and supplementary counter affidavit submitted that the basic pension of the petitioner was wrongly fixed at the initial stage by the Accountant General, Bihar, Patna as Rs.8325/-, instead of Rs.5550/-, which clearly establishes that the respondent Bank is not at fault, rather the mistake lies on the part of the pension fixation authority. Further submission has been made that as per Clause 14 of the Bihar Treasury Code,

2011, the Authority of the Treasury Officer, who examined that the withdrawal of pay, pension, etc. by an agent on behalf of the Government servant and pensioners is in accordance with the instructions contained in Accounts General circular no. 135 dated 31.10.1940 and subsequent orders issued by him from time to time. As Per Clause 15 of the said Code, the authority of the Treasury Officer is personally responsible for any payment of pension wrongly made. In case of the pension sanctioning authority or the Treasury Officer did not forward any revision order or any revised order to the Bank or any revised order or any revised P.P.O. to the respondent Bank after notification of implementation of 6th and 7th CPC, the respondent Bank would have certainly avoided the discrepancies. Further submission has been made that the respondent Bank discussed the entire issue involved in the matter with the petitioner and his representative in person and also sent a written communication through a letter dated 15.05.2023 explaining the facts and reasons for reduction in pension and also informed therein that excess pension of Rs.22,99,673/- would be recoverable in an installment of Rs.15,000/- per month till 2036. The respondent Bank has also delivered the pension calculation sheet of the pension paid and payable along with the excess paid amount to the petitioner under his acknowledgment on 20.09.2023.

10. On the other hand, counter affidavit as well as supplementary counter affidavit has been filed on behalf of respondent no.3, the District Programme Officer (Establishment), Patna stating therein that from the record it appears that at the very initial stage when the petitioner retired from service on 31/03.2006, the Accountant General, Bihar, Patna has made a mistake while issuing the PPO in favour of the petitioner and fixed his basic pension of Rs.8325/- per month, whereas at that point of time, he was entitled to basic pension of Rs.5550/- per month, because at the time of retirement, the petitioner was getting the basic salary, which was Rs.11,000/-. The mistake compoundly benefited to the petitioner at every stage of pension fixation such as in the 6th Pay Revision and 7th Pay Revision that is why the Treasury Officer, Patna vide his letter no. 842 dated 16.09.2023 has confirmed to the Bank that the initial pension of the petitioner after 6th Pay Revision should be Rs.12,543/-. In view thereof, he categorically submitted that the PPO, which was issued as Rs.8325/- per month was wrong and incorrect.

11. He further submitted that on account of the aforesaid reason, the exchequer of the State Government has

been adversely affected and as such so far recovery of excess paid amount is concerned, the Bank is competent authority to act on account of Circular of the Reserve Bank of India after due process. He lastly submitted that after fixation of pension with regard to any employee, normally file has been closed with respect to the employee and thereafter the matter has come in between the pensioner and the respondent Bank.

12. It is to be noted that during the pendency of the present writ petition, the petitioner has filed an interlocutory application, bearing I.A. No. 1 of 2023 assailing the letter dated 15.05.2023 and 21.09.2023 issued by the Manager/Branch Manager of the Indian Bank, Phulwarisharif Branch, Patna under which a decision was purported to have been communicated to the petitioner that his pension was wrongly fixed from September, 2008 that was led to excess pension payment of Rs.22,99,673/-, which is to be recovered to be monthly installment of Rs.15,000/- per month, which will end in February, 2036.

13. The respondent Bank while concluding his submission has made reliance upon a judgment rendered by the Apex Court in the case of **High Court of Punjab & Haryana & Ors, Vs. Jagdev Singh**, reported in **2016 (4) PLJR (SC) 78**.

14. This Court has meticulously perused the materials available on record, as also given anxious consideration to the submissions advanced on behalf of the learned counsel appearing for the respective parties.

15. Before coming to the final conclusion, it would be apt and proper to deal with the provisions, which regulates the mechanism for recovery of excess pension payment made by the Bank. From time to time, the Reserve Bank of India has issued circulars providing for recovery of excess payment made by the Bank and at present, the Reserve Bank of India vide Circular dated 21.01.2021, while withdrawing its earlier instruction issued vide Circular dated 17.03.2016, provided for recovery of excess pension payment made by the Banks, whereunder the deduction of excess pension paid to the petitioner started from July, 2022, which circular governs the case of the petitioner. The provisions of instructions further consolidated in the Master Circular-Disbursement of Government Pension by Agency/Banks dated 01.04.2022 prescribed the guidelines pertaining to refund of excess payment to Government, which are also mentioned in para. 5 and 6 of the aforementioned circular and read as under.

5. Whenever any excess/over payment is deducted the entire amount *thereof should be credited to the Government account in lump sum immediately when the excess/overpayment is due to an error on the part of the agency bank. This action is independent of recovery from the pensioner. Agency banks are requested to seek guidance from respective Pension Sanctioning Authorities regarding the process to be followed for recovery of excess pension paid to the petitioners, if any.*

6. If the excess/wrong payment to the pensioner is due to errors committed by the Government, Bank may take up with the matter with the full particulars of the cases with respective Government Department for a quick resolution of the matter. However, this must be a time bound exercise and the government authority's acknowledgment to this effect must be kept on the bank's record. The banks may take up such cases with government departments without reference to the Reserve Bank of India."

16. Now coming to the materials available on record, especially the affidavit filed on behalf of the Bank as well as the District Programme Officer (Establishment), Patna, one thing, which is evident is that at the very initial stage, when the petitioner retired from service on 31.03.2006, the Accountant General, Bihar, Patna has made a mistake while

issuing the P.P.O. to the petitioner by fixing his basic pension of Rs.8325/- per month, whereas at that point of time, he was entitled to the basic pension of Rs.5550/- per month, because at the time of retirement the petitioner was getting the basic salary only @ Rs.11,1000/-. Accordingly, the mistake compoundly benefited to the instant petitioner for every stage of pension fixation, till the petitioner filed his representation to the Treasury Officer, Patna for restoration of his commuted portion of pension, whereupon the matter has been referred to the Central Processing Centre, Indian Bank, Head Office, Chennai and it has been found that the petitioner was being paid excess amount of pension.

17. It has been informed to this Court that the aforesaid Master circular dated 01.04.2022, also contained the aforesaid provisions, as noted hereinabove in para. 5 and 6 of the circular.

18. Now coming to the case in hand, this Court in the course of hearing vide its order dated 04.10.2023, while granting interim order of stay of recovery has directed Regional Director, Reserve Bank of India, South Gandhi Maidan, Patna to look into the affairs of the Indian Bank, Puhlwarisharif Branch, Patna and further take steps to proceed in accordance with the

provisions of Bank Regulation Act, 1934 and to furnish action taken report with respect to present Bank and also direct the disciplinary authority of the Bank to take action against the officials of the Bank.

19. Having gone through the affidavit filed on behalf of the respondent Reserve Bank of India, apart from other irregularities, this Court, prima facie, in the matter of the petitioner has found that the fitment factor has wrongly been used by the Bank, resulting into excess pension payment order. The Bank had initiated the recovery of excess pension amount from the petitioner since July, 2022 without consulting the Pension Sanctioning Authority, which is in contravention to para. 5 of the RBI Master Circular on Disbursement of Government Pension by Agency Banks dated 01.04.2022. It is also informed to this Court that RBI has initiated follow up action for the aforesaid irregularities committed by the concerned branch of Indian Bank in accordance with the provisions of the Agency Agreement entered with the Bank under Section 45 of the Reserve Bank of India Act, 1934.

20. The error or the mistake, while issuing the PPO by the office of Accountant General, Bihar, either based upon the letter of the sanctioning authority or on account of own

mistake. The allegation and counter allegations are being made by the concerned department or by the office of the Accountant General, Bihar, but admittedly the mistake occurred by the pension sanctioning authority or at the level of the Accountant General Office, Bihar, which is not required to be adjudicated by this Court. However, this is the fact that before the initiation of process of recovery, there has never been any consultation of the Bank with the Pension Sanctioning Authority and, as such, a complete go-bye to the provisions of the guidelines, pertaining to refund of excess pension payment as contained in Master Circular-Disbursement of Government Pension by Agency/ Banks dated 01.04.2022 or the revised circular dated 03.04.2023.

21. Thus, this Court has no hesitation to hold and declare that the entire process of recovery initiated by the Bank is contrary to the guidelines, especially para. 5 of the R.B.I. Master Circular dated 01.04.2022.

22. Now coming to the reliance on the judgment rendered in the case of **High Court of Punjab & Haryana & Ors, Vs. Jagdev Singh**, reported in **2016 (4) PLJR (SC) 78.** It is needless to observe that the same would not be applicable in the facts of the present case, as the role of the respondent Bank

is only limited to the drawing and disbursing authority and there is no relationship of employer and employee between the Bank and the pensioner. Furthermore, this is not a case where excess payment has been made on account of wrong calculation or miscalculation on the part of the Bank, rather from the materials available on record, it prima facie suggests that the initial mistake was made either by the authority, who has issued the pension payment order or the sanctioning authority and, as such, any rectification, if any, is required to be done only with the consultation of the sanctioning authority or the authority, who had issued the Pension Payment Order in favour of the petitioner.

23. Further, the reliance of the petitioner on the judgment rendered by the Hon'ble Supreme Court in the case of **Rafiq Masih and Thomas Denial** (supra) finds substance in the facts of the present case. It would be apt to quote para 8 and 18 of the judgment rendered in the case of **Rafiq Masih** (supra), which would certainly, in the opinion of this Court answer the issue posed before this Court:

> ***"8.*** *As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue*

resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

***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 impermissible in law:*

(i) Recovery from the employees belonging to Class III and Class IV 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."

24. Further, the Hon'ble Supreme Court in the case of **Thomas Daniel** (supra) after taking note of the earlier judgments has held in clear terms that in case where the excess payment was made due to a mistake on account of wrong interpretation of rules, which was subsequently pointed out by the Accountant General, Bihar after passage of 10 years of his retirement is unjustified when the excess payment has not been made on account of misrepresentation or the fraud.

25. In view of the aforesaid facts, circumstances and the position obtaining in law, the present writ petition stands allowed and the impugned orders, as contained in letters dated 05.05.2023 and 21.09.2023, issued by the Branch Manager, Indian Bank, Phulwarisarif Branch, Patna, are hereby set aside to the extent it relates to recovery of excess amount from the pension of the petitioner. However, the respondents are at liberty to make necessary correction(s) by re-fixation of the pension of the petitioner in terms of the guidelines issued by the Reserve Bank of India, as discussed hereinabove, after giving an opportunity of hearing to the petitioner.

26. The present writ petition stands allowed with the aforesaid observations and the liberty.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	03.01.2024
Uploading Date	22.01.2024
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