

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19435 of 2019

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Lalita Mishra Wife of Late Bhuban Mohan Mishra, Resident of Road No.1-E,
House No. 107, New Patliputra Colony, P.S. Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.
2. The General Manager, Centralized Pension Processing Centre, (CPPC, State Bank of India, Administrative Building, Zonal Office, Judges Court Road, Patna.
3. The Assistant General Manager, Centralized Pension Processing Centre (CPPC, State Bank of India, 4th Floor, Administrative Building, Zonal Office, Judges Court Road, Patna.
4. The Branch Manager, State Bank of India, Sri Krishna Puri Branch, Sahdeo Marg, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shardanand Mishra, Advocate Mr. Bishnu Kant Dubey, Advocate
For the UoI	:	Ms. Kanak Verma, CGC
For the SBI	:	Mr. Abbas Haider, Advocate Mr. Wasi Mohammad, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 03-09-2024

Heard Mr. Shardanand Mishra, learned counsel for the petitioner, Mr. Abbas Haider, learned counsel for the State Bank of India and Ms. Kanak Verma, learned counsel for the Union of India.

2. The short facts, which led to the filing of the present writ petition, are that the husband of the petitioner, namely, Bhuban Mohan Mishra was initially appointed as Auditor on 17.06.1965; on account of his ailment, he took



voluntary retirement on medical ground on 17.10.1998 after completing his qualifying service. On being superannuated, the husband of the petitioner was provided pension and gratuity for which PPO No. C/DAD 66/1999 was issued from the office of the Chief Controller of Defence Accounts (Pension), Allahabad, fixing his pension @ Rs. 3502/- per month w.e.f. 17.10.1998 for life and family pension in favour of the petitioner at enhanced rate @ Rs. 3502/- per month following the date of death of husband of the petitioner for seven years or for a period up to date of which the deceased government servant would have attained the age of 65 years or till death or remarriage, whichever is earlier and thereafter normal family pension @ Rs. 2103/- per month subject to the terms and conditions stipulated.

3. The ill-luck of the petitioner ordained due to the demise of the petitioner's husband on 27.09.2002. The petitioner submitted the death certificate of her husband upon which the concerned Sri Krishnapuri Branch of the Bank made endorsement about the demise of the petitioner's husband in the PPO and allowed enhanced pension for seven years from the date of death. The petitioner has been getting regular enhanced pension and thereafter family pension, but all of a sudden, vide letter bearing no. 330 dated 11.01.2019, the petitioner was informed that she has been paid excess payment and, in spite of



family pension, regular pension de hors to her entitlement to the tune of Rs. 8,63,388/- has been paid, which is found recoverable by the Bank and to be refunded to the government as excess paid amount belongs to the government. A legal notice has also been served upon the petitioner on behalf of the State Bank of India, Centralized Pension Processing Centre, directing her to refund the excess payment, failing which the same shall be recovered from the account of the petitioner along with other expenses.

4. The petitioner through her advocate apprised the entire aspect of the matter to the Bank Officials and submitted that apart from the incorrect calculation made by the Bank, due to sheer carelessness of the Bank and its employees, alleged excess payment, if any, is made to the petitioner and thus the petitioner cannot be held responsible.

5. In response to the afore-noted reply of the petitioner, the Assistant General Manager, State Bank of India, vide his letter dated 28.06.2019, stated that despite the death of the petitioner's husband on 27.09.2002, it has not been reported to the Bank, neither by the petitioner nor by her representative; and on the contrary, life certificate of the erstwhile employee has been submitted by the petitioner every year and, in such circumstances, she was being paid regular pension up to



December, 2018.

6. In the aforesaid premise, the process of recovery has been commenced and an amount of Rs. 4,400/- w.e.f. January, 2019 is directed to be deducted every month from the family pension of the petitioner.

7. The petitioner being aggrieved by the action of the respondent/Bank and its officials invoked the jurisdiction of this Court under Article 226 of the Constitution of India, seeking a direction upon the respondent/Bank and its officials not to make any recovery and/or compel the petitioner to refund an amount of Rs. 8,63,388/-, which is said to have been paid in excess to her entitlement. The petitioner also sought a direction to refund the recovered amount from her family pension w.e.f. January, 2019 up to date and to make payment of family pension of the petitioner @ Rs. 13,470/- along with D.A. after making revised fixation of her pension.

8. During the pendency of the writ petition, one interlocutory application bearing I.A. No. 1 of 2024 has been filed seeking amendment of the prayer in the writ petition by assailing the order/notice dated 11.01.2019 issued by the Assistant General Manager, CPPC, State Bank of India, Zonal Office, Patna, by which the petitioner was directed for depositing excess paid amount to the tune of Rs. 8,63,388/-.



9. Mr. Shardanand Mishra, learned counsel for the petitioner, while assailing the impugned order and action of the respondent/Bank and its officials, primarily denied the allegation made on behalf of the respondent/Bank that no information with regard to the death of the petitioner's husband was given and she had ever been submitted life certificate of her husband, rather the fact would be writ large from the perusal of the record that the petitioner has always been submitted her life certificate along with Aadhaar Card and other required documents, whereupon she was getting enhanced pension and thereafter family pension. Certain anomalies have also been pointed out in the calculation of the amount, which is said to be excessively paid to the petitioner. Heavy reliance has been placed on an instruction, known as, Payment of Defence Pension Instruction, 2013, (for short 'the Instruction, 2013') especially Clause 103.2, which reads as follows:

“103.2 Overpayments of pensions not detected within 12 months of the date of the first erroneous charge should not be recovered from the pensioner's dues without the orders of the Principal Controller of Defence Accounts (Pensions). If there are any arrears due to the pensioner, the payment of the same may be overpayment comes to the notice of the Pension Disbursing Authority he should report the full



details of the case to the Principal Controller of Defence Accounts (Pensions) who will decide the case himself, if it lies within his financial powers or he will obtain the orders of the competent authority or the Government of India as the case may be. To avoid hardship to the pensioner, payment for the current period, however, should be continued to the pensioner at the correct rate admissible. On the decision of the case by the competent authority, the orders passed will be communicated to the Pension Disbursing Authority by the Principal Controller of Defence Accounts (Pensions).”

10. Learned counsel for the petitioner further contended that the case of the petitioner is fully covered by a decision of this Court in the case of **Kalawati Devi v. The Union of India and Others [C.W.J.C. No. 4050 of 2019]**, wherein the learned co-ordinate Bench of this Court taking note of the Instruction, 2013 and placing reliance upon the judgment of the Hon’ble Apex Court in the case of **State of Punjab v. Rafiq Masiah [(2015) 4 SCC 334]**, has quashed the impugned order of recovery issued by the Assistant General Manager, CPPC, State Bank of India, whereby it was directed to recover the excess payment from the family pension of the petitioner (Kalawati Devi).

11. Reliance has also been placed on a judgment of



the Hon'ble Apex Court in the case of **Paras Nath Singh v. The State of Bihar and Others [2009 (6) SCC 314]**, that in case of illiterate persons, not knowing the implications of giving an undertaking and in absence of any fraud or misrepresentation attributable to the employees, a lenient view should be taken and the amount already paid by the State authorities in excess should not be recovered.

12. *Per contra*, Mr. Abbas Haider, learned counsel for the State Bank of India, countering the submission of learned counsel for the petitioner submitted that the Bank has initiated the process of recovery in the light of Master Circular No. RBI/2018-19/1 DGBA.GBD.No.-1/31.02.007/2018-19 dated 02.07.2018, which clearly stipulates the provisions for recovery of excess/wrong payment made to a pensioner. It is further contended that the excess amount received by the pensioner is a public money; the petitioner is not entitled in law to receive the same and thus it has been found to be recoverable and refundable to the government as per the mandate of the Master Circular and the law settled by the Apex Court. It is also the contention of learned counsel for the Bank that the State Bank of India is a Pension Disbursing Agency has erroneously made overpayment and in such case the Bank is ought to follow the Instruction of Reserve Bank of India, issued time to time. In this



regard, the Reserve Bank of India vide its Circular dated 01.07.2015 issued categorical Instruction to the Bank regarding recovery of overpayment made to the petitioner. The R.B.I. Circular dated 01.07.2015 would be relevant for adjudication of the matter.

13. A retiring government servant/pensioner is required to submit an undertaking before commencement of pension, which also speaks that any excess payment deposited to his/her account, can be recovered by the Bank. Reliance has also been placed on a judgment rendered by the Hon'ble Apex Court in the case of **Court of Punjab and Haryana and Others v. Jagdev Singh [2016 (14) SCC 267]**.

14. Mr. Haider, learned counsel for the Bank, confronting the submission of the petitioner that the claim of the petitioner is based on parity to that of the decision rendered in **Kalawati Devi** (supra), has submitted with due regard that the learned co-ordinate Bench of this Court in **Kalawati Devi** (supra), has not taken into consideration the Master Circular issued by the State Bank of India as well as the Instruction/Guideline of the Reserve Bank of India. Further reliance has also been placed on a decision of this Court in the case of **Rameshwar Ram v. The Union of India and Others [C.W.J.C. No. 288 of 2023]** and another analogous case], wherein



this Court while dismissing the writ petition has rejected the claim of the petitioner seeking quashing of the order of recovery from the Bank. A copy of the decision of the learned Division Bench in the case of **Union of India v. Sri Bijoy Kumar [C.W.J.C. No. 12844 of 2021]** has also been placed on record in support of his contention that in identical situation when the Central Administrative Tribunal interfered in the order of recovery, the same was set aside vide order dated 20.12.2021.

15. This Court has anxiously heard the learned counsels for the respective parties and also meticulously perused the materials available on record.

16. Now, the question for adjudication before this Court is as to whether at this belated stage, the Bank is empowered to recover the excess amount from the family pension of the petitioner, which is said to have been paid in excess to her entitlement.

17. So far the provisions of the Instruction, 2013, especially Clause 103.2 is concerned, indubitably it clearly speaks that if the overpayments of pension not detected within 12 months of the date of first erroneous charge, it should not be recovered from the pensioner's dues without the order of the Principal Controller of Defence Accounts (Pensions). Thus, it does not forbid the recovery rather it prescribes the provision for



recovery, but after the order of the Principal Controller of Defence Accounts (Pensions), if the overpayments is not detected within 12 months of the date of first erroneous charge.

18. Rule 101 of the Instruction, 2013 makes it abundantly clear that any demand outstanding against the individual is either notified by the Pension Sanctioning Authority in the Pension Payment Order/Corrigendum Pension Payment Order or intimated separately by the Principal Controller of Defence Accounts (Pensions) to the Pension Disbursing Authority and is recoverable from his/her pension, gratuity, commuted value of pension or dearness relief in the manner mentioned therein, the Pension Disbursing Authority shall not recover of its own any demand (except overpayment of pension) for which there is special provision for recovery of overpayment of pension in Clause 103 of the Instruction, 2013.

19. Clause 110.1 of the Instruction, 2013 stipulates that recovery should normally be effected by deduction from pension bills ordinarily @ 1/3 of Net (pension+dearness relief).

20. From the reading of the afore-noted provisions of the Instruction 2013, this Court has no hesitation to observe that it does not forbid recovery of excess payment from the pension, except subject to the order of Principal Controller of Defence Accounts (Pensions), if overpayment is not detected within



twelve months of the date of first erroneous charge.

21. In the case in hand, a counter affidavit has been filed on behalf of respondent no.1, wherein it has categorically averred that this is a case where overpayment of pension paid due to erroneous calculation/payment of pension on the part of Pension Disbursing Authority i.e. State Bank of India itself and in case of overpayment erroneously made by the Pension Disbursing Authority, they are required to follow the Instruction of the Reserve Bank of India.

22. While considering the identical issue where the petitioner on being aggrieved by the order of recovery of the Bank, has preferred the writ petition by contending, *inter alia*, that the action of the respondent/Bank is in complete violation of the principles of natural justice and *per se* in the teeth of the mandate of the settled proposition as propounded by the Hon'ble Apex Court in the case of **Rafiq Masiah** (supra) and **Thomas Daniel v. State of Kerala and Others** [2022 SCC OnLine SC 536], this Court with due regard to the decision of the Hon'ble Supreme Court, has held in paragraphs no. 20 to 23 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 aforementioned 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

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.”

23. This Court after having gone through the Master Circular and the Instruction/Guideline issued by the Reserve Bank of India, which is obligated to be followed by the Pension Disbursing Authority/Banks, is of the opinion that the pension is paid to the petitioner by the Bank under the scheme for payment of pension by Public Sector Banks; on being acceded, at the request of the pensioner to credit to saving/current account in single name of the pensioner payable to him from time to time. As it falls due for the said purpose, the pensioner executes an undertaking to refund or make good to the Bank any amount to which the pensioner is not entitled or any excess amount which may be credited to the account over that to which the pensioner would be entitled and agrees that the amount, when demanded by the Bank and as due and payable to the Bank shall be



conclusive and binding on the pensioners. The pensioners also bind themselves and their legal heirs and agreed to undertake to indemnify the Bank from and against any loss, damage and expenses suffered or incurred by the Bank in so crediting the pension to the account of the pensioner under the scheme and to forthwith pay the same to the Bank and authorized the Bank to recover the amount in respect thereof by debit to the account or any other deposit belonging to the hands of the Bank.

24. It would be apposite to quote the relevant Instruction of the Reserve Bank of India dated 01.07.2015, which deals with the recovery of excess/wrong payment made to the pensioner.

"...11. Details of the uniform procedure evolved for recovery of excess/wrong payments made to pensioners drawing pensions under the Scheme for payment of pension to Central/Civil/Defence/Railways pensioners through public sector banks, are given below:

i. As soon as the excess/wrong payment made to a pensioner comes to the notice of paying branch, the branch should adjust the same against the amount standing to the credit to the pensioner's account to the extent possible including lump sum arrears payment.

ii. If the entire amount of overpayment cannot be adjusted from the



account, the pensioner may be asked to pay forthwith the balance amount of overpayment.

iii. In case the pensioner expresses his inability to pay the amount, the same may be adjusted from the future pension payments to be made to the pensioners. For recovering the overpayment made to the pensioner from his future pension payment In installments 1/3rd of net (pension + relief) payable each month may be recovered unless the pensioner concerned gives consent in writing to pay a higher installment amount.

iv. If the overpayment cannot be recovered from the pensioner due to his death or discontinuance of pension then action has to be taken as per the letter of undertaking given by the pensioner under the scheme.

v. The pensioner may also be advised about the details of over payment/wrong payment and mode of its recovery..."

25. It is further observed that the Master Circular also crystallized that whenever any excess/overpayment is detected, the entire amount thereof should be credited to the government account in lump sum immediately as soon the excess/over payment is due to an error on the part of the Agency Bank. If the



excess payment to the Bank due to errors committed by the Government, Banks may take up the matter with full particulars of the cases with respective Government Departments for a quick resolution of the matter.

26. The issue with respect to recovery of excess amount has also been brought to the knowledge of the Principal Controller of Defence Accounts (Pensions) and the counter affidavit filed on behalf of respondent no.1, suggests his consent for recovery in accordance with the Instruction of the Reserve Bank of India as also in the light of the mandate of the Hon'ble Apex Court in the case of **Jagdev Singh** (supra).

27. Now coming to the prime submission of the petitioner, based upon parity to that of the case of **Kalavati Devi** (supra), with due regard to the decision rendered by the learned co-ordinate Bench in the case of **Kalavati Devi** (supra), the relevant provisions of the Master Circular of the State Bank of India as well as the Instruction issued by the Reserve Bank of India, have not been brought to the knowledge of the Court.

28. So far the contention of the petitioner that she has been getting enhanced pension or family pension, soon after demise of her husband w.e.f. 27.09.2002 and now at this belated stage, after sixteen years any alleged excess amount ought not be recovered, does not find force as the payment of excess



pension is a recurring/successive wrong, which gives rise to a distinct and separate cause of action and the wrong or illegality cannot get sanctity or legalized by mere passage of time.

29. This Court is also not oblivious of the fact that the petitioner is a hapless widow. She has been getting enhanced pension and thereafter family pension since long and at this stage, any deduction from the family pension would certainly cause hardship but at the same time this fact could not be ignored that the excess payment paid to the petitioner is a public money which belongs neither to the officers who effected overpayment nor to the recipient. Moreover, the petitioner and the Bank do not fall within the definition of employer and employee, rather the Bank was in the role of Pension Disbursing Authority and the pension was being paid pursuant to the Pension Payment Order issued by the Government of India, PCDA (Pension), Allahabad. Thus being an Agency, it is bound by its Master Circular and the Instruction issued by the Reserve Bank of India, which has never been questioned.

30. In view of the afore-noted discussions, this Court does not find any merit in the writ petition and the same stands dismissed with the liberty to the petitioner that in case the petitioner is not satisfied with the calculation made by the Bank authorities and/or re-fixation of monthly installment, she may



file an appropriate application before the respondent no.3, who shall look into the matter sympathetically in terms of the provision of the Master Circular of the S.B.I. and pass necessary order forthwith.

(Harish Kumar, J)

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CAV DATE	06-08-2024
Uploading Date	04-09-2024
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