IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.288 of 2023

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Rameshwar Ram Son of Late Ram Sharan Ram Resident of Shanti Niketan School Campus 3rd House, Jagat Narayan Road Kadam Kuan, P.S.- Kadan Kuan, P.O.- Kadam Kuan, Town and District- Patna, Bihar PIN- 800003.

... ... Petitioner/s

Versus

1. The Union of India through Home Secretary, Government of India.
2. The Home Secretary, Ministry of Home, Union of India, North Block, New Delhi, 110001.
3. The Director General, Border Security Force, FHQ, B.S.F. New Delhi C.G.O. Complex Lodhi Road, New Delhi- 110003.
4. The Commandant 2nd Battalion, Border Security Force, Falia Bala Road, Jalalabad, Fazilka (Punjab) PIN 152024, at present Commandant Take Head Quarter 2nd B.N. B.S.F. Campus MV-3 Near R.T.O. Office Post Office- Tamasa, District- Malkhangiri, State Orissa, Pin Code- 764045.
5. The Pay and Account Department Border Security Force, Pushpa Bhawan 2nd floor C. Wing, Madangir, New Delhi PIN- 110062.
6. The Branch Manager, State Bank of India, Kankarbag Branch Kankarbag, Patna.
7. The Branch Manager, State Bank of India, Kadam Kuan Branch, Patna.
8. The Assistant General Manager, Centralized Pension Processing Center Administrative Office Building, State Bank of India, 4th floor Judges Court Road, Patna- 800001.

... ... Respondent/s

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With

Civil Writ Jurisdiction Case No. 4704 of 2023

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Ekbal Baitha S/o Late Nathuni Baitha, R/o Mohalla- Sahu Colony (Pathan Toli), P.O.- Damodarpur, P.S.- Kanti, District- Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Finance Department, Govt. of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Old Secretariat, Patna.
3. The Commissioner Sales Tax, Govt. of Bihar, Patna Old Secretariat, Patna.
4. The Joint Commissioner (Audit) Sales Tax, Muzaffarpur Division, Muzaffarpur.

5. The Accountant General (A and E), Bihar, Mahalekhakar Bhawan, Birchand Patel Path, Patna.
6. The Chief Manager, Centralized Pension Processing Centre, State Bank of India Judges Court Road, Patna (Bihar).
7. The Treasury Officer, Muzaffarpur.

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 288 of 2023)

For the Petitioner/s	:	Mr. Vishwa Mohan Kumar Sinha, Advocate
		Mr. Debanjan Chowdhary, Advocate
For the Respondent No. 6 to 8	:	Mr. Amit Shrivastava, Sr. Advocate
		Mr. Apurv Harsh, Advocate
		Ms. Almanya, Advocate
		Mr. Raghu Raj Pratap, Advocate
For the Union of India	:	Mrs. Dr. Punam Kumar Singh, Advocate

(In Civil Writ Jurisdiction Case No. 4704 of 2023)

For the Petitioner/s	:	Mr. Manindra Kishore Singh, Advocate
For the Respondent/s	:	Mr. Sri Ram Krishna, AC to SC-11
For the Bank	:	Mr. Amit Shrivastava, Sr. Advocate
		Mr. Apurv Harsh, Advocate
		Mr. Raghu Raj Pratap, Advocate
		Ms. Almanya, Advocate
For the A.G.	:	Mrs. Nivedita Nirvikar, Sr. Advocate
		Ms. Supragya, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

Date : 05-01-2024

Heard the parties.

2. Considering the identical issue involved in both the writ petitions, with consent of the parties, the same have been heard together and are being disposed of by a common order. However, the facts of both the cases are being noted separately

for easy reference.

Re.: CWJC No. 288 of 2023

3. The petitioner was initially appointed as Constable in 3rd Battalion Manipur Rifles on 11.02.1967 and in the year 1968 his service was merged in Border Security Force named as 95 BSF Battalion. Having been promoted on different posts he lastly promoted to the post of Inspector, BSF and superannuated on 31.07.2004. After superannuation, his necessary pension papers were forwarded to Payment and Account Department (PAD), BSF for release of terminal benefits and the petitioner's basic pension was fixed at Rs. 5520/- as per the Pension Payment Order issued by the office of the Accountant General (A&E), Bihar, Patna. The pension of the petitioner was subsequently revised @ Rs.8317/- with effect from 01.01.2006 and after 6th and 7th Pay Revision,s lastly he was getting monthly pension @ Rs.32064/- till August 2017. However, all of a sudden his pension has been reduced to Rs.14,472/- without any show cause notice or opportunity of hearing. Being surprised, the petitioner enquired the matter from his Bank whereupon he was informed that excess payment was made to him and accordingly the same is being recovered from

his pension.

4. The petitioner thereupon filed an application under Right to Information Act and also filed a representation before the Commandant, 2nd Battalion, Border Security Force on 08.12.2017 for review of his pension according to 7th Central Pay Commission. In response to his application under Right to Information Act, the respondent-Bank informed the petitioner that due to miscalculation of the basic pension of the petitioner, excess payment of Rs. 9,29,794/- has been paid to the petitioner, hence same is recovered from the pension of the petitioner. On the other hand, the Commandant 2nd Battalion, BSF by his letter dated 16.12.2017 has informed that the pension of the petitioner was duly revised @ Rs.32050/- and the same was sent to the PAD, New Delhi vide letter No. 26573 dated 15.12.2017.

5. The petitioner on being aggrieved filed the present writ petition seeking a direction upon the respondents, especially the respondent-Bank to re-calculate the pension on his basic pension at Rs. 32064/- in the light of the letter issued by the Commandant, 2nd Battalion, BSF dated 16.12.2017 as contained in Annexure-6 and stop the recovery of any amount further from the pension of the petitioner and to return the

pensionary amount which was/is already recovered from the petitioner by the Bank till date.

6. A separate counter affidavit has been filed on behalf of the respondent-Union of India, submitting therein that the petitioner having completed more than 37 years of qualifying service proceeded for retirement from 2nd Battalion, Border Security Force on 31.07.2004 with all admissible terminal benefits. At the time of retirement, the petitioner was drawing basic pay of Rs.7500/- in the pay scale of Rs.6500-200-10500. After proper calculation, the basic pension of the petitioner was fixed at Rs. 5520/- with dearness pay (Rs. 3680+DP @50% Rs. 1840) vide PPO dated 17.08.2004. After implementation of 6th Central Pay Commission the pension of the petitioner was fixed @ Rs.8317/- per month w.e.f. 01.01.2006 and further on implementation of 7th Central Pay Commission revised pension of the petitioner was fixed @ Rs.23800/- w.e.f. 01.01.2016. It is submitted that for revision of pension, the pensioner who retired in the pay scale of Rs.6500-200-10500 or equivalent pay scale, revised pension was fixed at Rs.24,500/- per month and thus the revised pension was fixed at Rs.24,500/- to the petitioner. However, in absence of essential documents regarding revision of pension, the 2nd Battalion, BSF calculated suggestive revised

pension of the petitioner as per the available documents and forwarded the same to PAD, BSF, New Delhi for revision of pension of the petitioner but the same was not accepted and it was correctly revised and thus the pension of the petitioner was correctly revised @23800/- w.e.f. 01.01.2016.

7. In view of the aforesaid facts, the petitioner has been accorded basic and revised pension as per his entitlement and thus the claim of the petitioner for revision of his pension @ Rs.32064/- is found to be wrong.

8. A separate counter affidavit has been filed on behalf of the respondent-Bank and categorical averments have been made that the petitioner's basic pension was fixed at Rs.5520/- as per the Pension Payment Order and all the post retiral benefits have been calculated and given to him. The pension of the petitioner has been revised from 5th and 6th CPC by the system itself and the basic pension was revised from Rs.5,520 to Rs.12,476/- as per the existing formula of revision and the pension was being paid with basic of Rs.12,476/- and the petitioner started receiving the enhanced pension.

9. It is further stated that in the general parlance as the Bank adopts since revision order is delayed and revision is undertaken for all the section of the pensioners, and in this case

the Bank has received the order of revision only on 06.02.2012 whereby the basic pension of the petitioner was revised downward with retrospective effect from 01.01.2006 as per revision order issued by the Central Pension Accounting Office. The basis pension was reduced from Rs.12,476/- to Rs. 8,317/- as per the 6^{th} CPC whereas pension was being paid to the petitioner with basic of Rs. 12,476/- resulting in accrual of excess pension paid to the petitioner in excess of his eligibility.

10. It is further stated that duration of excess payment in pension was from 01.01.2006 to 31.07.2016, therefore total recovery of Rs.9,29,794/- on account of payment of excess pension calculated and slated against the pension account of the petitioner. It is further stated that the petitioner was duly intimated and notice of recovery has already been sent to the petitioner and further amount of deduction is within $1/3^{rd}$ limit which is Rs.7007/- per month.

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11. The petitioner was initially appointed as Joint Commissioner (Audit) as on 13.01.1975 and after having worked for more than 37 years he was superannuated from service on 13.10.2013 after attaining the age of 60 years from

the post of Joint Director. Having been superannuated, the Pension Payment Order was issued by the Accountant General (A&E), Bihar, Patna to the Treasury Officer, Muzaffarpur fixing the basic pension @ Rs.12355/- along with dearness and medical allowance totalling Rs. 23575/- upto April 2019. The pension of the petitioner was further revised w.e.f. 01.04.2017 as per 7th Pay Revision and accordingly the revised pension of the petitioner was fixed as Rs.32,050/- and accordingly the pension with admissible dearness allowance was started to be paid through the State Bank of India, Red Cross Branch, Muzaffarpur.

12. It is submitted that all of a sudden the respondent-Bank started recovery of the amount of Rs.12,298/- w.e.f. October 2019. The petitioner having come to know sought information in this regard with the Branch Manager of Centralized Pension Processing Centre (CPPC), State Bank of India, thereupon a calculation chart was furnished to him stipulating therein that since May 2014 to April 2019 excess dearness allowance amount was paid with basic pension to the petitioner which was later on ascertained and thus the total recoverable amount of Rs. 7,83,834/- is being deducted @ Rs.12,298/- per month. The petitioner on being aggrieved by the

action of the respondent-Bank filed the present writ petition seeking a direction upon the respondents concerned to stop the recovery of alleged excess payment of dearness allowance on the revised pension w.e.f. 01.04.2017 till 30.10.2019 against the pension payment order issued by the Accountant General (A&E), Bihar, Patna and further sought a direction to return the amount which was/is already recovered from the account of the petitioner.

13. Respective counter affidavits have been filed on behalf of the State-respondent as well as the respondent-State Bank of India. The stand of the State is that the pension of the petitioner was revised in the light of the recommendation of 7th Pay Revision Committee report w.e.f. 01.04.2017 and the revised pension of the petitioner was fixed @ Rs.32,050/- per month and admissible allowance was allowed by the Accountant General, Bihar as per the the Finance Department, Government of Bihar Resolution No. 755 dated 20.10.2017. It is submitted that the calculation of pension and dearness allowance was done by the Central Pension Processing Unit of the State Bank of India, Patna and the amount of pension and dearness allowance was paid by the State Bank of India as per their calculation in pursuant to the authority slip of the Accountant General, Bihar,

the concerned respondent has not passed any order with respect to the calculation of pension and dearness allowance of the petitioner. Thus, the answering respondent has no concern and is not accountable in the instant matter.

14. On the other hand, the respondent-State Bank of India averred in its counter affidavit that the petitioner's basic pension was fixed @ Rs.12355/- along with dearness allowance on the basis of pension payment order issued by the Accountant General(A&E), Bihar. It is submitted that while allowing the dearness allowance to the basic pension, wrong amount has been calculated due to which substantial increase took place in his pension and the payments were being made to the petitioner during 01.04.2017 to 30.04.2019, though as per the 6th Pay Commission, the D.A. should have been reduced to 'zero' but because of the fact that the petitioner was receiving the payment as per the 5th Pay Commission till October 2019, he had received an excess payment of Rs.7,83,834/- than the actual amount of pension payable to the petitioner. It is lastly submitted that the Bank corrected the anomaly and started releasing the due amount of pension to which the petitioner is entitled and is currently drawing a sum of Rs. 46511/- towards pension, from which an amount of Rs.12,298/- is being set off

against the excess credit made earlier and for which demand has been raised vide letter dated 25.09.2019 and consequently Rs.34,213/- is being credited in the account of the petitioner by the Bank.

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15. While assailing the action of the respondent-Bank making recovery of alleged excess payment, it is vehemently contended on behalf of the petitioners that the action of the respondent Bank is in complete violation of the principle of natural justice, in as much as, at no point of time any notice to show cause or opportunity of hearing has been given to the petitioners and the decision to recover the alleged excess amount from the pension was unilateral and against all the canons of law. That apart, the action of the respondent was *per se* in the teeth of the mandate of the settled legal proposition, as propounded by the Apex Court in the case of ***State of Punjab vs. Rafiq Masih (White Washer) [(2014) 8 SCC 883],*** and further reliance has been made in the case of ***Thomas Daniel vs. State of Kerala [2022 SCC OnLine SC 536].*** It has lastly been submitted that it is not the case of the respondents that the petitioners have made any misrepresentation or they have committed any fraud on the Bank or were anyhow found

instrumental in getting the enhanced pension in any manner, all the more they have been getting enhanced pension since long and as such any recovery at this belated stage from the pension of the petitioners is quite iniquitous, harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

16. In response to the aforesaid submissions made on behalf of the petitioners, Mr. Amit Shrivastava, learned senior counsel representing the State Bank of India submitted across the Board that the role of the Bank is limited only to the extent of disbursement of pension on the basis of Pension Payment Order issued by the Accountant General (A&E), Bihar, Patna after getting sanction from the concerned Department. It is submitted that the pensioner whose pension is paid by the Bank under the scheme for payment of pension by Public Sector Banks in consideration of the Bank having agreed 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, under the scheme for payment of civil pension by Public Sector Banks, 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 pensioner.

17. The pensioners also bound themselves and their heirs, executors and administrators and agree and 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 pensioners under the scheme and to forthwith pay the same to the bank and irrecoverably authorise 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. After advancing the afore-noted submissions, he drew the attention of this Court to the undertaking submitted on behalf of the petitioners furnished before credit of pension in their respective accounts.

18. Mr. Shrivastava, learned Sr. Advocate further submitted that at the time of agreeing at his request to credit the amount of pension payable had agreed that when demand is raised by the State Bank of India he shall make good the amount and thus the matter is squarely covered by the judgment of the Hon'ble Apex Court in ***Chandi Prasad Uniyal Vs. State of***

Uttarakhand reported in ***(2012) 8 SCC 417*** where the Hon'ble Apex Court has observed, especially at paragraph no. 14 thereof that the excess money is the taxpayers money and does not belong to officers who have affected payment and the recipient and in such situations law implies an obligation on the payee to repay the money or else it would amount to unjust enrichment. Reliance has also been made on the judgment of the Apex Court in the case of ***High Court of Punjab and Haryana Vs. Jagdeo Singh*** reported in ***(2016) 14 SCC 267*** where the Hon'ble Court while considering the law as laid down in ***Rafiq Masih*** (supra) has also postulated a principle that in case a person has given an undertaking with effect that payment found in excess is required to be refunded, is bound by that undertaking and therefore action of recovery is totally justified.

19. He further made reliance on a Bench decision of this Court in the case of ***Smt. Janaki Devi Vs. The State of Bihar & Ors. (CWJC No. 14346 of 2019) and further Bhuneshwar Prasad Singh Vs. The State of Bihar & Ors. and Md. Yasin Ansari Vs. The State of Bihar & Ors.(CWJC Nos. 13085 of 2021 and 14025 of 2021),*** copies, whereof have been put on record by Annexures F and G to the counter affidavit.

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 aforenoted 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.

24. In view of the afore-noted settled legal position and the fact that the petitioners have been accorded excess payment on account of wrong calculation or miscalculation and thus, in no stretch of imagination the same cannot be recovered, otherwise certainly it would amount to unjust enrichment, for which the petitioners are not legally entitled to receive. Any person who receives an excess amount more than to his entitlement owes a duty to repay the same as the amount is not of the officer/department but of the common man/tax payer.

25. The opinion of this Court also strengthened by the similar finding of the Co-ordinate Benches of this Court wherein in identical matters the recovery at the level of the Bank has not been interfered with by holding that it would be

iniquitous to sustain the pensioner's plea to allow him/her to retain the amount which was inadvertently deposited in his/her account because of clerical errors at the time of making entries in the pension system.

26. In view of the discussions made hereinabove, this Court does not find any merit in the writ petitions and accordingly both the writ petitions are dismissed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	NAFR
CAV DATE	07.12.2023
Uploading Date	08.01.2024
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