

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present:
The Hon'ble Justice Aniruddha Roy

W.P.A. 10546 of 2019

Kalpana Mondal
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Kumar Jyoti Tewari Mr. Amrit Sinha Mr. Aniruddha Tewari
For the State	:	Mr. Pinaki Dhole Md. Giaur Rahaman
Heard on	:	February 08, 2024
Judgment on :	:	February 08, 2024

Aniruddha Roy,J.

Facts:

1. The husband of the petitioner was an **Assistant Teacher** who died on **April 2, 1998** after rendering more than 29 years of service. After demise of the husband of the petitioner the necessary Pension Payment Order (PPO) was issued on **March 12, 2002** on account of the family pension payable to the petitioner.
2. The complaint in the writ petition is that, the petitioner being the widow of a State employee has received family pension till **December 31, 2017**. Thereafter on and from **January 1, 2018** the family pension was not

paid to the petitioner on the plea that during the period **June 1, 2009 till December 31, 2017** the petitioner had received family pension at an enhanced rate and the excess paid to her, the petitioner was not eligible to receive as family pension in accordance with law. However, it is an admitted position that, on and from **January 1, 2018** the petitioner has not received any family pension whatsoever.

Submissions:

3. Drawing attention to **Annexure P-5** at **page 44** which is a communication dated **April 11, 2019** issued by the Jurisdictional Treasury Officer, Mr. Kumar Jyoti Tewari, learned counsel for the petitioner submits that, a sum of **Rs.1,45,764/-** has already been recovered on account of alleged excess payment and still there was an alleged overdrawal amount of **Rs.4,70,986/-** which would be deducted as **Rs.5,000/-** per month till the entire amount is recovered.

4. Mr. Tewari further submits that, on and from **January 1, 2018** the eligibility of the petitioner to receive family pension per month was slightly more than **Rs.15,000/-** where as the petitioner has been receiving slightly more than **Rs.10,000/-** since **April, 2019**. The petitioner claimed the refund of the recovered amount on the ground of alleged overdrawn to the extent of **Rs.6,16,750/-** and her regular family pension payable to her since **January 1, 2018** to which petitioner is eligible to receive strictly in accordance with law.

5. Mr. Pinaki Dhole, learned State counsel submits that, there is no question of refunding any amount which already has been recovered from the petitioner's account as overdrawn by the petitioner. He submits that, the recovery was made by making lesser payment to the petitioner from her eligible quantum by **Rs.5,000/-** per month and no amount was recovered from her bank account. Drawing attention to the pension payment order, **Annexure P-1** at **page 27** to the writ petition Mr. Dhole submits that on and from **January 8, 2018** the petitioner will be eligible to receive basic family pension @ **Rs.2,400/-**.

6. Mr. Pinaki Dhole further submits that, the petitioner did not raise any objection whatsoever and accepted the recovery and the mode of recovery of the excess amount paid to the petitioner. Therefore, at this belated stage the petitioner cannot maintain this writ petition.

7. Mr. Kumar Jyoti Tewari, learned advocate submits that, since there was no step for recovery taken against the deceased husband of the petitioner, who was the employee of the State, before one year of his retirement, no step for recovery should have been taken and is maintainable against the widow of the State employee being the petitioner herein from her family pension. In as much as, he submits that, the excess amount of pension was paid to the petitioner more than five years of span. He further submits that, the petitioner being the widow her survival depends on this family pension. In this prevailing hard days of survival considering the market index, if this recovery is made, the same would be iniquitous and

harsh against the petitioner. The petitioner then will suffer immense crisis and irreparable hardship. In support, learned counsel for the petitioner has relied upon a judgment ***In the matter: of State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others*** reported at **(2015) 4 Supreme Court Cases 334**.

8. Further Mr. Tewari, submits that, considering the ratio laid down by the Hon'ble Supreme Court ***In the matter of: Rafiq Masih (Supra)*** a Special Bench of this Court had decided that in the light of facts and circumstance, recovery is not permitted. In support he relied upon a judgment ***In the matter of: Renuka Sarkar Vs. State of West Bengal and Others*** reported at **2023 SCC OnLine Cal 5467**.

9. In reply Mr. Pinaki Dhole, learned State Counsel submits that, none of these judgments rendered in a case for recovery of excess pensionary benefit paid to the beneficiary. The law was settled on the facts where salaries paid to the employees in excess or there was an overdrawn on account of salary by the employee. He submits that, the writ petition should be dismissed.

Decision :

10. After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the facts narrated above are not disputed by and between the parties. It is an admitted fact that, nearly about 17 years the petitioner was paid with the alleged excess amount on account of family pension and the State authority did not take any step whatsoever throughout the said period.

11. In the matter of: **Rafiq Masih (Supra)** the Hon'ble Supreme Court has observed 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 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."

12. The Larger Bench In the matter of: ***Renuka Sarkar(Supra)*** has observed as under:

"3. In the second writ petition being WPA 18830 of 2022 which has been referred, the writ petitioner namely Jharna Chakraborty is the wife of Suman Chandra Chakraborty since deceased, who was an employee of the State Government. The employee retired on 30.6.2000 and had been obtaining pension till his expiry on 13.10.2002. After the intimation of death of the employee since deceased on 28.10.2002, the petitioner started to receive family pension and the pension account is with the State Bank of India. The family pension continued till December 2021 and thereafter from January 2022 the said family pension was stopped. The bank authority informed the petitioner that due to miscalculation excess of payment amounting Rs. 9,71,184/- has been made to the petitioner during the period 06.06.2007 to 31.12.2021. The writ petitioner thereafter on 29.01.2022 had gone to the bank where she had to sign on a form being compelled, otherwise her survival was at stake. The respondent bank thereafter on 15.02.2022 requested the writ petitioner to repay the excess amount. It was also intimated that such excess is on account of wrong calculation of the basic pay which has crept in inadvertently. The bank authority decided that the pension amount is to be Rs. 9410/-. The bank

authority started deducting Rs. 9,135/- towards recovery and writ petitioner is being credited the paltry amount of Rs. 275/- as pension in her account. Being aggrieved by such decision of the bank authority the said petitioner preferred a writ petition. On 08.12.2022 an Hon'ble Single Bench of this Court directed the respondent bank authority to pay family pension to the petitioner at the rate calculated by the SBI every month as was being paid from October 2002 till December 2021. The respondent bank is now crediting Rs. 6534/- as family pension and deducting Rs. 3,135/- towards recovery. Along with the aforesaid order the Hon'ble Single Bench also passed the following:

“Whether a Bank, being the disbursing authority of pension to a retired employee or his family member, can be brought within the fold of the Supreme Court decision in State of Punjab vs. Rafiq Masih (White Washer); (2015) 4 SCC 334, more specifically under Paragraph 18 of the decision?”

9. Now the moot points for consideration is as to whether the bank authority, being the disbursing authority in respect of pension of a retired employee or in respect of family pension in favour of family member of the employee, is to be guided by the decision of the Hon'ble Supreme Court passed in the Judgement between State of Punjab and Ors. Vs. Rafiq Masih (white washer), (2015) 4 SCC 334

As to whether the Judgement passed by the Hon'ble Single Bench in WPA 22759 (W) of 2019 is in accordance with law.

30. In respect of reference this Court feels that the Judgement of the Hon'ble Apex Court passed in State of Punjab V. Rafiq Masih (white washer), (2015) 4 SCC 334 encompasses all the interested parties in respect of payment of pension and receipt of pension. Thus, the bank that is the disbursing authority and all the pensioners including the persons receiving family pension are fall within the ambit of the ratio decidendi laid down in the aforesaid Judgement. In so far as the appeal which arises out of the Judgement and order of the Hon'ble Single Bench dated 19.2.2020 passed by an Hon'ble Single Bench in writ petition WP no. 22759 (W) of 2019 in the case between Sumita Bhadra Vs. State Bank of India and ors.

33. In the backdrop of the above discussion:

i) Reference connected to WPA 18830 of 2022 is answered as follows: That the bank falls within and/or is required to act in terms of Paragraph 18 of the State of Punjab Vs. Rafiq Masih since the condition enumerated therein cover all stakeholders associated with the sanction, disbursement and receipt of pension.

ii) With regard to Reference arising out of WPA 10545 of 2020 the same principle as enunciated above in answering the Reference WPA 18830 of 2022 (supra) shall apply to all stakeholders and the

rigors of recovery shall be guided by the principle laid down at Paragraph 18 of Rafiq Masih(supra).

iii) With regard to appeal, this Court holds that considering the facts and circumstances of the case particularly the onerous situation faced by the appellant/writ petitioner, the Bank is requested to pass reasoned order in respect of the recovery of the excess pension.

34. WPA 10545 of 2020 with FMA 511 of 2021 with IA No. CAN 1 of 2020 (Old No. CAN 2531 of 2020) with WPA 18830 of 2022 stand accordingly disposed of.

13. In view of the settled proposition of law as discussed above and in the facts of this case this Court is also convinced and is of the considered opinion that, if the recovery is allowed after 17 years of payment from the widow and considering the amount of actual pension receivable by the petitioner in comparison with the market index, the same will be harsh, iniquitous and prejudicial for the survival of the petitioner.

14. For those foregoing reasons and discussions the amount already recovered from the petitioner to the extent of **Rs.4,30,764/-** as on **December 2023** as mentioned in **Annexure R-1** at **page 4** to the affidavit report affirmed on behalf of respondent No. 2 on January 16, 2024, shall be returned to the petitioner by the respondent No. 2 forthwith but positively within a period of **two weeks** from the date of communication of this order.

15. The respondent No. 2 on and from January 2024 shall pay and continue to pay the actual family pension payable to the petitioner in accordance with law without committing any default and shall not deduct any amount therefrom.

16. With the above observations and directions this writ petition being **W.P.A. 10546 of 2019** stands **allowed**, without any order as to costs.

17. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)