IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.19379 of 2015
and
M.P.No.1 of 2015

T.Shanmugam

... Petitioner

Vs.

1.Indian Overseas Bank,
Rep. by its Chief Manager,
Central Pension Processing Centre,
I.O.B. Building,
No.319 Mount Road,
Chennai 2

2.Branch Manager
Indian Overseas Bank,
St. Thomas Mount,
Chennai 16

3.Pay and Accounts Officer,
Central Pension Accounting Officer,
Government of India,
Trikoot 2, Bhikaji Cama Place,
New Delhi 110 066.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Declaration declaring that the action of the respondent Bank No.1 and 2 in arriving as if there is excess payment of pension of Rs.57,540/- to the petitioner from 1.1.2006 and recovering the said sum from the pension of the petitioner as illegal, arbitrary and contrary to law and consequently direct the respondents to refund the pension already recovered along with interest at the rate of 9% per annum, award cost.

For Petitioner	: M/s.Balan Haridas
For Respondents	:
(for R1 & R2)	: M/s.N.G.R.Prasad
(for R3)	: M/s.K.Srinivasan Murthy, SPCCG

ORDER

Challenging the recovery of his pension by the respondent bank from out of the pension account, the petitioner is before this Court.

2. The facts are as follows:-

2.1. The petitioner had served the Civil Aviation Department where he joined as a Traffic Peon. His services had been absorbed into the National Airports Authority on 02.10.1989. At the time of his absorption he had commuted the entire pension with the Civil Aviation Department. On completion of 15 years after the commutation of pension, 1/3rd pension was restored with effect from 02.10.2004 and he was paid Rs.425/- without Dearness Allowance. He had since retired on 31.03.2007 from the National Airports Authority.

2.2. He would submit that he has been paid pension along with full Dearness Allowance. His basic pay has been fixed at Rs.3,500/- with effect from 01.04.2007 and the said amount is being credited to his SB account with the 2nd respondent bank. The petitioner would submit that at the time of filing of this writ petition, the pension including Dearness Allowance was Rs.6,057/- per month and the pension had been credited and received until December 2014.

2.3. While so, he was orally informed by the 2nd respondent that an excess pension had been credited to his account from 01.01.2006 and in this manner a sum of Rs.57,540/- had been paid in excess and which had to be recovered. Thereafter, the 2nd respondent bank had not permitted the petitioner to operate his bank account from January 2015. Not stopping with this, a sum of Rs.26,000/- had been adjusted by the 2nd respondent on 10.06.2015 from and out of the pension amount accumulated in the petitioner’s account. Further, a sum of Rs.1,000/- has been recovered on 27.06.2015.

2.4. The petitioner would submit that he was totally in the dark about the payment of the excess amount paid to him and now in the light of the oral instructions of the 2nd respondent, the petitioner was also not able to operate his bank account. That apart, the petitioner was forced to write a letter dated 07.04.2015 in and by which he had given an undertaking that the amounts could be recovered at the rate Rs.1,000/- per month. In the said letter, the petitioner had also pointed out that a total sum of Rs.45,598/- was paid in excess to him, out of which a sum of Rs.27,000/- has already been recovered and the balance payable was only a sum of Rs.28,598/-.

2.5. The petitioner would submit that he is a Class IV retired employee and therefore the recovery of amount was totally contrary to the dicta laid down by the Hon'ble Supreme Court in the judgement reported in (***2015) 4 SCC 334 – State of Punjab and others Vs. Rafiz Masih (White Washer) and Others.*** Challenging the above recovery, the petitioner is before this Court.

3. A counter affidavit has been filed by respondents 1 and 2 inter alia contending that the petitioner is a pensioner of the Airport Authority of India and it is as per their instructions that the amount were sought to be recovered. The bank had received a letter dated 15.01.2014, from the Government of India, Regional Pay Accounts Office, Ministry of Civil Aviation, Chennai Airport, amending/modifying the pension payment to the petitioner as per the

VI Pay Commission. According to the revised VI Pay Commission, the petitioner is now entitled to Rs.2,102/- as pension with effect from 01.01.2006. However, the petitioner was drawing an excess pension of Rs.2,650/- from 01.04.2007 to 23.09.2012.

4. The petitioner was paid in excess pension for nearly 90 months and the petitioner had admitted the fact that he had received an excess amount over and above what was payable to him and had also agreed to permit the bank to recover the excess amount in 28 installments after adjusting a sum of Rs.17,598/- already recovered. The bank has nothing to do with the petitioner's employment and therefore the Writ Petition is not maintainable.

5. Heard the counsels on either side.

6. The learned counsel appearing on behalf of the respondents would contend that this is not a case of the employer recovering money from the employee, but rather a case of the bank, where the pension amounts are credited, taking steps for recovery. Therefore, it

is the contention of the learned counsel that the case of ***State of Punjab and others Vs. Rafiz Masih (White Washer) and Others*** would not apply to the instant case.

7. Admittedly, the amounts that are being recovered constitute the pension that is payable to the petitioner. The case of the Hon'ble Supreme Court reported in ***(2015) 4 SCC 334 – State of Punjab and others Vs. Rafiz Masih (White Washer) and Others*** applies in circumstances where a pension arrears were sought to be recovered from an employee. The case of the bank is that they have paid a sum of Rs.2,650/- as against the sum of Rs.2,102/- which is payable towards the pension. Therefore, they are recovering the excess amount paid to the petitioner. The Hon'ble Supreme Court in the aforementioned case had stated that recovery of money from employees of a lower rung of the services would result in the extreme hardship. In the instant case, the petitioner would claim that he belongs to a Class IV employee. Even otherwise the Hon'ble

Supreme Court had observed that a retired employee or an employee who would about to retire is a class apart from those who have sufficient service in their credit before the retirement. At the time of retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. At this juncture, the employees' earnings have substantially dwindle on account of retirement and in these circumstances ordering recovery on account of wrongful payment to the employee would be arbitrary that too when the recovery is said to be made after the employee's retirement. Therefore, the Hon'ble Supreme had postulated the following situations where the recoveries are impermissible:-

> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
>
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) Recovery from 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."

8. The case of the petitioner falls under Clause (i) and (ii). Therefore, the action of the respondents 1 and 2 in recovering the amounts from out of the pension account of the petitioner is per se illegal, arbitrary and contrary to law.

9. Accordingly, the Writ Petition is allowed. The respondents 1 and 2 are directed to refund the amounts already recovered from the petitioner with interest since the amounts have been wrongly recovered. It is seen that a sum of Rs.26,000/- has been recovered as early as in the year 2015 and since this Court holds that the recovery is illegal and arbitrary, the amounts recovered will be reimbursed with interest at 9% per annum from 27.06.2015 till the date of payment. No costs. Consequently, the connected Miscellaneous Petition is closed.

02.08.2024

(shr)
Index : Yes/No
Speaking Order: Yes/No
Neutral Citation : Yes/No

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