IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.34866 of 2012
and M.P.Nos.1 & 2 of 2012

Mrs.S.Rosalind Borgia ...Petitioner

-Vs-

1.The Principal Accountant General (A &E),
361, Anna Salai,
Teynampet, Chennai – 600 018.

2.Indian Overseas Bank
Rep. by its Assistant General Manager,
"Chennai House", Esplanade Branch,
Chennai – 600 108. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus calling for the records on the file of the respondents relating to the impugned order of the 2nd respondent dated 06.12.2012 addressed to the petitioner and to consequentially direct the 2nd respondent to credit the petitioner's savings Bank Account No.004801000039505 with the sum of Rs.4,02,460/- and to pass such further orders.

For Petitioner : Mr.Sai Krishnan
for M/s.Sai Bharath and Ilan

For R1	:	Mr.V.Vijay Shankar Senior Counsel
For R2	:	Mr.P.Rakesh Kumar

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order of the 2nd respondent Bank dated 06.12.2012 and consequently direct the 2nd respondent to credit the petitioner's savings Bank Account No.004801000039505 with the sum of Rs.4,02,460/-.

2. The case of the petitioner is that her late husband, Mr.V.Jayaraman retired from judicial services as a Subordinate Judge on 31.05.2002. Thereafter, he expired on 11.02.2004. The family pension is being disbursed by the 2nd respondent Bank by crediting it into her savings bank account No.004801000039505. The 2nd respondent issued a communication dated 06.12.2012 informing her that excess amounts have been credited into her account than what is eligible and on that premise they have unilaterally debited her account of the sum of Rs.4,02,460/-.

3. Learned counsel for the petitioner submitted that no notice was

issued to her about any alleged excess payment and that she was not called upon by giving her an opportunity regarding the same. On the other hand, totally unmindful of the fact that she depends entirely on her family pension for her survival and the savings in her savings bank account to meet her medical and family expenses, the 2nd respondent Bank has chosen to debit the entire savings in her account without any basis.

4. Learned counsel further submitted that the 2nd respondent Bank called her over the phone to come to their branch on 01.12.2012 and immediately thereafter, she met the 2nd respondent Bank along with her elder son. The 2nd respondent Bank informed her that some mistakes had been detected in the payment of the family pension and that an enquiry was being conducted into the same and requested her to make good of any excess payment if found out after enquiry. Even at that point of time, the petitioner had told him that she was completely depending on her family pension and savings in her bank account for her very survival and that she was also making arrangements for the marriage of her younger son, V.J.Kolochuvar for which also she was depending on the savings in her account. While so, the 2nd respondent Bank dishonoured two of her cheques given to her creditors on 05.12.2012, in spite of the fact that there were sufficient funds in

her account by stating a false reason, "Refer to Drawer". Thereafter, the 2nd respondent Bank addressed the impugned letter dated 06.12.2012, informing her that they had debited her savings account of Rs.4,02,460/- towards the alleged excess payment.

5. Learned counsel further submitted that after receipt of the impugned letter dated 06.12.2012, the petitioner sent a letter dated 17.12.2012 to the 2nd respondent Bank setting forth her objections for their illegal action and calling upon him to forthwith restore her account with the sum of Rs.4,02,460/- which was illegally deducted. The action of the 2nd respondent Bank in debiting her savings account for the alleged excess payment of her family pension is totally illegal, arbitrary and unjust. The respondents have not given any opportunity to the petitioner and the respondents cannot take advantage of their mistakes in depriving the petitioner in her savings bank account. The alleged statement enclosed with the letter dated 06.12.2012 is not correct and is disputed by the petitioner.

6. Learned counsel further submitted that no order has been made after due opportunity to the petitioner and without passing such order, the respondents cannot unilaterally recover amounts by taking advantage of

amounts lying in the petitioner's savings bank account. The respondents cannot misuse and abuse their powers to recover the amounts which they are not entitled to under the law and their claim is also hit by the law of limitation. The petitioner is in no way responsible for the alleged excess payment and she cannot be penalised in this fashion for no fault of hers. Aggrieved by the order passed by the 2nd respondent dated 06.12.2012, the petitioner has approached this Court by way of filing the present writ petition.

7. Learned counsel further submitted that this Court at the time of admission has granted an interim injunction in M.P.No.1 of 2012 in W.P.No.34866 of 2012 dated 21.12.2012 and the same is still in operation and force till date.

8. Learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court reported in ***2022 SCC Online SC 536 (Thomas Daniel Vs. State of Kerala and Others)***.

9. A counter was filed by the 1st respondent on 15.09.2017 and the relevant paragraphs are extracted hereunder for better appreciation and

understanding:

> *"3.In this connection, it is respectfully submitted that this respondent office Principal Accountant General (A&E) is vested with the authority of authorizing basic pension at the time of retirement in respect of the retired Tamil Nadu Government Employees as per Tamil Nadu Rules based on the proposals forwarded by the department concerned. The pension will be disbursed and subsequently will be revised as per subsequent pay commission recommendations by the Pension Disbursing Authorities (i.e.) either by Treasury Officers or Public Sector Banks.*
>
> *4. It is submitted that a basic pension of Rs.7100 p.m with effect from 01.06.2002 and Enhanced/Normal rate of family pension of Rs.7100/Rs.2840 p.m had been admitted by this office at the time of retirement of the deceased Government servant (L) Shri V.Jayaraman vide PPO number C.63034 based on the proposals forwarded by the department vide proceedings dated 14.07.2004 by incorporating his wife's name Smt.Rosalind Borgia as family pensionery beneficiary. In the instant case, this respondent office had not issued any recovery orders and the petitioner had challenged the orders dated 06.12.2012 issued by the 2nd respondent (i.e) Indian Overseas Bank, Esplanade Branch who is the pension disbursing authority in the instant case and this office has no role in this issue."*

10. The 2nd respondent has also filed counter affidavit on 18.03.2013.

11. Learned counsel for the 2nd respondent submitted that the eligible pension as per the pension payment order was Rs.6,750/- per month up to 14.05.2007 or for seven years following the date of death, whichever is earlier and afterwards the eligible pension for the family was only Rs.4,050/- per month. The said copy is available with the petitioner. In respect of the above pension scheme, the reduced payment of pension was to be paid from 15.05.2007. But by mistake the earlier higher amount was continued to be paid to the petitioner with corresponding increases from time to time. This excess payment came to be noticed only on 01.12.2012 when the 1st respondent audit team pointed out the mistake. Since the said Audit was conducted after 4 years, the same did not come to the notice of this respondent. So this respondent was forced to regularise the excess of Rs.4,02,460/- as per pension regulations and undertaking letters. As per the requirements of pension regulation, the Bank, undertakes to refund any amount to which the party concerned is not legally entitled. The said letter of undertaking binds the person who is benefited by the pension, his or her legal heirs, successors, executors and Administrators to identify the Bank from and

against any loss suffered or incurred by the Bank. Such a letter was given to this petitioner. This enables the Bank to call upon the party concerned to pay the said sum forthwith and also irrevocably authorises the Bank to recover the amount due by debiting the account or any other account or deposit belonging to the person concerned. So as per the terms of the Agreement, this respondent was entitled to debit a sum of Rs.4,02,460/- and this respondent did explain this to the petitioner and her son when they visited the Bank. So the amount was debited only in conformity with the agreed terms. This respondent has acted purely in conformity with the Rules and Regulations as per the agreed terms thereon.

12. Heard both sides and perused the materials available on record.

13. In this matter, as per the counter affidavit filed by the 1st respondent, the basic pension of Rs.7,100 p.m. with effect from 01.06.2002 and Enhanced/Normal rate of family pension of Rs.7,100/Rs.2,840 p.m. had been admitted by this office at the time of retirement of the deceased Government servant (L) Shri V.Jayaraman vide PPO number C.63034 based on the proposals forwarded by the department vide proceedings dated 14.07.2004 by incorporating his wife's name, Smt.Rosalind Borgia as family

pensionary beneficiary. It is also further stated in the counter affidavit that the respondent office had not issued any recovery orders and the petitioner had challenged the order dated 06.12.2012 issued by the 2nd respondent (i.e) Indian Overseas Bank, Esplanade Branch, who is the pension disbursing authority in the instant case and this office has no role in this issue.

14. As per the 2nd respondent Bank counter affidavit, the eligible pension as per the pension payment order was Rs.6,750/- per month up to 14.05.2007 or for seven years following the date of death, whichever is earlier and afterwards the eligible pension for the family was only Rs.4,050/- per moth. The said copy is available with the petitioner. In respect of the above pension scheme, the reduced payment of pension was to be paid from 15.05.2007. But by mistake, the earlier higher amount was continued to be paid to the petitioner with corresponding increases from time to time. This excess payment came to be noticed only on 01.12.2012 when the 1st respondent audit team pointed out the mistake. Since the said Audit was conducted after 4 years, the same did not come to the notice of this respondent.

15. Learned counsel for the 2nd respondent Bank drew the attention

of this Court letter dated 26.08.2002 given by late V.Jayaraman addressed to the Branch Manager, Indian Overseas Bank, Esplande Branch, Chennai – 600 108, and the same is extracted hereunder:

> "*Inconsideration of your having at my request agreed to make payment of pension due to me every month, by credit to my account with you, I the undersigned, agree and undertake to refund or make good any amount to which I am not entitled or any amount which may be credited to my account in excess of the amount to which I am or would be entitled. I further hereby undertake and agree to bid myself and my heirs, successors, executors and administrators suffered or incurred by the Bank in so crediting my pension to my account under the scheme and to forthwith pay the same to the Bank and also irrevocably authorise the Bank to recover the amount due by debit to my said account or any account/deposists belonging to me in the possession of the Bank.*"

16. In the instant case, the above letter of undertaking was given by the petitioner's late husband on 26.08.2002 and by the petitioner herself. But no notice was given before debiting a huge amount of Rs.4,02,460/- from her family pension account. No notice or opportunity of hearing was given to the petitioner before debiting, which is a violation of principles of natural justice. Since the letter of undertaking was given by the petitioner as well as the late petitioner's husband does not mean that the 2nd respondent Bank cannot take

away the amount from the family pension account.

17. It is pertinent to note that the 1st respondent i.e. Accountant General Office has not issued any recovery order, as it can be seen from the counter affidavit filed by the 1st respondent and it is only the 2nd respondent Bank which has issued recovery order dated 06.12.2012 informing that an excess amount of sum of Rs.4,02,460/- had been credited into her account and the same will be debited from the family pension account.

18. It is purely negligence on the part of the 1st respondent for not deducting the mistake much earlier. The pension amount was paid from 15.05.2007 and was noticed only on 01.12.2012 for nearly 5 years, for which the petitioner shall not be held liable and she is not responsible and cannot be penalised for the negligent act of the 1st respondent in paying the excess amount of pension. The letter of undertaking submitted by the petitioner as well as her husband was in the year 2002 and was 10 years before the recovery order dated 06.12.2012. Hence, it is the duty of the 2nd respondent Bank to inform the petitioner that the amount has been paid in excess by mistake and it has to be debited from her account. The excess amount can be paid by the petitioner even in the monthly instalments, but not in one stroke

by debiting the entire excess amount of sum of Rs.4,02,460/- which is a huge amount for a family pensioner who is also aged about 60 years a senior citizen.

19. The 2nd respondent Bank has stated in the counter affidavit that, as per the pension regulation, requirement of the Bank and undertaking to be given to refund any amount to which the party concerned was not legally entitled to and such a letter was given by the late husband of the petitioner namely, V.Jayaraman, since she is the legal heir of the deceased employee. It is pertinent to note that in this case, the petitioner has not given any wrong calculation or misrepresented or fraud, the excess amount has been paid by the petitioner.

20. This Court at the time of admission has granted an interim injunction in M.P.No.1 of 2012 in W.P.No.34866 of 2012 dated 21.12.2012 and the same is still in force till date.

21. Learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court reported in ***2022 SCC Online SC 536 (Thomas Daniel Vs. State of Kerala and Others)***, wherein it is held as follows:

***"11.** In Col. B.J. Akkara (Retd.) v. Government of India2 this Court considered an identical question as under:*

*"**27.** The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):*

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was 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.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are *in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made."*

***13.** In State of Punjab v. Rafiq Masih (White Washer)4 wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:*

*"**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."

***14.** Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General."*

22. The petitioner retired from service on 31.05.2002 and died on 11.02.2004. It is pertinent to note that the recovery order has been issued not against the pensioner but only against the family pensioner, who is the wife of the deceased employee. In view of the judgment of the Hon'ble Supreme Court reported in ***2022 SCC Online SC 536 (Thomas Daniel Vs. State of Kerala and Others)***, the recovery cannot be maintained from the retired employee and in this case, the recovery is made against the wife of the

deceased employee. Hence, the same is unsustainable.

23. In view of the above factual matrix of the case and the ratio laid down by the Hon'ble Supreme Court of India, the impugned order of the 2nd respondent dated 06.12.2012 is liable to be quashed and the same is hereby quashed.

24. In the result, the **writ petition stands allowed**. No costs. Consequently, connected miscellaneous petitions are closed.

21.03.2024

cda
Index : Yes/No
Speaking/Non-Speaking Order

To

1.The Principal Accountant General (A &E),
361, Anna Salai,
Teynampet, Chennai – 600 018.

2.The Assistant General Manager,
Indian Overseas Bank

"Chennai House", Esplanade Branch,
Chennai – 600 108.

J.SATHYA NARAYANA PRASAD, J.

cda

W.P.No.34866 of 2012

21.03.2024