

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

WPA 9971 of 2020

**Abhoycharan Basu
-Vs-
Paschim Banga Gramin Bank & Ors.**

For the Petitioner : Mr. Mohinoor Rahaman
Ms. Iqra Rahaman
Mr. Prosenjit Mukherjee
Mr. Prosenjit Chongder

For the Respondent : Mr. Baidurya Ghosal
Nos. 1 to 5 Ms. Aatreyee Dutta
Mr. Saikat Mukherjee

Heard on : 07.12.2023, 22.01.2024, 07.02.2024, 04.12.2024,
22.07.2025

Judgment on : 28.08.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner had prayed for a writ in the nature of Mandamus directing the Respondent Bank to refund the amount of Rs 1,27,870/- (Rupees One Lakh, Twenty Seven Thousand, Eight Hundred and Seventy only) which was deducted by the Respondent Bank from the SB account of the petitioner and his wife bearing No. 11210110009836.
2. The petitioner was a retired officer, Scale-1 (OJM-1), of the Paschim Banga Gramin Bank (hereinafter referred to as 'Respondent Bank'). On attaining

the age of 60 he retired from his service on November 30, 2014 while he was an Assistant Manager of Banamalinagar Branch, District- Howrah. He had been receiving his pension on and from April 1, 2018.

3. The Respondent Bank issued a notice on December 14, 2018 that as per an order passed by the Hon'ble Supreme Court on April 25, 2018 in SLP (C) 39288/2012, the Officers/Employees, retirees and family members of the deceased employees/officers of the Respondent Bank were eligible to opt for pensions and application for the same should be submitted in writing within April 3, 2019 in order for the applicants to become eligible for the pension as per the notification at the concerned Regional Office where they had last worked. The Petitioner exercised his option for becoming a member of the Paschim Banga Gramin Bank (Employees) Pension Fund on January 18, 2019. His Pension Payment Order was issued on April 17, 2019 and he was paid his pension for the month of February 2019 and March 2019 to the joint account of the petitioner and his wife. The Petitioner had also received Rs 2,60,337.26 (Rupees Two Lakhs, Sixty Thousand, Three Hundred and Thirty Seven; and Twenty Six Paisa Only) on June 28, 2019 and Rs 21,820 (Rupees Twenty One Thousand, Eight Hundred and Twenty Only) on July 3, 2019 for the period from April 1, 2018 to January 1, 2019.
4. On April 17, 2019, the Paschim Banga Gramin Bank (Employees) Pension Fund Trust sanctioned his application for Pension and credited Rs 712303.20 to his PBGB SB bank accountNo. 11210110009836 on November 20, 2019.

5. However, on November 20, 2019, a lump amount of Rs 1,27,870/- (Rupees One Lakh, Twenty Seven Thousand, Eight Hundred and Seventy only) was deducted from his PBGB SB bank account No. 11210110009836 on the pretext of recovery. He was not informed in writing of the reason for the deduction.
6. On December 9, 2019 the Petitioner wrote an letter with regards to the deducted amount to the Respondent Bank. Vide a letter dated December 11, 2019, the Chief Manager, PAD replied stating that there was no anomaly in the payment of pension or commutation and recovery of excess payment. The petitioner sent another communication on August, 25, 2020 with regards to the deducted amount. On September 4, 2020, the General Manager PBGB replied through email affirming that Rs 1,27,870/- (Rupees One Lakh, Twenty Seven Thousand, Eight Hundred and Seventy only) was recovered, the amount was credited to Paschim Banga Gramin Bank (Employees) Pension Fund, recovery of excess pension was paid on account of commutation, and the voucher was an internal document and the passbook entry was the replica of voucher which served the purpose. The petitioners wrote another email on September,14 2020 with regards to the deducted amount, however they received no reply from the respondent bank.
7. The petitioner has submitted that he has been deprived of Rs 1,27,870/- (Rupees One Lakh, Twenty Seven Thousand, Eight Hundred and Seventy only). The transfer of the amount from his bank account was illegal in nature and was done in the absence of any valid direction or authorization

from the petitioner. The Respondent Bank had failed to prove that the amount deducted was done so for the recovery of excess pension paid on account of commutation. As per Regulation 39 of the PBGBEPR, 2018, the Respondent Bank cannot recover from the amount of commutation of pension. Regulation 54 of the PBGBEPR, 2018 and Rule 6/1 (ii)(b) of the Civil Services (Commutation of Pension) Rules, 1981 does not state anything about recovery of amount from the pension optee, rather it speaks about reduction in the amount of pension on account of commutation. The same was in violation of Article 14, 16 and 21 of the Constitution of India.

8. The Respondents 1-5 submitted that the Paschim Banga Gramin bank (Employees) Pension Regulation, 2018 came into force from December 5, 2018 with effect from April 01, 2018 and all retirees applied for pension irrespective of their date of retirement. The Respondent Bank started the disbursement of pension to the first lot of pension optees from March 1, 2019 for the month of February, 2019. Subsequently, before making disbursement of commutation values in the month of November, 2019, the Respondent Bank made calculation of the commutation value taking date of commutation as April 1, 2018. Commuted Value was calculated by multiplying $\frac{1}{3}$ rd of Basic pension, commutation value expressed as number of years of purchase and 12.
9. In the given situation, had the commutation date been set to March 1, 2019, the Petitioner would have been 65 on their next birthday, and the pension commutation factor would have been 8.50. Consequently, the commuted value would have amounted to Rs. 6,86,460. However, the commutation

date was considered as April 1, 2018, the effective date of the pension regulation, which resulted in a lower age factor of 8.82. This adjustment led to a commuted value of Rs. 7,12,330.20, which was paid in a lump sum rather than in installments. Due to the earlier commutation date, the Petitioner received an additional Rs. 25,843.20 (Rs. 7,12,330.20 - Rs. 6,86,460.00). The commuted value of the pension was scheduled to be restored on April 1, 2033, 15 years after the commutation date of 01.04.2018. Had the commutation date been March 1, 2019, the restoration would have occurred on March 1, 2034. The full commutation was paid on November 20, 2019 in one installment. As per the undertaking tendered by the pension optees being Form 9, all pension optees were required to refund excess payment.

10. The pension payment effective date is 1st day of April as per the Paschim banga Gramin Bank (Employees) Pension Regulation, 2018 and since the Pension Regulation was made effective from a retrospective date being April 1, 2018 and the full pension was already paid to the Petitioner up to October 10, 2019, the excess payment made to the petitioner for 19 months (April 1, 2018 to October 31, 2019) had been recovered.
11. The Petitioner in reply to the above arguments submitted in the case of WP No. 20034/2003, the Hon'ble High Court of Karnataka issued a judgment on March 22, 2011 and the Hon'ble High Court of Rajasthan then ruled on August 13, 2012 in D.B. Civil Special Appeal (W) No. 2021/2011 where the petitioner was entitled to receive Superannuation Pension on/from the next date of his retirement on superannuation being December 1, 2014.

Subsequently, the Hon'ble Supreme Court of India affirmed these judgments in their decision dated April 25, 2018, in SLP (C) No. 39288/2012. The Supreme Court dismissed the SLP, thereby upholding the High Court decisions. As a result, the petitioner was entitled to receive his Superannuation Pension starting from the day following his retirement on December 1, 2014. However, the petitioner only began receiving this pension from April 1, 2018 due to reasons known to the respondent bank.

12. It was further argued that the Respondent bank has arbitrarily inserted the date of April 01, 2018 as the effective date in Paschim Banga Gramin Bank (Employees) pension regulation, 2018 instead of November 01, 1993 and had thus disobeyed the Hon'ble Supreme Court Judgement and order dated April 15, 2018. The inserted date of executive in nature and was not a judicial order and thus has no sanctity in law as an executive decision could not overrule a Judicial Decision. Furthermore, the commuted value of pension could not be computed taking a date preceding the date of the Petitioners application as the entitlement to commutation of pension of a pensioner optee is decided only after receiving a legitimate application for the commutation of pension. The application of the Petitioner was received by the Respondent Bank on January 31, 2019. It would also be evident from the Form No. 16 issued by the Government of India, Income Tax Department that no excess payment was made and the petitioner had never received a notice from the respondent bank in connection with excess payment or that recovery was made. The petitioner further argued that the undertaking taken which is Form 9 should be considered a formal

agreement and was not similar to a letter of authorization. The unauthorized debit transaction made by the Respondent Bank was done in violation of Clause 8.4 c of the BCSBI's Code of Bank's Commitment to Customers, 2018.

13. The Learned Advocate representing the petitioner submitted as follows:-

- i. The petitioner was a retired officer, Scale-I (OMJ-1) of Paschim Banga Gramin Bank who retired on superannuation on attaining the age of 60 years on 01.12.2011.
- ii. As per the order of the Hon'ble Supreme Court the petitioner was eligible for pension as per the notification of the respondents and accordingly he was paid his pension for the month of February and March, 2019.
- iii. On the prayer for the petitioner the respondent bank sanctioned his application for commutation of pension on 17.04.2019 and credited a commuted pension of Rs.712303.20/- to his PBGB, S/B Account No.11210110009836 dated 20.11.2019 but the Bank authority thereafter credited illegally a lump sum amount of Rs.127870/- debited from the account of the petitioner and his wife (joint account) without any information or without any permission from the petitioner and/or his wife.
- iv. The recovery of Rs.127870/- from the S.B. Account of the petitioner was nothing but a forceful recovery from the account of the petitioner which was contrary to the provisions of the Rules of the Bank as without permission or consent of the customer the

Bank authority had no right to debit any amount from the customer's S.B. Account.

- v. The act of the respondents was not only illegal and arbitrary but also devoid of any mark of procedural reasonableness and as such the same was violation of the provisions of Articles 14, 16 and 21 of the Constitution of India.
- vi. The act of the respondent bank in deducting the amount from the S.B. Account of the petitioner and his wife without any valid direction from the customer i.e. the petitioner herein which was absolutely illegal and the same was violation of the provisions of the principle of natural justice.

14. The Learned Advocate representing the respondents submitted as follows:-

- i. The petitioner's claim was untenable in law and facts. It was submitted that Paschim Banga Gramin Bank is an amalgamated entity comprising three erstwhile banks, and prior to the enactment of the Paschim Banga Gramin Bank (Employees') Pension Regulations, 2018, there existed no pension scheme within the bank. Pursuant to the directions of the Hon'ble Supreme Court in SLP (C) No. 39288 of 2012, the Central Government was mandated to frame and implement a pension scheme for RRB employees at par with sponsor banks. In compliance, the Pension Regulations, 2018, were duly notified in the Gazette on 5th December, 2018, with retrospective effect from 01.04.2018.

- ii. Wide publicity was afforded, calling upon retirees to exercise their option within 120 days, with a further grace period of 60 days to refund the employer's share of Provident Fund. The petitioner too exercised such option, refunding the requisite contribution. Pension payment commenced from February, 2019, with commutation values calculated in accordance with the table prescribed under the Regulations.
- iii. It was urged while the petitioner initially claimed commutation on the basis of 01.03.2019 (age next birthday being 65 years, factor 8.50), the correct reckoning, as per the notified Regulations effective from 01.04.2018, was to be 01.04.2018 (age next birthday 64 years, factor 8.82), which yielded a higher commuted value of Rs. 7,12,303/-, favourable to the petitioner.
- iv. The respondents further submitted since full pension had already been disbursed for the period 01.04.2018 to 31.10.2019, the excess payment occasioned thereby was liable to be recovered at the time of commutation. Such recovery is fortified by the petitioner's undertaking in Form No. 9, authorising the Bank to recover any excess amount credited. Reliance is placed on the principle enunciated by the Hon'ble Supreme Court in *State of Punjab v. Rafiq Masih*, (2015) 4 SCC 334, that recovery of excess payment is permissible when the employee has furnished consent or where statutory provisions empower such recovery.

v. The respondents emphasized the Pension Regulations of RRBs are uniform throughout the country, and have no nexus with the CCS (Commutation of Pension) Rules, 1981. Therefore, the petitioner's claim based on such provisions is misconceived.

(i) It was further submitted that the Bank acted strictly in consonance with the Pension Regulations, 2018, and that the recovery of excess pension was both lawful and consented to by the petitioner. Hence, the writ petition was liable to be dismissed.

15. The following communications exchanged between the petitioner and the respondent Bank as replicated deserve to be circumspected.

16. The communication being Ref. No. PBGB/HO/PAD/2415/2019-20 dated 17.02.2020 from General Manager, Paschim Banga Gramin Bank to the Asstt. General Manager, UCO Bank, inter alia stated as follows:-

"Ref. No. PBGB/HO/PAD/415/2019-20

Date: 17.02.2020

The Asstt. General Manager,

Agriculture & Rural Business Department/FI

UCO Bank, Head Office, 3rd Floor, 10, BTM Sarani,

Kolkata-700 001

Sub: Complaint of Mr. Abhoycharan Basu, a retired PBGB officer/pensioner, on unauthorized deduction from commuted value of the complaintant.

Sir,

Please refer to your letter no. (HO)/ARBD/X-50/1383/2019-20 dated. 07.02.2020 addressed to our Chairman on the captioned subject. In this connection we append below the relevant portion of Paschim Banga Gramin Bank (Employees') Pension Regulations, 2018 as hereunder:

Provided that on and from 1 July, 2003, an applicant in whose case the commuted value of pension becomes payable on the day following the date of retirement or from the date from which commutation becomes absolute (01.04.2018), the reduction in the amount of pension on account of commutation shall become operative from its inception and where payment of commuted value of pension could not be made within the first month after the date of retirement or within the first month after the date when the commutation becomes absolute (01.04.2018), the difference between the normal monthly pension and the commuted pension shall be paid for the period between the date following the date of retirement or when the commutation becomes absolute and the date preceding the date on which commuted value of pension is deemed to have been paid.

From the above, it is clear that there is no inconsistency on the part of the Bank in the payment of commutation/pension or effecting the recovery of difference amount between the normal monthly pension and the commuted pension for the period when the commutation becomes absolute (01.04.2018) and the date preceding the date on which commuted value of pension is deemed to have been paid (20.11.2019) for which complete calculation sheet is enclosed.

In view of above, we reiterate that there is no anomaly in payment of pension /commutation and recovery of difference amount, if any, in this regard.

With regards,

Yours faithfully.

GENERAL MANAGER”

17. The communication being no.(HO)/ARBD/X-50/1448/2019-20 dated 28.02.2020, inter alia, stated as follows:-

“(HO)/ARBD/X-50 / 1448/2019-20

Dated: 28/02/2020

Shri Abhoycharan Basu
'Nirmala Kuthi'
265/ 1093A Fuleshwar-RB Para Street
P.O. Fuleshwar, Uluberia
Howrah-711 316

Sir

(Sub): Complaint regarding unauthorized deduction from commuted value of pension.

With reference to your mail dated January 10, 2020 on the captioned subject, we understand from the views of Paschim Banga Gramin Bank that the Bank has rightly deducted the amount as they have paid the pension amount at full value (without deducting commutation amount) from your retirement from October, 2019. Since the full pension has been paid upto 31.10.2019 and the commutation amount was paid to you on 20/11/2019 the amount of commuted value of pension which has already been paid from 01/04/2018 to 31/10/2019 deemed to be recovered. The copy of the calculation sheet of Paschim Banga Gramin Bank is enclosed herewith for your information.

So there is no anomaly in deduction of excess amount already paid.

AK Patral
Asst. General Manager
Agriculture & Rural Business / FI

Encio: Copy of calculation sheet of Paschim Bariga Gramin Bank
c.c. Paschim Banga Gramin Bank for information."

18. The communication being no.(HO)/ARBD/X-50/1527/2019-20 dated 21.03.2020, inter alia, stated as follows:-

"(HO)/ARBD/X-50/ 1527/2019-20 Dated: 21/03/2020

Shri Abhoycharan Basu

*“Nirmala Kuthi”
265/1093A Fuleshwar-RB Para Street
P.O. Fuleshwar, Uluberia
Howrah-711 316*

Sir,

(Sub): Complaint regarding unauthorized deduction from commuted value of pension.

We invite reference to your letter dated 10/03/2020 on unauthorized deduction from commuted value of the complaint. In this regard, we wish to inform as under:

- 1. Your earlier letter dated 07/02/2020 received at our end on 10/02/2020 was duly replied by us on 28/02/2020 after obtaining the details from PBGB. So your allegation of not replying your earlier letter does not hold good.*
- 2. It is further mentioned that the PPO No. PBGB 579 dated 17/04/2019 stipulates date of commutation as 01/03/2019 where as the date of commutation allowed is from 01/04/2018. It is learnt that the date of commutation was 1st decided as 01/03/2019. Since the Pension Regulation of PBGB, 2018 was notified in the Official Gazette on 5th December, 2018 and it is made applicable for the 1st time, the entire process of calculation & payment of Pension was done after taking approval from all concerned. At the 1st instance, date of commutation was decided as 01.03.2019, but, since the pension effective date was from 01.04.2018. PBGB received request from several quarters to allow commutation from the date of effect of pension. In the present situation, had the commutation date been from 01/03/2019, then age in the next birth day of the complainant would have been 65 and the Corresponding factor for calculation of pension would have been 8.50 and the commuted value would have been Rs.6,86,460/- Since a request was made to consider the date of commutation as 01/04/2018. i.e. the date on which the pension regulation made effective, the staff member got the benefit of lower*

age, thus the factor of commutation went up to 8.82 for which the commutation value became Rs.7,12,330.20/-.

3. The entire amount was paid in lumpsum, not in instalments as claimed in your aforesaid letter. Since the date of commutation was preponed the applicant received a higher amount of commutation. (i.e. Rs.7,12,303.20 - Rs.6,86,460.00 = Rs.25,843.20) and the commuted value of pension shall be restored on 01.04.33 e. after the 15 years of commutation date 01.04.18. Had the commutation date been from 01.03.2019, the restoration of commutation would have been on 01.03.2034. In the commutation calculation sheet, it is clearly mentioned to ignore earlier information on commutation provided in the PPO. So commutation date mentioned in PPO stands revised.

4. Regarding submission of medical certificate, it is an obligation on the part of the pensioner to submit medical certificate for considering his application for payment of commutation amount, Bank concerned runs with additional risk for not insisting for medical certificate as stated.

5. Since the Pension Regulation was made effective from a retrospectic date i.e. 01.04.18 and the full pension was already paid to the Pensioner upto 31/10/19, the excess payment (i.e. full payment before commutation) so made to the Pensioner for 19 months (01.04.18 to 31.10.19) has been recovered.

6. The Pensioner has already given an understanding in Form No.9 authorising the Bank to recover any excess amount credited in his account. So there is authority on the part of the Bank to recover the excess amount credited in his account.

In view of the above, we do not observe any irregularity in payment of Pension. Commuted value of Pension, hence the complaint stands resolved. Further we will not entertain any correspondence in this regard.

RK Chhattani)

General Manager

Agriculture & Rural Business / FI

c.c. Paschim Banga Gramin Bank... for information."

19. The communication being no.PBGB/HO/PAD/270/2019-20 dated 18.03.2020 from General Manager, Paschim Banga Gramin Bank to the Asst. General Manager, UCO Bank, inter alia, stated as follows:-

"Ref. No: PBGB/HO/PAD/270/2019-20

Date: 18/03/2020

The Asst. General Manager,
Agriculture Rural Business Development Dept.,
UCO Bank, Head Office,
10 Brabourne Road,
Kalkata-700001

Dear Sir

Sub: Unauthorized deductions from Commuted value by the PBG Bank Authority on the pretext of "Recovery Comm." and reversal thereof.

With reference to your mail dated 10/03/2020 on the above subject, we give below point-wise reply for your kind perusal and necessary action.

- 1) *Initially when computation of pension was made taking date of commutation as 01/03/2019 as shown in the calculation sheet of Pension, it was done as below:-*

a) Basic Pension - Rs.20,190.00/-

b) Commutation value expressed as 2 number of year's purchase -8.50

Commuted Value = 1/3rd of Basic Pension X Commutation value expressed as number of year's purchase X 12 = 1/3rd of Rs.20,190.00 X 8.50 X 12 = Rs.6,86,460.00/-

Calculation of Commutation value expressed as number of year's purchase :
 Commutation value expressed as number of year's purchase is calculated from the table of "Commutation values for a pension of one rupee per annum".

Age next birth day	Commutation value expressed as number of years's purchase
64	8.82
65	8.50

Date of birth of Abhoy Charan Basu is 01/12/1954

i) When date of commutation is taken as 01/03/2019, his age at next birth day becomes 65 and accordingly from the table given above, commutation value per rupee of monthly pension is 8.50.

ii) When date of commutation is taken as 01/04/2018, his age net birthday becomes 64 and accordingly from the table given above, commutation value per rupee of monthly pension is 8.82.

So, Commutated Value (1/4/18) = $1/3^{\text{rd}}$ of Basic Pension X Commutation value expressed as number of year's purchase X 12 = $1/3^{\text{rd}}$ of Rs.20,190.00 X 8.82 X 12 = Rs.7,12,303.20/-.

It may be mentioned that Pension regulation of Paschim Banga Gramin Bank (Employees') Pension regulations 2018 was notified in the official gazette on 5th December 2018 and applications for pension were invited to be submitted within 120 days from the date of publication of Pension regulation in the gazette.

After submission of Pension applications within said 120 days, another 60 days were allowed to refund the employers' contribution of PF already availed by the pension optees.

The pension payment effective date is 1st day of April, 2018 as per Paschim Banga Gramin Bank (Employees') Pension regulations 2018.

Paschim Banga Gramin Bank started disbursement of pension to 1st lot of pension optees from 1st March 2019 for the month of February 2019.

Subsequently, before making disbursement of commutation values in the month of November 2019, the Bank made calculation of commutation value taking date of commutation as 01/04/2018.

Accordingly the commutation value stands at Rs.7,12,303.20/-, calculation of which is shown above.

Point No: 1 &2:

Allegations made are unfounded and not acceptable. Pension was paid correctly based on Pension Regulations of the Bank.

Point No: 3:

Calculation was made correctly as explained above elaborately.

The Pension regulations of the Bank came into force from 5th December 2018 with effect from 1/4/2018. Hence, all the retirees applied for pension after 5th December 2018, there is almost one year delay from the effective date i.e. 1st April 2018, irrespective of their dates of retirement. So no medical certificate was taken and date of effective was taken on 1/4/2018 and pensions, arrears & commutation values-all were paid w.e.f., 1/4/2018

Point No: 4

The reply to Point No. 3 and calculation given above justify that calculation is correct and procedures are correct under the given circumstances.

Point No: 5

The reply to Point No. 3 and calculation given above justify that calculation is correct and procedures are correct under the given circumstances.

Point No: 6

The full commutation was paid on 20/11/2019 in one installment only in a single occasion. However, excess payment was recovered on 20/11/2019 itself. It may also be mentioned that all pensioners are required to refund excess payment, if any, made to them as per the undertaking tendered by pensioners (Form 9).

Point No: 7:

The pensioner has been paid commutation value in the lump sum on 20/11/2019 and not in installments as he has stated.

Pension payment is administered at HO level and no branch is disbursing pension. As such, payment of pension and recovery of excess pension if any, is done by the Bank only and in the instant case, debit and credit transactions have been done by the Bank and not by the Pension Trust.

In the PPO of Sri Abhoy Charan Basu, the date of commutation has been mentioned as 01/04/2018.

The Bank has paid pension, arrears pension & commutation to around 550 pensioners in the similar manner and there has been no grievance raised by any of the pensioners except Sri Abhoy Charan Basu.

Thanking you.

Yours faithfully.

General Manager”

20. The communication being no.PBGB/HO/PAD/288/2020-21 dated 09.06.2020 from General Manager, Paschim Banga Gramin Bank to the Asst. General Manager, UCO Bank, inter alia, stated as follows:-

“REF. NO.:PBGB/HO/PAD/288/2020-21 Date:-09th June, 2020

To

Shri Abhoy Charan Basu

S/o Lt Santosh Kumar Basu

“Nirmala Kuthi”

Fuleshwar- RB Para Street,

PO- Fuleshwar, PS- Uluberia

Howrah, WB, Pin-711316

Dear Sir,

Sub:- Supply of (i) Pension Arrears Calculation Sheet for the period from 01/04/2018 to 31/03/2019 and (ii) Commuted value of Pension Computation Sheet along with Sanction Advice.

We invite reference to your email dated 08th June, 2020 on the captioned subject. At the outset it is pertinent to mention herein that, Bank on an earlier occasion vide Ref. No. PBGB/HO/PAD/270/2019-20 Dated 18/03/2020 duly provided you the method of calculating commuted value as well as your commutation amount. However, you have sought the information once again. As sought by you we are providing the said calculation for your easy reference.

It is pertinent to mention that all queries and information related to pension has been duly replied by the Bank through various earlier correspondences, and now also.

Thanking You,

Yours faithfully,

(S.X.SAHU)

General Manager”

21. The communication being no.H161/ABHOY CHARAN BASU/PBGB579 dated 17.02.2020, inter alia, stated as follows:-

“COMMUTATION

H161/ ABHOY CHARAN BASU/PBGB579

With reference to your application for commutation as per provision of the Paschim Banga Gramin Bank (Employees') Pension Regulations, 2018, your commutation of pension has been processed in your favour as under:

Date of Commutation 01-Apr-2018

Date of restoration 01-Apr-2033

@Age as on next birth day 64 year

Basic Pension Rs.20,190.00/-

Commuted Pension Rs.6,730.00/-

Commutation Factor 8.82

Commutation Value Rs.7,12,303.20/-

Commutation already paid for 19 month

Commutation already paid Rs.1,27,870.00/-

A/C no.11210110009836

Basic after Commutation Rs.13,460.00/-

Date of Payment 20-Nov-2019

#Date of restoration of full Pension after fifteen years from date of commutation.

@Next Birthday is the Birthday after Retirement or 01 April 2018 whichever is later.

\$ Commutation value = Commuted Pension Commutation Factor of your Age x 12

Please ignore all the earlier information for commutation in PPO, Work sheet etc.

Note:: 1. RRB Pension Regulation, 2018 approved by Government of India, adopted and notified by Paschim Banga Gramin Bank.

2. These Regulation shall apply to any employee who exercises an option in writing within one hundred and twenty days from the notified date (15-11-2018) to become a member of the fund and refund Bank's contribution to PF within sixty days after the expiry of said period of one hundred and twenty days.

3. The effective date is 1^a April 2018."

22. The "Form No.5" of the Paschim Banga Gramin Bank inter alia stated as follows:-

"Ref.:.....

The Chief Manager

P & A Department

..... Bank

Date:.....

Dear Sir,

Sub: Particulars of Outstanding Liabilities of Shri Abhoy Charan Basu.

We are furnishing below the particulars of outstanding liabilities of Shri Abhoy Charan Basu, Last Designation: Officer-in-Charge (OJM – 1), EPF Noti. 161 retired on 30.11.2014.

<i>Particulars of Outstanding Loan</i>	<i>Account No</i>	<i>Balance</i>
<i>1. House Building Loan</i>		
<i>2. Housing Loan (Commercial Scheme)</i>		
<i>3. Staff Over Draft</i>		
<i>4. Festival Advance</i>		
<i>5. Education Loan (Ananya Basu)</i>	<i>11210610001694</i>	<i>Rs.5,84,538/-</i>
<i>6. Conveyance Loan</i>		
<i>7. Others, if any (mention details)</i>		
<i>8. Total Loan Balance</i>		<i>Rs.5,84,538/-</i>

Yours faithfully,

Signature with seal

..... *Bank**Branch*”

23. The “worksheet for arrear pension from April 2018 to January 2019” of Abhoy Charan Basu, inter alia stated as follows:-

“

<i>Emp. No.</i>	<i>H161</i>	<i>Name</i>	<i>Abhoy Charan Basu</i>	<i>PPO No.</i>	<i>PBGB579</i>
<i>Month</i>	<i>Basic Pension</i>	<i>Dearness Relief</i>	<i>Total Pension</i>	<i>EPFO Pension</i>	<i>Net Pension</i>
<i>April, 2018</i>	<i>20,190</i>	<i>10,640.13</i>	<i>30,830.13</i>	<i>2076</i>	<i>Rs.28,754.13/-</i>
<i>May 2018</i>	<i>20,190</i>	<i>10,640.13</i>	<i>30,830.13</i>	<i>2076</i>	<i>Rs.28,754.13/-</i>
<i>June 2018</i>	<i>20,190</i>	<i>10,640.13</i>	<i>30,830.13</i>	<i>2076</i>	<i>Rs.28,754.13/-</i>
<i>July 2018</i>	<i>20,190</i>	<i>10,640.13</i>	<i>30,830.13</i>	<i>2076</i>	<i>Rs.28,754.13/-</i>
<i>Aug 2018</i>	<i>20,190</i>	<i>10,922.79</i>	<i>31,112.79</i>	<i>2076</i>	<i>Rs.29,036.79/-</i>
<i>Septembe r 2018</i>	<i>20,190</i>	<i>10,922.79</i>	<i>31,112.79</i>	<i>2076</i>	<i>Rs.29,036.79/-</i>
<i>October 2018</i>	<i>20,190</i>	<i>10,922.79</i>	<i>31,112.79</i>	<i>2076</i>	<i>Rs.29,036.79/-</i>
<i>November 2018</i>	<i>20,190</i>	<i>10,922.79</i>	<i>31,112.79</i>	<i>2076</i>	<i>Rs.29,036.79/-</i>
<i>December</i>	<i>20,190</i>	<i>10,922.79</i>	<i>31,112.79</i>	<i>2076</i>	<i>Rs.29,036.79/-</i>

2018					
January	20,190	10,922.79	31,112.79	2076	Rs.29,036.79/-
2019					
Total					Rs.2,89,237.26/-
TDS	7080	1 st	2,60,337.26	2 nd	21,820
Deducted		Disbursement		Disbursement	

24. The “E-mail Communication” dated 08.06.2020 inter alia stated as follows:-

“From : ho gm2<ho.gm2@mail.pbgb.co.in>

dated: Mon, Jun 08, 2020, 03:37 PM

Subject: Fwd: Supply of (i) Pension Arrears Calculation Sheet for the period from 01.04.2018 to 31.03.2019 and (ii) Commuted Value of Pension Computation Sheet along with Sanction advice.

To: ho.pad<ho.pad@mail.pbgb.co.in>

External images are not displayed. Display images below

From: “Abhoycharan Basu”<acbasu55@gmail.com>

To: “ho.gm2”<ho.gm2@mail.pbgb.co.in>

Sent: Monday, June 8, 2020 3:25:45 PM

Subject: Fwd: Supply of (i) Pension Arrears Calculation Sheet for the period from 01.04.2018 to 31.03.2019 and (ii) Commuted Value of Pension Computation Sheet along with Sanction advice.

From:

Shri Abhoycharan Basu
S/o Lt. Santosh Kr Basu of

“Nirmala Kuthi”
 Fuleshwar – RB Para Street,
 P.O. Fuleshwar,
 P.S. – Uluberia,
 Howrah, WB,
 Pin – 711316
 PAN : ADXPB3933D
 Mob : 09330800465 & 7980897253
 Email: acbasu55@gmail.com
 Dated: June 08.2020

To

The General Manager, PAD & Pension Cell, and Chairman, BOT, PBGB
 Employees' Pension Fund,
 Pashim Banga Gramin Bank,
 Head Office,
 Natabar Paul Road,
 Chatterjee Para More,
 Tikiapara, Howrah – 711101
 Ph:033-26676078

Respected Sir,

Subject: Supply of (i) Pension Arrears Calculation Sheet for the period from 01/04/2018 to 31/01/2019 and (ii) Commuted Value of Pension Computation Sheet along with Sanction advice.

I, Shri Abhoycharan Basu a retired PBGB officer/pensioner (vide my PPO No. PBGB 579) and a law-abiding senior citizen of India, would like to draw your attention to the following facts for your kind consideration and appropriate action.

That I have been receiving my Bank Pension each and every month through my SB A/c No. 11210110009836-with-PBGB, Manikpur Branch.

I was paid by the Authority concerned, PBGBEPF/Trustees, an amount of Rs.260337.26 as Pension Arrears for the period from 01-04-2018 to 31-01-

2019, by crediting to my BGVB SB A/c No. 11210110009836 on 28-06-2019. Surprisingly, I have not yet been provided "Pension Arrears Calculation Sheet" for the period from 01-04-2018 to 31-01-2019 by the Authority concerned, PBGB, which I require immediately.

Unfortunately, I have not yet received the Commutation of Pension Computation Sheet too, although the Commuted Value of Pension was credited into my PBGB SB A/c No. 11210110009836 on 20-11-2019.

So, I request you to provide me with (i) the "Pension Arrears Calculation Sheet" for the period from April 01, 2018 to January 31, 2019 and (ii) the "Commuted Value of Pension Computation Sheet" along with "Sanction advice" of the same in my favour at your earliest convenience.

Your prompt action in the matter would be highly appreciated.

With best regards,

Yours faithfully,

Abhoy charan Basu

(PBGB 579)

08/06/2020"

25. The Division Bench of this Hon'ble Court in a bunch of cases being MAT 85 of 2023, MAT 86 of 2023, MAT 87 of 2023, MAT 127 of 2023 vide an order dated 2nd of May, 2024, *inter alia*, observed as follows:-

"13. It is submitted that this pension scheme was introduced for the benefit of the superannuated employees and although they were not eligible for the commuted value of the pension prior to their depositing the entire corpus which was admittedly made in May, 2019.

14. Moreover, if commutation of pension were to be paid to the writ petitioners considering the absolute date that is 1st April, 2018 then as per regulation the reduction of amount in pension on account

of commutation shall become operative from its inception, that is, 1st April, 2018.

15. In the aforesaid backdrop the claim of the appellants needs to be considered.

16. The requirement of the respondent bank to pay pension upon commutation in terms of Regulation 39 read with the other regulations in our view would be dependent upon the entire corpus being deposited by the superannuated employees as in absence of any such deposit the corpus of fund could not be created. It is no doubt that they would be entitled for pension if they fulfil all the conditions which had inter alia, include exercise of option but unless the corpus is created and deposits are made by the individual willing retired employees they cannot get the benefit of retrospective effect of the notification.

17. Moreover, the difficulties explained by the bank in implementing the said scheme needs to be considered. The bank faced various difficulties at the time of creation of the fund as it involves huge financial implication inasmuch as the application for exemption from the Regional Provident Fund Commissioner, Jalpaiguri under Section 17(1), 17(1)(C) of EPF Act, 1952 was pending. The exemption was ultimately granted on 25th February, 2020.

18. It appears that the National Pension System for staff members was introduced on 24th May, 2019 and prior thereto all the branches were informed to circulate the regulations to collect option forms from the staffs.

19. The bank relying on the provisions of the relevant regulations calculated the commuted amount of pension considering 1/3rd of basic pension of the writ petitioner multiplied by the age of the writ petitioners as on 1st April, 2018 being the absolute date and reduction was made accordingly as per clause 6 of Section 39 and was ultimately paid.

20. The writ petitioners have enjoyed the entire amount till it was actually deposited although they got the benefit with retrospective effect and over and above the same they have also received interest on the lump sum amount paid to them towards commuted value in terms of the order of the learned Single Judge.

21. In the aforesaid circumstances, we are of the view that the finding of the learned Single Judge that the writ petitioners would not be entitled to payment of 1/3rd of pension on April, 2018 till January, 2022 is justified. In fact, simply put it could be seen as a delayed payment of pension for which the writ petitioners have been duly compensated by payment of interest.

22. The bank has already complied with the order of the learned Single Judge.”

26. The above judgment of the Division Bench aptly distinguished the benefit conferred through lump sum amount received towards commutation of pension which on the present date had been indisputable. The representation of the petitioner from time to time had been properly addressed by the bank with proper explanation. It was further stated the respondent Bank to have disbursed pension, arrears pension and commutation to around 550 pensioners in the similar manner and there had been no grievance raised by any of the pensioners except the present petitioner.
27. The Learned Advocate representing the petitioner relied on the observation of the Hon'ble Apex Court in the judgment replicated below.
28. In ***Thomas Daniel vs. State of Kerala***, the Hon'ble Supreme Court held as follows:-

“(10) In Sahib Ram v. State of Haryana and Others¹ this Court restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the authority concerned, without any misrepresentation on part of the employees. It was held thus:

“5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any 1 1995 Supp (1) SCC 18 misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault.

Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.” (11) In Col. B.J. Akkara (Retd.) v. Government of India and Others² 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.

(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.

2 (2006) 11 SCC 709 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.” (12) In *Syed Abdul Qadir and Others v. State of Bihar and Others*³ excess payment was sought to be recovered which was made to the appellants—teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/ understanding of a Rule or Order. It was held thus:

3 (2009) 3 SCC 475 “59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part.

The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.” (13) In State of Punjab and Others v. Rafiq Masih (White Washer) and Others⁴ 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 4 (2015) 4 SCC 334 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.”

29. In **State of Punjab vs. Rafiq Masih**¹, the Hon'ble Supreme Court held as follows:-

“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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- a) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- b) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- c) 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.*
- d) 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.*
- e) 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.”*

30. In **Syed Abdul Qadir v. State of Bihar**², the Hon'ble Supreme Court held as follows:-

¹ (2015) 4 SCC 334

² (2009) 3 SCC 475

“Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.”

31. In **Radhey Shyam Gupta v. Punjab National Bank**³, the Hon'ble Supreme Court held as follows:-

“However, we are also of the view that having regard to proviso (g) to Section 60 (1) of the Code, the High court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In other words, the High Court erred in altering the decree of the Trial Court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into Fixed Deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in the Jyoti Chit Fund case

3 (2009) 1 SCC 376

(supra) has been considerably watered down by later decisions which have been indicated in paragraphs 15 and 16 hereinbefore and it has been held that gratuity payable would not be liable to attachment for satisfaction of a Court decree in view of proviso (g) to Section 60(1) of the Code.

We also agree with Ms. Shobha that the High Court could not have gone behind the decree in the execution proceedings and the alteration in the manner of recovery of the decretal amount was erroneous and cannot be sustained.

We also agree with Ms. Shobha that even after the retiral benefits, such as pension and gratuity, had been received by the appellant, they did not lose their character and continued to be covered by proviso (g) to Section 60(1) of the Code. Except for the decision in the *Jyoti Chit Fund and Finance case (supra)* ((1976) 3 SCC 607), where a contrary view was taken, the consistent view taken thereafter support the contention that merely because of the fact that gratuity and pensionary benefits had been received by the appellant in cash, it could no longer be identified as such retiral benefits paid to the appellant.”

32. In **Col. B.J. Akkara (Retd.) v. Govt. of India**⁴, the Hon’ble Supreme Court held as follows:-

“Such relief, restraining recovery back 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

⁴ (2006) 11 SCC 709

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.”

33. In the aforesaid observations, the retired employees had enjoyed the excess payment claimed to be recovered from them over a considerable period of time. The petitioner’s case is distinguishable on the point that the pension regulations of the bank came into force from 5th December, 2018 with effect from 01.04.2018. The retired employees applied for pension after 5th of December, 2018 after a delay from the effective date of 1st April, 2018 irrespective of the dates of their individual retirement. Accordingly, medical certificates were not collected from the retired employees as the date to give effect to the aforesaid regulations commenced on and from 01.04.2018 computing the amount of pensions arrears and commutations to be paid with effect from 01.04.2018.
34. The petitioner was not deprived of or prevented from seeking any relief for non-production of medical certificate which otherwise was not necessary in the opinion of the respondent bank which, however, did not cause any prejudice to the petitioner.
35. It further appeared that the full amount of commutation was paid on 12.11.2019 in one instalment on a single occasion and the excess payment

was recovered on the same day on 20.11.2019 itself on detection of an excess payment in the account of the petitioner eradicating the possibility of claiming recovery of the excess amount which had been paid to the petitioner prior to his retirement being enjoyed by him over a considerable period of time.

36. Moreover, the petitioner had signed an undertaking in Form-9 as aforesaid agreeing to recovery of excess payment by the respondent bank. The petitioner being granted a lump sum amount at one instance cannot claim to have been deprived of enjoyment of an excess amount which had been wrongfully credited to his account on the same date and, thereafter, debited instantly both on 20.11.2019. Such amount in excess beyond entitlement of commutation as aforesaid to have been deducted from the account of the petitioner did not constitute recovery of excess amount to have been accounted to the detriment of the petitioner's rights and contentions whereby the petitioner had been disadvantaged of his claim legitimately nor had he been discriminated. The decisions as aforesaid relied upon by the Learned Advocate representing the petitioner accordingly did not apply to the petitioner's case.
37. In view of the above discussions, the instant writ petition being WPA 9971 of 2020 is dismissed.
38. There is no order as to costs.
39. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)