IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5907 OF 2025

Malti Shankar Kuthe Vs The Union of India , thr. General Manager, South East Central Railway, Bilaspur and others.

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Mr. Rahul Dilip Dhande, counsel for petitioner.
Mr. S.A. Choudhari, counsel for respondent Nos. 1 and 2.
Ms Ashwini Manhahari, counsel for respondent Nos. 3 and 4.

CORAM : ANIL S. KILOR and RAJNISH R. VYAS, JJ.
DATE : 15/12/2025.

1. Heard learned counsel for the respective parties.

2. Perused the record. The issue involved in the present petition is squarely covered by the law laid down by the Hon'ble Apex Court in the case of ***State Of Punjab & Ors vs Rafiq Masih (White Washer) and others*** reported in ***2015 (4) SCC 334***, more particularly paragraph – 18 of the said judgment, which is reproduced as below:-

> "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."

3. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

> (i) …………

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

4. In the instant matter, at the outset, it is necessary to clarify that it is not the case of any of the respondents that any fraud was played by the employee which resulted in miscalculation of pensionary benefits.

5. In the aforesaid background, we have tested the prayers made in the petition. The petitioner is the legally wedded wife of the deceased employee of South East Central Railway, Nagpur Division, Nagpur. The deceased employee was appointed on 08.06.1956 and superannuated on 30.06.1996, at which time he was holding the post of Office Superintendent-I under Grade-III (Group-C services).

6. After his retirement in the year 1996, pension was paid to him as per the applicable rules. On 08.12.2009, the employee expired, and thereafter, the present petitioner applied for extension of pensionary benefits with effect from 08.12.2009.

7. At the relevant time, the deceased employee was drawing a pay scale of Rs. 5,500–175–9,000 with a basic pay of Rs. 6,375/-. Subsequently, upon implementation of the 6th Central Pay Commission, his pay was revised to the scale of Rs. 9,300–34,800 with a basic pay of Rs. 16,060/-. Under the 7th Central Pay Commission, the last drawn pay of the petitioner's husband was fixed at Rs. 42,300/-. All these years, there was absolutely no issue raised by the employer regarding either the entitlement or the disbursement of pension at a particular rate.

8. On 09.04.2015, a communication was issued by the Workshop Accounts Office attached to South East Central Railway, addressed to Respondent No.3, directing it to examine the petitioner's pension case and ascertain the period during which excess payment was allegedly made. According to the respondents, the petitioner was paid pension with a basic pension of Rs. 21,150/- with effect from 01.01.2016 instead of Rs.12,690/- as per the revised pension under the 7th Central Pay Commission, due to an alleged erroneous calculation.

9. In May 2025, when the pension amount was not credited to the petitioner's account, an inquiry was made, whereupon she came to know orally from Respondent No.4 – Bank, that her pension payment had been stopped on account of alleged overpayment. On 12.06.2025, the petitioner further came to know that her pension account had been frozen on the basis of instructions issued by Respondent No.2, i.e., the Assistant Financial Advisor (Workshop), Motibagh Depot, South East Central Railway, Nagpur.

10. According to the petitioner, she was neither afforded an opportunity of being heard nor informed prior to taking such a drastic action. The unilateral stoppage of pension and freezing of her account is contended to be arbitrary and illegal. Though the petitioner submitted a representation dated 19.09.2025 requesting the authorities to de-freeze her account, no action was taken. In short, it is her case that the recovery and recalculation undertaken were wholly impermissible, as neither she nor her husband had ever made any false representation.

11. In response to the notice issued by this Court, an affidavit dated 26.11.2025 was filed by the Assistant Financial Advisor, South

East Central Railway, Nagpur, wherein it was stated that, as per the undertaking (Format-9 – Pension Settlement) submitted at the time of processing pension/family pension, the pensioner or family pensioner authorized the bank to recover any erroneous overpayment made to the pension account.

12. Mr. Choudhary, learned counsel appearing for the respondent-employer, further contended that the Ministry of Finance's Circulars dated 17.03.2016 and 13.03.2015, as well as the letter dated 16.05.2018, deal with recovery of excess payments made to pensioners/family pensioners. According to him, excess payments can be adjusted from the pension account or from future pension payments. He submitted that although the husband of the petitioner has expired, the fact remains that an overpayment was made and, therefore, recovery cannot be said to be illegal.

13. Be that as it may, we have tested the rival contentions and have gone through the record of the case. Admittedly, the deceased employee was appointed on 08/06/1956 and superannuated on 30/06/1996 as a Superintendent under Grade-III (Group-C). After his retirement, till his date i.e. till 08/12/2009 Pension amount was paid. From 08/12/2009 till 09/04/2025 (date on which the alleged miscalculations was noticed), the petitioner was getting Pension.

14. Thus, it is crystal clear that from the year 1996 till the year 2025 almost for 29 years, there was absolutely no action at the behest of respondent-employee to recover the Pension on the basis of erroneous calculation. The fact remains that neither the petitioner nor her husband had any point of time had made any false representation or is responsible for alleged erroneous miscalculation. The petitioner, a

70 years old lady, without giving any opportunity of being heard was denied the pension amount earlier granted and her accounts were also freezed.

15. The contention of respondent/employer's that there was an undertaking in format-9, and various circular issued in the year 2016 and 2018 regarding recovery of amount and therefore, recovery was rightly made, cannot be accepted.

16. We are of the opinion that alleged excess payments made to the employees by the employers mistake, and not due to the employees fraud cannot be recovered, especially after employee has retired. The administrative error or misinterpretation of rules by the employer, without any representation or fraud by the employee, does not give the employer the right to recover the amount after a significant delay. In the present case, the respondent-bank was also not justified in freezing the account of the petitioner, considering the peculiar facts and circumstances of the case.

17. In view thereof, we **allow** the present petition in terms of prayer clause-(a), (b), and (c) which is reproduced under:-

> (a) This Hon'ble Court be pleased to hold and declare that:
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> (i) the letter/communication issued by the Assistant Financial Advisor (Workshop), South East Central Railway (SECR), Nagpur/Respondent No.2 to the Punjab National Bank/Respondent Nos. 3 and 4 dated 9.4.2025 **(Annexure "B)** to the extent that the directions issued by Respondent No.2 to the Respondent No.3 and 4 Bank directing recovery of overpayment from the Petitioner is illegal, arbitrary and contrary to law.;
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> (ii) the freezing of the Bank Account of the Petitioner bearing Account No. 0799000100202468 in the Punjab

National Bank Kanhan Branch by the Respondents is without any jurisdiction / authority of law and hence the same is illegal, arbitrary and contrary to law:

(b) this Hon'ble Court be pleased to issue an appropriate writ, direction in the nature of a Writ of Mandamus or any other writ, order to quash and set aside the letter/Order issued by the Assistant Financial Advisor (Workshop), South East Central Railway (SECR), Nagpur/ Respondent No.2 to the Punjab National Bank/ Respondent Nos. 3 and 4 dated 9.4.2025 **(Annexure "B")** to the extent that the directions issued by the Respondent No.2 to the Respondent No. 3 and 4 Bank directing recovery of overpayment from the Petitioner is illegal, arbitrary and contrary to law and further direct the Respondents to deposit pension in the account of the Petitioner w.e.f. May, 2025 till date along with interest @ 9% per annum;

(c) this Hon'ble Court be pleased to issue an appropriate writ, direction in the nature of a Writ of Mandamus or any other writ, order, direction to direct the Respondents to de-freeze the bank account of the Petitioner having bank account in Punjab National Bank, Kanhan Branch, Nagpur/ Respondent No.4 bank bearing Account No. 0799000100202468.;

The respondents are directed to act accordingly.

In view of the above, the writ petition is **disposed of** accordingly.

(RAJNISH R. VYAS, J.) **(ANIL S. KILOR, J.)**

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