**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.6272 of 2022**

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Santosh Kumar Mishra S/o Late Ram Nagina Mishra, R/o Village - Bedupur, P.O. - Rampur (Bindalal), P.S. Ekma, District – Saran. ... ... Petitioner/s

Versus

1. Bank of India through the Senior Manager, CPPC, Bank of India Building, II Floor, Kingsway, S.V. Patel Marg, Nagpur - 440001.
2. The Manager, Bank of India, Pankaj Market, Saraiyaganj, Post Box No. 17, Muzaffarpur- 842001.
3. The Branch Manager, Bank of India, Branch - Parsa Bazar, Saran - 841220.
4. The Union of India through Ministry of Defence.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr.Maruth Nath Roy,<br>Mr. Ajay Kumar, Advocates. |
| For the Bank of India | : | Mr. Rupak Kumar, Adv.<br>Mr. Vikrant Kumar, Adv. |

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**CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR**

ORAL ORDER

16 01-05-2026 Heard Mr. Maruth Nath Roy, learned counsel for the petitioner and learned counsel appearing for the Respondents.

2. The present writ petition has been preferred to refrain the respondents from making the recovery from the pension account of the petitioner and to release the frozen amount with fixed rate of interest and also to refund the amount already recovered from the pension of the petitioner with interest.

3. Learned counsel for the petitioner submits that the petitioner joined the Indian Air Force as an Aircraftsman (Under Training) on 16.08.1985 at the Administrative Training Institute, Air Force, Sambra, Belgaum, and was eventually released as a Sergeant from the 7 BRD Air Force station, Tuglakabad, New Delhi, on 31.08.2008. Following his release, Pension Payment Order (PPO) No. 08/14/B/13761/2008 (Annexure-1) was issued

for pension payments into his Bank of India account (SB449510100009205) at Parsa Bazar, Saran. His pension underwent several revisions, first via Corrigendum PPO No. 08/14/B/COR/61925/2010 dated 16.02.2010 (Annexure-2), followed by Corrigendum PPO No. 08/14/B/COR/79591/2012 dated 17.10.2012 (Annexure-3), and again via Corrigendum PPO No. 08/14/B/COR/20124/2014 dated 08.01.2014, which was communicated to the Bank of India CPPC Nagpur on 15.01.2014 via letter HQ/99798/700713/08/08/SP/DAV (Annexure-4). During this timeline, the bank froze a sum of Rs. 4,97,817/- in the petitioner's account on 29.07.2010. Additionally, in ignorance of the proper legal forum, the petitioner filed Consumer Forum Case no. 05/2013, which remains pending and which he intends to withdraw.

4. It has further been submitted that the petitioner proactively notified the bank regarding extra payments through multiple emails sent on 15.08.2018, 16.08.2018, 18.09.2018, 30.09.2018, 05.10.2018, 06.10.2018, and 13.10.2018 (Annexure-5). In response, the bank recalculated his pension from September 2008 to January 2019, determining a net outstanding amount of Rs. 7,84,287 (Annexure-6). On 14.08.2020, the Ministry of Personnel, PG & Pension issued an

office memorandum providing guidelines for the waiver of recovery of wrongful or excess payments made to retired government servants (Annexure-7). This was followed by a Reserve Bank of India letter (RBI/2020-21/84) dated 21.01.2021 to all agency banks regarding the withdrawal of circulars related to the recovery of excess pension (Annexure-8).

5. A further revision of the petitioner's pension occurred *via* Corrigendum PPO No. 349200814335 dated 17.05.2021, communicated to the bank on 10.06.2021 via letter HQ/ 99798/ 700713/ 08/08/ SP/DAV (Annexure-9). On 11.09.2021, the petitioner submitted a representation to Bank of India authorities seeking a waiver of recovery and the release of his frozen funds (Annexure-10). However, *via* Reference PB/UK/20-21 dated 04.10.2021, the Branch Manager clarified that the waiver guidelines were inapplicable as the bank acted as an agent, not an employer, and stated that Rs. 4,04,884 was to be recovered (Annexure-11). To date, the bank has already recovered Rs. 3,79,403/- from the petitioner's account. In ignorance of the proper legal forum, the petitioner had previously filed Consumer Forum Case No. 05/2013, which is still pending and which he intends to withdraw. Furthermore, the bank has frozen a sum of Rs. 4,97,817 in the petitioner’s

account since 29.07.2010, an amount which was originally paid against Corrigendum PPO No. 08/14/B/CORR/61925/2010 dated 16.02.2010.

6. Lastly, the learned counsel for the petitioner submits that there has not been any misrepresentation on the part of this petitioner or fraud committed rather the mistake or error in the calculation, if any, is attributable to the Bank, hence, the recovery from the account of the petitioner would be inequitus or harsh, which needs to be interfered in the light of Hon'ble Apex Court judgment passed in the case of ***State of Punjab v. Rafiq Masih[(2015) 4 SCC 334)].***

7. On the contrary, learned counsel for the Bank submits that the issues with regard to recovery of excess amount paid to the pensioner by the bank who has been ensuring the pension to the pensioners, only in the capacity of Disbursing Authority, has been duly considered by this Court in the case of ***Rameshwar Ram v. The Union of India & Ors (CWJC No. 288 of 2023 & Other analogous cases)*** and order of recovery has been fond sustainable.

8. It has next been submitted that relying upon the said judgment another similar matter in the case of ***Shairun Nisha v. The Union Of India & Ors (CWJC No. 5395 of 2021)***

has also been decided by the Co-ordinate Bench of this Court and the petitioner's case is squarely covered by the same dictum and, as such, the instant case needs to be disposed of in the light of aforementioned adjudication.

9. Having considered the submissions advanced on behalf of the learned counsel for the respective parties and taking note of the order/judgment passed in the aforesaid case, this Court finds that the submissions made by the learned counsel for the petitioner cannot be sustained in law because the excess payment is a public money which is often described as tax payers' money and the same does not belong either to the officers who have effected over payment or to the recipient and this Court in the case of ***Rameshwar Ram (Supra)*** has already dealt with the similar issues and has held as follows:-

> *"20. This Court has heard the learned counsel for the respective parties and also examined the materials on record meticulously. One thing it is admitted that the role of the respondent Bank is only limited to the extent of drawing and disbursing authority, who ensure payment of pension on the basis of authority letter issued by the competent authority, i.e., the*

*Accountant General (A&E), Bihar, Patna on being sanctioned by the concerned Department/institution/authority under which the employees had rendered their services. Thus, there is no relationship of the employer and employee between the Bank and the pensioner. That apart, the function of the Bank is being regulated by the master circular(s) issued from time to time by the higher authorities of the Bank empowering the Bank to recover the excess amount, which is paid on account of mistake or miscalculation, after giving proper demand notice.*

*21. After careful examination of the judgments rendered by the Apex Court in the case of* ***Sahib Ram Vs. The State of Haryana [1995 supp (1) SCC 18]; Syed Abdul Kadir Vs The State of Bihar [(2009) 3 SCC 475], Rafiq Masih (supra)*** *as also the* **Thomas Daniel** *(supra), it goes without saying that the mandate of the Supreme Court not to recover the excess amount is based upon equity, in case the excess payment was not made on account of misrepresentation or fraud on the part* *of the employee or 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 or where court arrives at the conclusion that the 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.*

*22. Taking note of the aforenoted settled proposition of law, this Court feels it apt and proper to quote paragraph nos. 13 and 14 of the judgment rendered in the case of Chandi Prasad Uniyal (supra) where the learned Apex Court has observed as follows:*

> *"13. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud*

*on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.*

*14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake.*

*Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc., because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust* *enrichment."*

*23. Further in the case in hand before making payment of pension the petitioners were put to notice and the petitioners had already furnished undertaking that they would refund the excess amount paid and thus they are bound by the undertaking. The aforesaid proposition has well explained and propounded by a 3-Judge Bench of the Hon'ble Supreme Court in the case of* ***Jagdeo Singh*** *(supra) wherein the Hon'ble Court taking note of the earlier judgment rendered in the case of* ***Rafiq Masih*** *(supra) has held that in case where officers to whom payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded, the officer furnished an undertaking while opting for the revised pay scale, he is bound by the undertaking.*

*24. In view of the afore-noted settled legal position and the fact that the petitioners have been accorded excess payment on account of wrong calculation or miscalculation and thus, in* *no stretch of imagination the same cannot be recovered, otherwise certainly it would amount to unjust enrichment, for which the petitioners are not legally entitled to receive. Any person who receives an excess amount more than to his entitlement owes a duty to repay the same as the amount is not of the officer/department but of the common man/tax payer."*

10. Accordingly, in terms of order dated 23.09.2024 passed by the Co-ordinate Bench in the case of ***Shairun Nisha v. The Union Of India & Ors (CWJC No. 5395 of 2021),*** this case is disposed of with a direction to the Respondent-Bank to recover the amount in same proportion by fixing equal installments for making recovery of access amount to the tune of Rs. 8,88,286/-.

11. It is made clear that the Respondent-Bank before effecting recovery would inform the petitioner with regard to the status of the amount due to be recovered.

12. At this stage, learned counsel for the petitioner submits that the amount which was received towards pension against which the petitioner is said to have paid income tax, the Respondent-Bank may be directed to adjust the amount which

has been deposited by this petitioner towards the income tax. If any amount which has been deposited by this petitioner towards the income tax on unearned income, the same shall be adjusted appropriately towards recovery.

13. The writ petition with the aforesaid direction and observation stands disposed of.

**(Ajit Kumar, J)**

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