IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Acting Chief Justice Sujoy Paul
And
The Hon'ble Justice Partha Sarathi Sen

WPCT 193 of 2025

General Manager, State Bank of India and another
-Vs-
Smt. Sabita Dutta and others

For the petitioner/Bank : Mr. Debashis Saha
Mr. Avirup Roy Sanyal
Ms. Sucheta Pal

For the respondent no.1 : Mr. Arun Kr. Paul
Ms. Shikha P. Choudhury

Heard on : 07.01.2026

Judgment on : 07.01.2026

SUJOY PAUL, A.C.J. : –

1. This petitioner filed under Article 226/227 of the Constitution of India takes exception to the order of Central Administrative Tribunal, Kolkata Bench (Tribunal) dated 22.04.2025 passed in O.A.350/1161/2020 whereby the Original Application (O.A.) filed by respondent/applicant was allowed and the recovery imposed by the Bank has been set aside.

2. Draped in brevity, the relevant facts are that the respondent no.1 is widow of Late Balai Krishna Dutta who served as Ex-Clerk in East Frontier Railway, Katihar. The widow was getting family pension after the demise of her husband.

3. Pension disbursing authority was the State Bank of India/present petitioner. The State Bank of India passed the order dated 31.12.2019 and informed the pensioner that in view of certain over payment in the matter of family pension, it was decided to recover Rs.4365/- per month from her pension till the complete amount of overpayment of Rs.166624/- (excess amount) is recovered.

4. The pensioner filed O.A.350/1161/2020 assailing the said order. The principal argument of the applicant is based on the judgment of Supreme Court in the case of ***State of Punjab vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696***. It was highlighted in the said judgment that recovery from retired employees or employees who are due to retire within one year is not permissible. The Tribunal after considering certain judgments of Supreme Court, opined that recovery cannot sustain judicial scrutiny and accordingly set aside the recovery and directed the bank not to recover any amount from pensionary benefits of the applicant. The pivotal question raised by learned counsel for the petitioner bank is based on the subsequent judgment of Supreme Court in the case of ***High Court of Punjab and Haryana and others vs. Jagdev Singh*** reported in ***(2016) 14 SCC 267***. It is highlighted that judgment of ***Rafiq Masih*** (supra) was distinguished in this judgment by holding that if the employer/bank has taken an undertaking from the employee/pensioner that in the event of any over payment, excess amount needs to be refunded, recovery is permissible. Thus, para (ii) of judgment of ***Rafiq Masih*** (supra) was distinguished.

The Tribunal was informed while filing affidavit-in-opposition that such undertaking was given by the pensioner about which averments are mentioned in para 4(c) of the affidavit-in-opposition. In support thereof, Annexure-A i.e. undertaking of the pensioner was filed to show that he undertook that he or his heirs/successors will return the amount of over payment if such eventuality arises. Thus, it is submitted that the judgment of ***Rafiq Masih*** (supra) should not have been pressed into service. The singular reason assigned by learned Tribunal is that so called excess payment is determined by the Bank unilaterally and present pensioner has not been heard and therefore, recovery was held to be impermissible.

5. Learned counsel for the petitioner submits that if non-following the principle of natural justice was the reason to interfere with the recovery, the proper course for the Tribunal was to set aside the recovery and permit the bank to follow the principle of natural justice and pass a fresh order in accordance with law. During course of hearing, he also apprised the court that in the meantime, the entire recovery has been made and applicant's regular pension has been restored with effect from November 2022.

6. Learned counsel for the respondent/applicant on the other hand supported the impugned order and submitted that after 12 years from the date of signing the undertaking, the alleged excess amount of pension is sought to be recovered. The said undertaking cannot be

pressed into service after a period of 12 years. The Tribunal has not committed any error of law which warrants interference.

7. No other point is pressed by learned counsel for the parties.

8. We have heard the parties at length and perused the record. We have carefully gone through the judgment of Supreme Court in the case of ***Rafiq Masih*** (supra). In para 18(ii), it was held that recovery from the retired employees or the employees who are due to retire within one year, is impermissible. This judgment was again considered by the Supreme Court in the case of ***Jagdev Singh*** (supra). The Apex Court opined as under:

> *"**10.** In State of Punjab v. Rafiq Masih this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:*
>
> *(i) Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service).*
>
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
>
> *(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
>
> *(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.*
>
> *(emphasis supplied)*
>
> ***11.** The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the 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."*

9. Thus, the judgment of Supreme Court makes it clear that recovery may be made in case such undertaking is available.

10. Interestingly, this point again cropped up before Supreme Court in the case of ***Jagdish Prasad Singh vs. State of Bihar & Ors (Civil Appeal No.1635 of 2013)*** decided on 08.08.2024. The previous judgment including **Rafiq Masih** (supra) were considered by Supreme Court and in para 21 it was recorded as under:

> *"**21.** We firmly believe that any decision taken by the State Government to reduce an employee's pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of <u>Syed Abdul Qadir and others v. State of Bihar and others</u>, this Court held that **when the excess unauthorized payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recover...**"*
>
> *(Emphasis Supplied)*

11. In view of this judgment of Supreme Court, we find substance in the objection of learned counsel for the respondent/applicant.

12. No doubt, in ***Jagdev Singh*** (supra), it was held that judgment of ***Rafiq Masih*** (supra) is distinguishable inasmuch as recover may be permissible where undertaking was obtained for recovery/return of over payment. However, when this question again cropped up before the Supreme Court in ***Jagdish Prasad Singh*** (supra), the Apex Court in no uncertain terms opined that if excess unauthorized payment is

detected within a short period of time, it would be open for the employer to recover the same. Conversely, after long duration of time, it would be iniquitous to make any recovery. The present case is squarely covered by this finding of Supreme Court. The recovery is sought to be made in this case after almost 12 years from the date the undertaking was given. Thus, in our opinion, the Tribunal has rightly considered the recent binding judgment of Supreme Court in ***Jagdish Prasad Singh*** (supra) and has taken a view which is in tune with the law laid down by the Supreme Court.

13. Thus, we find no reason to interfere in this matter. The writ petition is **dismissed**.

14. Urgent Photostat certified copy of this judgment, if applied for, be given the parties upon compliance of all necessary formalities.

(Sujoy Paul, A.C.J.)

I agree.

(Partha Sarathi Sen, J.)

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