

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 21984 of 2025

Miss Madhulina Sen
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Bidhayak Lahiri
For the State	:	Mr. Pinaki Dhole Mr. Amman Amrit Ansari
For the Bank	:	Mr. Subrata Kumar Sinha
Heard on	:	16.03.2026
Judgment on	:	16.03.2026

Amrita Sinha, J.:-

1. Affidavit of service filed in Court today be kept with the records.
2. The petitioner is an unmarried daughter of a deceased pensioner who retired from service in the year 2002 and received pension till his death in the year 2005. After the death of the pensioner, his widow received family pension till her death on October 21, 2023.
3. The petitioner being eligible to receive pension as unmarried daughter applied before the authority for grant of family pension in her favour on and from October 22, 2023. At that point of time, it was detected that the widow of the pensioner received excess payment to the tune of Rs.17,66,556/-.

4. The bank has mentioned that the pensioner had signed a letter of undertaking wherein he undertook to adjust any excess payment paid and the said undertaking is binding on his heirs and legal representatives. The money has been paid from the public exchequer and no loss ought to be caused to the Government on account of erroneous overpayment. Calculation showing the amount payable to the pensioner and the amount already paid to her had been forwarded to the petitioner.

5. The Bank directed the petitioner to refund the excess amount paid to her mother within seven days or else the bank shall be constrained to adjust the pension amount payable to her against the overpayment and hold her responsible for the remaining balance along with interest, cost and expenses.

6. The petitioner is aggrieved by the same.

7. It has been submitted that the petitioner is in acute financial distress and requires immediate financial assistance for continuing her medical treatment. She is suffering from renal failure and other critical medical issues and the money is urgently required for conducting dialysis.

8. It has been submitted that neither the petitioner nor her deceased mother are in any way responsible for the error on the part of the bank to release excess payment in favour of her mother. It has been contended that as the petitioner is suffering from severe financial crisis, accordingly, the authority ought not to seek refund of the overpayment made and the authority should take steps to release the family pension actually receivable by her so that she can avail medical treatment.

9. The petitioner relies on the judgment delivered by the Hon'ble Supreme Court in the matter of ***State of Punjab Vs. Rafiq Masih*** reported in ***(2015) 4 SCC 334*** which laid down the situations where recovery by the employer would be impermissible in law.

10. The aforesaid submission of the petitioner is opposed by the learned advocate representing the bank.

11. It has been submitted that the pensioner was aware with regard to the amount that was receivable by her as the said amount is mentioned in the Pension Payment Order issued in favour of the pensioner. The pensioner never refunded the excess payment made. As per the undertaking submitted by the employee, any amount paid in excess either to him or to his heirs may be recovered by the bank.

12. It has been argued that as the bank deals with public money, accordingly, the bank has every right to recover the amount which was erroneously paid to the pensioner.

13. In support of such submission, learned advocate representing the bank relies on the judgment delivered by the Hon'ble Supreme Court in the matter of ***High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh*** reported in ***(2016) 14 SCC 267*** wherein the Court held that the officer to whom the payment was made was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer would be bound by the undertaking furnished while opting for the revised pay scale.

14. Reliance has also been placed on the judgment delivered by the three-Judge Bench of this Court on June 30, 2023 in a batch of matters first of which is **WPA 10545 of 2020 (Renuka Sarkar Vs. The State of West Bengal & Ors.)** wherein the Court was answering a reference made to the larger Bench. The Court held that considering the facts and circumstances of the case particularly the erroneous situation by the appellants/ writ petitioners, the bank was requested to pass reasoned order in respect of recovery of the excess pension so that no hardship is caused to the family.

15. The Circular of the Reserve Bank of India dated January 21, 2021 relating to withdrawal of the Circular of recovery of excess payment made to pensioners has been placed before this Court wherefrom it appears that the issue of refund to be made to the Government on account of excess/wrong pension payment was examined by the Reserve Bank of India. The Reserve Bank of India advised the banks that where excess payment had been made on account of mistakes committed by the bank, the amount paid in excess should be refunded to the Government in lumpsum immediately after detection of the same and without waiting for recovery of any amount from the pensioners.

16. The bank prays for dismissal of the writ petition further permitting the bank to recover from the petitioner the amount paid in excess to her deceased mother.

17. Upon hearing both the parties and on perusal of the documents placed before the Court it appears that, the employee received the pension

in the proper scale till his death in the year 2005. The widow of the employee was paid in excess and she received the excess payment from November, 2007 till her death in the year 2023. The bank never detected the error of payment and merrily continued making payment at an enhanced rate for nearly sixteen years. It is only after the widow of the employee expired in 2023 and the petitioner being an unmarried daughter of the employee applied for receiving family pension, that the error was detected by the bank.

18. Had the employee not left behind an unmarried daughter eligible for receiving family pension, then the error may not have been detected at all and the bank would not have been in a position to recover the allegedly overpaid amount.

19. Incidentally in the instant case, the employee left behind an unmarried daughter eligible to receive family pension. The bank at the time of calculating the amount of family pension payable to her, detected the error and found that a sum of Rs. 17,66,556/- was paid in excess to the widow. The bank suddenly woke up from deep slumber and now intends to recover the same on lumpsum basis from the petitioner within the shortest period of time.

20. Can the bank be permitted to recover the payment made in excess to the family pension holder for nearly sixteen long years, after her death from the heir(s) and legal representative(s) is the issue that is to be decided.

21. In Jagdev Singh (supra), the Court found that the pensioner was put on notice as regards the excess payment made and he would be bound by the undertaking given by him to refund the same while opting for the revised pay scale. Such is not the case at hand. Neither the petitioner is the original pensioner nor did she submit any undertaking for refund of the excess payment which was made due to incorrect calculation made by the bank. The family pension holder did not have any role to play at the time of fixation of the amount of family pension.

22. The original pensioner in the instant case, i.e. the employee, executed the undertaking to refund excess payment. The employee, however, never received any payment in excess. The widow of the pensioner was never put on notice regarding receiving any payment in excess. The widow, during the entire period for which she received family pension, was not made known that she was being paid any amount in excess and would be bound to refund the same. Had the widow been put on notice in proper time, then the excess amount received by her could have been recovered in accordance with law.

23. The petitioner, on application for receiving family pension as unmarried daughter, was made known for the first time by the impugned communication dated July 22, 2025, that a sum of Rs. 17,66,556/- had been paid in excess to her deceased mother and the said amount is liable to be refunded by her. The petitioner was given only seven days' time to refund the same or else the bank would be constrained to adjust the

pension amount payable holding the petitioner liable to pay the remaining balance along with interest, costs and expenses.

24. In Rafiq Masih (supra), the Court clearly laid down that recovery from employees where excess payment had been made for a period in excess of five years before the order of recovery is issued and recovery from the retired employees or employees due to retire within one year of the order of recovery, is impermissible.

25. Rafiq Masih (supra) was considered by the Court in Jagdev Singh (supra). However, since the employee in Jagdev Singh (supra) had furnished an undertaking to refund any amount paid in excess while opting for the revised pay scale, the Court directed recovery to be made from the pensioner in equated monthly installments spread over a period of two years. The fact of Jagdev Singh (supra) does fit with the facts of the instant case.

26. In the case at hand, excess payment was made to the widow of the employee for a period spanning nearly sixteen years. It is absolutely impossible for the unmarried daughter, who claims to be suffering from such financial distress that she is not in a position to pay for her medical treatment, to refund an amount of rupees seventeen lakh and more within a period of seven days.

27. The bank cannot reasonably expect to recover excess amount paid for a period of sixteen years as onetime refund payment within a period of seven days.

28. The undertaking which was given by the employee is being used as a tool to recover the excess payment made to his widow, since deceased. How far can such an undertaking be stretched? Can such undertaking be made applicable in the teeth of the judgment passed by the Hon'ble Supreme Court clearly directing that recovery from retired employees is impermissible.

29. The Court, in Rafiq Masih (supra), further held that 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, in that case recovery by the employer would be impermissible.

30. Renuka Sarkar (supra) held that the bank will be bound by the principles laid down in Rafiq Masih (supra).

31. Here, the excess payment was made by the bank, the pension disbursing authority, and not the employer. There is no demand for recovery from the employer. The bank, being the custodian of public money, had made wrong calculation and made excess payment of family pension to the widow of the deceased employee. For such error of the bank the petitioner has been put to such disadvantageous position that she has no money to continue her treatment and had to rush to Court for relief. Had the bank maintained proper accounts, such type of situation could have been avoided.

32. The public, in general, relies on the calculation and accounts maintained by the bank and take the same to be true. The general public

hardly recheck the figures provided by the bank. It is not only the bounden duty and statutory responsibility by also an onerous obligation of the bank to keep proper accounts of the public money deposited before it. The bank ought not to make payment without proper calculation and verification of accounts. The officer responsible for the mistake may be made liable to make good the loss caused to the bank. Disciplinary action may also be initiated against any officer found to be negligent in duty and/or acting against the interest of the bank.

33. The petitioner has already expressed her inability to refund the amount paid in excess and has prayed for an order restraining the bank from recovering any amount which was paid in excess relying on the principle laid down in Rafiq Masih (supra). As the amount of excess payment is a big sum, recovering the same within such short span of time will be harsh and iniquitous. At the same time, restraining the bank from recovering the amount at all, would result in loss to the Government.

34. A representation by the petitioner seeking waiving of the overdrawn payment is pending consideration at the end of the bank.

35. The bank is directed to take a balanced stand and consider the prayer of the petitioner to exonerate her from making the repayment/refund as demanded. If recovery is at all to be made, the bank shall keep in mind that the medical treatment of the petitioner may not be hampered in any manner and the recovery is made in very easy monthly installments spread over a substantial period of time. The family pension amount that will be receivable by the petitioner may be paid after making

necessary adjustment(s), if any, in a soft manner. The bank shall not be entitled to charge any interest or costs or expenses from the petitioner as neither the petitioner nor her mother was in any way responsible for the over payment made.

36. A decision shall be taken by the bank in line with the discussions made herein above at the earliest but positively within a period of four weeks from the date of communication of this order so that the medical treatment of the petitioner is not stalled. A reasoned order shall be passed and communicated to the petitioner.

37. The petitioner is directed to forward all documents relating to her medical treatment to the bank at the time of communication of this order so that a decision may be taken by the bank within the time limit specified hereinabove.

38. The writ petition stands disposed of.

39. All parties to act on the basis of the server copy of this judgment duly downloaded from the official website of this Court.

40. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Amrita Sinha, J.)