IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.17023 of 2021
CNR No. ODHC010350362021

Fanibhusan Mohanty .... **Petitioner**
Mr. A.K. Jena, Advocate

-versus-

Govt. of India & Ors. **Opp. Parties**
Mr. S.K. Das, Adv.
.... for O.P. Nos.2 & 3
Mr. S. Mishra, Adv. for
O.P. No.4

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
05.11.2026

Order No

05. **1.** This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard learned counsel appearing for the parties.

3. The present Writ Petition has been filed *inter alia* with the following prayer: -

> *"It is therefore humbly prayed that this Hon'ble Court may graciously be pleased to admit the writ application, issue notice to the Opp. Parties and show cause as to why the stoppage of pension and the order of recovery under Annexure - 6 issued by the Opp. Party No-3 will not be quashed, and further be pleased to continue the benefit of pension as usual for his sustenance in the interest of justice.*
>
> *And further be pleased to direct the opp. Party not to take any coercive action and de-freeze the pensionable account of the pensioner in the interest of justice.*
>
> *And issue any other order or order(s), direction or direction(s) as your lordships deem fit and proper for the interest of justice."*

4. It is contended that on consideration of the petitioner's application to get the benefit of Higher Pension and with due deposit of the differential amount on the direction issued by the Employees Provident Fund Organisation, petitioner was sanctioned with the Higher Pension w.e.f. 17.05.2019.

4.1. It is contended that while in receipt of such Higher Pension on being so sanctioned, petitioner vide the impugned order, was intimated that he has been wrongly sanctioned with the Higher Pension and accordingly while withdrawing the higher pension, Petitioner was held liable to re-pay a sum of Rs.1.01.824/-.

4.2. It is however contended that because of the interim order passed by this Court on 02.06.2021, no recovery has been made. However, in terms of the impugned order, petitioner is now receiving the reduced pension in place of the Higher Pension, which was duly sanctioned by the authorities of EPFO in the year 2019.

4.3. It is further contended that since petitioner's claim to get the benefit of Higher Pension was duly considered by the authorities of EPFO and on the direction issued by the authority, petitioner deposited the differential amount in terms of the decision of the Hon'ble Apex Court in the case of ***R.C. Gupta and Others Vs. Regional Provident Fund Commissioner***

and Others, there was no occasion to withdraw the higher Pension and directing for recovery vide the impugned communication dated 16.02.2021 under Annexure-6 and that too after about 2 (two) years of such sanction of Higher Pension.

4.4. It is further contended that since petitioner is a retired employee and a pensioner, no recovery can be made in view of the decision of the Hon'ble Apex Court in the case of ***State of Punjab & Others Vs. Rafiq Masih, AIR 2015 SC 696*** so followed in the case of ***Thomas Daniel Vs. State of Kerala & Others, 2022 Live Law (SC) 438.*** It is accordingly contended that the impugned order under Annexure-6, requires interference of this Court.

5. Learned counsel appearing for the Organisation on the other hand contended that even though petitioner was sanctioned with Higher Pension with due deposit of the differential amount w.e.f.17.05.2019, but since subsequently it was found that petitioner is not eligible to get the benefit of Higher Pension, while withdrawing the same, petitioner was directed to payback a sum of Rs.1,01,824/- vide the impugned communication dated 16.02.2021 under Annexure-6.

5.1. It is contended that since petitioner subsequent to such sanction of Higher Pension was found ineligible to get the benefit of Higher Pension, such an

action was taken by Opp. Party No.3 in issuing the impugned communication under Annexure-6.

5.2. It is accordingly contended that since petitioner is not eligible to get the benefit of Higher Pension, which was wrongly sanctioned, no illegality or irregularity can be found with the impugned communication issued under Annexure-6.

6. Having heard learned counsel for the parties and considering the submission made, it is found that petitioner while continuing in the establishment of Opp. Party No.3, retired from his services on attaining the age of superannuation on 31.10.2012. Petitioner thereafter when raised his claim to get the benefit of Higher Pension in terms of the decision of the Hon'ble Apex Court in the case of ***R.C. Gupta*** so cited (supra), petitioner was directed to deposit the differential amount and on such deposit of the differential amount, petitioner was sanctioned with the Higher Pension w.e.f. 17.05.2019.

6.1. However, it is found that on the ground that petitioner is ineligible to get the benefit of Higher Pension, vide the impugned communication dated 16.02.2021 under Annexure-6 while withdrawing the benefit of higher pension, petitioner was directed to re-pay a sum of Rs. 1,01,824/-.

6.2. Since on due consideration of the petitioner's claim with deposit of the differential amount,

petitioner was sanctioned with the Higher Pension in the year 2019, it is the view of this Court that without giving an opportunity of hearing to the petitioner to have his say with regard to his eligibility, no such decision could have been taken by Opp. Party No.3 in withdrawing the higher pension and directing the petitioner to payback a sum of Rs.1,01,824/-.

6.3. Since from the counter affidavit nothing is found that principle of natural justice was followed by Opp. Party Nos.2 and 3, prior to withdrawing the higher Pension and directing the petitioner to pay the amount in question, it is the view of this Court that the impugned order cannot sustain legal scrutiny.

6.4. Therefore, this Court while quashing the impugned communication dated 16.02.2021 under Annexure-6, directs Opp. Party No.3 to take a fresh decision by giving an opportunity of hearing to the petitioner. This Court directs Opp. Party No.3 to issue a show-cause as to why petitioner is not eligible to get the benefit and on receipt of the reply from the petitioner, a fresh decision be taken by giving an opportunity of hearing to the petitioner. Opp. Party No.3 is directed to complete the entire exercise within a period of 4(four) months from the date of receipt of this order.

6.5. Recovery of the excess payment so indicated in Annexure-6 shall not be made, till a fresh decision is

taken as directed. However, relevancy and effect of the decision in the case of ***Rafiq Masih*** so followed in the case of ***Thomas Daniel*** be taken into consideration.

7. The Writ Petition stands disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Nitu Prava

Signature Not Verified
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Reason: Authentication
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