
(2019) 07 PAT CK 0349

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4050 Of 2019

Kalawati Devi

APPELLANT

Vs

Union Of India Through The Principal And Ors

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Defence Pension Payment Instructions (Defence PPI), 2013 — Rule 103.2

Citation : (2020) 1 PLJR 85

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Jitendra Kumar, S.D. Sanjay, Rajesh Kumar Verma, Sanjiv Kumar

Final Decision : Allowed

Judgement

The present writ petition has been filed for restraining the respondents from making any recovery of the alleged excess payment of family pension

made to the petitioner herein as also for directing the respondents to refund a sum of Rs. 1,11,279/- illegally recovered from the account of the

petitioner herein.

The brief facts of the case are that the deceased husband of the petitioner herein Late Dharam Nath Singh was working in the Government of India

with effect from 04.03.1964 and had superannuated from his services on 31.07.1997. While working on the post of Senior Auditor and serving in the

office of Chief Comptroller of Defence Account (Pension), Allahabad, Uttar Pradesh a pension payment order dated 27th June, 1997 was issued to

the husband of the petitioner and the pension was commenced with effect from 01.08.1997. Unfortunately, the husband of the petitioner died on

08.04.2001 whereafter the petitioner had applied for family pension in the prescribed format and thereupon she started getting family pension from the

respondent-Bank in Account No. 11632008308. Suddenly, the petitioner received a letter dated 17.02.2008 stating therein that the petitioner was liable

to be paid family pension @ of Rs. 3665/- up to 03.07.2004 and thereafter she was to be paid a sum of Rs. 2220/-, however, by mistake the enhanced

amount had been paid to her till November, 2005 resulting in excess payment of Rs. 27,921/-, hence a sum of Rs. 2000/- would be deducted each

month so that recovery can be made regarding the excess amount paid to the petitioner. Again on 10.08.2018, the petitioner received a letter from the

State Bank of India's Centralized Pension Processing Centre, Patna, stating therein that excess pension amounting to Rs. 4,13,958/- has been paid

to the petitioner over a period ranging from January, 2008 to the month of July, 2018, hence the same is recoverable, thus, the petitioner was requested

to deposit the said amount in the pension account.

The learned counsel for the petitioner has submitted that the respondent Bank is seeking to recover alleged excess amount of payment made to the

petitioner over a period of more than 10 years. In this regard, the learned counsel for the petitioner has referred to the provisions of the Defence

Pension Payment Instructions (Defence PPI), 2013, Rule No. 103.2 whereof is reproduced herein below:-

103.2 Overpayments of pensions not directed within 12 months of the date of the first erroneous charge should not be recovered from

the pensioner's dues without the orders of the Principal Controller of Defence Accounts (Pensions). If there are any arrears due to the

pensioner, the payment of the same may be withheld pending decision for the overpayment made. As soon as an overpayment comes to the

notice of the Pension Disbursing Authority he should report the full details of the case to the Principal Controller of Defence Accounts

(Pensions) who will decide the case himself, if it lies within his financial powers or he will obtain the orders of the competent authority or

the Government of India as the case may be. To avoid hardship to the pensioner, payment for the current period, however, should be

continued to the pensioner at the correct rate admissible. On the decision of the case by the competent authority, the orders passed will be

communicated to the Pension Disbursing Authority by the Principal Controller of Defence Accounts (Pensions).

It is the contention of the learned counsel for the petitioner that as per the aforesaid Rule 103.2, no recovery can be made from the petitioner herein

without the orders of the Principal Comptroller of Defence Accounts (Pension) since the over payments of pension in the case of the petitioner was

not deducted/recovered within 12 months of the first erroneous charge.

Per contra, the learned counsel appearing for the respondents no. 2 to 4, referring to the counter affidavit filed by the Manager, State Bank of India,

Centralized Pension Processing Centre, Patna has submitted that earlier the pension was being processed and paid from the Branch level, however,

the State Bank of India has constituted Centralized Pension Processing Centre at Patna and in the year 2007-08 the pension relating documents of the

petitioner maintained at the Mohammadpur Branch, have been migrated to the said Centralized Pension Processing Centre at Patna and during the

course of migration on account of inadvertent mistake, the petitioner has been getting family pension at a higher rate since the year 2008. It has been

further submitted that recently Data Purification Drive was carried out during which it transpired that the petitioner has been paid an excess amount of

Rs. 4,13,958/- since the year 2008.

The learned counsel for the respondent Bank has referred to the Circular of the Reserve Bank of India dated 17.03.2016 wherein excess payment

made to the pensioner are recoverable from them. The learned counsel for the respondent-Bank has also referred to the letter of undertaking given by

the petitioner herein, which is undated, wherein it has been undertaken to refund or make good to the bank any amount to which she is not entitled or

any excess amount which has been credited to her account over which she would be entitled. Thus, the learned counsel for the respondent-Bank has

submitted that the Bank is justified in recovering the excess amount of pension paid to the petitioner herein. In this regard, the learned counsel for the

respondent Bank has referred to a judgment rendered by the Honâ??ble Apex Court, reported in 2016(14) SCC 267 (High Court of Punjab &

Haryana & ors. Vs. Jagdev Singh), wherein the Hon,ble Apex Court has directed to make recovery of the excess amount paid to an employee on

account of wrong fixation of revised pay-scale, since from the said employee an undertaking was taken to the effect that in case any excess payment

was found to have been made subsequently, he would refund the same. Thus,

the Honâ??ble Apex Court has held that since the officer to whom excess 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 as the officer had furnished an undertaking, while opting for the revised pay-scale, hence he was bound by the said undertaking. In such view of the matter, the Honâ??ble Apex Court had said that the law enunciated in the case of State of Punjab vs. Rafiq Masiah, reported in (2015) 4 SCC 334 is not applicable in the case under consideration.

Per contra, the learned counsel for the petitioner, in reply to the submissions made by the learned counsel for the respondent-Bank, has submitted that the judgment rendered by three Judges Bench of the Honâ??ble Apex Court in the case of Rafiq Masih (supra) fully covers the present case and it has been authoritatively held by the Honâ??ble Apex Court, in paragraph nos. 18 and 19, as follows:-

â??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. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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.

19. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly

fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court

of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.â??

It has been next contended by the learned counsel for the petitioner that the judgment relied upon by the learned counsel for the Bank, as rendered by

the Hon,ble Apex Court in the case of Jagdeo Singh (supra) is distinguishable inasmuch as firstly the recovery sought to be made in the said case was

regarding excess salary paid to the officer on account of revised pay-scale whereas the present case pertains to excess payment of pension not only

ranging over a period of few months but ranging over a period of 10 years, allegedly made solely on account of laches and fault on the part of the

respondent-Bank without there being any misrepresentation or fraud having been committed on the part of the petitioner herein. It is further submitted

that the case of Jagdeo Singh (supra) was not a case of retirement or grant of excess family pension but the officer in the said case had been

compulsorily retired whereas in the present case the petitioner is the widow of the deceased employee/pensioner. Thirdly, it is submitted that much

before passing of the judgment in the case of Jagdev Singh (supra) the Honâ??ble Apex Court, in the case of Paras Nath Singh vs. the State of

Bihar & ors., reported in 2009(6) SCC 314, has already held that in the case of illiterate persons, not knowing the implications of giving an undertaking

and in absence of any fraud or misrepresentation attributable to the employee in question, a lenient view should be taken and the amount already paid

by the State authorities in excess should not be recovered. In this connection, the learned counsel for the petitioner refers to paragraph no. 2 to 6 of

the said judgment rendered in the case of Paras Nath Singh which are reproduced herein below:-

â??2. On 15-4-1995, the appellant was given provisional first time-bound promotion with effect from 13-6-1984. After about 10 years,

more precisely on 19-9-2005, the first time-bound promotion granted to the appellant was cancelled. In view of such cancellation of

promotion, direction was issued by the State/respondent to recover Rs 1,01,529.50 from the salary of the appellant at the rate of Rs 5000

per month. Aggrieved by the aforesaid order directing recovery, the appellant filed a writ petition before the High Court of Judicature at

Patna contending that since the time- bound promotion given to him was at the fag end of his employment and that the appellant, once

having worked in the time- bound promotional post, recovery against him was not justified.

3. The writ petition, however, was dismissed by a learned Judge of the High Court and affirmed by a Division Bench of the High Court in a letters

patent appeal. Feeling aggrieved, the appellant has filed this special leave petition, which on grant of leave, was heard in the presence of the learned

counsel for the parties.

4. Having heard the learned counsel for the parties and considering the fact that the State authorities had allowed the appellant to work for about 10

years and paid the salary at the enhanced rate, in which the appellant had no role to play except that he had given an undertaking to the authorities that

in the event his first time- bound promotion was cancelled, in that case, he would be bound to refund the same.

5. Having considered the fact that the appellant was only a Class IV employee in the State of Bihar and almost an illiterate person and did not know

the implications of giving such undertaking and in the absence of any fraud and misrepresentation attributed to the appellant and the amount being not

so excessive, in particular Rs 1,01,529.50, out of which certain amount has already been recovered from the salary of the appellant by the State

authorities, we are of the view that a lenient view should be taken and the amount already paid by the State authorities to the appellant shall not be

recovered. However, whatever amount that has already been recovered, shall not be paid back to the appellant.

6. In view of the above, the impugned judgments of the High Court are set aside and the writ petition filed by the appellant stands allowed. For the

reasons aforesaid, the appeal is allowed to the extent indicated above. There will be no order as to costs.â??

The learned counsel for the petitioner has thus submitted that the law laid down by the Honâ??ble Apex Court in the case of Paras Nath Singh

(supra) would be applicable in the present case as also the same squarely covers the present case, hence no recovery can be made from the petitioner

herein. It is further contended that the law laid down by three Judges Bench of the Honâ??ble Apex Court in the case of Rafiq Masiah (supra) also

holds the field and squarely covers the case of the petitioner herein.

I have heard the learned counsel for the parties and have gone through the materials on record as also considered the entire matter in its true

perspective, after going through the various judgments referred to by the learned counsel for the parties. This Court finds favour with the arguments

advanced by the learned counsel for the petitioner. Nonetheless, before the issue of permissibility of recovery arises, since over payments of pension

have been made ranging over a period of more than 10 years, no recovery could have been made or directed to have been made from the petitioner

herein without the orders of the Principal Comptroller of Defence Accounts (Pension) i.e. the respondent no. 1 herein, as is mandated in Clause 103.2

of the Defence Pension Payment Instructions, 2013 and has not been refuted or disputed by the learned counsel for the respondent Bank. In such

view of the matter, this Court deems it fit and proper to quash the impugned order of recovery dated 10.08.2018 issued by the Assistant General

Manager, Centralized Pension Processing Centre, State Bank of India, Patna.

The writ petition stands allowed to the aforesaid extent.