
(2020) 08 BOM CK 0024
In the Bombay High Court
Case No : LD-VC-CW-665 Of 2020

Naini Gopal S/o Dhirendra Mohan Roy	APPELLANT
Vs	
Union Of India And Others	RESPONDENT

Date of Decision : 20-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 21, 41, 46, 300A

Citation : (2020) 08 BOM CK 0024

Hon'ble Judges : R.K. Deshpande, J;N.B. Suryawanshi, J

Bench : Division Bench

Advocate : S.S. Sharma, Sushma, Anilkumar

Final Decision : Allowed

Judgement

R.K. Deshpande, J

1. Notice for final disposal of the matter was issued by this Court on 30-7-2020 and the parties were heard finally by consent. Hence, Rule. The

petition is being disposed of finally.

2. The petitioner Naini Gopal S/o Dhirendra Mohan Roy is retired as an Assistant Foreman from the Ordnance Factory at Bhandara with effect from

1-10-1994. The last drawn basic salary of the petitioner was Rs.2,675/- and the basic pension was fixed at Rs.1,334/- as on 1-10-1994. Consequent

upon increase in the pension and the dearness allowance as per the recommendations of the 5th, 6th and 7th Pay Commissions, the basic pension of

Rs.25,634/- was fixed, for which the petitioner was entitled to and accordingly he was paid.

3. In the month of August 2019, the basic pension amount of the petitioner was reduced from Rs.25,634/- to Rs.25,250/- with effect from 1-1-2016

and accordingly, the respondent No.3- the Centralized Pension Processing Centre of the State Bank of India, directed recovery of an amount of

Rs.3,69,035/- from the pension payable to the petitioner in the installments of Rs.11,400/-, i.e. 1/3rd of the monthly pension with effect from 1-8-2019.

The deduction of pension was without the consent or knowledge of the petitioner and, therefore, the petitioner filed an application under the Right to

Information Act, 2005 on 1-9-2019 to know the reason for deduction and details as to the revision of pension during the period 2015-16 and 2016-17.

In response to this application, the petitioner received the reply on 20-9-2019 from the respondent No.3 informing that there was excess payment of

pension of Rs.3,69,035/- to the petitioner, which was discovered after making the revised calculations.

4. The petitioner has, therefore, approached this Court challenging such action and seeking further direction to the respondents to restore the position

in respect of payment of pension, prevailing prior to the deduction which commenced from 1-8-2019. Reliance is placed upon the communication dated

4-12-2019 at Annexure-Q to the petition, issued by the Accounts Officer of the employer stating that the pension at the rate of Rs.26,000/- was

correctly notified vide 7th CPC PPO No.401199400151 (0101).

5. Initially, we heard the matter on 30-7-2020, when the following order was passed :

Â â?? Hearing was conducted through Video Conferencing and the learned Counsel for the parties agreed that the audio and visual quality was proper.

2) Issue notice for final disposal of the matter, returnable on 10/8/2020.

3) Smt. Sushma, learned Counsel waives service of notice for respondent nos.1, 2 and 4.

4) We have seen the impugned order dated 14/11/2019 issued by the State Bank of India. We are anxious to know as to whether the State Bank of

India has acted on its own or on the basis of instructions issued by any other respondent in the matter. If we find that the action of the Bank is without

any authority, we will have to impose heavy costs upon the Bank. Apart from this, if the amount is lying with the personal account of the petitioner, we

are also surprised to note as to how the Bank is preventing or not permitting the petitioner to withdraw the amount. If any recovery is to be made, it

will be open for the employer to make the same in accordance with law.

5) This order be communicated to the learned Counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.â??

6. We were under an impression that the respondent No.3- State Bank of India, Medical College Area, Branch Nagpur, where the petitioner holds the pension account No.10387387888, must have acted on the basis of the instructions issued by the employer of the petitioner. Therefore, we passed an order stating that we are anxious to know as to whether the State Bank of India has acted on its own or on the basis of the instructions issued by the other respondents in the matter. Obviously, the employer is the party-respondent in this petition. We further made it clear that if we find that the action of the Bank is without any authority, we will have to impose heavy costs upon the Bank. It was also expressed that if the amount is lying with in personal account of the petitioner, how the Bank is preventing or not permitting the petitioner to withdraw the amount. If the recovery is to be made, it is open for the employer to make the same in accordance with law.

7. In response to this petition, the employer, who is the respondent No.4- the General Manager, Ordnance Factory, Bhandara, has filed an affidavit taking the stand in Paras 1 to 5 as under :

â??1. It is humbly submitted that the details of the Petitioner regarding service particulars, retirement date (as stated in the W.P.) are correct as per record.

2. It is humbly submitted that the Respondent No.02 i.e. the PCDA(P), Allahabad has issued revised PPO No.401199400151 (PPO Suffix 0199) (Copy enclosed as Annexure-R/1) dated 08/01/2018 in respect of the Petitioner, Ex Asstt. Foreman, O.F. Bhandara. Revised pension under the said PPO was Rs.25250/-(w.e.f. 01/01/2016) per month.

3. It is humbly submitted that the Respondent No.02 has Suo-moto revised the above said PPO vide PPO No.401199400151 (PPO Suffix 0101) (Copy enclosed as Annexure-R/2) on the basis of Circular No.C-202 dated 06/08/2019 (Copy enclosed as Annexure-R/3) and the pension was fixed to Rs.26,000/- (w.e.f. 01/01/2016).

4. It is humbly submitted that the PPOs are being sent by the Respondent No.02

to Respondent No.03 directly through email.

5. It is humbly submitted that the Respondent No.04 has not issued any order for recovery of any amount from the pension of the

Petitioner.â??

We have also perused Annexure-Q, which is the communication dated 4-12-2019 by the Accounts Officer from the office of the respondent No.4-

employer stating that the pension at the rate of Rs.26,000/- has been correctly notified.

8. We now turn to the reply filed by the respondent No.3- State Bank of India and Paras 4 to 8 being relevant, are reproduced below :

â??4. That the Petitioner submits that The pension was further revised from Rs.4,027.00 to Rs.9,102.00 as per the 6th C.P.C. This was payable to

the Petitioner as he was a Civil Pensioner, however the respondent bank calculated the same as a Personnel Below Officer Rank (PBOR) and

started paying him Rs.9974.00 thus an excess of Rs.872.00 per month from Oct. 2007 erroneously which was due to technical error in the system. It

is submitted that there was an corrigendum No.PPO No.C/Corr/6th CPC/04635/2012 and Circular No.102 which was not taken into consideration

while making the payments and the bank continued to pay Rs.9974.00 till the subsequent revision. The Copy7 of the Pay Fixation by the Respondent

No.2 is filed as Annexure R-1.

5. That the Pension was further revised from Rs.9,102.00 to Rs.25,634.00 as per the 7th CPC which is payable till date. That the Petitioner submits

that the basic was Rs.9,102.00 however the Bank paid Rs.9974.00 erroneously and further made enhancement of the Pension on the said erroneously

calculated pension which comes to Rs.25,634.00 which was being paid and on having noticed this fact, the Bank has fixed the Pension at Rs.25,250.00

which is as per the guidelines of the respondent No.2 and 4.

6. The respondent has not received any Memo from the respondent No.2 and 4 for enhance of pension to Rs.26,000/- as filed at Page No.92 by the

Respondent No.4 and on receipt of the copy of the Petition, the respondent has already taken up the matter with the respondent No.2 on 7.8.2020 vide

complaint No.52973 and on receipt of the clarification and appropriate PPO the increased pension if any shall be released as may be advised by the

Respondent No.2 and 4.

7. That the Petitioner submits that due to oversight an amount of Rs.3,69,035/- is paid in excess by the answering respondent during the aforesaid

period which is being recovered. It is submitted that the respondent No.5 has recovered the said amount over a huge period of time, which can be

seen from the fact that the aforesaid recoveries have started from Jan. 2006 and till date only Bank has partly recovered the amount and the Bank is

yet to recover an amount of Rs.42,042.00 till date and nominal interest thereon.

8. That the respondent submits that in view of the representations made the Bank has not recovered any amount from Dec. 2019 as the Petitioner has

informed that he is entitled to Rs.26,000.00 as pension and he is likely to receive sizeable arrears and the remaining amount can be recovered from the

said amount, for which bank has sent him various letters however the Petitioner only made correspondences and never met the bank officials for the

amicable resolution.â??

It is the stand taken by the respondent- Bank that an amount of Rs.872/- per month was erroneously paid in excess to the petitioner from the October

2007 due to technical error in the system.

9. Reliance is placed upon the Reserve Bank of India Circular No.RBI/2015-16/340-DGBA.GAD.No.2960/45.01.001/2015-16 dated 17-3-2016,

containing clause (c), which is reproduced below :

Â â??c) In case the pensioner expresses his inability to pay the amount, the same may be adjusted from the future pension payments to be made to

the pensioners. For recovering the over-payment made to pensioner from his future pension payment in instalments 1/3rd of net (pension + relief)

payable each month may be recovered unless the pensioner concerned gives consent in writing to pay a higher installment amount.â??

On the basis of the aforesaid clause, the Bank claims to have an authority to recover the excess payment made to the pensioner. It is the further stand

taken in Para 6 of the reply filed by the Bank that it has not received any Memo from the respondent Nos.2 and 4 for enhancement of pension from

Rs.26,000/-, which is referred to as Annexure R-2 in the reply filed by the employer and it is stated that the Bank has already taken up the matter with

the respondent No.2 on 7-8-2020 vide complaint No.52973 and on receipt of the clarification and appropriate PRO, the increased pension if any shall

be released as may be advised by the respondent Nos.2 and 4.

10. What we find in the present case is that the stand taken by the employer, the competent authority, is very clear and unequivocal in stating that the fixation of pension of the petitioner was correct and proper. The employer has supported the claim of the petitioner and has no role to play in the matter of reduction of pension or its recovery.

The letter dated 4-12-2019 addressed to the petitioner by the employer states that the pension at the rate of Rs.26,000/- has been correctly notified vide 7th CPC PPO No.401199400151 (0101). We are, therefore, satisfied that the entitlement of the petitioner to the pension was correctly fixed by the competent authority.

11. It is the stand taken by the Bank that the revised pension of Rs.9,102/- was payable to the petitioner as a civil pensioner, but the Bank calculated it as Rs.9,974/- as a personnel below officer rank (PBOR) and thus paid an amount of Rs.872/- per month in excess from October, 2007. Though we passed an order on 30-7-2020, reproduced earlier, to know the authority of the Bank to question this, we do not find any response to it in the reply filed, particularly when the Bank was knowing the stand of the employer supporting the claim of the petitioner for pension. We are of the view that it is not the authority of the Bank to fix the entitlement of the pension amount of the employees other than the employees of the respondent- Bank. We, therefore, hold that the action of the Bank to reduce the pension of the petitioner is unauthorized and illegal. Furthermore, the Bank has failed to demonstrate any technical error in the calculations.

12. The Bank has placed reliance upon the Reserve Bank of India Circular No.RBI/2015-16/340-DGBA.GAD.No.2960/45.01.001/2015-16 dated 17-3-2016 to urge that the authority to recover the excess payment is conferred upon it by the Reserve Bank of India. In Para 14 of the reply, the reliance is also placed upon the undertaking, said to have been given by the petitioner to the Bank, permitting the deduction of all such excess amounts, if so credited in his account due to oversight. The decision of the Apex Court in the case of High Court of Punjab and Haryana and others v. Jagdev Singh, reported in (2016) 14 SCC 267, has been relied upon. In our view, once we hold that in fact there was no excess payment made to the petitioner, the question of applicability of the instructions issued by the Reserve Bank of India or the undertaking given by the petitioner does not arise.

Consequently, the decision of the Apex Court in the aforesaid case would also not apply to the facts of the present case.

13. If the Bank had any doubt about the correctness of fixation of pension, it should have carried the correspondence with the employer and got the clarification. At least, an explanation in respect of the proposed deduction with retrospective effect from October, 2007 should have been called from the petitioner. This is the bare minimum requirement of the principles of natural justice. No enquiry or investigation is made before taking the action impugned by the Bank. It is for the first time on 7-8-2020, i.e. after issuance of notice by this Court in the present petition, that the Bank started making enquiries and seeking clarifications from the employer of the petitioner in respect of pension and an assurance is given in the reply that the restoration of pension shall be done, as may be advised by the respondent Nos.2 and 4, the employers. This exercise, in our view, should have been carried out prior to effecting the deductions from the pension payable to the petitioner. The entire action of the Bank, in our view, is arbitrary, unreasonable, unauthorized and in flagrant violation of the principles of natural justice and cannot be sustained.

14. The Bank is a trustee of the account of the pensioners, like the petitioner, and has no authority in the eyes of law to dispute the entitlement of the pension payable to the employees, other than those in the employment of the Bank. To tamper with such account and effect the recovery of pension without any authority, is nothing but a breach of trust of the petitioner by the Bank. We should not be understood to have said that even where there is technical error in calculation, other than of entitlement, is committed resulting in excess payment, the Bank cannot recover it. We have already held that no such case is made out here. The petitioner is of 85 years of age and in Para 5 of the petition, it is the claim that he bears a great liability of mentally disabled daughter, aged about 45 years, who has to be looked after mentally and physically, and the costly medical treatment is required to be administered. Instead of showing sensitivity to the problems of senior citizens, the Bank has shown the arrogance and the the petitioner was driven from pillar to post to know the reason for deduction of amount from the pension payable to him. Though we issued notice for final disposal of the matter, keeping in view that the petitioner is a senior citizen and requires immediate attention to his problem, the respondent- Bank has chosen to file

only interim submissions on affidavit sworn-in by the Manager, State Bank of India, Medical College Area, Branch Nagpur.

15. The Bank has reduced the pension payable to the petitioner from Rs.9,974/- to Rs.9,102/- per month and the amount of Rs.872/- per month is said

to have been paid in excess to the petitioner, which is being recovered. In fact, an amount of Rs.3,26,045/- has already been recovered and the

recovery of the balance amount of Rs.42,042/- is proposed to be made. We, therefore, need to direct the Bank to refund the amount of Rs.3,26,045/-

to the petitioner by crediting it in his pension account with interest at the rate of 18% per annum from the date of deduction till the date of crediting

such amount in the account of the petitioner. We have to restrain the Bank from recovering the balance amount of Rs.42,042/- from the pension

account of the petitioner. The Bank is required to be directed to pay the costs of Rs.50,000/- to the petitioner towards the expenses of this petition,

mental agony and harassment, within a period of eight days from today; failing which, the further costs of Rs.1,000/- for each day's delay shall

have to be imposed.

16. Before parting with this Judgment, we need to remind the Bank that the pension payable to the employees upon superannuation is a

â??propertyâ?? under Article 300-A of the Constitution of India and it constitutes a fundamental right to livelihood under Article 21 of the

Constitution of India. The deprivation, even a part of this amount, cannot be accepted, except in accordance with and authority of law. Article 41 of

the Constitution of India in the Part IV of Directive Principles of State Policy has created an obligation upon the State to recognize a right of public

assistance in the case of old age, sickness and disablement. Article 46 therein requires the State to promote with special care the economic interests

of the weaker sections of the people. In short, the aforesaid provisions of the directive principles of State policy create an obligation upon the State to

enact suitable laws, making the provisions to recognize a right of public assistance, to promote economic interests, to protect the life and property of

senior citizens, to treat them with respect and dignity and to give wide publicity to it.

17. Unfortunately, the time has come to tell the Bank that the aging is natural process, which leads to weakening of the body and mind. The

productivity, working ability and mobility decreases or paralyzes with growing age. The traditional norms, values and culture in the Indian Society

demand to treat the senior citizens with respect, dignity and lay stress on providing security, care and assistance to them. It becomes a part of the

human right of the senior citizens. The senior citizens are the persons who had shouldered the responsibility of building a nation in general and society

or community in particular, while in service. Utilizing their experience in the life and working, the strong shoulders are created of young persons to

substitute and rest the responsibility upon them, while demitting the office. The bank officials must realize that tomorrow it may be their turn, upon

superannuation, to fight for the pension or post-retiral benefits. The thought process, therefore, to be adopted should be of a person in a situation like

the petitioner. The respect, dignity, care, sensitivity, assistance and security would automatically follow.

18. We have, however, seen and can take judicial note of the fact that the security of the senior citizens always remain in peril. We have seen the

senior citizens anxiously waiting for credit of the pension amount in their account and standing in a queue for withdrawal. Once the amount is

withdrawn personally either from the Bank or from the ATM, a serious threat starts posing to the life from the watchdogs roaming around involved in

pick-pocketing and stealing. We have actually seen the old aged persons " men and women, counting the currency with cramping hands and trying

to secure the amount at some hidden place in the body. It is then after waiting in the premises of the Bank and taking stock of the situation and the

atmosphere with scared mind and the feeling of insecurity, the escape route and time is chosen to reach to their destination safely. It is a high time for

the Banks to create a separate cell and to devise a method to provide personal service through the men of confidence, at the door-step to the old aged,

disabled and sick persons who are the senior citizens. They have to be treated with respect and dignity. The sensitivity to the problems of the senior

citizens need to be addressed. The mechanism for immediate redressal of grievance needs to be provided. The officers having a degree or

master's degree in Social Work or Psychology, who can be in personal touch with and genuinely understand and redress the grievances or

complaints of the senior citizens, can be appointed.

19. In the result, this petition is allowed and the following order is passed :

(1) The action of the respondent No.3- Bank in deducting an amount of Rs.11,040/- per month with effect from October, 2019 is hereby quashed and set aside.

(2) We direct the respondent No.3- Bank to immediately credit an amount of Rs.3,27,045/-, recovered from the pension account of the petitioner, along with interest at the rate of 18% per annum from the date of recovery of each of the installments, till the date of credit of this amount in the pension account of the petitioner.

(3) The respondent No.3- Bank is restrained from recovering any amount from the pension payable to the petitioner on the basis of the action, which we have quashed and set aside.

(4) We direct the respondent No.3- Bank to pay the compensation of Rs.50,000/- to the petitioner and credit the said amount in the pension account of the petitioner within a period of eight days from today, failing which the additional costs of Rs.1,000/- for each day's delay will have to be paid.

(5) We direct the Registry of this Court to forward the copies of this Judgment to the Centralized Processing Pension Centres of all

the Nationalized Banks and also to the Reserve Bank of India and the Chief Secretary, Government of Maharashtra, to consider the

question of constitution of separate cell and release of appropriate guidelines so as to attain the constitutional goal of providing

respect, dignity, care, sensitivity, assistance and security to all the pension account holders in the Banks.

(6) This Judgment be uploaded under the digital signature of the Private Secretary.

20. Rule is made absolute in the aforesaid terms. No order as to further costs.