

(2016) 07 PAT CK 0017

In the Patna High Court

Case No : Letters Patent Appeal No.1629 of 2015 IN Civil Writ Jurisdiction Case
No. 5570 of 2015

Santosh Kumar Ghosh

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 PLJR 183

Hon'ble Judges : I.A. Ansari, ACJ. and Smt. Anjana Mishra, J.

Bench : Division Bench

Advocate : Mr. Dhananjay Kumar Shahi, Advocate, for the Appellant; Mr. Sanjay Kumar, ASG, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, ACJ - Under what circumstances, recovery can be made from a retired government employee falls as the moot question for determination in this intra Court appeal, which has been preferred against the order, dated 25.06.2015, passed, in CWJC No.5570 of 2015, where under a learned single Judge of this Court has directed recovery of a sum of Rs.1,600/- instead of recovery, which was being made of a sum of Rs.3,200/- per month from the monthly pension of the petitioner-appellant.

2. Material facts, leading to the present appeal, may, in brief, set out as under:

3. The writ petitioner voluntarily retired from CISF on 30.04.2013 and since then, he has been drawing pension from the Union of India, the initial pension being paid from the date of retirement in 2003 till February, 2012, in the pre-revised pay-scale and the monthly pension being, as on 28.02.2012, Rs.7,184/- per month.

4. However, upon implementation of the recommendations of 6th Pay Revision Committee, an amount of Rs.2,33,086/- was paid to the petitioner as arrear and

he was being paid revised pension at the rate of Rs.11,230/- per month substituting the old pension of Rs.7184/- per month. Though the petitioner continued to receive the said benefit of revised pension from the month of April, 2012, till October, 2012, it was, later on, detected in October, 2012, that the fixation of pension, on account of revision of pay scale, was erroneous and contrary to Government's decision inasmuch as the petitioner was entitled only to a monthly pension of Rs. 9,693/- per month. From the month of November, 2012, the petitioner was, therefore, started being paid pension of a sum of Rs.9,693/- per month making deduction of a sum of Rs.3200/- per month as recovery from the amount of Rs.3,83,145/- already paid in excess of the pension amount entitled to be received by the petitioner.

5. The recovery so made was put to challenge by the writ petitioner, whereby the writ petitioner sought for issuance of a writ commanding the respondents not to recover excess amount already paid in respect of the pension of the petitioner, who retired as a constable from Central Industrial Security Force (in short CISF), Government of India, and/or refund the excess amount already recovered.

6. Under order in appeal the learned single Judge did not, however, set aside the order of recovery, but directed that instead of Rs.3,200/- per month, the deduction shall be made at the rate of Rs.1,600/- per month.

7. Aggrieved by the decision so arrived at and the direction given, this appeal has been preferred.

8. We have heard Mr. Dhananjay Kumar Shahi, learned Counsel, appearing on behalf of the appellant, and Mr. Sanjay Kumar, learned Additional Solicitor General, appearing on behalf of the Union of India.

9. While considering the present appeal, it may be noted that it is the appellant's case that the appellant had paid the money, which he had received as arrears of his pension, towards treatment of his wife and had also incurred a loan from the bank for the purpose of making further payment of medical treatment of his wife and if such recoveries were continued to be made, he would be subjected to a life of abject poverty.

10. In support of his contention that the recovery in the present case is not permissible in law, Mr. Dhananjay Kumar Shahi, learned Counsel, appearing on behalf of the appellant, relies on the decision of the Supreme Court in the case of State of Punjab and Ors. v. Rafiq Masih and others, reported in (2015)4 SCC 334, wherein the Supreme Court at paragraphs 7 and 8 had held:

"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be

iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover."

11. From a careful reading of the observations made above, it clearly transpires that recovery of monitory benefit wrongly extended to an employee by his employer can be interfered with in a case, where such recovery would result in a hardship of a nature, which would far outweigh the equitable balance of the employer's right to recover.

12. To put it a little differently, the Supreme Court has held, in Rafiq Masih's case (supra), that interference would be called for only in such cases, where it would be iniquitous to recover the excess payment already made.

13. Concluded, therefore, the Supreme Court in Rafiq Masih's case (supra), at paragraph 18, thus:

"It is not possible to postulate all situations of hardship which would governed the 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 herein above, we may, as a ready reference, summarized the following situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees or the employees who are due to retire within one year of the order of recovery.

(iii) Recovery from the 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 being required to discharged duties of a higher post, and has been paid accordingly, even though he should have rightfully being 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."

14. From the law, which has been summarized and laid down in Rafiq Masih's case (supra), it becomes clear that the Court would prevent, and interfere with, recovery of an excess payment made to a retired employee if the materials on record reveal that recovery from the employee of the excess payment made 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.

15. In the case at hand, the admitted position is that the excess payment to the petitioner-appellant had not been made because of any misrepresentation made, or fraud played, by the petitioner-appellant; rather, the error was on the part of the employer. We are, therefore, clearly of the view that the appellant, having already spent, in the treatment of his wife, the money, which he had received in excess of his entitlement, cannot be made to repay the amount inasmuch as the hardship, which would be caused by the recovery, would far outweigh the equitable balance of the employer's right to recover; more so, when the appellant-applicant, having retired in the year 2003 itself has already incurred loan from bank for medical treatment of his wife.

16. We, therefore, allow this appeal and set aside the judgment and order under appeal. We direct that no further recovery shall be made from the pension of the appellant for the excess payment of pension, which had been made to him.

17. No order as to costs.

Anjana Mishra, J. - I agree.