

(2024) 02 CHH CK 0014
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 2556 Of 2020

Vidya Dhar Bajpai

APPELLANT

Vs

State Bank Of India

RESPONDENT

Date of Decision : 05-02-2024

Acts Referred:

Central Civil Services (Pension) Rules, 2021 — Rule 66(4)

Citation : (2024) 02 CHH CK 0014

Hon'ble Judges : Arvind Singh Chandel, J

Bench : Single Bench

Advocate : Anand Shukla, P.R. Patankar

Final Decision : Allowed

Judgement

1. The instant petition has been moved by the Petitioner seeking following reliefs:

"10.1) That, this Hon'ble Court may kindly be pleased to set aside the order dated 18.05.2020 & 01.06.2020 (ANNEXURE P-1) in the interest of justice.

10.2) That, this Hon'ble Court may kindly be pleased to issue a writ/direction to respondent authorities to reimburse the recovered amount of the petitioner and recreate his Fixed Deposit.

10.3) That, this Hon'ble Court may kindly be pleased to call for the entire records of the case.

10.4) That, this Hon'ble Court may kindly be pleased to award cost.

10.5) Any other relief or relief(s) which this Hon'ble Court may think proper in view of the facts and circumstances of the case may also kindly be granted."

2. Facts of the case, in short, are that the Petitioner was appointed as a Clerk-cum-Typist in the State Bank of India/Respondents on 16.8.1978 and after completion of his service tenure he retired from service on 31.12.2014. On 19.5.2020, the Petitioner discovered that his STDR amount was frozen by the

State Bank of India (henceforth 'the Bank') and hold on his savings account had been removed. On 22.5.2020, the Petitioner, vide Annexure P3, made a communication to the State Bank of India/Respondents mentioning that he had not requested freezing or holding of any of his accounts and had also not received information regarding any excess payment to him. In response, vide letter dated 21.5.2020, the Bank informed that the action was not for a recovery, rather the action was for holding his account. Vide letter dated 1.6.2020, it was informed by the Bank that an excess payment of Rs.9,45,011 had been made to the Petitioner and as per the direction issued by Respondent 2 this amount has to be recovered from the Petitioner. The Bank provided the Petitioner with contact number of the concerned department for clarification also. The Petitioner tried to contact the concerned, but, did not get any response. Meanwhile, without providing a due opportunity and without obtaining any consent from the Petitioner the premature FDR of the Petitioner was broken by the Respondent/Bank on 3.6.2020 and the amount was credited into his savings bank account and thereafter the amount of excess payment of Rs.9,45,011 was debited from the savings bank account of the Petitioner and the same was credited into the account of Respondent 2. Hence, the instant petition.

3. Learned Counsel appearing for the Petitioner submitted that the action of the Respondents is arbitrary and violates the principle of natural justice. The Respondent/Bank without serving any show cause notice or obtaining any consent from the Petitioner his premature FDR was broken by the Respondent/Bank and the amount was credited into his savings bank account and the amount of excess payment of Rs.9,45,011 was debited from his savings account and was credited into the account of Respondent 2. It was further submitted by the Learned Counsel that the Petitioner has neither committed any fraud nor had misappropriated any money. The excess amount was given to the Petitioner by the Bank authorities due to their own mistake. The case of the Petitioner is squarely covered by a judgment of the Supreme Court in *State of Punjab v. Rafiq Masih (White Washer)*, (2015) 4 SCC 334, as the Petitioner herein is a retired employee of the Bank and recovery is being made by the Bank after his retirement on account of excess payment of pension which is not permissible. Reliance was also placed on *Thomas Daniel v. State of Kerala*, AIR 2022 SC 2153 as also on a judgment dated 25.4.2019 passed by a Coordinate Bench of this Court in Writ Petition (C) No.767 of 2019 (*Prabhash Chandra Sardar v. State Bank of India*).

4. Learned Counsel appearing for the Respondents/State Bank of India submitted that consequent on revision of pension on account of 10th bipartite agreement the basic pension of the Petitioner was revised from Rs.14,340 to Rs.23,445 which was to be paid along with dearness allowance as applicable for the retired employee who retired from the service of the Bank on or after 1.11.2012. However, due to inadvertence, since July, 2016 the Petitioner was erroneously paid the higher rate of dearness allowance which was applicable for the retired employees who retired from the service of the Bank between 1.11.2007 and

31.10.2012 during the 9th bipartite settlement. The excess payment of dearness allowance continued till April, 2020. The anomaly was detected in May, 2020. Hence, on 18.5.2020, the Petitioner was issued a notice (Annexure P1) informing him about the excess payment of Rs.9,45,011 and requesting him to refund the excess payment as early as possible as the Petitioner was having sufficient amount in his fixed deposit. He further submitted that the excess amount has been recovered from the Petitioner as per the circular dated 17.3.2016 issued by the Reserve Bank of India (Annexure R4). He further submitted that the law is well settled that if a person has received an amount mistakenly to which he is not entitled to then he has to refund the same. He further submitted that the case of Rafiq Masih (supra) is not applicable to the present case being distinguishable on facts.

5. I have heard the rival contentions put-forth on behalf of the parties and perused the material available with due care.

6. Undisputedly, the Petitioner after completion of his service tenure retired from service on 31.12.2014. As contended by Learned Counsel for the Respondents/Bank, consequent on revision of pension on account of 10th bipartite agreement, the basic pension of the Petitioner was revised from Rs.14,340 to Rs.23,445 with dearness allowance. According to Learned Counsel for the Respondents/Bank, the Petitioner was erroneously paid the higher rate of dearness allowance which was applicable for the retired employee who retired from service between 1.11.2007 and 31.10.2012 during the 9th bipartite settlement. Since the Petitioner retired on 31.12.2014, i.e., after 1.11.2012, the Petitioner is entitled to get lesser dearness allowance. In July, 2016, the Petitioner was erroneously paid higher rate of dearness allowance till 2020 which was recovered by the Bank from the Petitioner as per the circular of the Reserve Bank of India dated 17.3.2016 (Annexure R4). A bare perusal of the said circular goes to show that the recovery of excess payment made to a pensioner is permissible, but, how that recovery will be made a method is prescribed in the said circular (Annexure R4). Though the circular (Annexure R4) empowers the Bank to recover the excess payment made to a pensioner from his account, in the case in hand also, the Respondent/Bank recovered the amount of excess payment of Rs.9,45,011 from the savings bank account of the Petitioner. But, before debiting the said amount from the savings bank account of the Petitioner, the Respondent/Bank, without obtaining any consent from the Petitioner, broke his premature FDR on 3.6.2020 and the amount of FDR was credited into the savings bank account of the Petitioner. Thereafter, the excess payment made to the Petitioner was debited from his savings bank account and the same was credited into the account of Respondent 2, which clearly shows arbitrariness on the part of the Respondent/Bank. The Respondent/Bank had no authority to break the premature FDR of the Petitioner without obtaining his consent.

7. At this juncture, it would be appropriate to reproduce sub-rule (4) of Rule 66 of the CCS (Pension) Rules, 2021 (henceforth '2021 Rules'), which reads thus:

"xxx

(4) If, consequent on revision of pension or family pension under sub-rule (2), an excess payment of pension or family pension is found to have been made to the pensioner or family pensioner and if such excess payment is not on account of any misrepresentation of facts by the pensioner or family pensioner, the administrative Ministry or Department shall examine in consultation with the Ministry of Finance (Department of Expenditure) whether or not recovery of such excess payment can be waived off and issue appropriate orders in accordance with the relevant rules and instructions in this regard."

8. Sub-rule (4) of Rule 66 of 2021 Rules clearly provides that where an excess payment has been made to a pensioner and there is no misrepresentation of facts by the pensioner the Department shall examine in consultation with the Ministry of Finance (Department of Expenditure) whether or not recovery of such excess payment can be waived off. In the case in hand also, there is no allegation against the Petitioner/pensioner that the excess payment made to him was done due to his misrepresentation of facts. Therefore, in the light of the above, the case of the Petitioner is also liable to be examined by the Department in consultation with the Ministry of Finance. Since the amount of excess payment has been deducted by the Respondents/Bank without any authority and without obtaining any consent from the Petitioner by breaking his premature FDR, this action on the part of the Respondent/Bank is totally arbitrary.

9. Thus, the recovery is held to be void. The instant writ petition is allowed. The Respondents are directed to deposit the entire deducted amount of Rs.9,45,011 along with simple interest @ 6% per annum payable with effect from the date of breaking of premature FDR of the Petitioner, i.e., 3.6.2020 in the savings bank account of the Petitioner within a period of one month from the receipt of this order. However, the Respondents, if they so desire, can make recovery of the amount of excess payment from the Petitioner in accordance with the relevant rules and law. Since the above excess payment was not made to the Petitioner due to misrepresentation of facts by him, the Respondents are also directed to consider the case of the Petitioner as contained in sub-rule (4) of Rule 66 of the CCS (Pension) Rules, 2021.