

Before Rajiv Narain Raina, J

S. S. GURAYA — Petitioner

versus

UNION OF INDIA — Respondents

CWP No. 23195 of 2015

March 17, 2017

Constitution of India — Art. — 226 — Pension matter — Recovery of excess pension after 30 years held illegal — Petition is old pensioner with 33 years of service on 31.10.1985 — Almost 30 years after retirement, without prior notice, the Bank started to make recoveries per month on some alleged over payment of pension — Stand in defence of recovery is an undertaking given by a pensioner — Writ allowed.

Held that condition in Para 3 of the letter dated 15.03.2017 is general in nature and not specific to this case. There is no evidence produced on record that the present petitioner had given an undertaking in the year 1985 or at any time that excess payment credited into pensioner account can be recovered by the Bank. No such evidence is produced before this Court to apply the principle of Jagdev Singh's case (*supra*) which is distinguishable on facts.

(Para 7)

Further held that in any case it is far too long a time to lay surprise on the petitioner who returned 33 years ago for sustaining recovery from pension. Even the state cannot recover money after 30 years in view of Article 112 of the Schedule of the Limitation Act. Direction (v) in Rafia Masih's case (*supra*) clearly comes to the aid of petitioner when their lordships of the Supreme Court carved exception [other than directions (i) to (iv)] holding that 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 employees right to recover then even the thought of recovery is ruled out. The writ petition is allowed.

(Para 8)

Petitioner in person.

Vivek Singla, Advocate
for Union of India.

H.S.Bhatia, Advocate
for respondents No.2 & 3.

RAJIV NARAIN RAINA, J. (ORAL)

(1) The petitioner is an old pensioner with 33 years of service to his credit as a Commissioned Officer in the rank of Major under Government of India, Ministry of Finance and Ministry of Defence respectively. Before he retired from service on 31.10.1985, he had served in a Civil Department, in the Army and lastly in the NCC. He was sanctioned pension by the PCDA Allahabad vide PPO No.2141/1985. He withdraws his pension entitlements from respondent No.3 – Punjab National Bank, Jagadhri (Haryana). Almost 30 years after retirement, without prior notice, the Bank fell on him by starting to make recoveries @ Rs.10,000/- per month from the account of pensioner on some alleged over payment of pension. The monthly pension suddenly dropped from Rs. 43,692/- to Rs. 25,087/- in October, 2014, which the petitioner laments has disturbed his monthly budget and caused undue harassment to him and his family. Against this arbitrary action of the Bank, the petitioner has approached this Court.

(2) After notice of motion was issued, the Union of India filed an application in this Court for remitting the case to the Armed Forces Tribunal but on second thoughts withdrew the application on 16.09.2016 and in these circumstances, notice was issued to the Punjab National Bank – respondent No.3 and was directed to file reply by interim order.

(3) The Bank has filed its reply but no defence whatsoever has been offered except to say that the pension of the petitioner was not correctly fixed and therefore, fresh calculation was required to be made and that the pension actually payable to the petitioner was Rs. 33,900/- instead of Rs.39,323/-, the details of which have been worked out and tabulated in the reply.

(4) Since it appeared to the Court that the case was covered by the decision of Supreme Court in *State of Punjab & others* versus *Rafiq Masih (white washer)*¹, this Court passed the following interim order:

¹ (2015) 2 SCC (Civil) 608

“Mr. Vivek Singla, Advocate to take instructions from the Union of India as to why this petition should not be allowed and the recovery order quashed in view of the State of Punjab & others vs. Rafiq Masih (white waster) etc. (2015) 2 SCC (Civil) 608. The petitioner appears in person had retired in 1985.

List on 17.03.2017 for final disposal.

To be shown in the urgent list.”

(5) Mr. Vivek Singla, Advocate appears for Union of India and has produced a letter received from the office of Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad dated 15.03.2017 with reference to the present case in which in para. 3 it has been recorded as follows:

“In this connection, it is stated that an undertaking submitted by retiring Govt. Servants/pensioners to the Pension Disbursing Agencies i.e. Banks / Treasury / DPDO before commencement of pension. As per para 9.2 (II) of the scheme for the payment of pension of defence pensioners, it has been clearly mentioned that before starting payment of pension, the paying bank will obtain the undertaking in Annexure – K from the pensioner that any excess payment credited to his/her account can be recovered by the bank.”

(6) What is pressed in defence of recovery is an undertaking given by a pensioner that if any excess payment is credited to his/her account it can be recovered by the Bank and on this proposition, the Union of India has relied on the judgment of the Supreme Court delivered on July 29, 2016 in ***High Court of Punjab & Haryana & ors. versus Jagdev Singh***, [Civil Appeal No. 3500 of 2006] distinguishing ***Rafiq Masih's case (supra)*** in cases where an undertaking has been given to return money overpaid by mistake.

(7) Condition in Para 3 of the letter dated 15.03.2017 is general in nature and not specific to this case. There is no evidence produced on record or pointed out in the letter dated 15.03.2017 that the present petitioner had given an undertaking in the year 1985 or at any time that excess payments credited into pensioner account can be recovered by the Bank. No such evidence has been produced before this Court to apply the principle of ***Jagdev Singh's case (supra)*** which is distinguishable on facts.

(8) In any case, it is far too long a time to lay a surprise on the complacent petitioner who retired 33 years ago for sustaining recovery from pension. Even the State cannot recover money after 30 years in view of Article 112 of the Schedule to the Limitation Act, 1963 which bars State to recover the money after 30 years. Direction (v) in **Rafiq Masih's case (supra)** clearly comes to the aid of the petitioner when their Lordships of the Supreme Court carved exception [other than directions (i) to (iv)] holding that 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 then even the thought of recovery is ruled out. I think it would be wholly iniquitable an extremely harsh to sustain the recovery by the Bank.

(9) It may be pointed out that in **Jagdev Singh's case (supra)** the High Court employee retired in 2003 and recovery was effected early from 2004 onwards and that is how the employee was pinned down to his undertaking given in the pension papers duly signed.

(10) In view of the above, the letter dated 15.03.2017 retained on record as Mark 'A' is quashed to the extent it adverse to the interest of the the petitioner. It is declared not binding on him.

(11) The writ petition is allowed and the respondent-bank will return the money recovered by it so far within a period of one week from the date of receipt of certified copy of this order. The future monthly entitlements to pension will remain in original position. The action of Union of India and the Bank in reducing the pension of the petitioner and effecting recovery is held illegal, arbitrary and unconstitutional and violative of petitioner's rights *inter alia* under Article 300A of the Constitution of India. The petitioner will have costs of this petition assessed at Rs.50,000/- to be paid by the respondent Punjab National Bank for not even raising plausible defence in the reply. The costs be deposited together with the recovered amount within same time frame with interest @ 18% per annum from the date of illegal ex parte deduction till deposit.

Amit Aggarwal