

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 30th OF OCTOBER, 2023

WRIT PETITION No. 7407 of 2020

BETWEEN:-

**ANUGRAH KIRAN DAS W/O LATE MR. SANTOSH
SUNIL DAS, AGED ABOUT 65 YEARS,
OCCUPATION: RETIRED TEACHER 156 MCI
CHRISTIAN COLONY KATANGA (MADHYA
PRADESH)**

.....PETITIONER

***(PETITIONER BY SHRI BRIAN D'SILVA – SENIOR ADVOCATE WITH SHRI
SARABVIR SINGH OBERAI - ADVOCATE)***

AND

- 1. STATE BANK OF INDIA THROUGH
ADDITIONAL GENERAL MANAGER
CENTRALIZED PENSION PROCESSING
CELL BEHIND WORKING WOMEN HOSTEL
GOVINDPURA BHOPAL (MADHYA
PRADESH)**
- 2. STATE BANK OF INDIA THR. ITS BRANCH
MANAGER KATANGA JABALPUR
(MADHYA PRADESH)**
- 3. KENDRIYA VIDHYALAYA SANGATHAN
THR. DEPUTY COMMISSIONER REGIONAL
OFFICER JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.1 AND 2 BY SHRI PRABHANSHU SHUKLA - ADVOCATE)

*This petition coming on for admission this day, the court passed
the following:*

ORDER

This petition under Article 226 of Constitution of India has been filed against order dated 09.03.2020 passed by respondent No.1/State Bank of India by which petitioner has been informed that excess payment to the tune of Rs.3,11,894/- has been paid and thus it was directed that either petitioner may refund the entire amount in one installment or else the excess amount shall be recovered in easy monthly installment of Rs.12,394/-.

2. It is the case of petitioner that petition is a retired teacher. The petitioner is a widow and uses major amount of her pension towards medical treatment and the recovery of the excess payment made to petitioner has adversely affected her financial condition. It further submitted that in the light of judgment passed by Supreme Court in the case of State of **State of Punjab & Others vs. Rafiq Masih (White Washer)** reported in **(2015) 4 SCC 334**, the recovery of excess payment made to the retired employee is not permissible. It is further submitted that in the impugned order it has already not been clarified that under what circumstances excess payment of her pension was made.

3. *Per contra*, the petition is vehemently opposed by counsel for respondents No.1 and 2. The respondent No.3 has also filed its return separately.

4. It is the case of respondents No.1 and 2 that petitioner had commuted her pension and as such the commuted portion of pension was required to be reduced from her pension from the date of payment

of commuted value of pension for the next 15 years and only thereafter the pensioner was entitled to get the full pension. In the present case, although the petitioner had commuted her pension but the commuted portion of her pension was not reduced from the pension, which was paid to the petitioner. The petitioner had claimed commutation of pension in the year 2014 and thus commutation installment of Rs.4946/- was to be deducted for a period of 15 years. However, the commuted installment of Rs.4946/- was not deducted. As a result, excess payment of Rs.3,11,894/- was made to the petitioner, which is liable to be recovered. The Reserve Bank of India vide Circular No.RBI/2015-16/340 dated 17.03.2016 has clearly provided that as soon as the excess/wrong payment made to a pensioner comes to the notice of the paying branch, then the branch should adjust the same against the amount standing to the credit of pensioner's account to the extent possible including lumpsum arrears payment. The petitioner had given an undertaking to refund or make good to the bank, any amount to which she was not entitled or any excess payment, which may be credited to her account. Although, the petitioner had claimed commutation of pension and she was fully aware of the fact that she is not entitled for the entire pension but still she did not bring it to the notice of the bank that excess pension is being made. The bank should have deducted the commuted portion of pension, whereas she was continuously receiving her full pension, which clearly indicates the dishonest intention of the petitioner.

5. Respondent No.3 has filed its return separately and has claimed that although the excess payment was made by respondents

No.1 and 2/State Bank of India but since petitioner was an ex-employee of Kendriya Vidyalaya Sangthan, therefore, if the petitioner is seeking any relief against Kendriya Vidyalaya Sangthan, then she has to approach the Central Administrative Tribunal and writ petition is not maintainable.

6. It is also submitted that all the relevant orders related to pension of petitioner were sent to Manager (Pension), State Bank of India, Main Branch Parliament Street, New Delhi and copies were endorsed to the petitioner from time to time by speed post. The total retirement benefit amounting to Rs.13,17,260/- comprising of retirement gratuity of Rs.7,78,995/-, the commutation of pension Rs.4,86,331/- and Leave Encashment of Rs.51,934/- was paid to her through the Principal, KV CMM, Jabalpur vide Cheque No.258462 dated 30.08.2014 on her superannuation and the acknowledgement receipts of the aforesaid payment executed by the petitioner have also been filed as Annexure- R/2. After release of payment of commutation of pension, revised pension payment order was issued on 11.09.2014 by deducting the amount of commutation i.e. Rs.4946/- p.m. out of full pension of Rs.12,365/- and reduced pension payable @ Rs.7,419(+)DR on original pension as admissible from time to time.

7. The petitioner had also submitted an undertaking with regard to refund of excess payment paid to her towards retirement gratuity, leave encashment, pension including Ad-hoc relief and other dues. Even, after receipt of revised pension payment order dated 11.09.2014, the petitioner did not inform to the Disbursing Authority regarding excess receipt of commuted portion of pension of Rs.4946/-. Thus, it is

also the case of respondent No.3 that petitioner was wrongly paid full pension and the commuted portion of pension was not deducted.

8. Heard the learned counsel for parties.

9. The petitioner has not disputed the fact that she had commuted the pension and had received an amount of Rs. 4,86,331/- towards the commutation of pension. She has also not disputed her liability to refund the commuted portion of pension in easy installment of Rs.4946/- p.m. for 15 years. It has also not been disputed by the petitioner that the revised pension payment order was also received by her. It is also not disputed by her that she did not bring it to the knowledge of the Disbursing Authority about the excess payment of pension.

10. The only contention of counsel for petitioner is that once the person has retired, then the excess payment cannot be recovered in the light of **Rafiq Masih** (supra).

11. Considered the submissions made by counsel for parties.

12. It is the case of respondents that petitioner had also executed an undertaking that in case if any excess payment is made, then she will be liable to refund the same.

13. The petitioner was already in possession of the revised pension payment order. She knew the fact that she has commuted her pension and is not entitled for full pension in spite of that she did not bring it to the notice of the bank and was happily receiving the full pension.

14. So far as the judgment passed in the **Rafiq Masih** (supra), the same is not applicable on two grounds i.e.

- (i) The petitioner had executed an undertaking.
- (ii) The excess payment was not made while the petitioner was in service but it is a case of excess payment of pension.

15. It is a case where commuted portion of pension was not recovered. The mistake was committed by the Disbursing Authority i.e. State Bank of India and not by the employer because the employer had issued a revised pension payment order but either it escaped from the notice of the Disbursing Authority or it did not reach to the Disbursing Authority.

16. In the present case, petitioner had already received the commuted portion of her pension and although She was under obligation to refund the same in easy installment of Rs.4946/- per month for a period of 15 years but she was very happy to note that the State Bank of India was making full payment of pension and was not deducting the commuted portion of pension.

17. This conduct of the petitioner also amounts to breach of trust because it was expected from the petitioner to bring it to the notice of the bank that excess payment is being paid to her for which she is not eligible.

18. Since, petitioner had given an undertaking, therefore the law laid down by the Supreme Court in the case of **High Court of Punjab & Haryana & Ors. vs. Jagdev Singh** reported in (2016) 14 SCC would apply.

22. There is no question of any undertaking under compulsion. It is not a case of petitioner that the bank had ever threatened the

petitioner that unless and until undertaking is executed she would not be paid her pension. It was a voluntary act of petitioner.

23. Considering the totality of the facts and circumstances of the case and the petitioner had already received the amount of commuted pension in advance and instead of refunding the same she was happy in receiving the full pension amount.

24. This Court is of the considered opinion that respondent No.1 and 2/ State Bank of India did not commit any mistake by directing for refund of the excess pension received by her.

25. The Supreme Court in the case of **Style (Dress Land) v. UT, Chandigarh**, reported in (1999) 7 SCC 89 has held as under:-

“15. Regarding awarding of the interest by the High Court for the period of stay it is argued that as in *Sahib Singh case* no such direction was issued, the appellants could not be burdened with the liability of paying the interest and that at the rate of 18% per annum it was excessive and exorbitant. It is a settled principle of law that as and when a party applies and obtains a stay from the court of law, it is always at the risk and responsibility of the party applying. Mere passing of an order of stay cannot be presumed to be the conferment of any additional right upon the litigating party. This Court in *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn.* [(1992) 3 SCC 1] held that the said portion of order by the Court means only that such order would not be operative from the date of its passing. The order would not mean that the order stayed had been wiped out from existence. The order of stay granted pending disposal of a case comes to an end with the dismissal of a substantive proceeding and it is the duty of the court in such cases to put the parties in the same position they would have been but for the interim orders of the court. Again in *Kanoria*

Chemicals and Industries Ltd. v. U.P. SEB [(1997) 5 SCC 772] the Court held that the grant of stay had not the effect of relieving the litigants of their obligation to pay late payment with interest on the amount withheld by them when the writ petition was dismissed ultimately. Holding otherwise would be against public policy and the interests of justice. In *Kashyap Zip Industries v. Union of India* [1993 Supp (3) SCC 493 : (1993) 64 ELT 161] interest was awarded to the Revenue for the duration of stay under the Court's order, since the petitioners therein were found to have the benefit of keeping back the payment of duty under orders of the Court.

16. The High Court was, therefore, not wrong in directing the payment of interest on the amount of arrears of rent for the period when the stay order was obtained till the period the writ petitions were dismissed. We, however, feel that awarding of interest @ 18% per annum from the aforesaid period was on the excessive side. The respondent authority could not be equated with private commercial institutions and conferred with an amount of compensation in the form of interest which, in the judicial parlance, may amount to penalty, despite the fact that the persons found to have jeopardised the process of law were rightly held liable to compensate the respondent authority by way of interest. In our opinion 15% per annum interest for the aforesaid period would have been just and proper. We, however, agree with the findings of the High Court that the respondents are free to charge appropriate interest on the amount of arrears of rent between 1-3-1992 to the date when the stay orders were passed by the High Court. We are sure that in determining such rate of interest the respondent authority would act fairly and justly.”

26. Thus, it is clear that once judgment debtor has obtained stay on the execution of money decree, then he cannot seek exemption from payment of interest in case if he loses the appeal.

27. In the present case, the petitioner had obtained an interim order dated 22.05.2020 and from thereafter she was not making payment of the outstanding excess payment, which was made to her. Therefore, it is directed that the petitioner shall be liable to pay interest @ 6% per annum on the amount which had become due from 22.05.2020 till today.

28. So far as the further recovery of outstanding amount is concerned, no interest shall be charged.

29. With aforesaid observation, the petition is **dismissed**.

(G.S. AHLUWALIA)
JUDGE

VB*