



2026:AHC:161034

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 65483 of 2008

Hari Prasad Rai

.....Petitioner(s)

Versus

State Of U.P. Thru Director Pension...And Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Ravi Prakash Srivastava
Counsel for Respondent(s)	:	C.S.C.

Court No. - 34

(Sl. No. 25)

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri H.P. Mishra, Advocate holding brief of Sri Ravi Prakash Srivastava, learned counsel for the petitioner and Sri Dilip Kumar Kesharwani, learned Addl. Chief Standing Counsel for the State.

2. The instant writ petition has been filed by the petitioner being aggrieved by the impugned orders dated 30.10.2008 and 29.7.2008, whereby the recovery of the excess amount which was paid to the petitioner due to the technical error as the pension amount was wrongly feeded in the computer programme. However, it is undisputed that the petitioner was not entitled for that amount and after the impugned orders have been passed, the said error has already been corrected and thereafter the rightful pension is being paid to the petitioner. The issue is whether the respondents are entitled to recover the said amount, which has already been paid to the petitioner, without there being any fault on his part as the part of the pension of the petitioner. The excess amount so paid to the petitioner was not paid due to any wrong fixation but due to wrong feeding in the computer system.

3. Briefly stated facts of the case are that the petitioner had retired from the post of Senior Assistant from PWD, Construction Division-II, Allahabad on 31.1.1996. Thereafter, initially the provisional pension was accorded to the petitioner and thereafter on 8.8.1999, the Pension Payment Order was issued from the office of the Respondent No. 1, determining the pension of the petitioner. However, on 29.1.2008, an order was passed whereby it was realised that due to the technical error in feeding the pensionary benefits available to the petitioner, an error has been committed since March, 2002 till 30.11.2007. Consequently, an excess amount of Rs.1,19,508/- has been paid to the petitioner. Realising the aforesaid mistake, the order dated 29.1.2008 was passed whereby it was directed that the excess amount paid to the petitioner shall be recovered from the pension amount of the petitioner and the deduction was started from the month of January, 2008 and vide letter dated 29.1.2008 the

aforesaid facts were duly communicated to the petitioner that the aforesaid amount which has been wrongly paid to the petitioner shall be recovered from the pension of the petitioner. Being aggrieved, the instant writ petition has been filed by the petitioner.

4. Learned counsel for the petitioner relying upon the judgment in the case of ***State of Punjab and Others vs. Rafiq Masih (White Washer)*, (2015) 4 SCC 334** and the judgment of this Court in ***Lal Mani Mishra Vs. State of U.P. and others* (2011) 8 ADJ 162** submits that since there was no fault on the part of the petitioner and admittedly, it is the case of wrong feeding on the part of the respondent due to which the excess payment has been made to the petitioner as part of the pension and the said amount as and when paid was utilised by the petitioner in bonafide belief that it is a lawful pension being paid to the petitioner, therefore, the same cannot be recovered from the petitioner paid due to the mistake of the respondents that too for about six years.

5. Per contra, learned Addl., Chief Standing Counsel submits that it is not any excess amount paid due to wrong fixation of pay scale or the pensionary benefits to the petitioner but due to the mistake occurred while feeding the amount of pension payable to the petitioner. Once the same was realised as the petitioner was not lawfully entitled for the said amount, the same has been ordered to be recovered from the pension of the petitioner and that too on the instalment of Rs. 2000/- per months so that the petitioner would not suffer all of sudden by the recovery of the entire amount. Therefore, the impugned orders are justified and lawful he seeks dismissal of the instant petition.

6. Having heard rival submissions made by the learned counsel for the parties, this Court has carefully gone through the records of the case. It is an admitted position that from 1.3.2002, due to wrong feeding, excess amount of pension was paid to the petitioner to which the petitioner was not entitled for. The aforesaid mistake was committed due to wrongly feeding the amount payable to the petitioner as pension due to some clerical error on the part of the respondents. Once the said mistake was realised and corrective measures have been taken by the respondents, the impugned order has been passed to recover the excess amount paid to the petitioner. In ***Rafiq Masih (supra)*** the Apex Court in para-18 has held as under:-

"18. It is not possible to postulate all situations of hardship which would govern 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 hereinabove, we may, as a ready reference, summarise the following few 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 been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been 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."

7. In **Lal Mani Mishra (Supra)** coordinate Bench of this Court relying upon the various judgments of the Apex Court has held that once the petitioner was not at fault for wrong fixation of his pay, such amount could not be recovered from his post retiral dues/ benefits.

8. In the instant case, petitioner, who was retired in the year 1996 is about 89 years of age and at this stage, he is solely dependent upon the pensionary benefits which he is receiving and admittedly, there was no fault on the part of the petitioner in getting the aforesaid excess amount. It was an admitted position that due to wrong feeding of the amount of pension for the month of March, 2002 till November, 2007, the excess amount has been paid to the petitioner. However, the said amount paid to the petitioner is such a meager amount which must have been utilised by the petitioner, cannot be recovered from the petitioner, since the mistake has already been rectified by the respondents. However, relying upon the principles of law laid down by the Apex Court **Rafiq Masih (supra)** specially Clause-18 (v), this Court is of the view that it would be too harsh at such stage to permit the respondents to recover the said amount specially when vide interim order dated 18.12.2008, recovery of the said amount has already been stayed by this Court.

9. Looking at the stage and condition of the petitioner, this Court do not find in the peculiar facts and circumstances of the case to permit the recovery of the said amount from the petitioner.

10. Consequently, the instant petition is allowed and the impugned orders dated **30.10.2008 and 29.7.2008** are hereby set aside. However, it is made clear that this Court has not interfered with the refixation of the rightful pension available to the petitioner.

(Anish Kumar Gupta,J.)

August 3, 2026
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