IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS
&
THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 25TH DAY OF MAY 2021 / 4TH JYAISHTA, 1943

OP (CAT) NO.110 OF 2020

ARISING OUT OF THE JUDGMENT IN O.A.NO.180/00122/2019 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONERS/RESPONDENT NOS.3 & 4:

1 THE ASSISTANT GENERAL MANAGER
STATE BANK OF INDIA, CENTRALIZED PENSION PROCESSING CENTRE (CPPC), LMS COMPOUND,
THIRUVANANTHAPURAM - 695 033.

2 BRANCH MANAGER
STATE BANK OF INDIA, KADAVOOR BRANCH,
KOLLAM DISTRICT - 691 601.

BY ADVS.
BINDUMOL JOSEPH
SRI.B.S.SYAMANTHAK

RESPONDENTS/APPLICANT & RESPONDENTS 1 & 2:

1 S.SARADAMANI
AGED 60 YEARS
W/O.LATE K.SATHYASEELAN, PATTARAZHIYATH HOUSE,
KANJAVELI P.O., PERINAD, KOLLAM - 691 602.

2 FINANCIAL ADVISOR AND CHIEF ACCOUNTS OFFICER (PENSION)
SOUTHERN RAILWAYS, CHENNAI - 600 001.

3 SENIOR DIVISIONAL MANAGER
SOUTHERN RAILWAYS, THIRUVANANTHAPURAM - 695 014.

BY ADV SRI.A.DINESH RAO, SC, RAILWAYS

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 10.03.2021, THE COURT ON 25.05.2021 DELIVERED THE FOLLOWING:

'C.R.'

ALEXANDER THOMAS & K.BABU, JJ.

O.P.(CAT) No.110 of 2020

(Arising out of the order in O.A.No.180/122/2019 dated 5.9.2019 of CAT, Ernakulam Bench)

Dated this the 25th day of May, 2021

JUDGMENT

K.Babu, J.

The order dated 5.9.2019 in O.A.No.122 of 2019, passed by the Central Administrative Tribunal, Ernakulam Bench, is under challenge in this Original Petition filed under Article 227 of the Constitution of India. Respondents 3 and 4 in the O.A., the State Bank of India, Centralised Pension Processing Centre, Thiruvananthapuram and its Branch Manager of Kadavoor Branch respectively are the petitioners. The original applicant and respondents 1 and 2 in the O.A. are the respondents herein.

2. The prayers in the Original Petition are as follows :

> *"To issue appropriate order or direction setting aside Exhibit P4 order of the Central Administrative Tribunal, Ernakulam dated 5.9.2019 in O.A.No.180/00122/2019 to the extent it limits the right of the Bank to recover the excess payment made to the applicant three years prior to the date when the Bank had informed the applicant i.e., 8.2.2019 and to declare that the Bank is entitled to recover the amount paid in excess during the*

period November 2013 to January 2016."

3. Heard Smt.Bindumol Joseph, learned counsel appearing for the petitioners, Sri.A.Dinesh Rao, the learned Standing Counsel for Railways and Sri.C.S.Gopalakrishnan Nair, learned counsel for the original applicant.

4. The original applicant is the wife of late K.Sathyaseelan, who retired as headwaiter in the pantry car from Thiruvananthapuram Division of Southern Railway on 30.11.2006. Sathyaseelan died on 12.7.2007. The original applicant has been receiving family pension. She received letter No.CPPC/TVM dated 8.2.2019 issued by petitioner No.2/respondent No.4 in the O.A. informing that an amount of Rs.1,49,366/- was paid to her in excess from November, 2013 to January, 2019. She was further informed that the excess amount so paid will be recovered in instalments at the rate of Rs.3,200/- per month from 1.2.2019 till 31.12.2022. She was also informed that the family pension entitled to her has been reset at Rs.9,000/- with effect from 1.1.2016. The original applicant pleaded that no amount is recoverable from her. The applicant contended that recovery cannot be effected for the period from November 2013 to January 2016, a period prior to the

span of three years from the date of notice of recovery, as it is barred by limitation.

5. The original applicant/respondent No.1 raising the above challenges, *inter alia,* filed the aforementioned O.A. with the following prayers :

> *"(i) To call for the records leading upto the issue of Annexure A2 and quash the same.*
>
> *(ii) To declare that no amount is to be recovered from the applicant towards the alleged excess payment.*
>
> *(iii) To direct the 4th and 5th respondents not to effect any recovery from the family pension on the ground of alleged excess payment.*
>
> *(iv) To direct the respondents to credit the arrears of pension etc., as ordered in Annexure A3 within a time frame.*
>
> *(v) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.*
>
> *(vi) Grant costs of this O.A."*

6. The petitioners/respondents 3 and 4 in the O.A. resisted the claim of the original applicant and contended that the challenge of the original applicant raising the plea of limitation is not tenable as the matter falls within the ambit of Section 17 of the Limitation Act. The pensioner died on 12.7.2007 and the family pension at the enhanced rate was sanctioned to the applicant till 29.11.2013. According to the petitioners, enhanced rate of family

pension was to be paid till the deceased pensioner would have reached the age of 67 years or 7 years from the date of his death whichever is earlier. The pensioner would have reached 67 years on 29.11.2013 and his date of birth is 30.11.1946. Inadvertently, the Bank continued to pay enhanced rate of pension up to January, 2019. The mistake was found during verification conducted in the month of January, 2019. The total excess payment made to the original applicant is Rs.1,49,366/-. The original applicant had executed a letter of undertaking while accepting the family pension. So she is bound by the undertaking and the Bank is entitled to recover the amount. The Bank is only a pension disbursing agency as per the orders of the competent sanctioning authority.

7. After appreciating the rival contentions, the Tribunal held that the petitioners are entitled to recover the excess payment made to the original applicant three years prior to 8.2.2019, the date when the Bank informed the applicant regarding the excess payment made by mistake. The Tribunal held that the petitioners are not entitled to recover the payment made by mistake to the original applicant for the period prior to the span of three years from the date on which the mistake was found.

8. The learned counsel for the petitioners/the Bank

contended that the excess amount happened to be disbursed to the account of the original applicant by way of a bonafide mistake. It is submitted that Section 17 of the Limitation Act will defeat her claim. It is contended that the period of limitation will not begin to run until the mistake was discovered. The learned counsel for the Bank further contended that the rules of limitation are not meant to destroy the rights of the parties and that limitation bars only the remedy.

9. The learned counsel for the original applicant contended that the transaction involved is covered by Section 72 of the Contract Act and recovery of any amount from the original applicant for the period prior to the span of three years from the date when the alleged mistake was discovered, is barred by limitation.

10. The learned counsel for the original applicant placed heavy reliance on ***State of Punjab v. Rafiq Masih (White Washer)*** *[(2015) 4 SCC 334]* to challenge the claim of the petitioners/Bank and to contend that it is impermissible to realise the amount sought to be recovered.

11. The learned counsel for the petitioners/Bank, per contra, contended that the original applicant is not entitled to the

benefit of the principles declared by the Apex Court in *Rafiq Masih* (supra) as she had executed an agreement to repay any excess amount received by her. The petitioners relied on the decision of the Apex Court in ***High Court of Punjab and Haryana and others v. Jagdev Singh*** *(AIR 2016 Supreme Court 3523)* to defeat the claim of the original applicant placing reliance on *Rafiq Masih* (supra). It is also contended that there is no employee-employer relationship between the original applicant and the petitioners/Bank insofar as the disbursement of the pension is concerned.

12. It is common ground that the amount in excess was paid to the original applicant by the petitioners and the mistake was found out by the petitioners/Bank during verification conducted in the month of January, 2019. The total excess payment made by mistake to the original applicant is Rs.1,49,366/-.

13. The first contention of the petitioners/Bank is that the transaction involved is covered by Section 72 of the Contract Act which says that a person to whom money has been paid or anything delivered, by mistake or under coercion must repay or return it. The challenge of the applicant is that her liability under Section 72 cannot be enforced in respect of an amount which was paid, in

excess, for the period prior to the span of three years from the date when the Bank discovered the mistake.

14. The learned counsel for the petitioners/Bank, per contra, submitted that in the case of any application for the relief from the consequences of a mistake the period of limitation prescribed shall not begin to run until the applicant has discovered the mistake and hence in the given case, the limitation starts to run only from January, 2019 and hence the Bank is entitled to recover the amount from the original applicant.

15. Section 17 of the Limitation Act reads thus :

> *"**17. Effect of fraud or mistake**.—(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—*
> *(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or*
> *(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or*
> *(c) the suit or application is for relief from the consequences of a mistake; or*
> *(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,*
> *the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:*
> *....."*

16. Section 17 stipulates that limitation runs, in the case of

mistake, from the date when the mistake was discovered or with due diligence could have been discovered. In ***Sales Tax Officer v. M.D.Abraham*** *(1974 KLT 244)*, this Court held that if the applicant could have discovered the mistake with reasonable diligence that will suffice to start the running of the time against him. Where a plaint or application is *prima facie* time barred the initial burden lies on the plaintiff or applicant to make out the circumstances which would prevent the statute from having its normal effect. The plaintiff/applicant shall have to aver in the plaint/application, the date on which he discovered the fraud or mistake, as the case may be, and shall also have to aver that with reasonable diligence, he could not have discovered it prior to that date.

17. On diligence in discovery of mistake the learned author, in Halsbury's Laws of England, fifth edition, Volume 68, para 1223, writes thus :

> *"**1223. Diligence in discovery of fraud, deliberate concealment or mistake**. The standard of diligence which the claimant needs to prove is high-, except where he is entitled to rely on the other person; however, the meaning of 'reasonable diligence' varies according to the particular context. In order to prove that a person might have discovered a fraud, deliberate concealment or mistake with reasonable diligence at a particular time, it is not, it seems, sufficient to show that he might have discovered the fraud by pursuing an inquiry in some collateral matter; it must be shown that*

> *there has been something to put him on inquiry in respect of the matter itself and that if inquiry had been made it would have led to the discovery of the real facts. If, however, a considerable interval of time has elapsed between the alleged fraud, concealment or mistake and its discovery, that of itself may be a reason for inferring that it might with reasonable diligence have been discovered much earlier."*

18. In the given case, the mistake initially occurred in November 2013 ; and it continued and the same was discovered only in February 2019. A considerable interval of time has elapsed between the alleged mistake and its discovery. If the petitioners or the Southern Railway had conducted timely audit they could have discovered the mistake earlier. Hence it is to be inferred that it might with reasonable diligence have been discovered much earlier.

19. The petitioners/Bank also failed to plead that with reasonable diligence, they could not have discovered the mistake prior to the date on which it was discovered. The resultant conclusion is that they are not entitled to the benefit of Section 17 of the Limitation Act.

20. Secondly, it is contended by the petitioners/Bank that even if it is found that a portion of their claim is barred by limitation, it will not destroy their substantive right to recover the amount paid in excess by way of mistake. The learned author

U.N.Mitra, in his Law of Limitation and Prescription, 15th Edition, Lexis Nexis, in page No.11, comments thus :

> *"**9. Limitation generally bars remedy only** :- The law of limitation is in fact a kind of imperfect prescription as it does not in all cases destroy the primary or substantive right itself but puts an end only to the accessory right of action. The judicial remedy is barred but the substantive right itself survives and continues to be available in other ways. The rules of limitation are not meant to destroy the rights of parties. Section 3 of the Act only bars the remedy, but does not destroy the right which the remedy relates to. Though the right to enforce the debt by judicial process is barred under S.3 read with relevant article in the schedule, the right to debt remains. The time barred debt does not cease to exist by reason of S.3. Only exception in which the remedy also becomes barred by limitation is that the right itself is destroyed. For example under S.27 of the Act a suit for possession of any property becoming barred by limitation leads to the right to property itself to be destroyed. Except in such cases, which are specifically provided under the right to which the remedy relates, in other cases the right subsist so long as the debt is not paid. That right can be unraised in any manner than by means of a suit. It is not obligatory to file a suit to recover the debt. Rules of limitation are not meant to destroy the rights."*

21. In ***Punjab National Bank and others v. Surendra Prasad Sinha*** *(AIR 1992 Supreme Court 1815)*, the Apex Court upheld the above mentioned principle and held that Section 3 of the Limitation Act only bars the remedy, but does not destroy the right which the remedy relates to.

22. In so far as the claim of the petitioners is concerned only the judicial remedy is barred, but the substantive right itself survives and continues to be available in other ways. In other words, the rules of limitation are not meant to destroy the rights of parties.

23. By applying the afore principle, the right of the petitioners to recover the money paid in excess to the original applicant is to be treated as subsisting.

24. The Tribunal held that the payment made by bonafide mistake for a period of three years prior to the date when the petitioners/Bank informed the applicant regarding the excess payment can be recovered. Hence the Tribunal ordered that the petitioners are entitled to recover the excess payment made to the applicant three years prior to 8.2.2019.

25. The finding of the Tribunal based on the rules of limitation is not legally sustainable. Where a suit or application is for relief from the consequences of a mistake, under Section 17 of the Limitation Act, the period of limitation shall not begin to run until the mistake is discovered or the mistake could, with reasonable diligence, have been discovered. In the instant case, we have recorded a finding above that the petitioners are not entitled to the benefit of Section 17 of the Limitation Act on the ground that they could have with reasonable diligence discovered the mistake much earlier. The finding of the Tribunal relying on the rules of limitation is not sustainable in view of the principle that the Law of Limitation only bars judicial remedy, but the substantive right

itself survives and continues to be available in other ways. We make it clear that the substantive right of the petitioners/Bank to recover the money paid in excess to the original applicant in ways other than judicial remedy is not destroyed by reason of the rules of limitation.

26. We now turn to the question whether the original applicant is entitled to resist recovery of the excess amount allegedly paid to her by mistake for the period prior to the span of three years from the date of discovery of the mistake, relying on the principles declared by the Apex Court in *Rafiq Masih* (supra).

27. The learned counsel for the original applicant contended that the principles laid down in *Rafiq Masih (supra)* are squarely applicable to the facts of this case. Per contra, the learned counsel for the petitioners contended that the original applicant is not entitled to the benefit of *Rafiq Masih* (supra) in view of the subsequent decision of the Apex Court in *Jagdev Singh's case* (supra). The learned counsel for the original applicant pointed out that in *Jagdev Singh* (supra), the Apex Court did not hold that the judgment in *Rafiq Masih* (supra) was wrong and had only carved out a distinction in cases coming out of the second criterion of employees noted in paragraph 18 of the judgment in *Rafiq Masih*

(supra).

28. In *State of Punjab v. Rafiq Masih (White Washer)* (supra), in paragraph 18, the Apex Court held as follows :

> *"**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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
> *(iii) Recovery from 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, eventhough 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 extent, as would far outweigh the equitable balance of the employer's right to recover."*

29. In the subsequent decision in *Jagdev Singh* (supra), in paragraph 9, the Apex Court held as follows :

> *"**9.** The submission of the respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the State. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the respondent was clearly on notice of the fact that a future refixation or revision may warrant an adjustment of the excess payment, if any, made."*

30. The effect of the judgment in *Jagdev Singh* (supra) on the judgment in *Rafiq Masih* (supra) was considered by the

Division Bench of this Court in ***State of Kerala and others v. Vinod Kumar C.R.*** *[2020 (4) KLT 230]* and ***State of Kerala and others v. Abraham P.Joseph*** *[2021 (2) KLT 288]* and held that the Apex Court in *Jagdev Singh* (supra) has not interfered with the directions contained in paragraph 18 of the judgment in *Rafiq Masih* (supra) regarding Clauses (i), (iii), (iv) and (v).

31. As a challenge to the applicability of the principles laid down in *Rafiq Masih* (supra), it is contended by the petitioners/Bank that there is no employer-employee relationship between the petitioners and the original applicant.

32. The original applicant is claiming under her husband who was admittedly a Class IV employee.

33. The petitioners/Bank and respondents 1 and 2 (the Railways) filed separate affidavits explaining the nature of arrangement between them in the matter of pension disbursement of Central Government employees. It is submitted that by virtue of Section 6(1)(b) of the Banking Regulation Act, a Bank can act as an agent for any Government or local authority or carry on agency business of any description including the clearing and forwarding of business. It is further submitted that as per Section 33 of the

State Bank of India Act, the State Bank may engage in one or more or other forms of business specified in Section 6(1) of the Banking Regulation Act and further the State Bank of India is authorised to act as an agent for any Government or any other local authority including Railways in addition to the banking and other business.

34. The petitioners submitted that in the light of the aforesaid provisions, the State Bank of India is acting as a pension disbursing agency of the Southern Railway. It is also submitted that the Reserve Bank of India has authorised various Banks to make payments of pension to central civil pensioners. The Reserve Bank of India has issued guidelines to all agency banks regarding refund of over payment of pension to the Government employees and recovery of excess payments made to the pensioners. It is submitted that the Reserve Bank of India has issued circulars on recovery of excess payment made to the pensioners. Circular No.Ref.Co.DGBA(NBS) No.44/GA.64(11-CVL)90/91 dated 18/04/91, circular No.Ref.Co.DGBA(NBS) No.50/GA.64(11-CVL)90/91 dated 06/05/91 and circular No.RBI/2015-16/340: DGBA.GAD.No.296/0/ 45.1.001/2015-16 dated 17/03/16 issued by the Reserve Bank of India deal with recovery of excess payments made to the pensioners.

35. It is further submitted that the Reserve Bank of India has issued another Circular No.RBI/2020-2021/84 (DGBA.GBD No.SUO 546/45.01.001/2020-21) dated 21.1.2021 withdrawing the above mentioned circulars and instructed that agency Banks are requested to seek guidance from respective Pension Sanctioning Authorities regarding the process to be followed for recovery of excess pension paid to the pensioners, if any.

36. It is submitted from the part of the original applicant that the arrangement between the petitioners/Bank and respondents 1 and 2 (the Southern Railway) in the matter of pension disbursement creates a Principal - Agent relationship resulting to the consequence that the acts of the Agent (petitioners) bind the Principal (Southern Railway). Agency in its broadest sense includes every relation in which one person acts for or represents another by his authority. In the more restricted sense in which the term is used in the law of principal and agent, agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.

37. On an analysis of the arrangement, stated to have been made, regarding pension disbursement in respect of pensioners of

respondents 1 and 2 (the Southern Railway), it is revealed that the petitioners are engaged in the business of disbursal of pension as the agent of Southern Railway. As is evident from the circular dated 21.1.2021 of the RBI, the petitioners are effecting recovery after seeking guidance from the respective Pension Sanctioning Authority. It appears that the arrangement between them was in terms of an agreement for which the Bank was authorised to become a party by virtue of Section 6(1)(b) of the Banking Regulation Act, 1949 and Section 33 of the State Bank of India Act, 1955. Though the Reserve Bank of India has issued guidelines to all agency Banks regarding refund of over payment of pension, the circular dated 21.1.2021 shows that the agency Banks are required to seek guidance from the respective Pension Sanctioning Authorities. While dealing with an arrangement in which insurance premium was to be deducted by the employer from the salary of the employee and for forwarding it to the insurer, and the arrangement was in terms of an agreement, in *LIC of India and others v. Smt.Mukesh Devi (AIR 2002 Raj. 404)* and in *LIC v. K.Rama Iyer (ILR (2004) Kant.)*, it was held that the employer had become an agent of the insurer for this purpose. The arrangement for the disbursal of pension to the employees of the Southern Railway in

the instant case is almost similar to the above referred facts. The resultant conclusion is that the petitioners have become agents of respondents 1 and 2 (the Southern Railway) for the purpose of pension disbursement.

38. Where it is found that there is a principal-agent relationship between the Southern Railway and the Bank, under Section 226 of the Contract Act, any contracts entered into through an agent and obligations arising from acts done by agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

39. It is contended from the part of the original applicant that even if the acts of the agent are the result of the agent's mistake or the agent acted unauthorisedly the principal will be still bound by the transaction made with the third party, if the third party dealing with the agent has acted in good faith.

40. On principal's liability for acts of agent the learned author, in the book, The Indian Contract Act, 1872 [Pollock and Mulla, 14th Edition, pages 1775 and 1776], writes thus :

> *"Transaction within the authority of the agent is valid, irrespective of whether beneficial to the principal. Even where the agent defrauds the principal, or the transaction is to the detriment of the principal, the principal will still be*

> *bound by the transaction made with the third party, only if the third party dealing with the agent has acted in good faith, and the act is within the apparent scope of authority of the agent. The principal's liability is not affected by the fact that the agent is personally liable, and that the other contracting party had given credit to the agent."*

41. The Judicial Committee of the Privy Council in Ram Pertab v. Marshall (ILR (1898) 26 Cal. 701) had ruled that the right of a third party against the principal on the contract of his agent though made in excess of the agent's actual authority was nevertheless to be enforced when the evidence showed that the contracting party had been led into an honest belief in the existence of the authority to the extent apparent to him.

42. On the liability of the principal to third parties for the acts of an agent, in Corpus Juris Secundum, Volume 3, paragraph 391, pages 220 to 222, the learned authors comment thus :

> *"Ordinarily the principal is bound by the act of his agent when he has placed the agent in such position that persons of ordinary prudence, reasonably conversant with business usages and customs, are thereby led to believe and assume that the agent is possessed of certain authority, and to deal with him in reliance on such assumption. Whether or not a principal is bound by acts of his agent in dealing with a third person who does not know the extent of his authority depends not alone on the actual authority given, or intended by the principal, but rather on what authority the third person, as a result of the acts of the principal, believes and has a right to believe, is possessed by the agent. However, if the agent has authority from the principal to do the particular act in question, the principal is bound irrespective of the third person's knowledge of existence of the authority. The responsibility of a principal for his agent's act is not essentially a matter of consent to the express act, or of an estoppel to deny that consent, but it is a survival from ideas of status, and the imputed responsibility congenial to earlier times, preserved now from motives of policy. While the courts have substituted*

> *for the archaic status a test based upon consent, that is, the general scope of the business, within that sphere the principal is held by principles quite independent of his actual consent, and indeed in the face of his own instructions. Such liability will be present even though the acts are the result of the agent's fraud or dishonesty neglect, or mistake, and are performed in disobedience to positive but private instructions. Also the principal is not relieved of liability because the acts of the agent constitute an unauthorised method of accomplishing the business entrusted to him."*

43. The petitioners have no case that excess payment of pension happened to be paid on account of any incorrect information furnished by the original applicant. Admittedly it happened as a result of the mistake on the part of the petitioners. She was not accessory to the mistake committed by the petitioners. The excess payment was detected not within a short period of time.

44. It is established that the Southern Railway (respondents 2 and 3) and the petitioners (The State Bank of India) have created a Principal - Agent relationship for the purpose of disbursal of pension to the employees of the former. It is also evident that the original applicant has always acted in good faith in the transactions. The liability in question resulted from the mistake of the petitioners.

45. The upshot of the above discussion is that the contention of the petitioners that the guidelines issued by the Apex Court in *Rafiq Masih* (supra) cannot be pressed into service for

the reason that there is no employer-employee relationship between the petitioners and the original applicant is not tenable.

46. The Tribunal has held that the petitioners are only entitled to recover the excess payment made to the original applicant for the period of three years immediately prior to 8.2.2019, that is, from 8.2.2016 to 8.2.2019. The petitioners are interdicted from recovering the amount for the period prior to 8.2.2016. The husband of the original applicant was admittedly a Class IV employee.

47. While summarising the situations wherein recoveries by the employers would be impermissible in law, the Apex Court in *State of Punjab v. Rafiq Masih (White Washer)* (supra) has considered the relevant constitutional principles in paragraphs 8 to 10, which are extracted below :

> *"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.*
> *9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the*

> *doctrine of equality, can be found in Articles 14 to 18, contained in Part III of the Constitution of India, dealing with "Fundamental Rights". These Articles of the Constitution, besides assuring equality before the law and equal protection of the laws, also disallow discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracized section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "Directive Principles of State Policy". These Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice - social, economic and political, by inter alia minimizing monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.*
>
> *10. In view of the afore-stated constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India."*

48. The original applicant prayed for a declaration that no amount towards excess payment is recoverable from her. The Tribunal held that the petitioners are only entitled to recover the excess payment made to the applicant for the period from 8.2.2016 to 8.2.2019 which is not under challenge. The original applicant is

aged above 60 years. The monthly pension entitled to her with effect from 1.1.2016 is only Rs.9,000/-. Having considered the particular facts and circumstances of this case, we arrive at the conclusion that the recovery of the amount, paid in excess for the period from November 2013 to February 2016, from the original applicant would be harsh and iniquitous as the effect of the recovery will be more unfair and more improper than the corresponding right of the petitioners to recover the amount.

49. To sum up, we hold as follows :

(1) The substantive right of the petitioners/Bank to recover the money paid in excess to the original applicant in ways other than judicial remedy is not destroyed by reason of the rules of limitation. The finding of the Tribunal that the Bank is only entitled to recover the excess payment made to the applicant, for a period of three years prior to the date when the Bank served notice of recovery on the applicant, by reason of the rules of limitation, is not sustainable on account of the settled law that Section 3 of the Limitation Act only bars the remedy, but does not destroy the right which the remedy relates to. Since the substantive right survives and continues to be available in other ways the Bank is entitled to adjust, the excess amount paid to the pensioner, from the amount

in his or her account even if it is time barred. The contra finding of the Tribunal will stand overruled.

(2) There exists a principal-agent relationship between the Southern Railway (the employer) and the Bank in the matter of disbursement of pension to the employees of the former. In the facts and circumstances of this case, the Southern Railway is bound by the transactions made by the Bank with the original applicant. As the public law remedy based on equity and justice deduced in *Rafiq Masih* (supra) is enforceable against the Southern Railway (the employer), the Bank, which stands in the shoes of the Railways for the purpose of disbursal of pension, is bound by the guidelines issued by the Apex Court in this case. Since the Apex Court in *Jagdev Singh* (supra) has not interfered with the directions contained in paragraph 18 of the judgment in *Rafiq Masih* (supra) regarding clauses (i), (iii), (iv) and (v), those directions in public law remedy would be invokable in case of this nature.

(3) Since the recovery of the amount, paid in excess for the period from November 2013 to February 2016, from the original applicant would be harsh and iniquitous as the effect of the recovery will be more unfair and more improper than the

corresponding right of the petitioners to recover the amount it is impermissible in law to permit the petitioners to recover the excess payment made to the original applicant prior to 8.2.2016. This, we hold so, as the principles in *White Washer*'s case (supra) as modified in *Jagdev Singh* (supra) will apply to the facts and circumstances of this case.

(4) However, we hold that the petitioners are entitled to recover the excess payment made to the original applicant for the period from 8.2.2016 to 8.2.2019. They are at liberty to realise the amount in 30 instalments.

50. The impugned final order of the Tribunal at Exhibit P4 will stand modified as above.

With these observations and modifications, the Original Petition will stand disposed of.

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-

K.BABU, JUDGE

csl

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1	A TRUE COPY OF THE O.A.NO.180/00122/2019 DATED 21.02.2019 FILED BY RESPONDENT NO.1/APPLICANT.
EXHIBIT P1(A1)	A TRUE COPY OF THE LETTER NO.CPPC/TVM DATED 08.02.2019 ISSUED BY THE 4TH RESPONDENT.
EXHIBIT P1(A2)	TRUE COPY OF THE DEATH CERTIFICATE ISSUED BY THE KOLLAM CORPORATION DATED 31.07.2007.
EXHIBIT P1(A3)	TRUE COPY OF THE LETTER DATED 28.04.2009 ADDRESSED TO THE MANAGER, SBI, QUILON ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P1(A4)	TRUE COPY OF THE LETTER NO.V/P. 626/314/06 DATED 21.10.2009.
EXHIBIT P1(A5)	TRUE COPY OF THE APPLICATION SUBMITTED BEFORE THE ADALATH.
EXHIBIT P1(A6)	TRUE COPY OF THE OM.F. NO.18/03/2015-ESTT.(PAY) DATED 02.03.2016.
EXHIBIT P2	A TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS 3 AND 4 BEFORE THE TRIBUNAL.
EXHIBIT P2(A1)	A TRUE COPY OF THE UNDERTAKING EXECUTED BY THE APPLICANT.
EXHIBIT P2(A2)	A TRUE COPY OF THE CIRCULAR NO.RBI/2015-16/340 DATED 17.03.2016.
EXHIBIT P3	A TRUE COPY OF THE APPRECIATION MA NO.533/2019 IN OA NO.122/2019 DATED 24.05.2019.

EXHIBIT P4	A TRUE COPY OF THE ORDER OF THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL IN ORIGINAL APPLICATION NO.180/00122/2019.
EXHIBIT P5	A TRUE COPY OF THE CIRCULAR NO.RBI/2020-21/84(DGBA.GBD.NO.SUO 546/45.01.001/2020-21) DATED JANUARY 21, 2021.
EXHIBIT P6	A TRUE COPY OF THE JUDGMENT DATED 27/06/2018 IN OA.NO.333/2017 OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM.
EXHIBIT P7	A TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA DATED 26/10/2018 IN OP(CAT) NO.169/2018.

RESPONDENTS' EXHIBITS :

EXHIBIT R3(a)	A TRUE COPY OF THE SCHEME FOR PAYMENT OF PENSIONS TO CENTRAL GOVERNMENT CIVIL PENSIONERS THROUGH AUTHORISED BANKS.
EXHIBIT R3(b)	A TRUE COPY OF FORM IN ANNEXURE XI
EXHIBIT R3(c)	A TRUE COPY OF THE SCHEME FOR DISBURSEMENT OF PENSION TO RAILWAY PENSIONERS.
EXHIBIT R3(d)	A TRUE COPY OF GUIDELINES ISSUED BY RBI DATED 17.3.2016.