**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

**WPS No. 912 of 2015**

1. Smt. Shail Gaur Wd/O Late D.S. Gaur Aged About 53 years R/O Q. No. O/6, In Front Of Janta Market Padnabhpur, Durg, District Durg Chhattisgarh

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh, Through The Secretary, Department Of Livestock Development, Mantralay, Mahanadi Bhawan, Naya Raipur Chhattisgarh
2. The Director Veterinary Services, Chhattisgarh, H.Q/ Indrawati Bhawan, Hod Bhawan, Naya Raipur Chhattisgarh
3. The Joint Director Treasury, Account And Pension Raipur Division, Raipur Chhattisgarh

**---- Respondent**

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| For Petitioner | Shri R.K. Kesharwani, Advocate |
| For Respondent/State | Shri A.V. Sridhar, Panel Lawyer |

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**Hon'ble Shri Justice Prashant Kumar Mishra**

**Order On Board**

**21/04/2015**

Heard learned counsel for the parties.

1. Petitioner has preferred this writ petition seeking quashment of the order dated 24.6.2014 (Annexure P-1), whereby an amount of Rs.4,06,531/- has been recovered from the petitioner, after the death of her husband.

2. Husband of the petitioner was working as Stenographer Grade-II. He died in harness on 22.12.2013. By the impugned order, the amount of

Rs.4,06,531/- has been recovered from the petitioner after the death of her husband.

3. Relying on the judgment of Supreme Court in the matter of ***Sahib Ram Vs. State of Haryana and others, 1995 Supp (1) SCC 18*** which has been followed by this court in the matter of ***Vidyadhar Tiwari Vs. The State of Chhattisgarh and others, 2006 (1) MPHT 105*** and ***Ramchandra Kurup Vs. State of C.G. & others, 2010 (3) CGLJ 400*** learned counsel for the petitioner would submit that recovery of excess payment cannot be made without giving any opportunity of hearing to the petitioner when payment has not been obtained by him by committing fraud or mis-representation.

4. On the other hand, learned State Counsel has relied on judgment of Supreme Court in the matter of ***Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors. 2012 AIR SCW 4742*** to argue that recovery of excess payment of public money paid to an employee has to be made as the concept of fraud or misrepresentation is not applicable to such situation. According to the learned State Counsel, any amount paid/received without authority of law can always be recovered.

5. In the matter ***Col. B.J. Akkara (Retd.) V. Government of India and others, [(2006) 11 SCC 709] : (2006 AIR SCW 5252)***, the Supreme Court has held that restraining recovery back of excess payment is granted by the courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees from the hardship that will be caused if recovery is implemented with further observation that a Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If

he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, and relief was granted in that behalf.

6. In ***Syed Abdul Qadir and others vs. State of Bihar and others [(2009) 3 SCC 475] : (2009 AIR SCW 1871)***, the Supreme Court restrained the department from recovery of excess amount paid by holding thus :

> "Undoubtedly, the excess amount that has been paid to the appellants – teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bonafide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made."

7. While holding in ***Chandi Prasad Uniyal (supra)*** that any amount paid/received without authority of law can always be recovered and the concept of fraud or misrepresentation is not applicable in such situation, the Supreme Court has clearly laid down the exceptions to the rule and the exceptions mentioned in the Judgment of ***Col. B.J. Akkara (Retd.) (supra)*** and ***Syed Abdul Quadir (supra)*** has been referred with approval. One of the exceptions carved out by the Supreme Court in the matter of ***Syed Abdul Qadir (supra)*** is that where the beneficiary of

excess payment has either retired or is on the verge of it, to avoid any hardship to such employees/teachers, the recovery was quashed.

8. In the present case also the husband of petitioner died on 22.12.2013. Steps for recovery of excess payment made to the petitioner on account of retiral dues were initiated after the death of her husband. Therefore, the case clearly falls within the exception carved out by the Supreme Court in the matter of ***Syed Abdul Qadir's case (supra)*** and approved in ***Chandi Prasad Uniyal (supra)***. If I may say so, the case in hand is on a better fototing because the amount is recovered from the widow of the deceased employee.

9. For the foregoing reasons, this Court has no hesitation in quashing the impugned order whereby recovery of amount of Rs.4,06,531/- has been directed on account of excess payment made to him without giving opportunity of hearing. The respondents are directed to refund the amount already recovered from the petitioner and they shall not recover any further amount.

10. In the result, the writ petition is allowed with the liberty aforesaid.

J u d g e

Gowri