

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 846 of 2017

- Smt. Lagni Bai W/o Late Jagbal Ram, Aged About 47 Years R/o Village And Post Barangjore, Tahsil Kunkuri, District Jashpur (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. The District Education Officer, District Jashpur, (Chhattisgarh)
3. The Block Education Officer, Pathalgaon, District Jashpur, (Chhattisgarh)
4. The Joint Director, Account, Treasury And Pension, Ambikapur, District Surguja, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri C. Jayant K. Rao, Advocate
For Respondents/State	:	Shri Prasoon Bhaduri, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20.02.2017

1. By means of this petition, the petitioner has sought quashment of the impugned order of recovery (Annexure P/1), whereby the respondents have directed to recover an amount of Rs. 66,744/- from the retiral dues payable to the petitioner on account of death of her husband, who died on 25.08.2012 in harness while in service.
2. Learned counsel for the petitioner relying upon the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer)** reported in **(2014) 8 SCC 883** on

the issue of recovery, submits that the said recovery is illegally being made from the amount which was payable to the petitioner on account of death of her husband. He further submits that the aforesaid amount was not paid to the husband of the petitioner because of any misrepresentation.

3. On the other hand, learned State counsel has relied on judgment of Hon'ble 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.
4. So far as the fact and circumstances of the case is concerned, it is evident that the excess payment was made to the deceased employee on account of inadvertence on the part of the respondent-employer. The deceased was working with respondent No.1 as peon and he died in harness on 25.08.2012. Out of the dues which were to be paid to the petitioner-widow, the respondents have recovered an amount of Rs. 66,744/- stating that an excess payment was made to the deceased employee. This issue is no longer res-integra as the Supreme Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) reported in (2014) 8 SCC 833** in a very categorical term has laid down the circumstances wherein recoveries made is impermissible in law :

- “i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D').
- 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 employees has wrongfully been required to discharge his 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.”

5. Further this Court also in series of cases relying upon the judgment of the Supreme Court in case of **Rafiq Masih (supra)** have quashed the order of recovery.
6. The perusal of the facts of the present case also clearly falls within the categories specified by the Supreme Court in case of **Rafiq Masih (supra)**. Accordingly the order impugned of recovery (Annexure P/1) is set aside. It is directed that respondents shall forthwith refund the amount of Rs. 66,774/- recovered from the retiral dues, to the petitioner along with interest @ 6% per annum from the date it was deducted till the date of actual payment.
7. With the aforesaid observation and direction, this petition stands disposed of.

Sd/-
(P. Sam Koshy)
JUDGE