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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.4365 of 2016

Smt. Ukha Bai Mandavi, aged about 53 years, W/o late Balaram Mandavi, R/o Ward NO.15, Kundrapara, Balod, Distt. Balod (CG).

---- Petitioner

Versus

1. The State of Chhattisgarh through its Secretary, Tribal Welfare Department, Mantralaya, Raipur.
2. District Education Officer, UB Kanker.
3. Block Development Officer, Vikas khand Koylibeda, Distt. UB Kanker.
4. Account Officer (Pension) Kosh Evam Lekha, Jagdalpur.

---- Respondents

For Petitioner	Shri Waquar Naiyar, Advocate.
For respondent/State	Shri PK Bhaduri, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

20/02/2017

1. This petition has been filed seeking for quashment of order dated 23.01.2011 and letter dated 09.06.2015 whereby the respondents is said to have recovered an amount of Rs.45,484/- from the dues which were payable to the petitioner's husband, who died in harness on 22.04.2014. The petitioner also prays for issuance of a direction to the the respondents for re-fixation of the pension after taking into consideration the last pay which the deceased employee was receiving.
2. So far as the question of illegal deduction of Rs.45,484/- from the dues payable to the Petitioner's husband is concerned, the law in respect of the recovery is by now well settled by a catena of decisions starting from 1995 SCC, Supl. (1) 18 JT 1995 (1) 24 in the case of Sahib Ram Vs. The State of Haryana and Others and the most recent being the

case of State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. reported in 2015 AIR SCW 501, wherein it has been in very categorical terms held by the Supreme Court that in the event if any excess payment paid to an employee for no fault of the employee and the said amount has been paid to him without there being any misrepresentation or fraud played by the employee, the recovery of the said amount would be improper on the part of the employer. It has been held in paragraphs-11 & 12 as under:-

> "11. Recovery of excess payment, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

"12. xxxxxxxxxx xxxxxxxxxx xxxxxxxxxx

> 2. 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, 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."

3. The state counsel fairly admits that impugned order of recovery is bad

in the light of above judgment of Supreme Court.

4. In view of the above given facts and also keeping in view the decisions of Hon'ble the Supreme Court referred to in the earlier paragraphs, the present petition deserves to be allowed.

5. The impugned order of recovery dated 23.01.2015 and 09.06.2015 are set aside and quashed. Consequently, the instant petition is allowed to the extent of order of recovery of excess payment of Rs.45,484/- being made against the Petitioner's Husband. The respondents are directed to release the amount recovered from the petitioner's payable dues forthwith within a period of 60 days from today alongwith interest @ 6 percent per annum from the date of recovery till its actual payment.

6. So far as other claim with regard to re-fixation of the pension is concerned, it is directed that the petitioner shall approach before the High Power Pension and Retiral Dues Committed constituted by the State giving all details along with all supportive documents by making a detailed representation.

7. The said committee shall in turn scrutinize the case of the petitioner objectively and take a decision within a period of 90 days from the date of receipt of representation.

8. With the aforesaid observations, the writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder