

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 1064 of 2014**

Kumari Bai Gautam wife of late Shri M. S. Gautam, aged about 60 years, resident of Ward no.5, Thakurpara, Khairagarh, Police Station and Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Health and Family Welfare Department, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. The Director, Health Services, Raipur (CG)
3. The Chief Medical Officer, Rajnandgaon, District Rajnandgaon (CG)
4. The Accountant General Chhattisgarh, Raipur (CG)
5. The Senior Account Officer, Office of Accountant General Chhattisgarh, Raipur (CG)

---- Respondents

For Petitioner	:	Shri Bharat Rajput, Advocate
For Respondent/State	:	Shri Shashank Thakur, Govt. Advocate
For Respondents 4 & 5	:	Shri Ashwani Shukla, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****30/04/2018**

The challenge in the present writ petition is to the order dated 20.10.2008 Annexure P-1. Vide Annexure P-1, initially an order of recovery was issued against the petitioner seeking for recovery of an amount of Rs.66,628/- towards excess payment having been made to the husband of the petitioner. Subsequently, a revised order has been issued from the office of the Block Medical Officer, Community Health Center, Chhuikhadan, Rajnandgaon on 10.04.2014 whereby an additional alleged

excess payment of Rs.10,000/- has further been ordered to be recovered from the petitioner.

2. The case of the petitioner is that the said alleged excess payment was made to her husband M. S. Gautam who was working as accountant under the respondents and who expired on 23.07.2002 i.e. much after his crossing the age of superannuation. Subsequently, vide Annexure P-1, the respondents detected certain excess payment made to the husband of the petitioner for which an order of recovery was issued which further stood modified by another letter dated 10.04.2014.

3. The two notices of recovery are per se illegal for the simple reason that the respondents could not have initiated a recovery proceeding against the family members of the deceased employee particularly when the respondents have failed to detect the alleged excess payment made to the employee while he was in service and the excess payment also has not been ordered to be recovered before the death of the employee. The issue raised in the instant case stands squarely covered by the judgment of the Supreme Court in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) and Others.** reported in (2015) 4 SCC 334..

4. The two notices of recovery therefore being per se illegal and also impermissible under law deserve to be and are accordingly quashed. The writ petition stands allowed. The entire amount which the petitioner has deposited in compliance of Annexure P-1 is liable to be returned back to the petitioner and the same be paid back to the petitioner within a period of 90 days from today. The said amount shall also carry interest @ 6% from the date of deposit till the date of actual payment.

**Sd/-
(P. Sam Koshy)
JUDGE**