

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1540 of 2014**

Urmila Bai Wd/o Jagannath Prasad Chaturvedi, Aged About 60 Years R/o Village Navagaon Salka, Tahsil And Police Station Kota, District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Collector, Bilasur, Chhattisgarh
2. Joint Director, Treasury Accounts And Pension Section, Bilaspur, Chhattisgarh
3. Chief Medical Officer, Korba, District : Korba, Chhattisgarh

----Respondents

For Petitioner	:	None
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23/07/2018**

1. The present writ petition has been filed seeking for the following main relief:

“10.A] That in view of the above facts and accepted legal position this Hon'ble Court may kindly be pleased to declare the deduction or recovery as illegal and the respondents be directed to refund the sum of Rs.35,213/- (Thirty five thousand and two hundred thirteen) with simple interest @ 6% P.A. to the petitioner.”

2. The facts leading to the filing of the present writ petition is that the petitioner's husband namely Jagannath Prasad Chaturvedi was working as a peon under the respondent No.3. The said employee retired from service in the year 2006. Subsequent to superannuation the husband of the petitioner died on 05.09.2004. On his death, the petitioner (widow of the deceased employee) was entitled for family pension and which was sanctioned also. Subsequent to the settlement of the dues payable to the petitioner on the death of her husband, the respondents detected that there were some excess payment

made to the petitioner's husband to the tune of Rs.35,213/- and that the respondents intended to recover the same from the balance of gratuity amount of Rs.2732/- and the rest of the amount would be recovered on installments from the family pension of the petitioner. That it is this what has led to the filing of the present writ petition seeking for refund of the entire amount recovered from the retiral dues payable to the petitioner.

3. The stand of the petitioner is that the said order/action of recovery is impermissible under law in the light of the recent decision of the Hon'ble Supreme Court, particularly in the case of ***"State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc."*** reported in ***2015 AIR SCW 501***." According to the petitioner first of all the order of recovery could not have been made from the widow of the deceased only for the reason that a recovery proceedings cannot be initiated against the widow of the deceased employee, particularly when no recovery proceedings were drawn against the employee as long as he was in service and subsequently as long as he was alive after his retirement.
4. Further contention of the petitioner is that the action of recovery is also bad in law for the reason that the excess payment alleged to have been made from the petitioner was by no fault of the petitioner or her husband, but is a clear clerical mistake on the part of the officer of the respondents and for which also the respondents now after considerable lapse of time could not have initiated steps. It was also the contention of the petitioner that the recovery also could not have been made by the State authorities for the reason that the alleged excess payment made to the husband of the petitioner was also much prior to his date of retirement and as such it is a stale claim made by the respondents.

5. Further it is also the stand of the petitioner that even otherwise the husband of the petitioner was working as a peon in the department and as such falls within the category of Low Paid Employee and even otherwise the recovery proceedings against the class-IV and class-III employees have been held to be impermissible. It was also the stand of the petitioner that even otherwise the recovery could not have been made for the simple reason that the department has moved the recovery notice much after the excess payment was allegedly paid to the deceased employees and the recovery order also has been passed much after the husband of the petitioner i.e. the deceased employee had retired from service.
6. The State counsel opposing the petition submits that it is a case where admittedly there were certain excess payment made to the petitioner on account of certain wrong fixation at the hands of the Accounts department and the Government has the right to recover any excess payment made which the employee is not otherwise entitled.
7. At this juncture it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***"Rafiq Masih"*** (supra). The Hon'ble Supreme Court while deciding the said matter has laid down certain situation under which the recovery is totally impermissible under law. The situations as envisaged in the said paragraph is as under :

"(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, 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."

8. Now coming back to the facts of the present case, when we analyze the situations mentioned in the said judgment, we would find that all those situations under which the Hon'ble Supreme Court has held the recovery to be impermissible attracts the case of the petitioner and therefore this Court has no hesitation in holding that the action on the part of the respondents while issuing the recovery notice and recovering an amount of Rs.35,213/- from the retiral dues payable to the petitioner to be bad in law and it is ordered that the said amount be paid back to the petitioner forthwith. The petitioner would also be entitled for the interest on the said amount @6% per annum from the date of retirement till the date the actual payment was made.
9. As a consequence, the present writ petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge