

**HIGH COURT OF CHHATTISGARH, BILASPUR**  
**WPS No. 3285 of 2016**

Smt. Bimla Choudhary W/o Late Hiralal Choudhary, Aged About 56 Years  
 R/o Village Pewara, Post Devgaon, Tahsil Barmkela, District Raigarh,  
 Chhattisgarh., Chhattisgarh

---- **Petitioner**

**Versus**

1. State Of Chhattisgarh Through Secretary, Education Department,  
 Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur,  
 Chhattisgarh., Chhattisgarh
2. District Education Officer, Raigarh, District Raigarh, Chhattisgarh.,  
 District : Raigarh, Chhattisgarh
3. Block Education Officer, Baramkela, District Raigarh,  
 Chhattisgarh., District : Raigarh, Chhattisgarh
4. Joint Director, Accounts, Treasury And Pension, Bilaspur, District  
 Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- **Respondents**

---

|                |   |                            |
|----------------|---|----------------------------|
| For petitioner | : | Shri C.J.K. Rao, Advocate. |
| For State      | : | Ms. Sunita Jain, PL        |

---

**Hon'ble Shri Justice P. Sam Koshy**  
**Order on Board**

**29/11/2018**

1. The challenge in the present Writ Petition is to the order Annexure-P/1 whereby the respondents have ordered for recovery of an amount of Rs. 1,59,038 from the death cum retiral dues paid to the petitioner on the death of her husband the deceased employee.
2. The facts of the case is that the husband of the petitioner was working as Upper Division Teacher under the respondents and he died on harness on 04/12/2015. While the deceased employee was in service, he was paid two advance increments on his obtaining B.E.d/D.E.d. The said increment was paid during the period 1998 to 2015 all along with when the deceased

employee was in service, there was no finding or any steps taken by the respondents with which it was held that the deceased employee was wrongly paid the benefit of the two advance increments on his obtaining qualification of B.E.d.

3. Subsequent to the death of the deceased employee, the department processed the dues payable to the petitioner, the widow of the deceased employee while releasing the dues the respondents have ordered for recovery of an amount of Rs. 1,59,038 from the dues paid. It is ordered which is under challenge.

4. The counsel for the petitioner submits that the impugned order is bad in law on the ground that the recovery could not have been made. Firstly from the present petitioner, the widow. Secondly, the recovery could not have been made subsequent to the death of the deceased employee. Thirdly, the alleged excess payment was not on account of any misrepresentation or fraud played by the deceased employee. Moreover, the said excess payment was for the period between 1998 to 2015. Thus, the payment made were quite long ago for the deductions which have now been proposed to be made. The counsel for the petitioner submits that even otherwise the order of recovery is bad in law in the light of the judgment of the Supreme Court in the case of State of Punjab Vs. Rafiq Masih, 2015 Vol. (4) SCC page 334.

5. The State counsel on the contrary opposing the petition submits that it is the case where the deceased employee was erroneously granted benefit of two advance increments on the deceased obtaining the qualification of

B.E.d. Degree. According to the State counsel the alleged degree which the deceased employee possess was not from the recognized University and therefore, he would not had been entitled for the benefit, and as such the order of recovery once which has been found to be wrongly paid to the deceased employee has been ordered to be recovered and hence, it can be said to be bad in law or erroneous. She further submits that erroneous payment have been made uptill the death of the deceased employee and therefore, it can be said to be a late deduction which is being made.

6. Having heard the submission of the learned counsel for the parties and the perusal of the records it would be relevant to ....take note of the fact that the deceased employee undoubtedly was working as an Upper Division Teacher which is a class 3 scale post. The respondents never initiated any steps against the deceased employee while he was alive and while he was in service. The deceased employee has paid the two advance increments from 1998 uptil his death. It is not in dispute that the said benefit of two advance increments paid to the deceased employee was not on account of any misrepresentation or fraud played by the deceased employee. Given the said facts and the circumstances of the case and also taking note of the situation which have been narrated by the Supreme Court in the case of Rafiq Masih (Supra). It would clearly reflect that such recoveries more particularly from the widow of the deceased employee, would be impermissible under law. Given the said facts, the impugned action on the part of statement dated 10/12/2015 passed by the respondents is bad in law, illegal and accordingly set aside. It has been informed by the petitioner that

the entire amount has been recovered, hence, as a consequence of the allowing of the present writ petition the petitioner would be entitled for the refund of the entire amount recovered i.e. Rs.1,59,038. The respondents are directed to release the amount at the earliest preferably within a period of 90 days from the date of receipt of copy of this order.

7. The writ petition accordingly stands disposed off.

Sd/-

**(P. Sam Koshy)**  
**JUDGE**

Rohit