

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3607 of 2018**

Smt. Karuna Upadhyay W/o Shri Yogeshwar Uadhyay Aged About 49 Years R/o Behind Balak High School Gariyaband, District-Gariyaband, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary To The Govt. Of Chhattisgarh, Department Of School Education, Mantralaya Mahanadi Bhawan, Naya Raipur, P. S. Rakhi, Raipur, Chhattisgarh.
2. Block Education Officer, Fingeshwar, Gariyaband District-Gariyaband, Chhattisgarh.
3. The Director, Directorate Of Treasury, Accounts And Pension, Indravati Bhavan, Naya Raipur, District- Raipur, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. A.D. Shrivastava, Advocate
For State	:	Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/05/2018**

1. The challenge in the present writ petition is to Annexure P/1 whereby the respondents have issued a notice of recovery of Rs.1,46,402/- from the retiral dues payable to the petitioner.
2. The fact of the case is that the husband of the petitioner was working as an Upper Division Teacher at the "Government Devi Sampad Higher Secondary School, Sanskrit Vidyapeeth, Rajim, District Gariyaband". He died in harness on 07.12.2016. While settling the death-cum-retiral dues payable to the petitioner, the widow of the deceased employee, the respondents have now issued with the impugned notice dated 26.10.2017 assessing an excess payment to be recoverable from the deceased employee, which has been ordered to be recovered from the retiral dues payable to the

petitioner.

3. Perusal of the record shows that alleged excess payment has been made because of a wrong fixation of pay granted to the petitioner's husband (deceased employee) at the time of absorption in the department on 18.10.1986. Thereafter the husband of the petitioner had served with the department till 2016 i.e. for a period of about 30 years. In between the respondents never had detected the wrong fixation of pay and ultimately after the death of deceased employee while settling the retiral dues the said excess payment has been ordered to be recovered.
4. At this juncture it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***"State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc."*** reported in ***2015 AIR SCW 501***. 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."

5. If we consider the situations, which the Hon'ble Supreme Court has held to be impermissible under law and compare the facts of the present case, it would clearly reflect that the case of the petitioner would squarely fall within the situations as envisaged in the judgment of the Hon'ble Supreme Court in the case of "Rafiq Masih" (supra).
6. The impugned order Annexure P/1, in the light of the aforesaid judgment of the Hon'ble Supreme Court is unsustainable as the recovery is impermissible under law and the same is bad in law and deserves to be and is accordingly set-aside/quashed.
7. It is directed that the respondent authorities should ensure that the death-cum-retiral dues payable to the petitioner is paid at the earliest without any further delay.
8. Any amount which has been recovered shall be refunded back to the petitioner with interest @10% per annum from the date of deduction till the date of actual payment.
9. The petition stands allowed and disposed off.

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