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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 9 of 2019

Kanchan Singh W/o Late Chanchal Singh, Aged About 49 Years, R/o First Battalion Chhattisgarh Armed Force, House No. 61/84, Bhilai, District Durg, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh
2. Director General Of Police, Police Head Quarter Raipur, District Raipur, Chhattisgarh
3. Inspector General Of Police, Chhattisgarh Armed Force, Head Quarter, Bhilai, District Durg Chhattisgarh
4. Commandant, First Battalion, Chhattisgarh Armed Force, Bhilai, District Durg, Chhattisgarh
5. Joint Director, Treasury, Accounts And Pension, Office At Durg, District Durg Chhattisgarh

---- Respondents

For Petitioner	:	Shri Praveen Dhurandhar, Advocate
For State	:	Shri Jitendra Pali, Dy. A.G.

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

07/01/2019

1. With the consent of the parties, the matter was heard finally.

2. The challenge in the present writ petition is to the recovery amount of Rs.73,673/- from the death-cum-retiral dues payable to the petitioner. The alleged deduction was on account of certain erroneous fixation of pay made to the deceased employee since 01.01.2006 onwards. The employee died in harness on 28.12.2016.

3. The contention of the counsel for the petitioner is that first of all the recovery could not have been made from the widow who was entitled to receive death-cum-retiral dues. Secondly, the recovery part was impermissible under law as the deceased employee admittedly was not responsible in any manner for receipt of the said excess payment. The excess payment if any was paid on account of fault on the part of the respondents. Counsel for the petitioner referred to the judgment of the Supreme Court in 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 held that such recoveries would be impermissible under law.

4. State counsel, on the other hand, tried to defend the action of the respondents on the ground that there was certain excess payment made to the deceased employee which otherwise he was not legally entitled for and when the said illegal excess payment was detected, the respondents have deducted the same from the dues that were payable to the legal heirs of the deceased employee.

5. Be that as it may, it has been settled by the Supreme Court by the judgment of Rafiq Masih (supra) wherein it has been very emphatically held by the Supreme Court that in the given situations, the recovery would be impermissible under law. Some of the situations in the said judgment of Rafiq Masih are reproduced hereinunder:

> "11. Recovery of excess payments, 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.
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> "12. xxxxxxxxxx xxxxxxxxxx xxxxxxxxxx
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> (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."

6. Perusal of the facts would reveal that the deceased employee in the instant case was working as a Trade Constable which undoubtedly was a Class-III post. The action of recovery has been initiated after death of the employee on 28.12.2016. It is not a case of the respondents that the excess payment has been made on account of any misrepresentation or fraud played by the deceased employee. Moreover, the alleged excess payment was made to the deceased employee more than 10 years prior to his death i.e. the first excess payment is said to have been made in the year 2006 and the recovery is being made in the year 2017.

7. Counsel for the petitioner at this juncture contended that firstly there has been no order of recovery served upon the petitioner in this regard. Secondly, the recovery has been made without any intimation to the petitioner and it has been straightaway deducted from the death-cum-retiral dues payable to the petitioner.

8. From the aforesaid factual matrix of the case, this Court has no hesitation in reaching to the conclusion that the case of the petitioner stands squarely covered by the judgment of the Supreme Court in the case of Rafiq Masih (supra) and in the said situations, the action of recovery was impermissible under law. The impugned action thus is bad in law and liable to be set aside/quashed and the same accordingly stands set aside/quashed. The recovery so made from the dues payable to the petitioner shall be refunded back to the petitioner forthwith preferably within a period of 90 days from the date of receipt of copy of this order.

9. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
JUDGE

Khatai