

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 293 of 2019**

Smt. Pyari Devi Nirmal Wd/o Late Anil Kumar Nirmal, Aged About 60 Years, R/o Quarter No. - 52, Police Training School, R. K. Nagar, Rajnandgaon, Police Station And District Rajnandgaon Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Home Department, Mahanadi Bhawan, Police Station New Raipur, District Raipur, Chhattisgarh
2. Director General Of Police, Police Head Quarters, Atal Nagar, Raipur, District, Raipur, Chhattisgarh
3. Superintendent Of Police, Police Training School, R.K. Nagar, Rajnandgaon, Police Station And District Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Vaibhav A. Goverdhan, Advocate
For State	:	Mr. Salim Kazi, Dy. A.G.

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

17/01/2019

1. The challenge in the present writ petition is to the order (Annexure P/1) dated 10.12.2018, passed by the respondent No.3.
2. Vide the impugned order, the respondents have passed an order for recovering an amount of Rs.97,733/- from the dues payable to the petitioner, who is the widow of the deceased employee late Anil Kumar Nirmal, who died in harness on 14.07.2016 working as a Head Constable.
3. The recovery has been made against an alleged erroneous payment of allowances, payable to the deceased employee for having worked in a naxalite area, which according to the

respondents, the deceased employee was not entitled for. The impugned order also reveals that the said payment was made for the first time in March, 2013 and was paid till the death of the deceased employee on 14.07.2016.

4. The contention of the counsel for the petitioner is that the said order of recovery is *per se* illegal for the reason that it is a case where the excess payment for the first time was made more than 5 years ago and the respondents at no point of time had reached to the conclusion that the deceased employee was not entitled for the said allowances. According to the petitioner, it is also not a case of the State Government that the alleged erroneous payment made to the deceased employee was on account of any misrepresentation or false submission made by the deceased employee, rather it is a case where it has been wrongly granted on the mistake committed by the officers/employees in the police department. Thus, the same cannot be recovered from the dues, which are payable to the widow on the death of the deceased employee.
5. State counsel on the contrary opposing the petition submits that it is a case where the deceased employee was paid an erroneous allowance of working in a naxalite area between March, 2013 to July, 2016. Since the last payment was made in July, 2016, it cannot be said to be an old due, which is being recovered and therefore the judgment passed in the case of **“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”** reported in **2015 AIR SCW 501**, may not come to the rescue of the petitioner.

6. The State counsel further submits that it is a case where the State Government in the course of settling the dues, found that the deceased employee was paid certain benefits, which he was not otherwise entitled for and when the error was detected, the respondents have only tried to rectify the mistake. As such, the impugned order cannot be said to be, in any manner, bad in law.
7. Having heard the contentions put forth on either side and on perusal of record, the admitted factual matrix of the case, which reflects is that the deceased employee *Anil Kumar Nirmal* was working as a Head Constable under the respondents and he died on 14.07.2016 while in service. The deceased, while he was posted at the Police Training School, Rajnandgaon, was paid certain allowances, which were paid to the police personnels posted in a naxalite area. The said payment was released to the deceased between March, 2013 to 14.07.2016. This grant of allowance was subsequently withdrawn by the State Government only vide order dated 07.09.2018, by which time the deceased employee had already expired. Subsequently, when the death-cum-retiral dues were paid to the widow, the impugned order has been passed recovering an amount of Rs.97,733/-.
8. At this juncture, it would be relevant to take note of 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 situations, under which the recovery is totally impermissible under law. The situations as envisaged in the said judgment are 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.”

9. Having considered the aforesaid observations of the Hon'ble Supreme Court in the case of "***Rafiq Masih***" (supra), the admitted factual position is that the excess payment for the first time was paid to the deceased employee about more than 5 years earlier to the impugned order being passed. It is not a case of the respondents that the deceased employee at any point of time had misrepresented for obtaining the same. It would also reveal that the petitioner was working as a Head Constable, which otherwise falls in a class-III category post. Moreover, the employee having died while in service, the amount could not have been recovered from the legal heirs/successors of a deceased employee. It also reveals that respondents have not given an opportunity of hearing to the petitioner before issuance of the impugned order of recovery and as such the said order would also be in violation of the principles of natural justice.

10. Given the aforesaid factual matrix of the case, this Court is of the opinion that the case of the petitioner squarely falls within the situations, which have been envisaged by the Hon'ble Supreme Court in its judgment in the case of "**Rafiq Masih**" (supra), where the Hon'ble Supreme Court has held that such recoveries would be impermissible under law.
11. Given the said facts, the impugned order (Annexure P/1) so far as the present petitioner is concerned deserves to be and is accordingly set-aside/quashed. The amount which has been retained by the respondents, the same is directed to be released to the petitioner forthwith preferably within a period of 3 months from the date of receipt of the certified copy of this order.
12. With the aforesaid observations, the writ petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge