

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 686 of 2019**

Rahul Vaishnav S/o Late Santosh Vaishnav, Aged About 25 Years, Mother Late Chandrika Vaishnav, Occupation Enumerator, Posted In The O/o Joint Director Veterinary Services, Bilaspur, Chhattisgarh, R/o House No. B-85, Vivekanand Residency, Mopka, District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. The State Of Chhattisgarh Through The Secretary, Livestock Development Department, Secretariat Mahanadi Bhawan, New Raipur, Chhattisgarh
2. The Director, Veterinary Services, Ground Floor, Indravati Block, New Raipur, Chhattisgarh
3. The Joint Director, Veterinary Services, Old Composite Building Campus, Opp. Collectorate Bilaspur, Chhattisgarh
4. The Joint Director, Treasury Account & Pension, New Composite Building Campus, Opp. District And Session Court, Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Sunil Kumar Soni, Advocate.
For State	:	Ms. Astha Shukla, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****01.02.2019**

1. The challenge in the present writ petition is to the action on the part of

the respondents in deducting an amount of Rs.2,92,379/- from the death-cum-retiral dues payable to the petitioner on the death of his mother late Chandrika Vaishnav.

2. The facts of the case are that the deceased employee Chandrika Vaishnav working on the post of Assistant Statistical Officer died while in service on 09.08.2017. Subsequently, the petitioner has been provided compassionate appointment. The death-cum-retiral settlement on the death of the deceased employee payable to the petitioner was not finalized. In the course of finalization of the same, it was detected by the respondents that the deceased employee has been wrongly given certain excess payment on account of erroneous fixation during the period from 23.02.2008 to 09.08.2017. The said excess amount comes to Rs.2,92,379/-. The respondents passed an order for recovery of the same and initially a letter was issued to the petitioner asking him to deposit the same. Subsequently, the respondents passed an order assessing Rs.5,04,192/- as the total gratuity payable to the petitioner of which 90% was sanctioned amounting Rs.4,53,773/-. Later on, from this amount of Rs.4,53,773/-, according to the petitioner, they deducted Rs.2,92,379 i.e. the alleged excess payment paid to the deceased employee while she was in service. It is this action which is under challenge in the present writ petition.
3. Contention of the counsel for the petitioner is that under the service rules governing the field itself the respondents could not have made any such recovery from the retiral dues payable to the petitioner. In the instant case, on the death of the employee, the payment is being

made to the legal heirs. On the death of the employee, the recovery could not have been made from the legal heirs. Moreover, the contention of the petitioner is that the recovery otherwise is also impermissible under law in the light of 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***.

4. State counsel, on the contrary, opposing the petition submits that it is a case where in the course of settlement of the dues payable to the petitioner on the death of his mother it was detected that she was given certain excess payment during the period 23.02.2008 to 09.08.2017. According to the State counsel, the deceased employee has been paid something in excess of what she was otherwise legally entitled for and therefore, the respondents on detecting the error are entitled for recovery of the same, the impugned order therefore has been passed which cannot be held to be either bad in law or contrary to the rule provision. It is also the contention of the State counsel that initially a consent was also taken from the petitioner for recovery of any excess amount from the dues payable to the petitioner and on this ground also, the petitioner at this stage would not be permitted to turn round and challenge the action of recovery.
5. Having heard the contentions put forth on either side and on perusal of the record what is undisputed is the fact that there has been no misrepresentation on the part of the deceased employee in getting the alleged erroneous excess payment. Moreover, the said excess payment from the record appears to have been first paid to the employee way back in the year 2008 i.e. about 9 years prior to the

date of death of the deceased employee. The deceased employee was discharging the duties as a Class-III employee under the respondent State Govt. It would also be relevant at this juncture to refer to the situations which have been given by the Hon'ble Supreme Court in the case of *Rafiq Masih (supra)* wherein it has categorically held that recovery under those situations would be impermissible under law. For ready reference, the situations mentioned in the said judgment are reproduced herein as under :

“18.. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

“(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. The admitted factual position of the present case referred to in the preceding paragraphs would clearly reveal that the petitioner's case squarely fits in the situations so referred in the said judgment.
7. In view of the same, this Court has no hesitation in holding that the recovery proceeding initiated by the respondents is bad in law and the same deserves to be and is accordingly set aside/quashed. The recovery, if any has been made, the same should be refunded to the petitioner at the earliest preferably within a period of 3 months from the date of receipt of copy of this order.
8. The writ petition accordingly stands allowed and disposed of.

Sd/-
P. Sam Koshy
Judge