

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5049 of 2019**

Smt. Rekha Vishwakarma W/o Late Chandra Bhushan Lal Vishwakarma
 Aged About 60 Years R/o Ward No. 15, Bharrapara, Village - Pendra, Tahsil
 - Pendra, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Tribal Welfare, Mahanadi Bhawan, Atal Nagar, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Commissioner Department Of Tribal Welfare Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Assistant Commissioner Department Of Tribal Welfare, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
4. Principal Government Higher Secondary School, Sarkaripara, Pendra, Tahsil - Pendra, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
5. Joint Director, Accounts, Treasury And Pension, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Yogendra Chaturvedi, Advocate
For State	:	Mr. Sameer Behar, PL

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/07/2019**

1. The challenge in the present writ petition is to the impugned order Annexure P-1 dated 01.05.2019 whereby the respondents have passed an order directing the petitioner to deposit the amount of 2,49,477/- so that the pension of the petitioner can be processed.

2. Facts of the case is that the husband of the petitioner was working as a Lecturer under the respondents and he has expired on 09.04.2018 while in service.
3. It is said that while the husband of the petitioner was in service he filed the petition before High Court seeking for benefit of regular pay scale w.e.f. the date of initial appointment and the same was allowed as per the judgment passed by the Madhya Pradesh State Administrative Tribunal, Jabalpur O.A. No. 2745/89 in the case of **Madhukant Yadu & Others Vs. State of M.P. & Others**, and also the judgment of the Chhattisgarh High Court passed in the case of **Amar Sai Ram & Others Vs. State of Chhattisgarh in WPS No. 4725/2006 decided on 01.09.2006**.
4. It is said that the respondents had complied with the order passed by this Court and had granted the benefit of regular pay scale from the date of initial appointment.
5. Now, subsequent to the death of the husband of the petitioner, the respondents have till date not finalized the pension and other pensionary benefits that the petitioner is entitled for. At the same time, the respondents have now issued the impugned order Annexure P-1 asking the petitioner to deposit an amount of Rs. 2,49,477/- on account of some excess payment made to the husband of the petitioner. According to the petitioner the impugned order of recovery is bad in law for the reason that first of all the respondents cannot recover an amount from the widow of the deceased employee. The respondents also cannot compel the petitioner to deposit the amount which was infact allegedly paid to

her husband while he was in service. The petitioner thus cannot be forced to make the payment before releasing her pension.

6. Further contention of the petitioner is that the impugned order is also bad in 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***. The said order of recovery is thus impermissible in law and thus prayed for the quashment of the same.
7. State counsel however, opposing the petition submits that husband of the petitioner infact was paid something which he was not otherwise entitled for and since he has been paid something excess, the department now intends to recover the same from the dues payable to the petitioner in the capacity of being legal heir. Thus, prayed for rejection of the writ petition.
8. Having heard the contentions put forth on either side and on perusal of records, undoubtedly the husband of the petitioner who was in employment under the respondent died as early as on 09.04.2018. The payment whatsoever, allegedly made in excess was to the husband of the petitioner while he was in service. That as long as he was alive, the respondent never raised a recovery notice against the husband of the petitioner. Moreover, there is no allegation against the husband of the petitioner of having received the alleged excess payment on account of any misrepresentation or fraud played by the husband of the petitioner.
9. Another aspect which needs to be considered is that whether the respondent can recover the dues paid in excess to the employee from the legal heirs of that employee after his death. The petitioner as

such is not responsible for any excess amount that was paid to her husband while he was serving the respondents or while he was alive. The petitioner is entitled for the dues payable to her on the death of the deceased employee.

10. Given the aforesaid facts and circumstances of the case and also relying upon the judgment of the Supreme Court in the case of **Rafiq Masih(Supra)**, this Court is of the opinion that the impugned order of recovery is not permissible and the same stands set aside/quashed with consequences to follow. Respondents are further directed to ensure that the retiral dues payable to the petitioner is processed and released at the earliest.

11. With the aforesaid observation, the writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Rohit