

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2853 of 2015

1. Rizina Paikra Wd/o Late Shri Parasram Paikra Aged About 49 Years R/o Mission Colony, Kutchary Para, Baikunthpur, Tahsil And District Baikuntpur Chhattisgarh, Chhattisgarh
2. (Deleted) Christina Paikra As Per Hon'ble Court Order Dated 10-04-2019.
3. Albert Robort Paikra S/o Late Parasram Paikra Aged About 29 Years R/o Mission Colony, Kutchary Para, Baikunthpur, Tahsil And District Baikuntpur Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh
4. Agastu Paikra S/o Late Parasram Paikra Aged About 27 Years R/o Mission Colony, Kutchary Para, Baikunthpur, Tahsil And District Baikuntpur Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Agriculture, Mahanadi Bhawan, New Mantralaya, Naya Raipur, District Raipur Chhattisgarh, Chhattisgarh
2. Deputy Director Agriculture, Baikunthpur, District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh
3. Joint Director, Treasury, Account And Pension, Ambikapur Division, Ambikapur Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
4. Treasury Officer, Baikunthpur, District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Neeraj Pradhan, Advocate
For State	:	Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/05/2019

1. The challenge in the present writ petition is to action on the part of the respondents for recovering the amount of 3,27,992/- from the gratuity amount payable to the husband of the petitioner on his retirement.
2. Facts of the case is that husband of the petitioner No. 1 was working under the respondents as Agriculture Extension Officer and died in harness on 10/12/2013 while working with the respondents. After death of the husband of the petitioner No. 1 the respondents while settling the retiral dues issued Annexure P-2 dated 23/08/2014 whereby it is reflected that respondents have found that there were certain alleged excess payment made to the husband of the petitioner (hereinafter referred as the deceased employee) to the tune of Rs. 3,27,992/-.
3. Contention of the petitioner is that documents enclosed along with the writ petition would reveal that this amount of 3,27,992/- has since been adjusted against the gratuity amount that was payable to the petitioner. Counsel for the petitioners at this juncture submit that except for the said deductions all other dues have been settled. He contends that the said recovery made by the department is totally

illegal and impermissible under law in as much as the recovery could not have been made from the dues payable to the petitioner on the death of deceased employee. Counsel for the petitioner submits that there has been no specific order of recovery passed by the respondents. It is only while settling the dues that they have passed an order of adjusting from the retiral dues without there being a formal order in this regard and on this ground also the impugned action is bad in law. Further contention of the petitioner is that perusal of Annexure P-2 & P-3 does not disclose the exact period during which the alleged excess payment was made to the deceased without which the impugned action becomes perse illegal. He has further contended that it is not the case of the respondent State that the said alleged excess payment was paid to the deceased on account of any false representation or fraud played by the deceased employee. For all the aforesaid reasons the petitioner contended that the impugned action bad in law and prayed for refund of the said amount to the petitioners.

4. The counsel for the State however defending the action on the part of the respondents submits that since the deceased employee has been paid certain excess amount because of erroneous fixation of pay, the amount was quantified at Rs.3,27,992/-, which has been ordered to be recovered. According to the respondents/State, since the deceased employee was not entitled for the said excess amount,

the Department has only passed an order for rectification and for recovery of the excess payment made and thus it cannot be said to be bad in law in any manner.

5. 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 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."

6. 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).

7. The impugned action, 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.
8. From the facts given in the writ petition what is admitted is that the deceased employee was class-III employee. The period of alleged excess payment is not reflected in the order of recovery. The stand of the respondents is not that deceased employee was responsible in any manner for the alleged excess payment that he has received. The alleged excess payment if at all was on account of error or fault on the part of the officer/employee of the State. It also appears that the said alleged excess payment was of a period long before the date of death of deceased employee and lastly recoveries if any in respect of the excess payment made to an employee could not under any circumstances have been made from the death cum retiral dues payable to the legal heirs of the deceased employee.
9. The petition stands allowed and the impugned order stands set-aside/quashed. The amount recovered by the respondents should be

forthwith released to the petitioner within an outer limit of 4 months from the date of receipt of the copy of this order.

Sd/-
(P. Sam Koshy)
Judge

Rohit