

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 7446 of 2019**

1. Smt. Ramkunwar Sahu, Wd/o Late Ram Sharan Sahu, Aged About 50 Years, R/o Podibhata, Ward No. 02 Akaltara, District: Janjgir-Champa, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Higher Education, Mantralaya, Mahanadi Bhawan, Atal Nagar New Raipur, District : Raipur, Chhattisgarh
2. Accountant General, Chhattisgarh, Raipur, District : Raipur, Chhattisgarh
3. Joint Director, Treasury Account And Pension Office, Bilaspur, District : Bilaspur, Chhattisgarh
4. Principal, Dr. Bhimrao Ambedkar Government College-Pamgarh, District: Janjgir – Champa, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Govind Dewangan, Advocate
For State	:	Mr. P. Acharya, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****17.09.2019**

1. The challenge in the present Writ Petition is to the two orders Annexures P-1 and P-2 dated 29.08.2019 and 15.05.2019. Annexure P-1 is an order, whereby the recovery of excess amount of Rs. 59,347/- has been ordered to be recovered, whereas Annexure P-2 is an order of recovery of an amount of Rs. 15,012/-, which is said to be cash, which was in hand of the deceased employee at the time of his death belonging to the respondent establishment, where the petitioner was working.

2. On due perusal of record, one does not find a strong case so far as challenge to the Annexure P-2 is concerned, for the reason that, if the deceased employee had certain cash available with him on the date of his death along with cash book while he was working, it is expected that the legal heirs have got to refund the same to the establishment. Thus, so far as Annexure P-2 is concerned, this Court is not inclined to entertain the Writ Petition.
3. However, as far as Annexure P-1 is concerned, it is an order of excess payment of Rs. 59,347/- which was erroneously said to have been paid to the deceased employee while he was alive when he was serving the establishment. The excess amount is said to have paid for the first time in July, 2006 ie., more than 12 years prior to the deceased employee having died and more than 13 years from the date of the order of recovery was passed.
4. The contention of the petitioner is that, the deceased employee is not held responsible for the alleged excess payment, if any received by deceased employee. Moreover, the deceased employee was a Class-III post-holder and the employee has also since died and the recovery as such cannot be made from the successors of the deceased employee as the departments themselves have not recovered the amount when the employee was alive.
5. The State Counsel on the contrary opposing the petition submits that, it is a case where the excess payment was deducted at the time of final settlement was being made and immediately, thereafter issued the said order.
6. According to the State Counsel, once when it is held that the

deceased employee had received certain excess payment which otherwise he was not entitled for, the State has all the powers to recover the same from the dues payable of the deceased employee to the petitioner herein and thus, it cannot be said to be bad-in-law, arbitrary and illegal.

7. Having heard the contentions put-forth on either side and on perusal of record, it is necessary at this juncture to refer to the judgment of the Supreme Court rendered in the case of ***“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”*** reported in **2015 AIR SCW 501**. Whereas the Hon’ble Supreme Court while deciding the said matter has laid down certain situations under which the recovery is totally impermissible under law. Some of 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.”

8. Given the aforesaid situations and when compared to the factual matrix of the case of the present Writ Petition, it was revealed that the deceased employee in the instant case was a class-III post holder, who died on 30.12.2018. The deceased employee was not in any manner responsible for the alleged excess payment received, if any.

The said excess payment was also made for the first time somewhere more than 12 years prior to the death of the deceased employee. The fact squarely meets the situations laid down by the Supreme Court making recovery impermissible under law

9. In view of the same, this Court has no hesitation in holding the impugned order Annexure P-1 to be bad in law, so far as the recovery part is concerned and the same deserves to be and is accordingly set-aside/quashed.
10. The quashment of the impugned order Annexure P-1 itself would not preclude the State Government from carrying out rectification part, so far as erroneous fixation is concerned, which the State would not be permitted to make except for the recovery from legal heirs of the deceased employee.
11. The Writ Petition stands allowed and disposed off.

**Sd/-
(P. Sam Koshy)
Judge**