

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4760 of 2020**

1. Smt. Shashikala Gupta, W/o Late Shri Pawan Kumar Gupta, Aged About 52 Years, R/o Bagicha Road, Kunkuri Kala, Block Batauli, District : Surguja, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya Atal Nagar, New Raipur, District : Raipur, Chhattisgarh
2. The District Education Officer, Ambikapur, District Surguja, Chhattisgarh
3. The Block Education Officer, Block Batauli, District Surguja, Chhattisgarh
4. The Joint Director, Treasury, Accounts And Pension, Surguja Division, Ambikapur, District Surguja, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Harish Khuntiya, Advocate
For State	:	Mr. Mateen Siddiqui, Dy. Adv. Gen.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10.12.2020**

1. The present writ petition has been filed challenging the order dated 06.06.2020 Annexure P-1 passed by the respondents; whereby they have ordered for recovering an amount of Rs. 3,82,574/- from the death-cum-retiral dues payable to the petitioner on the death of her husband.
2. The fact of the case is that the husband of the petitioner was working as an Upper Division Teacher for the respondents, who died in harness on 03.03.2020. Subsequently, the respondents processed

the claim payable to the petitioner being his widow and in the process of releasing the death-cum-retiral dues, the amount of Rs. 3,82,574/- has been recovered from the petitioner's dues payable. It is this action which is under challenge in the present writ petition.

3. The contention of the learned counsel for the petitioner is that the said recovery is being made on account of erroneous excess payment made to the husband of the petitioner while he was working in service. It is further contention of the counsel for the petitioner that all along when the petitioner's husband was alive, the respondents never initiated any proceedings to rectify the error. That the excess amount has been received by the deceased employee not on account of any misrepresentation or fraud played by the said deceased employee. The counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Punjab vs. Rafiq Masih, AIR (2015) 4 SCC 334** wherein in the similar nature of recovery, the Hon'ble Supreme Court in very categorically terms held to be impermissible under law.
4. The State counsel on the other hand opposing the writ petition submits that since in the process of calculating the death-cum-retiral dues payable to the petitioner, it was detected that the husband of the petitioner while in service has been paid certain excess payment because of erroneous fixation of pay. He further submits that in the process of the erroneous fixation of pay, the husband has received certain excess payment which he was not otherwise entitled for. Since it was detected, the respondents decided to recover the amount from the dues payable to the petitioner.

5. Having gone through the contentions put-forth by the counsel for the parties, the admitted factual position as it stands is that the husband of the petitioner was the employee working for the respondents as an Upper Division Teacher, which is a Class-III post and he died in harness on 03.03.2020. The respondents are also admitted/said to have paid certain excess payment to the deceased employee while he was in service. The erroneous fixation of pay is not attributed to the deceased employee but was on account of error on the part of the department.
6. 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) wherein in paragraph 18 has held 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, summarise **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.”

7. The Hon'ble Supreme Court has in very categorically envisaged the situation where the recovery would be impermissible under law. A plain perusal of the records would reveal the factual aspect/situation in the instant case falls well within the situations which have been declared by the Hon'ble Supreme Court to be impermissible under law.
8. In view of the same, the impugned order Annexure P-1 dated 06.06.2020 would not be sustainable and the same deserves to be and accordingly stands set-aside/quashed. It is well settled position that in the event of an erroneous fixation of pay, the remedy left for the respondents would be to carry out the rectification part, however, in the event of any excess payment if any made because of the default on the part of the respondents, the recovery as such of the said amount cannot be made as in the instant case for the said reason as has been done. With the aforesaid observation, the impugned order, therefore, stands quashed. The right to make rectification stands reserved with the respondents in accordance to law.
9. Taking into consideration that the respondents have already recovered the entire amount of death-cum-retiral dues payable to the petitioner, they are directed to forth-with release the said entire amount recovered within a period of sixty days from the date of receipt of copy of this Order.
10. The present writ petition, accordingly stands disposed off.

Sd/-
P. Sam Koshy
JUDGE