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01.10.2021.  
d.p.

**In The High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**W.P.A 30562 of 2016  
(Via Video Conference)**

**Niyati Panda  
-versus  
State of West Bengal & Ors.**

**Mr. K.B.S. Mahapatra,  
Ms. Rama Halder.  
...For the Petitioner.**

**Mr. Sandip Kumar Bhattacharyya.  
...For the Respondent No.3.**

None appears on behalf of the State respondents in spite of service.

The husband of the petitioner retired as Associate Professor and was holder of PPO No. Pen./CT-7541. He allowed revised pension vide No. Pen.VI/CT-R-D-5464 dated 25<sup>th</sup> October, 2013. He expired on 11<sup>th</sup> February, 2016. During his lifetime the employee was paid his retiral dues including the revised pension.

After his death, the widow by a communicating Memo No. 512/TR dated 28<sup>th</sup> July, 2016 was intimated by the Additional Treasury Officer, Purulia that a sum of Rs.4,79,929/- was paid in excess to her deceased husband. She was requested to appear before the Additional Treasury Officer, Purulia for recovery of the overdrawal amount.

It is the grievance of the widow that her family pension is not being paid to her and substantial

amount has been deducted from the family pension on account of refund of overdrawal amount.

From the documents which are available on record, it appears that the Additional Treasury Officer, Purulia has mentioned that the arrear family pension for the period 12<sup>th</sup> February, 2016 to 30<sup>th</sup> September, 2016 may be processed only after the overdrawn amount is recovered.

The petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of State of Punjab & Ors. -vs- Rafiq Masih (White Washer) reported in (2015) 4 SCC 334 wherein instances have been provided where recovery by the employer would be impermissible in law.

It mentions that recovery from the retired employees and recovery from the employees when the excess payment has been made for a period in excess of five years before the order of recovery is issued is impermissible.

In the instant case, the employee expired on 11<sup>th</sup> February, 2016 and during his lifetime, the employer never intimated him with regard to any amount which was allegedly overdrawn by him.

Long after the death of the employee the widow was intimated for refund of the overdrawal amount allegedly paid in favour of her deceased husband. The same in my opinion, is absolutely not permissible.

The Supreme Court has categorically laid down that recovery from retired employees is impermissible. The question of recovery from a deceased employee long

after he was superannuated, is certainly impermissible in law.

In view of the above, the action of the Treasury Officer in directing the petitioner to refund the amount allegedly overdrawn by the employee is liable to be set aside and is accordingly, set aside.

The Additional Treasury Officer, Purulia being the respondent No.4 herein is directed to immediately take steps for payment of the family pension in favour of the petitioner along with all arrears which are due and payable in her favour. Any amount which has been deducted from the account of the petitioner on account of refund of the overdrawal amount of the employee, shall also be immediately refunded to the petitioner.

Steps shall be taken by the Additional Treasury Officer at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

It is made clear that in the event the refund of the payment is not made to the petitioner within the aforesaid period of eight weeks, then the petitioner shall be entitled to interest at the rate of 5% per annum on the amount which has been wrongly deducted from the family pension which the petitioner is entitled to receive.

The interest shall be calculated from the date of its accrual till the date of actual payment.

It is needless to mention that the Additional Treasury Officer shall go on paying the regular family

pension to the petitioner without any deduction and without any delay.

W.P.A 30652 of 2016 stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

**( Amrita Sinha, J.)**