

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3348 of 2021**

1. Narendra Singh Thakur S/o Late Vijay Bahadur Singh Thakur Aged About 58 Years Working As Accountant, Office Of Chief Conservator Of Forest, Raipur, District Raipur Chhattisgarh R/o Nearby Holy Corss School, Pension Bada, Raipur, District Raipur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat Rural Development Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh
2. Block Education Officer, Dharsiwa, District Raipur Chhattisgarh
3. Joint Director Treasury, Account And Pension, Pension Bada Raipur, District Raipur Chhattisgarh

----Respondents

For Petitioner	: Shri H. B. Agrawal, Sr. Advocate along with Smt Swati Agrawal, Advocate.
For State	: Ms. Sunita Jain, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****07.07.2021**

1. Aggrieved by the order dated 04.06.2021 Annexure P/5, the present writ petition has been filed.
2. Vide the impugned order, the respondents are directed the petitioner to deposit an amount of Rs. 2,46,506/- by way of a challan which is said to be an excess payment paid to the wife of the petitioner who was the actual government employee.
3. The brief facts relevant for the disposal of the present writ petition are that wife of the petitioner was working under the respondents as an

Upper Division Teacher. On account of getting inflicted with Corona Virus after brief hospitalization the wife of the petitioner died on 02.05.2021. Subsequently, in the course of settlement of the death-cum-retiral benefits, the respondents have now issued an order Annexure P/5 dated 04.06.2021 whereby they have found that there was some excess payment made to the deceased employee w.e.f. 01.01.2006 and therefore the petitioner hereby has been ordered to deposit the amount of Rs. 2,46,506/-.

4. The contention of the Sr. Counsel for the petitioner is that the impugned order of recovery is bad-in-law for the reason that the said action is impermissible under law for various reasons. According to the counsel for the petitioner, the petitioner is being asked to deposit the amount when the alleged excess payment was made to the wife of the petitioner who has already expired on 02.05.2021. Even the alleged excess payment was one which was made about 15-16 years prior to the death of the deceased employee. There is also no allegation of the deceased having in any manner misrepresentation or played fraud for getting the said alleged excess payment.
5. Counsel for the petitioner refers to the judgment of the Hon'ble supreme Court in the case of "**State of Punjab and Ors. etc. v. Rafiq Masih (White Washer) etc.** [2015 AIR SCW 501]" in support of his contention.
6. The State Counsel on the other hand submits that it is a case where undoubtedly the payment was made to the wife of the present petitioner while she was in service. It is also the contention of the State Counsel that since the wife of the petitioner died in harness, it is only at the time of settlement of the death-cum-retiral dues that error was

detected and therefore the action on the part of the respondents can not be said to be bad.

7. Having heard the contention put forth on either side and on perusal of the records, admittedly the employee in the instant case was the wife of the petitioner deceased namely, Smt. Devki Singh Thakur, died of Corona Virus on 02.05.2021 and till the death of the deceased employee there has been no order of recovery initiated at any point of time. The alleged excess payment was said to have been paid initially on 01.01.2006 and thereafter, thus, admittedly the alleged excess payment was first made about 15-16 years prior to the death of the deceased employee. The impugned order also does not reflect that there has been any misrepresentation made by the petitioner or the deceased in getting the erroneous fixation of pay. The alleged error that has occurred, has been on account of the fault on the part of the respondents.
8. It is at this juncture that the judgment of the Hon'ble Supreme Court in the case of Rafiq Masih needs to be referred to wherein Paragraph 18, the Hon'ble Supreme Court had narrated various situations under which it has been categorically held that the recovery under those situations would be impermissible under law. For ready reference paragraph 18 is being quoted herein:-

“(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."

9. Perusal of the facts of the present case, when compared to the situations narrated in the judgment of the Hon'ble Supreme Court in the case of Raifq Masih (Supra) would clearly reflect that the petitioner's case also squarely fixed in the situations envisaged therein and the recovery becomes impermissible under law.
10. Under the circumstances, the impugned order Annexure P/5 would not be sustainable and the same deserves to be and is accordingly set aside/quashed and the respondents are directed to release the entire admissible dues payable to the petitioner on the death of his wife Smt Devki Singh Thakur, the employee under the respondents at the earliest preferably within a period of three months from the date of receipt of copy of this order.
11. With the aforesaid observations, Writ Petition stands disposed of.

Sd/-

**P. Sam Koshy
Judge**