

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Writ Petition (S) No. 5097 of 2020**

1. Smt. Anju Agrawal Wd/o Late Ganesh Prasad Agrawal Aged About 54 Years R/o Village Pendra, Tahsil Pendra, District Gaurela Pendra Marwahi, Chhattisgarh.

**---Petitioner(s)**

**Versus**

1. State Of Chhattisgarh Through- The Secretary, Department Of Tribal Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar Raipur, District Raipur, Chhattisgarh
2. Secretary Department of School Education, Mantralaya, Mahanadi Bhawan, Atal Nagar Raipur, District Raipur, Chhattisgarh
3. Commissioner Department Of Tribal Welfare, Raipur, District Raipur, Chhattisgarh
4. District Education Officer Gaurela Pendra Marwahi, District Gaurela Pendra Marwahi, Chhattisgarh
5. Block Education Officer And Nodal Officer (Incharge D.E.O.) District Gaurela Pendra Marwahi, Chhattisgarh
6. Joint Director Accounts, Treasury and Pension, District Bilaspur, Chhattisgarh

**---Respondents**

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| For Petitioner | : | Shri Yogendra Chaturvedi, Advocate.    |
| For State      | : | Shri Sudeep Verma, Dy. Govt. Advocate. |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**12.01.2021**

1. The challenge in the present writ petition is to the order dated 25.11.2019 by which the respondents have held that the deceased employee in the instant case would not be entitled for the benefit of regular pay scale from the date of initial appointment of the deceased employee.
2. The facts of the case is that, the deceased employee in the instant case is late Ganesh Prasad Agrawal the husband of the petitioner who was working on the post of Assistant Teacher. The said employee subsequently

stood retired w.e.f. 30.09.2018. In the course of finalizing the retiral dues, the respondents issued an order dated 25.04.2019 passing an order of recovery to the tune of Rs. 3,46,112/- on the ground that the employee was not entitled for the regular pay scale from the date of his initial appointment. The said order dated 25.04.2019 was subjected to challenge in a Writ Petition i.e. WPS No.4622 of 2019. The writ petition stood allowed on 26.06.2019 wherein in the operative part, this court made the following observations:

- “6. Plain perusal of the undisputed facts of the case with the situations narrated in the preceding paragraphs, this Court is of the opinion that recovery in the instant case is hit by the judgment of the Supreme Court in the case of Rafiq Masih(supra) and the same is not sustainable as recovery in the instant case also becomes impermissible under law. The writ petition accordingly stands allowed and the impugned order Annexure P-1 to the aforesaid extent stands set aside/quashed.
7. In case if the respondent intends to bring any change to the service benefits payable to the petitioner, the respondent can act upon it only after an opportunity of hearing is afforded to the petitioner in this regard, even if it is in respect of rectification of the pay scale or the pension payable to the petitioner.”
3. Pursuant to the order passed by this court, the respondents have now issued the impugned order dated 25.11.2019.
4. The contention of the petitioner is that, the benefit of the regular pay scale from the date of initial appointment, also was issued by the respondents pursuant to an order passed by this High Court and which has attained finality and any benefit accrued to the deceased employee pursuant to an

order of this court, unless the same having been recalled, the respondents could not have been again reached to the conclusion of the petitioner having been erroneously granted the said benefit.

5. It was the further contention of the petitioner that once when this court has held that the recovery order issued earlier on 25.04.2019 to be bad in WPS No.4622 of 2019, the only option left with that respondents was to reconsider the claim of the deceased employee so far as granting of retiral benefits on the basis of the salary that the petitioner was paid at the time of retirement. The other liberty which was available to the respondents was that if at all if the respondents were of the opinion that the deceased employee has been granted regular pay scale erroneously, they could have issued a show notice to the petitioner and after affording a hearing they could have passed a fresh order.
6. Plain reading of impugned order does not reflect either of the exercise being done by the respondents except for holding that the deceased employee was not entitled for the said benefit. Thus, from the plain reading of the impugned order it appears that the respondents have not properly considered the order passed by the High Court while ordering the granting of regular pay scale from the date of initial appointment and also not considered the observations made by this Court while setting aside the order of recovery dated 25.04.2019. The impugned order dated 25.11.2019 therefore to that extent would not be sustainable and there needs to be reconsidered again by the respondents.
7. The impugned order dated 25.11.2019 therefore being set aside/quashed, the matter stands remitted back to the respondents for reconsideration of the claim of the petitioner so far as retiral benefits are concerned and it is

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ordered that the respondent No.4 shall reconsider the claim of the petitioner and pass a fresh order in accordance with law, at the earliest and shall try to settle the claim of the petitioner so far as the unpaid retiral dues are concerned within a period of four months from the date of receipt of copy of this order.

- 8.** The writ petition accordingly stands partly allowed to the above extent.

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

inder