

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(S) No. 5971 of 2021**

- Smt. Akhleshi Maholiya W/o Late Vijay Singh Maholiya Aged About 47 Years R/o Village Udaipur P. S. And Tahsil Udaipur District Surguja Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of School Education, Mantralaya, Mahanadi Bhawan, Atal Nagar Nawa Raipur District Raipur Chhattisgarh
2. The District Education Officer Ambikapur District Surguja Chhattisgarh
3. Block Education Officer Ambikapur District Surguja Chhattisgarh
4. Principal Government Higher Secondary School Bandana Block Mainpat District Surguja Chhattisgarh

---- Respondents

For Petitioner:

Ms. Ruchi Pathak, Advocate

For State/Respondents:

Shri Kunal Das, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**Order On Board****29.10.2021**

1. Heard on admission.
2. Challenge in the present writ petition is to the order of recovery dated 26.12.2019 (Annexure P1) for recovering an amount of Rs.1,49,255/- and from the retiral dues payable to the petitioner's husband, namely, Vijay Singh Maholiya, who died during the course of his employment on 27.06.2018. The concerned respondent authorities have issued the said impugned order while settling the retiral dues and have paid the amount after adjusting the recovery amount. The alleged recovery has been made on the ground that while the petitioner's husband was in service, he had been granted some extra increment which he was otherwise not entitled for.

3. The contention of the petitioner is that her husband was working as a Peon in Government Higher Secondary School, Bandana Block Manipat, District Surguja (C.G). He died on 27.06.2018 during the course of his employment, however, abruptly one fine morning much after his death, the impugned order of recovery dated 26.12.2019 was passed ordering for recovery of Rs.1,49,255/- from the dues payable to the petitioner. The contention of the petitioner is that the order of recovery is impermissible under law for the reason that the said order of recovery has been issued without affording any opportunity of hearing, thus, is violative of principles of natural justice. The order also is bad in law for the reason that the recovery is being made against the amount which was paid to the petitioner's husband not on account of any misrepresentation or fraud played by him, but on account of an alleged error on the part of the respondent authorities. The contention of the petitioner also is that the impugned recovery is bad in law for the reason that the recovery is being made after the death of her husband in respect of claim which allegedly was paid to him long back while he was in service. The counsel for the petitioner relied upon judgment of Supreme Court in case of ***State of Punjab Vs. Rafiq Masih, 2015 (4)SCC 334.***

4. The State counsel, on the other hand, contended that since at the time of settlement of the retiral dues it was found that the petitioner's husband had been wrongly granted extra increment which he was otherwise not entitled for, and therefore, this excess money paid to him on account of wrong fixation of pay has been ordered to be recovered from the dues payable to the petitioner's husband. The same thus cannot be said to be bad in law.

5. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture to take note of decision of the

Supreme Court in case of Rafiq Masih (Supra) wherein in paragraph 18 the Supreme Court has laid down certain situations under which the recovery becomes impermissible under the law. For ready reference para 18 of the said judgment is being reproduced hereinunder:

“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.”

6. On going through the facts of the present case it clearly reflects that the case of the petitioner squarely meets most of the situations mentioned in the judgment of the Supreme Court wherein the recovery has been held to be impermissible under the law. Thus, the case of the petitioner is squarely covered by the said judgment.

7. As regards the alleged excess payment made long back while the employee was in service, the authorities would always have liberty to carry out the rectification part, but the excess payment so paid cannot be recovered in

the light of the judgment of Supreme Court rendered in Rafiq Masih (Supra).

8. In the aforesaid reasons, the writ petition at this juncture stands allowed. The impugned order of recovery is held to be bad in law. The same deserves to be and is hereby set aside/quashed. The respondents are directed to ensure that the amount with respect to retiral dues to the extent of Rs.1,49,255/- recovered from the petitioner's husband is refunded to the petitioner forthwith within a period of 60 days from the date of receipt of a copy of this order.

9. The writ petition accordingly stands disposed of.

Sd/-

(Sanjay S. Agrawal)
JUDGE