

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5379 of 2020**

Urmila Banjare W/o Late Shri Santosh Kumar Banjare, Aged About 40 Years R/o Village Tulsi (Nevra), Tahsil Tilda, District Raipur 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 Director, Directorate Of Public Instructions, Indravati Bhawan, Block Three, First Floor, Atal Nagar, Raipur Chhattisgarh
3. The Assistant Director, Treasury, Accounts And Pension, Raipur (Chhattisgarh)
4. The District Education Officer, District Balodabazar Bhatapara Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Shikhar Sharma, Advocate
For State	:	Mr. Rahul Jha, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****20/01/2021**

1. The challenge in the present writ petition is to the order Annexure P/1 dated 28.08.2020, whereby the respondents have directed to initiate recovery proceedings for the excess payment made to the husband of the petitioner (deceased employee) in respect of the certain increments given to the employee on completion of D.Ed. certificate course.
2. The facts of the case is that the husband of the petitioner namely late Santosh Kumar Banjare was working on the post of Headmaster under the respondents. The husband of the petitioner died while in service on 23.02.2019. Subsequently, in the process

of settling the retiral-cum-pensionary benefits to the petitioner, the impugned order of recovery has been passed. As per the impugned order, the husband of the petitioner was not entitled for the advance increment on getting the qualification of D.Ed. and therefore the erroneous payment made to the petitioner needs to be recovered.

3. At the outset, the counsel for the petitioner submits that the recovery order ***per se*** is bad in law for the reason that the recovery ought to have been made while the employee was in service. The alleged erroneous payment made to the petitioner was not on account of any fault of misrepresentation on the part of the deceased employee. The further contention of the petitioner also is that the said payment has been made much before the deceased employee had died and on this ground also the same cannot be recovered. The counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **“State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.”** reported in **2015 (4) SCC 334”**.
4. The State counsel on the other hand submits that it is a case where the husband of the petitioner died in harness and there was no occasion for the State Authorities to rectify the error, which occurred on the part of the respondents and therefore on the death of the deceased employee in the course of settlement of the dues when this error was detected, the respondents have passed the impugned order, which therefore cannot be said to be in any manner arbitrary or mala fide.

5. Having heard the contentions put forth on either side and on perusal of record, admittedly the petitioner is the widow of the deceased employee. The employee had died on 23.02.2019 while in service working on the post of Headmaster. The husband of the petitioner had received the alleged erroneous payment long before his death.
6. It is at this juncture where the judgment of the Hon'ble Supreme Court in the case of 'Rafiq Masih' (supra) needs to be considered. The Hon'ble Supreme Court in the said judgment in paragraph No.18 has narrated certain situations under which the recovery has been held to be impermissible under law. For ready reference paragraph No. 18 of the said judgment is being reproduced herein under:

“(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. Perusal of the impugned order would reveal that the case of the petitioner falls under the situations so enumerated in the said judgment of the Hon'ble Supreme Court in the case of 'Rafiq Masih' (supra). In view of the same, the order of recovery passed by the respondents (Annexure P/1) being not sustainable, deserves to be

and is accordingly set-aside/quashed. The authorities are directed to ensure that the retiral-cum-pensionary benefits payable to the petitioner is released forthwith. However, the respondents would be entitled for carrying out the rectification part in respect of any error that has been kept, which ofcourse would be subject to verifying the records of the deceased employee.

8. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved