

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 483 of 2021**

Smt. Shanti Bai S/o Late Ram Niwash Ram Aged About 50 Years R/o
Village Boda, Police Station And Tahsil Batouli, 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 Surguja District Surguja Chhattisgarh
3. Block Education Officer Batauli P. S. Batauli, Janpad Panchayat Batauli, District Surguja Chhattisgarh
4. The Divisional Joint Director Treasury, Account And Pension Department Surguja Division Ambikapur District Surguja Chhattisgarh
5. The Accountant General Chhattisgarh Zero Point Vidhansabha Raipur District Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Vikas Kumar Pandey, Advocate
For State	:	Mr. Amit Buxy, Panel Lawyer
For Respondent No.5	:	Ms. Purnima Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****11/02/2021**

1. The grievance of the petitioner is the impugned order of recovery dated 19.02.2020 for an amount of Rs.2,45,190/- from the death-cum-retiral dues payable to the petitioner.

2. The facts of the case is that the petitioner's husband was working on the post of Headmaster, Primary School under the respondents and who died in harness on 17.05.2019. On the death of the husband of the petitioner, the respondents while settling the death-cum-retiral dues deducted an amount of Rs.2,45,190/- from the dues payable to the petitioner and have released the balance of amount.
3. The contention of the petitioner is that the husband of the petitioner was a class-III employee and the alleged excess payment was made as early as on 01.07.2007 onwards i.e. more than 12 years prior to the death of the deceased employee and bonafidely the employee has consumed the said amount received erroneously if at all.
4. The State counsel on the other hand submits that the recovery is only in respect of the excess payment made to the petitioner on account of wrong fixation of pay provided to him, which the petitioner was otherwise not legally entitled for and therefore the respondents had all the rights to recover the same.
5. At this juncture it would be relevant to refer to 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 AIR SCW 501***. The Hon'ble Supreme Court while deciding the said matter has laid down certain situations under which the recovery is totally impermissible under law. The situations as envisaged in the said judgment are as 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."

6. If we consider the situations, under which the Hon'ble Supreme Court has held recoveries to be impermissible under law and compare the facts of the present case, it would clearly reflect that the case of the petitioner would squarely fall within the situations as envisaged in the judgment of the Hon'ble Supreme Court in the case of "**Rafiq Masih**" (supra).
7. As stated in the judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra), the facts which make the recovery impermissible under law are firstly that the order of recovery is in respect of an alleged excess payment made 12 years prior to the date of death of the deceased employee. Secondly, the recovery at no point of time was initiated/detected during the long time of the employee and therefore the same cannot be recovered from the petitioner-the widow of the deceased and thirdly, the husband of the petitioner i.e. the deceased employee was a class-III employee to add with it. There is no allegation against the petitioner of having

made a misrepresentation or played fraud in getting the alleged excess payment. The action of recovery also is without affording any opportunity of hearing, which would amount to violation of the principles of natural justice. For all the aforesaid reasons, the recovery becomes impermissible under law.

8. Given the aforesaid facts and circumstances of the case, the impugned order of recovery (Annexure P/1) dated 19.02.2020 ordering for recovery of an amount of Rs.2,45,190/- is erroneous, bad in law and impermissible under law and the same deserves to be and is accordingly set-aside/quashed.
9. The respondents are directed to settle the retiral dues of the petitioner without initiating any recovery. It is made clear that the indulgence of this Court is only to the extent of recovery, the respondents would be at liberty to rectify the erroneous fixation provided to the petitioner without making any recovery. If the entire amount has already been deducted by the respondent authorities, the said amount should be forthwith released to the petitioner within an outer limit of 90 days from the date of receipt of the copy of this order.
10. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved