

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

959 WRIT PETITION NO.14196 OF 2021

PRAKASH DHANSING PAWAR
VERSUS
THE CHIEF EXECUTIVE OFFICER & OTHERS

...
Advocate for the petitioner : Mr.Y.B.Bolkar
Advocate for respondent nos.1 to 4 : Mr.Maheshkumar s.
Sonawane.

...

**CORAM : S.V.GANGAPURWALA &
S.G.DIGE, JJ.**

DATE : 16.12.2021

P.C. :

1] Mr.Bolkar, learned counsel for the petitioner submits that the recovery is claimed under the impugned order dated 30.11.2021. The learned counsel relies on the judgment of the Apex Court in a case of **State of Punjab and others Vs. Rafiq Misih (White Washer) and others** reported in 2015 [4] SCC 334.

2] The learned counsel submits that the wife of the petitioner is dead and represented by legal heir. The recovery also cannot be claimed for a period prior to five years. No misrepresentation was made by the deceased wife of the petitioner at any material point of time.

3] Mr.M.S.Sonawane, learned counsel for the respondents submits that the deceased wife of the petitioner was supposed to complete MS-CIT within a stipulated period. The said period was also finally extended up to 31.12.2007. However, the deceased wife of the petitioner did not complete the same. In view of that, increments granted from 01.01.2008 have been rightly recalled. The deceased wife of the petitioner is liable for the same.

4] The case of the deceased wife of the petitioner does not come within the ambit and purview of wrong pay fixation. The increments were granted to the deceased wife of the petitioner on the ground that the deceased wife of the petitioner shall complete MS-CIT within the stipulated period. The deceased wife of the petitioner failed to complete the same. According to the petitioner she completed MS-CIT but after stipulated period. In view of that, the respondents were within their powers to withdraw the benefit given to the petitioner.

5] However, it would appear that the employee is dead and is now represented by the legal representative. It is only on the ground that deceased employee is dead and it would be inequitable to recover the amount from the legal heir, we have entertained the petition.

6] Considering the facts that hardship would be caused, if the recover is made from the legal representative of the deceased employee. The legal representative is a husband doing agricultural work. Only on the ground of equity and facts and circumstances of the case, we have entertained the petition.

7] In the result, the impugned order to the extent of recovery only is quashed and set aside. The amount of recovery as claimed under the impugned order shall not be withheld. However, pay fixation will be done considering the order that the deceased employee had not completed MS-CIT within the stipulated period.

8] In case, the recovery is already made by the respondent, the same shall be repaid / refunded to the petitioner preferably within a period of three [03] months.

9] Writ Petition is accordingly disposed of. No costs.

[S.G.DIGE, J.]

[S.V.GANGAPURWALA, J.]

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