

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No. 3259 of 2019

Punam Wd/o Hivshyam Paulzagde

...Petitioner

Versus

The Zilla Parishad Gondia, through its Chief Executive
Officer and another

...Respondent/s

Shri P.S. Kshirsagar, Advocate for the Petitioner

Shri Anoopsingh Parihar, Advocate for Respondent Nos. 1 and 2

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 15 FEBRUARY 2021

P.C.:

Heard learned Counsel for the parties.

2. The Petitioner is a widow of one late Hivshyam Koduram Paulzagade who was appointed on 4 August 1998 as an 'Assistant Teacher' in the Zilla Parishad, Gondia and died in service on 30 July 2018.

3. On 11 February 2019, the Zilla Parishad, Gondia took a decision regarding the Gratuity payable to the Petitioner of Rs.2,47,560/-. However, by the very same order stated that an amount of Rs.2,49,245/- be recovered. The Petitioner is aggrieved by the said order.

4. The learned Counsel for the Petitioner has sought to contend that the reason given for recovery is not correct and also that the recovery against the Petitioner's husband, being Class-III employee, should not be made in view of the decision of the Apex Court in the case of *State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others*¹. He also contends that no reasonable opportunity was given to the Petitioner and all of a sudden this order came to be passed.

5. Firstly, the impugned order does not give any reason except mentioning excess payment / computer recovery. Apart from these cryptic phrases no explanation is given or let alone any notice to the Petitioner or an opportunity as to how and why the amount was being recovered.

6. *Rule 134(A)* of the *Maharashtra Civil Services (Pension) Rules, 1982*, though deals with recovery from a retired Government Servant, states that the recovery should be made after giving reasonable opportunity. There is no reason why the same principle should not be extended and recovery is being made from the successor of a deceased Government Servant.

7. Since, the impugned order neither gives reasons nor gives opportunity to the Petitioner, the same will have to be set aside with liberty to the Respondent – Zilla Parishad to take necessary steps as per law, in respect of the recovery, if any, after giving opportunity to the Petitioner. It is open to the Petitioner to urge all contentions.

1 (2015) 4 SCC 334

8. The impugned order dated 11 February 2019 is quashed and set aside and the Respondents are given a liberty to proceed as stated above. The Petitioner will attend the office of the Chief Executive Officer, Zilla Parishad Gondia on 1 March, 2021 to submit his written submissions. The Chief Executive Officer will take necessary decision/steps within a period of eight weeks thereafter.

9. The Writ Petition is accordingly disposed of.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]