

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.7069 OF 2019

Smt. Ranjana wd/o Shivdayal
Parshuramkar, aged about 45 years,
Occ. : Nil, R/o Khadipar,
Tah. Sadak Arjuni, District Gondia.

... Petitioner

- Versus -

- 1) State of Maharashtra,
through its Secretary, General
Administrative Department,
Mantralaya, Mumbai - 400 032.
- 2) Zilla Parishad, Gondia,
through its Chief Executive Officer,
Gondia, Tahsil and District Gondia.
- 3) The Education Officer (Primary),
Zilla Parishad, Gondia, Tahsil and
District Gondia.
- 4) Deputy Chief Accounts and Finance
Officer, Zilla Parishad, Gondia,
Tahsil and District Gondia.

... Respondents

Shri I.N. Choudhari, Advocate for petitioner.
Ms. N.P. Mehta, Assistant Government Pleader for respondent no.1.
Shri A.Y. Kapgate, Advocate for respondent nos.2 to 4.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : AUGUST 3, 2021

ORAL JUDGMENT (Per Sunil B. Shukre, J.) :

Heard Shri Choudhari, learned Counsel for the petitioner, Ms. Mehta, learned Assistant Government Pleader for the respondent no.1, and Shri Kapgate, learned Counsel for the respondent nos.2 to 4.

2) Rule, returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

3) The husband of the petitioner, who was appointed as Assistant Teacher in Primary School run by respondent No.2, died in harness on 8/7/2016. After his death, pension order came to be issued to the widow of deceased Assistant Teacher on 12/7/2017. The gratuity release order was also issued to her. However, by the impugned order passed on 14/7/2017 payment of excess amount of Rs.4,81,101/- has been directed to be recovered from the gratuity payable to the petitioner. It is the contention of the learned Counsel for the petitioner that law in this regard is well settled, according to which a Class-III employee like the deceased husband of the petitioner who died in harness, falls under the category of the employees from whom recovery of the excess payment of salary is impermissible.

4) The law on the subject is well settled since the case of *State of Punjab and others V/s. Rafiq Masih (White Washer) and others* reported in (2015) 4 SCC 334.

5) The husband of petitioner was a Class-III employee, who had died while he was in service. The annual increment of the salary had been granted to the husband of the petitioner without his asking for the same and without his giving any undertaking for returning any amount, if subsequently found to have been paid in excess. Therefore, no recovery from the salary that was payable to the husband of the petitioner could have been ordered by the respondents. Accordingly, we are inclined to allow the petition and it is allowed.

6) The impugned order dated 14/7/2017 issued by the respondent no.4 is hereby quashed and set aside.

The recovery of ₹4,81,101/- (₹ four lakhs eighty-one thousand one hundred one) made from the gratuity payable to the petitioner be refunded to the petitioner in 12 equal monthly instalments starting from September 2021 along with interest at the rate of 6% per annum to be calculated for the period between the date of the recovery and date of order in this case. Rule accordingly. No costs.

JUDGE

JUDGE

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