

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

WRIT PETITION NO.7054/2019

Smt. Yogeshwari Wd/o Chatrugan Choudhari,
aged about 35 Yrs., Occ. Nil,
R/o Dawwa, Tah. Sadak Arjuni,
Dist. Gondia.

..Petitioner.

..Vs..

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

..Respondent.

Shri I.N. Choudhari, Advocate for the petitioner.
Shri A.A. Madiwale, A.G.P for respondent No.1.
Shri A.Y. Kapgate, Advocate for respondent Nos.2,3 and 4.

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

DATED :- 12.7.2021.

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

Hearing is conducted through Video Conferencing and all the
learned Advocates agreed that the audio and visual quality was proper.

2. Heard.

3. **Rule.** Rule made returnable forthwith. Heard finally by consent.

4. The husband of the petitioner who was appointed as Assistant Teacher in primary school run by respondent No.2 died in harness on 16.2.2017. After his death payment of pension order came to be issued to the widow of deceased Assistant Teacher on 15.5.2018. The gratuity release order was also issued on 21.5.2018. However, by the order passed on 21.5.2018 recovery of payment of excess salary was directed. Thereafter on 26.2.2021 stay was granted to the recovery of excess payment. It is the contention of 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.

5. 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.

6. 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.

7. The impugned order is hereby quashed and set aside.

The recovery of ₹1,57,536/- (₹ One Lac Fifty Seven Thousand Five Hundred Thirty Six Only) made from the gratuity payable to the petitioner be refunded to the petitioner in 12 equal monthly instalments starting from August 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