

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.286 of 2021

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Doli Devi Wife of Late Birendra Kumar Resident of Khaira, District- Jamui,
Bihar- 811317.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Principal Secretary, Gram Panchayat Raj, Bihar, Patna.
3. The District Magistrate, Jamui.
4. The District Panchayati Raj Officer, Jamui.
5. The Block Development Officer, Jamui.
6. The Block Development Officer, Gidhaur, District- Jamui.
7. The Panchayat Secretary, Gram Panchayat Raj Amrath, P.O. and P.S. and District- Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Sinha, Advocate.

For the Respondent/s : Mr. Prateek Kumar Sinha, AC to GA-12

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

8 12-12-2022 Heard Mr. Rajesh Kumar Sinha, learned counsel for

the petitioner and Mr. Prateek Kumar Sinha, learned AC to GA-

12 for the State.

By filing the present writ application, learned counsel
for the petitioner seeking quashing of the order as contained in
memo no. 316 dated 03.04.2018 issued by the Block
Development Officer, Gidhaur whereunder Rs. 3,66,450/- and
Rs. 4,05,917/- directed to be recovered and the same has already
been deposited in the account of the Government by the son of
the petitioner.

The short facts which led to the filing of the present
writ application is that the husband of the petitioner was



appointed as Panchayat Secretary in the year 1996 and posted in Laxmipur Block, he continued on the said post till 06.06.2016, the date on which, the husband of the petitioner unfortunately died in a road accident. It is further contended that the petitioner has applied for death-cum-post retirement benefit of her husband and finally the pension payment order and gratuity payment order were issued on 31.01.2019. However, it is submitted that an amount of Rs. 3,66,450/- and Rs. 4,05,917/- have been found to be outstanding against the husband of the petitioner and the remaining outstanding amount has been deposited by the son of the petitioner, but in compulsion. It is further contended that at no point of time any notice or any opportunity has been given, nor the petitioner had ever been informed by her late husband with regard to any outstanding amount against him, taken as an advance in his service period.

A counter affidavit has been filed on behalf of the respondents no. 3 to 6. Mr. Prateek Kumar Sinha, learned counsel for the State by referring to the statement made in the counter affidavit vehemently submits that the late husband of the petitioner was a Panchayat Secretary and while he was working under the Gidhaur Block, he took an advance of Rs. 4,38,450/- under the pension head and similarly an advance of



Rs. 4,05,917/- while he was posted in Jamui Block. The said amounts were never deposited by the petitioner's husband. Hence the B.D.O., Gidhaur wrote a letter to the petitioner to deposit the entire amount taken by her husband. In support of the aforesaid averments, a copy of the letter no. 316 dated 03.04.2018 along with endorsement made by the husband of the petitioner showing the advance taken by him, has brought on record by way of annexure-A series to the counter affidavit.

It is next submitted that in pursuant to the latter issued by the BDO, Gidhaur the outstanding due amount of Rs. 4,05,917/- has been deposited by the petitioner through her son, which was taken in advance by her late husband. He also drawn the attention of this court towards the letter given by the son of the petitioner as contained in annexure-B series to the counter affidavit stating therein that the remaining outstanding advance amount taken by the erstwhile employee is being deposited and a request has been made to issue no objection certificate and accordingly the same has been issued.

It is relevant to note here that the amount was deposited on 15.03.2019 itself. A rejoinder to the counter affidavit has been filed and submission has been made that at no point of time, the petitioner has deposited the advance amount



rather the same has been deposited by her son only with oblique motive to get compassionate appointment and at no point of time, she extended her consent for the same. It is further submitted that it is well settled that recovery cannot be made from the death-cum-retiral dues of a person and for the said purposes, he is relying upon a judgement rendered by the Apex Court in the case of *State of Punjab & Ors. Vs. Rafiq Masih reported in 2015 (4) SCC 334*.

Having considered the submissions made on behalf of the parties and taking into account the materials available on record, prima facie it appears that the due amount, which have been found taken in advance by the late husband of the petitioner has been deposited by the petitioner through her son way back in the month of March, 2019 itself and this writ petition has been filed in the month of January, 2021. This is also not a case of the petitioner that the amount has been deposited in duress rather they are admitting this fact that certain amount has been deposited by the son of the petitioner but the same has not been deposited with her consent. So far reliance made by the petitioner on a judgement passed by the Hon'ble Supreme Court is concerned, the same is not at all applicable in the present facts of this case as it is a case where



the petitioner has already deposited the advance amount through her son and now the petitioner cannot be allowed to turn around and denied the factum of advance taken by her late husband nor she can approbate and reprobate at the same time.

In view of the aforesaid facts, this Court does not find any merit in the present writ petition, however, since submission is being made on behalf of the petitioner that certain more amounts have been deducted from the death-cum-retiral benefits of her late husband, the petitioner is at liberty to raise the grievance by filing an exhaustive representation before the respondent no. 4. If such a representation is filed within a period of six weeks from today, the respondent no. 4 shall consider the same in the light of the judgement rendered by the Apex Court in the case of *State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors* (supra) and pass a reasoned and speaking order preferably within a period of further six weeks.

Accordingly, the present writ application stands disposed of with the aforesaid liberty and observation.

(Harish Kumar, J)

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