

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-3735-2019

Date of Decision :20.05.2022

Sheela Devi

..Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Devender S. Punia, Advocate for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

Harsimran Singh Sethi, J. (Oral)

Learned counsel for the petitioner argues that in the present case, after the death of the husband of the petitioner, his pay has been refixed by the respondents in order to make recovery of the excess amount, which is impermissible as per the settled principle of law settled by the Hon'ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195.**

As per the facts mentioned in the present petition, late husband of the petitioner was selected as Assistant professor in Geography in the year 2003 and while working on the said post, he died on 05.02.2016. After the death of the husband of the petitioner, while computing the benefits, for which the petitioner was entitled for on account of the services rendered by her late husband, the respondents discovered that husband of the petitioner

was wrongly granted two advance increments while in service for passing

M. Phil qualification and the same were withdrawn and the pay of the husband of the petitioner was refixed and an amount of Rs.1,35,691/- was ordered to be recovered from the petitioner from the benefits, which were to be paid by the respondents to the petitioner in respect of the services rendered by her late husband. Said order of recovery of the excess amount paid, passed by the respondents on 17.12.2016 (Annexure P/2) is under challenge in the present petition.

After notice of motion, the respondent-State have filed reply, wherein, it has been mentioned that after the death of the husband of the petitioner, the respondents discovered that two advance increments were given to the husband of the petitioner for clearing M. Phil qualification but, the same was wrongly extended and needed to be withdrawn. After withdrawing the said two advance increments, pay of the husband of the petitioner was refixed and ultimately it was found that an amount of Rs.1,35,691 was paid in excess to the husband of the petitioner, which has been deducted from the benefits to be paid to the petitioner after the death of her husband. Learned counsel for the respondents submits that the excess amount has been deducted on the asking of the petitioner herself.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, the pay of the late husband of the petitioner was refixed after his death and no opportunity of hearing was given to the petitioner before withdrawing the two advance increments given to the husband of the petitioner. Refixation of the salary of a dead man is not permissible under law. In the present case, the pay of the husband of the petitioner has been refixed after his death and that too without giving any

opportunity of hearing to the legal heirs.

Recovery of the excess amount paid from a dead man is not permissible. Recovery of the excess amount paid from a retired employee is also not permissible keeping in view the the settled principle of law settled by the Hon'ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**. In the present case, the petitioner is on a better footing, as the recovery has been done from the legal heirs of a dead employee. Keeping in view the fact that pay of the late husband of the petitioner was refixed after his death to his detriment without giving any opportunity of hearing to the legal heirs, therefore, the said refixation of pay and the consequent recovery cannot be sustained in the eyes of law. Learned counsel for the petitioner stated before this Court that the petitioner is only aggrieved against the recovery of amount of Rs.1,36,691/-which was deposited by the petitioner on the asking of the respondents, which action of the respondents cannot be sustained in the eyes of law and is accordingly set aside.

Respondents are directed to refund the amount of Rs.1,35,691/- to the petitioner within a period of two months from the date of receipt of copy of this order.

Petition stands allowed in above terms.

May 20, 2022

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(HARSIMR AN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No