

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8006 of 2023

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Gulabi Devi, Female, aged about 61 years, Wife of Late Makeshwar Nath Viswakarma, Resident of Mohalla-Gandak Colony, Ramnagar, Police Station-Ramnagar, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resource Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resource Department, Government of Bihar, Patna.
3. The Chief Engineer, Irrigation Creation, Water Resource Department, Bhagalpur.
4. The Executive Engineer, Irrigation Division, Bijikhorba.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ravindra Kumar Singh, Advocate
For the Respondent/s	:	Mr. Shailendra Kumar Singh, AC to AAG-4
		Mr. Sanjay Kumar, AC to AAG-4
		Mr. Sanjay Prasad, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 24-08-2023

Heard Mr. Ravindra Kumar Singh, learned counsel appearing on behalf of the petitioner and Mr. Shailendra Kumar Singh, learned AC to AAG-4 appearing on behalf of the State.

2. Learned counsel appearing on behalf of the petitioner submits that the husband of the petitioner had died in harness in the year 2005 from the post of Accounts Clerk and, thereafter, the petitioner is continuously receiving family pension. Thereafter, a communication was made by the Executive Engineer, Irrigation Division, Bijikhorba, Banka vide



Letter No. 352 dated 13.06.2020 informing that an amount of Rs. 2,73,245/- is required to be paid on account of the fact that the husband of the petitioner had taken loan of an amount of Rs. 2,09,267/- being the principle amount.

3. Learned counsel submits that recovery after the period of nearly 15 from a widow is not in accordance with law laid down by the Apex Court in the case of *State of Punjab & Others vs. Rafiq Masih (White Washer) and anr* reported in *(2015) 4 SCC 334*.

4. Mr. Shailendra Kumar Singh, learned counsel appearing on behalf of the State submits that no recovery has been made from the pensionary benefit of the petitioner, the loan amount which was taken by the husband of the petitioner has only been adjusted from the G.P.F amount payable to the petitioner.

5. Having considered the rival submissions made on behalf of the parties, the action of the Respondent No.4- the Executive Engineer, Irrigation Division, Bijikhorba, Banka, is without authority of law as no recovery can be made or any adjustment can be made from the petitioner, who is a widow of Class-III employee after lapse of more than 15 years from the date of death of the husband of the petitioner. Petitioner has



been receiving pension regularly and the action of the respondent is contrary to the law laid down by the Apex Court in case of ***State of Punjab & Others vs. Rafiq Masih (White Washer) and anr.*** reported in ***(2015) 4 SCC 334***. Paragraph No. 18 of the said judgment is reproduced herein under:

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

6. The Respondent No.4- the Executive Engineer, Irrigation Division, Bijikhorba, Banka, is directed to return the



entire amount which has been adjusted back to the petitioner in her G.P.F. account.

7. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-
Nilmani/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.08.2023
Transmission Date	N/A

