

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10312 of 2023

Chaya Devi Wife of Late Bibhuti Mandal Resident of Village- Baskichak,
Police Station- Dumka Muffasil, District- Dumka, Jharkhand, PIN- 814119.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Secretary, Minority Welfare Department, Government of Bihar, Patna.
4. The Managing Director, Bihar State Minority Finance Corporation Limited (Bihar Rajya Alpsankhyak Vitt Nigam Limited), 34, Harding Road, Ali Imam Path, Patna- 800001.
5. The In-Charge (Establishment), Bihar State Minority Finance Corporation Limited (Bihar Rajya Alpsankhyak Vitt Nigam Limited), 34, Harding Road, Ali Imam Path, Patna- 800001.
6. The Employees Provident Fund Organisation, Bhavishyanidhi Bhawan, R Block, Road No. 6, Serpentine Road, Near M.L.A. Flats, Patna, Bihar- 800001.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Gopal Govind Mishra, Advocate
For the Respondent/s : Mr.Anirban Kundu (SC 24)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 11-09-2023

Heard learned counsel for the parties.

2. The husband of the petitioner, namely, Bibhuti Mandal, was appointed on the post of Driver in Bihar State Minority Financial Corporation Limited (hereinafter to be referred as the 'BSMFCL') on 20.12.1989, who died in harness on 03.09.2020.

3. Petitioner is aggrieved for recovery of Rs.1,86,415/- and has sought for quashing of memo bearing no.144 dated 25.01.2021 (**Annexure - '2'**), through which the husband of the



petitioner had been communicated that due to incorrect fixation of pay, Rs.1,86,415/- has been recovered. Annexure '2' is the communication dated 25.01.2021 with respect to recovery of Rs.1,86,415/- whereas the husband of the petitioner had died in harness on 03.09.2020.

4. Learned counsel for the State has relied on Annexure 'R4/1' of the counter affidavit bearing memo no.1936 dated 18.12.2019, whereby the order of recovery of excess amount from the salary of the husband of the petitioner in instalment at the rate of Rs.20,000/- per months was passed.

5. Learned counsel for the 'BSMFCL' has drawn attention towards **Annexure 'R4/2'** of the counter affidavit and submitted that the husband of the petitioner during his life time had admitted the fact that the excess amount has been paid to him and the deduction amount should be reduced to Rs.15,000/- per month from his salary in place of Rs.20,000/- per month. In this regard, the husband of the petitioner had made communication, vide application dated 19.12.2019 kept as Annexure 'R4/2' to the counter affidavit.

6. Learned counsel for the State further submits that on account of incorrect fixation of pay scale, recovery has been justified by the Hon'ble Apex Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih** reported in **AIR 2015 SC 696**, Syed



Abdul Qadir Vs. State of Bihar reported in (2009) 3 SCC 475, **Col. B.J. Akkara Vs. Government of India** reported in (2006) 11 SCC 709 and **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.** reported in (2012) 8 SCC 417.

7. Learned counsel appearing on behalf of the petitioner submits that the petitioner is widow and her husband had died in harness as Class IV grade employee, who was not aware of the legal pronouncement and law laid down by the Hon'ble Apex Court. Learned counsel has clarified that so far as **State of Punjab & Ors. Vs. Rafiq Masih** (supra) and **Col. B.J. Akkara Vs. Government of India** (supra) are concerned, the Hon'ble Apex Court has already held that the pension is not a bounty rather a constitutional right as contained in Article 300(A) of the Constitution of India. He further submits that so far as **Syed Abdul Qadir Vs. State of Bihar** (supra) is concerned, it relates to a government servant posted on a gazetted post and in the same, the Hon'ble Apex Court has clarified that knowingly the gazetted employee had not made clarification with respect to excess payment on account of fixation of salary made by him, being drawing and disbursing officer himself, the realization on account of excess payment was held to be justified by the Hon'ble Apex Court. So far as the present case is concerned, the deceased employee was a Class IV employee and the recovery can not made



in the light of **State of Punjab & Ors. Vs. Rafiq Masih** (supra) and in any case, excess payment was made on account of incorrect fixation of salary by giving financial upgradation, the same could not amount to be promotion but on account of stagnation by giving the benefit of financial upgradation of the salary. Learned counsel has further relied on a recent judgment of the Hon'ble Apex Court passed in the case of **Amresh Kumar Singh & Ors. Vs. The State of Bihar & Ors.** reported in **2003 SCC Online SC 496**.

8. Recently the Hon'ble Apex Court in the case of **Amresh Kumar Singh & Ors. Vs. State of Bihar & Ors.** (supra) has clarified that the financial upgradation will not amount to be promotion. As such, on account of stagnation of an employee (husband of the petitioner) on Class IV post as Driver, no recovery can be made from the petitioner, who is a widow.

9. Considering the rival submissions made on behalf of the parties as well as the statements made in the counter affidavit, it is admitted that the husband of the petitioner had died in harness while he was posted on the post of Driver as Class IV employee. Petitioner is widow and she is an illiterate lady and any recovery on account of excess payment made to the husband of the petitioner during his service period (till his death) can not affect the family pension. Accordingly, **Annexure '2'** bearing Memo



no.144 dated 25.01.2021 and the consequential communications are quashed.

10. The Regional Director, Employee’s Provident Fund, Patna is directed to make payment of employees provident fund amount to the petitioner and for this purpose, he may make communication with the Managing Director of the ‘BSMFCL’ for facilitating payment of EPF amount to the widow of the deceased employee (petitioner). If the Regional Director, E.P.F., Patna finds that the certain paraphernalia like filling up of the forms by the petitioner is required, the same can be done at the level of the ‘BSMFCL’ and the Regional Director, E.P.F., Patna within a period of three weeks from the date of passing of this order. Both authorities are required to recruit a competent person to get the formalities done on behalf of the petitioner, who is widow and an illiterate lady.

11. With the above observation/direction, the present writ petition is disposed of.

(Purnendu Singh, J)

chn/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.09.2023
Transmission Date	

