IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25798 of 2019

==

Most. Chinta Devi Wife of Late Birju Prasad Resident of Village- Horil Bigha, P.S.- Hilsa, District- Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary Building Construction Department, Bihar, Patna.
3. The Superintending Engineer Building Circle, Building Construction Department, Patna.
4. The Executive Engineer Building Division, Nalanda at Bihar Sharif.
5. The District Provident Fund Officer Nalanda at Bihar Sharif.
6. The Treasury Officer Nalanda at Bihar Sharif.
7. The Branch Manager State Bank of India, Main Branch, Nai Sarai, Bihar Sharif, Nalanda.
8. The Accountant General Bihar, Birchand Patel Path, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner	:	Mr. Rana Ishwar Chandra, Advocate
For respondent No.7	:	Mr. Satyendra Kumar, Advocate
For the State	:	Mr. R.K. Chandran, AC to GP-19

==

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

12 14-03-2023 Heard Mr. Rana Ishwar Chandra, learned counsel appearing on behalf of the petitioner, Mr. Satyendra Kumar, learned counsel appearing on behalf of respondent No.7 and Mr. R.K. Chandran, learned AC to GP-19 for the State.

2. The petitioner is aggrieved by communication contained in Memo No. 1216, dated 12.07.2019 and Letter No. 2233, dated 26.11.2019 communicated to the Treasury Officer, Nalanda at Bihar Sharif and to the petitioner, respectively, by which it has been communicated to the petitioner that an amount

of Rs. 6,13,353/- on account of excess payment made to the husband of the petitioner required to be recovered.

3. Learned counsel appearing on behalf of the petitioner submitted that petitioner is the widow of deceased employee, namely, Late Birju Prasad, who was appointed as *Khalasi* in Nalanda Building Division, Biharsharif on 25.03.1980 and on 20.02.2014, the services of the husband of the petitioner was regularized. The husband of the petitioner attained age of superannuation on 31.01.2018 and he died on 23.05.2018. The pension of the deceased employee was not fixed, however, payment on account of gratuity and earned leave was provisionally paid to the deceased employee. He further submitted that petitioner was surprised to receive letter dated 26.11.2019 of Executive Engineer, Nalanda Building Division, Biharsharif by which he communicated to the petitioner that due to incorrect calculation excess amount of Rs. 6,13,353/- has been paid to the husband of the petitioner on different dates. The petitioner has further been directed to deposit the same in the Treasury Office and subject to the said payment, the family pension and other retiral dues payable to the petitioner would be made. Aggrieved by the said order, the petitioner has preferred the present writ petition. Learned

counsel further draws the attention of this Court that the action of the Executive Engineer, Building Division, Nalanda at Biharsharif (Respondent No.4) is illegal also on account of the fact that he was predetermined to make such recovery, which is reflected from the communication made by him to the Treasury Officer, Nalanda at Biharsharif (Respondent No.6) as contained in Memo No. 1216, dated 12.07.2019 much before the date the petitioner was communicated regarding the recovery vide letter dated 26.11.2019. He further submitted that the recovery has not been directed to be made for any misappropriation or misrepresentation to have been committed by the husband of the petitioner and in this regard he has placed reliance upon Judgment of the Apex Court ***(2015) 4 SCC 334 (State of Punjab and Others v. Rafiq Masih (White Washer) and Others*** in which Apex Court held as 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."

4. Learned counsel further relied on judgment of this Court reported in ***2017 (1) PLJR 797 (The State of Bihar & Ors. vs. Deopati Devi & Anr.).***

5. Learned counsel appearing on behalf of the State submitted that authority letter was issued in the name of the deceased employee namely Birju Prasad while he was alive, but the said authorized amount could not be encashed and in the meantime the employee died on 23.05.2018. Thereafter, the D.D.O i.e. Executive Engineer, Building Division, Biharsharif, Nalanda made request to the District Provident Fund Officer, Nalanda at Biharsharif (Respondent No.5) to re-validate the said authority letter No. 1359 dated 02.08.2019 to change the name as Chinta Devi, wife of the employee who is entitled to be paid actual dues of late Birju Prasad and G.P.F., however, in view of the communication made by the Executive Engineer an amount

of Rs. 6,13,353/- is required to be recovered. The petitioner has been requested to deposit the excess amount so that other retiral benefit may be paid to the petitioner and family pension can be fixed. He further submitted that petitioner instead of making payment aforesaid amount and has filed the present writ petition. Learned counsel further submitted that ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others*** is not applicable in the case of the facts of the petitioner. In the present case communication has been made to the original petitioner to deposit the amount of Rs. 6,13,353/- within his life time of original petitioner within one year. The petitioner is herself responsible for delaying in fixation of pension and other retiral benefits payable to her and on these grounds, it has been stated that the present writ petition is not maintainable.

6. Heard the parties.

7. Undisputed facts of the case are that the petitioner had retired on 31.01.2018 and died on 23.05.2018. Vide Memo No. 1216 dated 12.07.2019, the Executive Engineer Building Division, Nalanda at Bihar Sharif had informed the treasury Nalanda, Bihar Sharif to recover an amount of Rs. 6,13,353 and thereafter the Executive Engineer informed the petitioner vide order dated 26.11.2019 that due to incorrect calculation excess

amount of Rs. 6,13,353 has been paid to the original petitioner who was the husband of the present petitioner. For the said reason, the GPF payable to the petitioner has been paid and the pension has also not been fixed till date.

8. This Court finds that in absence of any regular proceeding to have been conducted during the lifetime of the petitioner or a proceeding initiated in terms of Rule 43 (b) of Pension Rules after the retirement of the petitioner, the action taken for recovery of the amount on account of excess payment cannot be sustained in absence of any allegation of misrepresented or petitioner having misappropriated any money. In as much as, no notice was issued to the petitioner before the communication made by the Executive Engineer Building Division, Nalanda at Bihar Sharif for recovery to the Treasury Officer, Nalanda-respondent no. 6 as contained in Memo No. 1216, however, the Executive Engineer Building Division, Nalanda at Bihar Sharif was adamant to take action for recovery and already directed the Treasury Officer to recover the amount in terms of communication dated 12.07.2019 contained in letter subsequent to the communication made to the Treasury Officer-respondent no. 6 vide letter no. 1216 dated 12.07.2019 is not permissible in law. The law laid down by the Apex Court in case

of ***Rafiq Masih Vs. State of Punjab and others(supra),*** restrains the recovery from retired, who is a Class IV or class-3 employee. The recovery of Rs. 6,13,353 from the original petitioner or his wife is illegal.

9. The post decisional communication made to the petitioner contained in letter no. 2233 dated 26.11.2019 is quashed and the direction for recovery contained in Memo No. 1216 dated 12.07.2019 is held to be illegal and without jurisdiction is also quashed. The respondents have admittedly found certain amount to be recovered on the basis of calculation made by them in calculating the retiral dues payable to the petitioner are themselves responsible and for which the original petitioner or the substituted heir of the original petitioner cannot be held liable.

10. The Apex Court in recent judgment in case of ***Thomas Daniel Vs. State of Kerala*** reported in ***2022 SCC OnLine SC 536*** wherein it has laid down that any excess payment made to the retired employee on account of error of incorrect calculation or error detected due to a mistake in interpreting any rules which has not been detected within a short time or wrong payment and excess payment not being on account of misrepresentation or forged cannot be recovered after

long span of time. Para 9 is reproduced here in under:

> **"9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess".**

11. In the present case admittedly the petitioner had retired on 31.01.2018 and he had died on 23.05.2018 during which period no communication of any excess payment on account due to mistake of calculation detected and communicated to the original petitioner. For the first time petitioner was communicated vide Letter No. 2233 dated 26.11.2019 after nearly two years cannot be considered to have

been considered within a short span of time.

12. Having regard to the above fact I am of the opinion that law is well settled that time to recover any amount from the petitioner was detected after nearly two years by the respondent from the present petitioner who is widow of employee is unjustified, in result the communication contained in Letter No. 2233 dated 26.11.2019 impugned is hereby quashed.

13. The writ petition succeeds and is accordingly allowed. There shall be no order as to cost.

(Purnendu Singh, J)

manish/minu

U			