IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11081 of 2024

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Sangeeta Kumari Wife of Late Rajeev Ranjan, Resident of Village- Ekangararai, Dhawan, P.O. and P.S.- Ekangarsarai, District- Nalanda, at present resided at Ranjan Niwas, Jehanabad Road Ekangarsarai, P.S.- Ekangarsarai, District- Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Rural Development Department, Government of Bihar, Patna.
2. The District Magistrate, Nalanda.
3. The Block Development Officer, Chandi Block at Nalanda.
4. The Nazir, Chandi Block at Nalanda.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Akhilesh Dutta Verma
For the Respondent/s	:	Mr.Government Pleader 25

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 05-08-2025

Heard the parties.

2. The petitioner is aggrieved with the order contained in Memo No. 1828 dated 14.11.2022, whereby an amount of Rs.11,13,020.20/- was ordered to be recovered from the petitioner, who is a hapless widow of the erstwhile employee. The petitioner further sought quashing of the order as contained in Letter No. 36 dated 05.01.2024 as also the consequential letter No. 243 dated 03.02.2024 whereby an amount of Rs.15,59,933.07/- is ordered to be recovered from the family pension account of the petitioner.

3. Before proceeding further in the matter, learned Advocate for the petitioner made it clear that in the light of the order contained in Memo No. 1828 dated 14.11.2022, the petitioner being a hapless widow without understanding the consequences, under compelling circumstances and on protest, deposited the amount. However, when the subsequent impugned order came to be passed in the year 2024, both the orders are put to challenge.

3. The erstwhile employee, the husband of the petitioner had joined the services in the year 2000 and thereafter he worked in so many offices and finally he was posted as Nazir in Chandi Block in the district of Nalanda, where he worked from 2017 to 2021. While the erstwhile employee was discharging his duty, due to serious renal ailment he died on 18.02.2021 on account of multiple organ failure.

4. The aforesaid fact has been acknowledged by the Department. After the sudden demise of the erstwhile employee, in harness, the petitioner has been paid the amount under the head of GPF, Gratuity and Group Insurance. However, she has not been allowed pension and other admissible dues for which she was moving behind the authorities concerned. In the meanwhile, all of a sudden the petitioner was served with letter

No. 1828 dated 14.11.2022 whereby an amount of Rs.11,13,020.20/- was ordered to be recovered.

5. Learned Advocate for the petitioner contended that when the petitioner met the respondent No. 3, she was threatened to face consequences that in case of failure on her part to deposit the amount, she would be deprived from the family pension, besides initiation of proceeding. Finally on such huge pressure, she deposited an amount to the tune of Rs.11,13,020.20/- under impression that No Dues Certificate shall be given to her. After depositing the afore noted amount, family pension came to be started in favour of the petitioner. The dispute, if any, in the submission of the petitioner came to be settled, but again after a period of one year and three months, the respondent authorities came out with Letter No. 36 dated 05.01.2024 and Letter No. 243 dated 03.02.2024 directing the petitioner to deposit the amount of Rs.15,59,993.07/-, making it clear that recovery shall be made through family pension of the petitioner by way of installment.

6. Learned Advocate for the petitioner assailing the action and orders of the concerned respondents has submitted that there could not be any recovery from the dead employee once he is no more alive to rebut the allegation and the

evidences based upon which the respondent authorities have come out with the order for recovery. He further submits that since the petitioner is a widow of the erstwhile employee who is no more alive and died in harness; thus any recovery from the pensionary benefits would be in the teeth of the mandate of the Apex Court in the case of ***The State of Punjab & Ors. vs. Rafiq Masih (While Washer) [(2015) 4 SCC 334***. Reliance has also been placed on a Bench decision of this Court in the case of ***Shashi Bhushan Pandey vs. The State of Bihar & Ors. [CWJC No. 8569 of 2024]*** wherein in identical facts, the Court deprecated the action of the authorities concerned in making recovery of the amount from pensionary benefits, is the contention of learned Advocate.

7. Mr. Ramadhar Singh, learned Advocate for the State dispelling the afore noted contention has submitted that on the basis of initial verification done, an amount of Rs.11,13,020.20/- has been recovered and deposited in the Government account. However, in course of detailed scrutiny of the vouchers and account registers, it was detected that the amount of several vouchers has been entered in the account register twice and after that it was found that an amount of Rs.5,89,368.07 was shortage in amount of vouchers and

Rs.9,70,565/- was shortage in the account register related to the election expenses and therefore an additional recoverable amount came to Rs.15,59,933.07/-. Accordingly, action has been initiated for recovery of the public money for Rs.15,59,933.07/-. It is the contention of the learned Advocate for the State that the husband of the petitioner has committed misappropriation of huge public money and since he is no more alive, the petitioner is liable to deposit such misappropriated amount.

8. Before parting with the case, it would be pertinent to observe that the entire action for recovery of the alleged unadjusted or misappropriated amount has been initiated after the death of the erstwhile employee and admittedly there had never been any show cause notice or proceeding with respect to the alleged default on the part of the erstwhile employee. Thus, the decision to recover the amount is unilateral based upon the document/evidence which could not have been accepted or confronted by the petitioner's husband. In an identical situation in the case of ***Smt. Indu Devi v. State of Bihar & Ors. [2004(1) PLJR 162]***, where the amount to the tune of Rs.1,39,282/- was ordered to be recovered on account of non handing over of the charge of certain articles before the death of the employee, who died in harness, the Court while allowing the writ petition with

cost held *"In my opinion, after the death of employee/Government servant recovery in such manner is not permissible. It is only permissible by getting a decree of Civil Court of competent jurisdiction otherwise it would be violative of principles of natural justice and fair play, moreso, because it is not possible for the widow to dispute such recovery on merit for want of proper opportunities, in the facts and circumstances aforementioned, this Court finds that the attitude of the Director in discharging liability of paying death-cum-retiral dues to the widow is gross callous and this Court strongly deprecates his such attitude"*

9. Further in the case of ***Smt. Shanti Choubey v. The State of Bihar & Ors. [2004 (4) PLJR 236]*** the Court, in the matter where the husband of the petitioner died in harness, without making adjustment of the amount given as an advance, and thus the respondent State authorities came out with an order directing for recovery of such amount from the pensionary benefits, while setting aside the impugned order of recovery has categorically observed that the recovery is not permissible after the retirement of government servant from service, except taking recourse to the provisions, contained in rule 43(b) of the Bihar Pension Rules and that too only if the case is covered by

the rider clause of the said provision, which provides that (a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment; (i) shall not be instituted save with the sanction of the State Government; (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings.

10. It would be relevant to encapsulate para-13 of the afore noted decision in the case of ***Smt. Shanti Choubey*** (supra), which will have material bearing over the issue raised before this Court.

> *"13. I fail to appreciate as to how after the death of the Government servant, the Government expects from the widow to meet such claim of the department when no step at all was taken during the lifetime of the deceased Government servant. It is really shocking that such decision for recovery is taken after the death of the Government servant on the pretext of adjustment sought to be made from the death-cum-retiral dues payable to the widow who obviously cannot meet such claim of the Department that the works for which advances were taken were not executed and vouchers/bills were not produced by the deceased Government servant during his lifetime."*

11. Now coming to the mandate of the Apex court in

the case of ***Rafiq Masih*** (supra), the Court succinctly held that it is not possible to postulate all situations of hardship which would govern the employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Based on the decisions rendered by the Apex Court in earlier cases, the Hon'ble Court summarized the following situations, whereas recovery by the employer would be held impermissible in law.

> *“"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, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:-*
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> *(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
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> *(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".

"(A) If it is from employees belonging from Class III and Class IV services (or Group C and Group D service);
(B) If it is from retired employees or the employees who are due to retire within one year, of the order of recovery;
(C) If it is 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;
(D) From employees who were wrongfully made to discharge duties of higher post and have been paid accordingly even though they should have rightfully been required to work against an inferior post."

12. Admittedly, in the case in hand, the question and the dispute as to whether the amount was paid in excess to the entitlement to the petitioner or could not be adjusted by the erstwhile employee, but it is obvious that the order has been issued to recover the same from the family pension of the

widow of the erstwhile employee, that too, without following any due process of law.

13. In the case of ***Rafiq Masih*** (supra), the Court while summarizing the situation where the recovery by the employer would be made impermissible, it has further been made clear in para-18(v) of the said judgment that 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.

14. The decision afore noted has been passed after reiterating the decision passed by the Hon'ble Supreme Court in catena of decisions reported in **Syed Abdul Qadir & Ors. vs State Of Bihar & Ors. [(2009) 3 SCC 475]; Sahib Ram vs. State of Haryana [(1995) Suppl.1 SCC 18]; Shyam Babu Verma vs. Union of India [(1994) 2 SCC 521]; V. Ganga Ram vs. Regional Joint Director & Ors.[(1997) 6 SCC 139]; Purshottam Lal Das vs. State of Bihar [(2006) 11 SCC 492]; Bihar State Electricity Board vs. Bijay Bhadur [(2000) 10 SCC 99]; B.J. Akkara vs. Government of India & Ors. [(2006) 11 SCC 709].**

15. After going through the mandates of the Apex

Court as well as the decisions of the co-ordinate Bench of this Court, the action of the respondents directing for recovery of the amount from the family pension of the petitioner is held to be impermissible, illegal and unsustainable in law. However, it is made clear that since the petitioner has deposited the amount of Rs.11,13,020.20/- in pursuant to the order as contained in Memo No. 1828 dated 14.11.2022 which has never been questioned before any authority and the same has been challenged only after issuance of the order as contained in Letter No. 36 dated 05.01.2024 and further consequential Letter No. 243 dated 03.02.2024, this Court does not interfere with the earlier order contained in Memo No. 1828 dated 14.11.2022 on account of the principle of estoppel and waiver. However, the subsequent order of recovery contained in Letter No. 36 dated 05.01.2024 and consequential Letter No. 243 dated 03.02.2024 are hereby set aside. The respondents are directed to ensure admissible family pension along with other due amount if the same has not been paid till date. Recovery of any amount in pursuant to Letter No. 36 dated 05.01.2024 and consequential Letter No. 243 dated 03.02.2024 shall also be restored, if any, made by the respondents, within a period of eight weeks from the date of receipt/production of a copy of this order.

16. The writ petition stands allowed partly.

17. There shall be no order as to cost.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.08.2025
Transmission Date	