



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.7331 OF 2024

Smt. Sheela W/o Dinkarrao Kshirsagar

Vs.

Zilla Parishad, Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri P.D. Meghe, Advocate for petitioner.

Shri M.A. Sable, Advocate for respondent nos.1 to 4.

Ms Hemlata Jaipurkar, AGP for respondent no.5/State.

Shri G.G. Mishra, Advocate for respondent no.6.

CORAM : SMT. M.S. JAWALKAR & M.W. CHANDWANI, JJ.

DATE : 15.12.2025.

The petitioner is seeking quashing of the communication/order passed by the respondent no.3 – Deputy Chief Accounts and Finance Officer, Zilla Parishad, Nagpur dated 16.07.2024 ordering recovery of ₹3,99,472/- which includes recovery of outstanding loan issued by the respondent no.6 – Zilla Parishad Prashashkiya Karmachari Pratyay Sahakari Sanstha, Nagpur amounting to ₹3,59,395/- and recovery of excess salary amount of ₹40,077/-.

2. It is informed that during the pendency of the petition, the issue with respect to amount of ₹3,59,395/- has been redressed. What remains is the recovery of amount paid by the employer to the petitioner towards excessive payment of salary to the deceased husband of the petitioner. Needless to mention that, the petitioner who is the widow of Dinkarrao Kshirsagar, who was working with respondents, was working on 'Group-C' post

and the amount of ₹40,077/- is sought to be deducted from the family pension of the petitioner a widow.

3. Having heard the learned counsels for the respective parties and having gone through the impugned communication/order dated 16.07.2024, we are of the view that the case is covered by the decision of the Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer)***¹, wherein, in para 18 it has been observed 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 herein above, 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

1 (2015) 4 SCC 334

extent, as would far outweigh the equitable balance of the employer's right to recover.”

4. Since, the case of the petitioner is covered by clause (i) to (iii) and (v) of **Rafiq Masih's** case (supra), we find force in the argument of the learned counsel for the petitioner that the excess amount cannot be recovered from the family pension of the petitioner on account of the excessive payment of salary to her deceased husband.

5. So far as the submission of respondent nos.1 to 4 that an undertaking was obtained with respect to any excess amount is paid while approving the family pension of the petitioner is concerned, we find that the said undertaking was not obtained by the employer before paying the excess amount. A general undertaking was obtained while approving the family pension which cannot be termed as an undertaking given before paying the excessive salary to the husband of the petitioner. Therefore, we find that the submission has no merit.

6. Therefore, the petition deserves to be allowed. We therefore quash and set aside the impugned communication/order dated 16.07.2024 to the extent of recovery of ₹40,077/- towards excess payment of salary made to the husband of the petitioner.

7. With this, the petition stands disposed of. No order as to costs.

(M.W. CHANDWANI, J.)

(SMT. M.S. JAWALKAR, J.)

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