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NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 2152 of 2017**

Smt. Kanchan Bagale W/o Late Shri Ramesh Chandra Bagale, Aged About 56 Years R/o Qr. No. H- 31, I. T. I. Colony, Rampur, Korba, District Korba Chhattisgarh., Chhattisgarh

... Petitioner**versus**

1 - State Of Chhattisgarh Through Secretary, Department Of Technical Education, H O D Building, Block-3, 3rd And 4th Floor, Indravati Bhawan, New Raipur, District Raipur Chhattisgarh. Chhattisgarh

2 - The Director, Directorate Of Employment And Training, Indravati Bhawan, Block-4, 1st Floor, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh.

3 - Joint Director Training , Regional Office, Industrial Training Institute, Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh.

4 - The Accountant General Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh.

5 - The Joint Director, Treasury And Pension, Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh.

6 - Principle Industrial Training Institute, Surajpur, District Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh.

... Respondent(s)

For Petitioner : Mr. Parth Shrivastava, Advocate

For Respondent Nos. 1, : Mr. Rohitashwa Singh, Dy. GA

to 3, 5 & 6

For Respondent No. 4 : Mr. Raj Kumar Gupta, Advocate

Hon'ble Shri Justice Sachin Singh Rajput,**CAV Order**



- 1) The instant petition is directed against the notice dated 09.11.2015 (Annexure P-1) as also the notice dated 08.03.2017 (Annexure P-2) issued by Joint Director (Training) Regional Office, Industrial Training Institute, Ambikapur, District Sarguja, CG (hereinafter referred to as respondent No.3) for recovery of Rs. 4,33,000/- which was withdrawn by the husband of the petitioner from development fund.
- 2) The husband of the petitioner is said to have died in harness on 22.01.2014. Respondent No.3 further directed the petitioner to submit an affidavit for giving her consent regarding recovery of dues from pension, gratuity, GPF. It is stated that no mis-representation was made by the husband of the petitioner and that no notice was served to him with regard to the withdrawal of the amount from development fund nor any enquiry for that was ever conducted. Respondent No. 3 did never ever issue any recovery order to the husband of the petitioner during his lifetime. It is after his death the respondent No.3 issued the recovery notice (Annexure P-1) for recovery of Rs. 4,33,000/- from his retiral dues. The petitioner made a detailed representation dated 01.03.2017 (Annexure P-6) requesting the respondents for payment of retiral dues, gratuity, GPF as also the full pension, but the same remained unheard of, and eventually without considering her representation the respondents asked her to give her consent on affidavit for recovery of the dues from retiral dues, gratuity, GPF. During the pendency of this petition, the respondents have again issued notice to the petitioner for recovery of amount of Rs. 09,59,010/- dated 19.12.2023 (Annexure P-14), and without affording any opportunity of hearing and assigning any reason for such recovery, the respondents have started recovery from the family pension of the petitioner which is evident from the statement of account filed as Annexure P-15. The subsequent recovery notice dated 19.12.2023 (Annexure P/14) was challenged by the petitioner by way of an amendment. It is the further case of the petitioner that without any fault on her part she is



suffering on account of non payment of all service benefits of her husband.

Being all this, it is submitted by the petitioner that the recovery notices (Annexures P-1 and P-2) may be set aside by allowing the petition.

- 3) Counsel for the petitioner submits that the action of the respondents in issuing the recovery notice to the petitioner is illegal, arbitrary and bad in law and being that the same is required to be set aside. He submits that the respondents have passed the recovery order from the retiral dues of the husband of the petitioner without conducting any enquiry during his lifetime, which is bad in law and cannot stand judicial scrutiny of this Court. It is submitted that there was no fraud or misrepresentation on the part of the husband of the petitioner which could have resulted in any financial irregularity rendering the same recoverable from the petitioner. It is submitted that the respondents are un-necessarily exerting undue pressure on the petitioner in order to extract consent from her for recovery of dues from the retiral dues of her husband such as GPF, gratuity etc. and since she has expressed her inability to give the consent asked for, the respondents are harassing her by not releasing the service benefits of her husband. Referring to Rule 66(1)(b) of the CG Civil Services (Pension) Rules, 1976 he submits that once the surety furnished by the employee is found to be acceptable, payment of pension and gratuity cannot be delayed. It is further submitted that since the petitioner was duly nominated by her husband to receive the gratuity as per Rule 69(2)(a)(i) of the CG Civil Services (Pension) Rules, she is entitled to receive the same consequent to his death in harness. It is submitted that as no opportunity of hearing was given to her or to her husband during his lifetime, the impugned recovery order is bad in law and contrary to the principles of natural justice and therefore liable to be set aside. It is further submitted that the respondents have started deducting the amount from the family pension, which in old age is putting the widow



petitioner to financial crisis who has the extra responsibility of her unmarried daughter also. In addition to this, he submits that the respondents have never initiated any recovery proceeding during the lifetime of the husband of the petitioner and it is after his death they started pressurizing his widow to give consent for such recovery on affidavit, which is illegal, arbitrary and in violation of the judicial pronouncements of the Supreme Court. In support of his submissions, reliance is placed on the decision of the Supreme Court in the matter of **State of Punjab and others v. Rafiq Masih (Civil Appeal No. 11527/2014 order dated 18.12.2014)** and on the decision of the Rajasthan High Court in the matter of **Nand Lal Raigar and others v. State of Rajasthan and others in Civil Writ Petition No. 324/2010 order dated 14.02.2024.**

- 4) On the other hand, counsel for the respondents No. 1 to 3, 5 and 6 submits that the aforesaid amount was received from the students against training fees and therefore it was the duty of the husband of the petitioner to make all entries about the withdrawals received under the aforesaid heads, which however was not done by him, which shows the misappropriation of the said amount. The return filed by these respondents however specifically says that as the entire episode pertained to the period after the death of the husband of the petitioner, no notice could be issued to him during his lifetime. It is submitted that while husband of the petitioner was alive and posted at Korba, he was allotted a government quarter. It is submitted that though in the month of May, 2007 he was transferred to Surajpur yet he did not vacate the said government quarter. It is further submitted that the notice issued to the husband of the petitioner for vacating government quarter also did not fetch any response and he remained in unauthorised possession thereof even after joining at ITI Surajpur. The husband of the petitioner is also stated to have not paid even the rent of the said government quarter. This non payment of rent towards the government quarter by the husband of the



petitioner caused huge financial loss to the public exchequer. It is thus submitted that during the service tenure while he was alive, the husband of the petitioner in order to gain undue benefit made self withdrawal of Rs. 04,05,000/- from the development, and even a sum of Rs. 28,000/- was also not deposited on the head of development fund which has been duly found in the enquiry conducted by the committee constituted vide order dated 31.03.2015. In support of his submissions, reliance is placed on the decision of the Supreme Court in the matter of **Thomas Daniel v. State of Kerala and others reported in 2022 SCC OnLine SC 536** and in the matter of **Wazir Chand v. Union of India and others** reported in **(2001) 6 SCC 596**, **Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others** reported in **(2012) 8 SCC 417**. It is thus the overall submission of the respondents that the petition is absolutely without any merit and therefore liable to be dismissed.

- 5) Heard counsel for the parties and perused the documents on record.
- 6) Having traversed through the documents on record it is apparent that the husband of the petitioner died in harness on 22.02.2014. There is nothing on record to show that any notice pertaining to financial irregularities was issued to him during his lifetime. On the contrary, the first ever notice was issued that too to his widow (the petitioner herein) on 09.11.2015 followed by the other one dated 08.03.2017 and the one dated 19.12.2023 all marked as Annexures P-1, P-2 and P-14 respectively. The law in respect of recovery of any excess payment made to the employee is well settled in the matter of **State of Punjab and others v. Rafiq Masih, relevant portion of which reads as under:-**

12. 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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from 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.

7) It is also decipherable from the documents on record that the husband of the petitioner was not issued any notice during his lifetime, and dealing with this aspect of the matter it has been held by the Rajasthan High Court in the matter of Nand Lal Raigar and others (**supra**) that a person must be alive against whom any enquiry or recovery proceedings are initiated. As soon as a person dies, he/she breaks all his connections with the worldly affairs. No punitive action can be taken against a dead person. Relevant portion of which reads as under:-

10. A person must be alive against whom any enquiry or recovery proceedings are initiated. As soon as, a person dies, he/she breaks all his connections with the worldly affairs. No punitive action can be taken against a dead person. This Court feels pity on the part of the respondents for initiating recovery proceedings against the dead mother of the petitioners who had already died way back in the year 2004 and this



information was well communicated to the respondents authorities. Thereafter, they initiated the same recovery proceedings against the petitioners without holding any enquiry. It is well-settled proposition of law that enquiry against a delinquent totally abets on death of such person. Once a person died, his/her all kinds of relationship with the authority ceases. The defence, if any, is a personal defence available to such person and no other person can be substituted in place of such dead person and defend the conduct of the dead person."

8) Since the recovery is sought to be made after the death of the employee that too from the service benefits receivable by the widow, it would be justifiable to treat the order of recovery on account of wrongful withdrawal by the deceased employee, as iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover. Furthermore, it is well-settled proposition of law that enquiry against a delinquent totally abets on the death of such person. Once a person dies, his/her all kinds of relationship with the authority cease. The defence, if any, is a personal defence available to such person and no other person can be substituted in place of such dead person, and defend the conduct of the dead person. Being this, no disputed amount can be recovered from the legal representatives of the deceased person until and unless any enquiry is conducted against the deceased and the same cannot be done now because the petitioner who happens to be widow is not aware about the irregularities or illegalities committed by her husband.

9) Same analogy appears to be applicable as regards the unauthorised occupancy of the government quarter by the husband of the petitioner or charging of penal rent. The decision sought to be taken support of by the Counsel for the respondents in the matter of Wazir Chand (**supra**) is not



applicable to the case in hand being distinguishable on facts, as in this case the person to be charged penal rent is no more and further that the recovery is being sought to be made from the widow.

10) In aforesaid view of the factual and legal discussion, this Court is of the considered opinion that the impugned recovery notices (Annexures P-1, P-2 and P-14) are illegal, arbitrary and contrary to the settled position of law adumbrated above, and being so they do not deserve to be countenanced. They are accordingly set aside.

11) The respondents are hereby directed to release the pension uninterruptedly to the petitioner as early as possible but not later than sixty days from the date of receipt of copy of this order. Other retiral dues of the deceased employee be also paid to the petitioner within the said time frame, if not already paid. If the respondents fail in making payment as above, they shall be liable to pay interest at the rate of 6% per annum on the entire unpaid amount.

12) Petition is thus allowed with the aforesaid observations and directions.

Sd/-

(Sachin Singh Rajput)
Judge

Jyotishi/Ansari