



2026:CGHC:4267

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1707 of 2022

1 - Hemlata Dewangan W/o Late Vijay Kumar Dewangan, Aged About 43 Years R/o Ward No.4, Laharod, Post Pithora, District Mahasamund, Chhattisgarh

... Petitioner(s)

versus

1 - State Of Chhattisgarh, Through Secretary, Department Of Higher Education, Block -3, Third Floor, Indravati Bhavan, Nava Raipur Atal Nagar, District Raipur Chhattisgarh.

2 - Divisional Joint Director, Education Division, 1st Floor, Integrated Education Complex, Raipur, Chhattisgarh.

3 - District Education Officer, Mahasamund District Mahasamund Chhattisgarh.

4 - Principal, Government Girls Higher Secondary School, Pithora, District Mahasamund Chhattisgarh.

5 - Divisional Joint Director, Treasury Accounts And Pension, Department Of Finance, Division Raipur, District Raipur Chhattisgarh.

... Respondent(s)

For Petitioner(s) : Smt. Poonam Gilurkar, Advocate

For Respondent/State : Shri Vivek Siddharth Ojha, Panel Lawyer



{Hon'ble Shri Justice Sachin Singh Rajput}

Order on Board

23/01/2026

Following relief has been claimed in this petition -

“1. The Hon'ble Court may kindly be pleased to call for the entire record pertaining to the case of the petitioner.

2. That this Hon'ble Court may kindly be pleased to issue a writ, and quash / set aside the communication dated 14/01/2022 (Annexure P/1) issued by Respondent No.4 by which recovery of an amount of INR Rs.1,97,827/- has been initiated against the petitioner.

3. That this Hon'ble Court may kindly be pleased to order for immediate payment of Family Pension and Death Gratuity along with 10 per cent interest to the petitioner.

4. Any other relief, which this Hon'ble Court may deem fit and proper may also be awarded to the petitioner including the cost of the petition.”

2. Learned counsel for the petitioner submits that the petitioner's husband Late Vijay Kumar Dewangan was working as Lecturer with the respondents. He died in harness on 17/04/2021. After his death, vide order dated 14/01/2022, recovery order was passed whereby an amount of Rs.1,97,827/- was directed to be recovered from the retiral dues of the petitioner's husband alleged to be an excess payment made to him from December, 1996 till his death. She submits that the said recovery cannot be made from the retiral dues of the petitioner's husband which the petitioner is entitled to receive. Even otherwise, she submits that the excess payment was not made on account of any misrepresentation or fraud played by the late husband of the petitioner. The said amount has already been recovered from gratuity amount of petitioner's husband. Therefore, the relief as claimed may be granted. She placed reliance on the judgment of Hon'ble Supreme Court in the case of **State of Punjab and ors etc. Vs. Rafiq Masih (White Washer) etc., 2015 4 SCC 334**. He further submits that the judgment of Rafiq Masih (supra) has been subsequently followed by Hon'ble Supreme Court in the case of **Thomas Daniel vs. State of Kerala and others** reported in **2022 SCC**



OnLine 536 and Jogeswar Sahoo & ors. vs. The District Judge, Cuttack & ors., 2025 SCC OnLine SC 724 and also judgment passed by this Court on 22/09/2021 in W.A. No.264/2020 and other connected matters.

3. On the other hand, learned State counsel opposes the above submission and submits that excess payment was made to the husband of the petitioner from the year 1996 till his death. The petitioner's husband was not entitled to receive the excess payment. Thus, after his death and when mistake came to the surface, recovery was made from the gratuity of petitioner's husband for which a consent was also given by the petitioner. Thus, there is no illegality or irregularity in making recovery of the said amount. Therefore, the writ petition is liable to be dismissed.

4. Heard learned counsel for the parties and perused the record.

5. The first contention raised by the State is that there is consent given by the petitioner at the time of settling of her retiral dues. This contention is liable to be rejected in the light of judgment of this Court passed in W.A.No.264/2020 in which it has been observed by the Division Bench of this Court that Revision of Pay Rules, 2009 and 2017 do not make any enabling provision reserving option for the employer to seek refund of the amount paid in excess, by making the employee to furnish an undertaking. Even otherwise, the fact remains that the employee has already passed away. Apart from this, Hon'ble Supreme Court in the case of Rafiq Masih (supra) has laid down certain situations wherein it has been categorically held that it would be impressible under law for the employer to make recovery. The situations as envisaged in the said judgment are as under:

“(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



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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.”

6. The judgment of Hon’ble Supreme Court in the case of Rafiq Masih (supra) has also been followed with approval in the case of **Thomas Daniel (supra)** and **Jogeswar Sahoo (supra)**. Thus the objections made by counsel for the respondents are not tenable and it is directed that the amount so recovered shall be refunded back to the petitioner within a period of 60 days from the date of receipt of copy of this order. The writ petition is accordingly allowed.

Sd/-

({Sachin Singh Rajput})

JUDGE