



2026:CGHC:13375

**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPS No. 2153 of 2024**

- Smt. Divya Joshi W/o Late Basant Kumar Joshi Aged About 55 Years R/o H. No. - 60 Sanjay Nagar, Ward No. 13 Daundi Lohara, District : Balod, Chhattisgarh

**... Petitioner**

**versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of School Education , Mahanadi Bhawan, Mantralaya, Nawa Raipur, Atal Nagar, District : Raipur, Chhattisgarh
2. The Director Public Instructions, Indrawati Bhawan, Nawa Raipur, Atal Nagar, District : Raipur, Chhattisgarh
3. The District Education Officer Balod, District : Balod, Chhattisgarh
4. The Principal Govt. Boys Higher Secondary School, Daundi, Lohara, District : Balod, Chhattisgarh

**... Respondents**

|                      |   |                                 |
|----------------------|---|---------------------------------|
| For Petitioners      | : | Ms. Juhi Anguria, Advocate      |
| For Respondent-State | : | Mr. Aditya Tiwari, Panel Lawyer |

**Hon'ble Shri Parth Prateem Sahu, Judge**

**ORDER ON BOARD**

**19/03/2026**

1. Learned counsel for petitioner submits that husband of petitioner while working on the post of Principal, Govt. Boys Higher Secondary School, Daundi, Block Lohara, District Balod, C.G. died in harness on 15.02.2024. At the time of computation of death-cum-retiral dues to be paid to petitioner, Respondent No. 3 issued an order on 25.02.2024 for recovery of amount of Rs. 3,62,487 stating therein that excess payment is paid to deceased employee (husband of petitioner) due to wrong fixation of pay w.e.f. 01.01.2016. She contended that notice of recovery is issued after death of

employee and therefore recovery is not permissible under the law. In support of his contention he places reliance upon decision in case of **State of Punjab & ors vs. Rafiq Masih (White Washer) & ors**, reported in (2015) 4 SCC 334, **Thomas Daniel vs. State of Kerala** reported in 2022 SCC OnLine SC 536.

2. On the other hand, learned State counsel does not dispute the submission of learned counsel for petitioner with regard to engagement of husband of petitioner as Principal, Govt. Boys Higher Secondary School, Daundi, Block Lohara, District Balod, C.G. Referring to document enclosed along with reply as Annexure R-3, he submits that deceased employee has given an undertaking, in which it is mentioned that if any excess payment is made it is to be recovered from the employee and therefore the order passed by Respondent No. 3 is correct and does not call for any interference.
3. I have heard learned counsel for the parties.
4. From the arguments which is advanced by learned counsel for the respective parties it is not in dispute that husband of petitioner died in harness on 15.02.2024 while working on the post of Principal, Govt. Boys Higher Secondary School, Daundi, Block Lohara, District Balod, C.G.
5. Recovery which is sought from petitioner is towards excess payment made to husband of petitioner during the period while he was in service on account of wrong fixation of pay. It is not the case of respondents that excess payment is made to husband of petitioner due to misrepresentation or suppression of fact or any fraud played by him with respondent-department.
6. In case of **Rafiq Masih (supra)**, Hon'ble Supreme Court considering the issue of recovery of amount paid in excess has summarized the situations where in certain cases, even recovery from the employee by the employer would not be permissible in law. Further in the case of **Thomas Daniel (supra)**, Hon'ble Supreme Court has considered its earlier decision in the

case of **Rafiq Masih (supra)** and set aside the order of recovery from the appellant therein. In Para-18 of the case of **Rafiq Masih (supra)** it was observed thus:-

“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 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. So far as submission of learned counsel for the State that deceased employee (husband of petitioner) has given undertaking/ consent for recovery of the excess amount, if any, paid to her husband. Perusal of undertaking Annexure R-3 enclosed along with reply filed by the State to the writ petition would show that the signature done on this document appears to be suspicious. Although, in case of **High Court of Punjab and Haryana and others vs. Jagdev Singh**, reported in (2016) 14 SCC 267, Hon'ble Supreme Court though had considered the issue with regard to the undertaking, however, Para-10 (i) of the decision in case of **Rafiq Masih (supra)** has not been overruled or interfered. This aspect is also considered

by the Division Bench of this Court in **WA No.264/2020 (State of CG vs Labha Ram Dhruv)** wherein it was observed thus:

“9. In the case at hand, the 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 if we conclude, for the sake of arguments, that even in the absence of enabling provision under the Rules, undertaking given by the employee would operate, the fact remains that against the classes of employees against whom recovery would be impermissible in law, as held by the Hon’ble Supreme Court in the matter of Rafiq Masih (Supra), recovery from the employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) would still be impermissible in law. Meaning thereby that even when undertaking is submitted by the employee, but he otherwise belongs to Class-III and Class-IV service, and the amount has been paid more than 5 years back, the law declared by the Hon’ble Supreme Court in the matter of Rafiq Masih (Supra) would still hold the field in favour of such employees, because the judgment in the matter of Rafiq Masih (Supra) has not been overruled, but only clarified, by the Hon’ble Supreme Court in its later judgment in the matter of Jagdev Singh, Supra”

8. From perusal of the above, it is clear that the recovery from the employees belonging to Class-III and Class-IV category (or Group 'C' and Group 'D' service) is held to be impermissible in law. Meaning thereby that even if undertaking is submitted by the employee, recovery of excess amount paid to him/her is impermissible and that too after retirement from the services.
9. In the case at hand, admittedly, husband of petitioner was holding a post of Class-II in the School Education Department and died in harness on 15.02.2024. Even if deceased employee was a Class-II employee but then the order of recovery which is issued by Respondent No. 3 is delivered after

death of employee and not during his lifetime. It is also not the case of respondents that petitioner had received excess payment by practicing fraud or by making misrepresentation. Thus, petitioner could not have been compelled to return the amount which has been paid by the respondents on their own without any misrepresentation or fraud on the part of husband of petitioner.

10. In light of above decisions and in the given facts and circumstances of the case, in the considered opinion of this Court, the respondents cannot be permitted to effect recovery from the petitioner of the amount paid in excess to her deceased husband and being so, recovery against petitioner is not sustainable.
11. Consequently, writ petition is **allowed** and the impugned recovery order Annexure P-1 dated 29.02.2024, is hereby set aside. Respondents are directed to return back the amount, if any, recovered from petitioner from the death-cum-retiral dues of husband of petitioner towards recovery of excess payment, within a further period of 03 months from the date of receipt of order passed by this Court, failing which the recovered amount shall carry interest @ 8% p.a. from the date of order till its realization.

Certified copy as per rules.

Sd/-

**(Parth Prateem Sahu)**

**JUDGE**