

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9393 of 2018

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Sunita Devi Wife of late Raj Kishore Singh Resident of Village-
Mahmmadpur Balmi Purani Bazar, P.O. and P.S. Motipur, District-
Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Rail, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Adv.
For the Respondent/s : Mr. M.N.H. Khan, SC-1
Mr. Md. Irshad, (AC to SC-1)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 01-07-2024

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ application has been filed for
quashing the Rail District, Katihar District Order No. 1410 of
2016 passed by the respondent no. 3 contained in Memo No.
626 dated 09.12.2016 by which the petitioner was directed to
deposit Rs.4,42,314/- in the office of Rail Police, Katihar which
was allegedly excess paid to the deceased husband of the
petitioner in the head of salary on account of 6th Pay Revision
and further prayer has been made to the respondent authorities
to refund the amount of Rs. 4,42,314/- with interest.

3. Learned counsel for the petitioner submits that the
husband of the petitioner was in service and his salary was fixed



by the respondent authorities themselves. Her husband was nowhere involved in fixation of his own salary. He further submits that her husband was died in course of discharging his duties on 12.07.2016. After his death, the petitioner has submitted application form for payment of all kind of death-cum-retiral dues of her husband, then only order impugned contained in Memo No. 626 dated 09.12.2016 has been served in which direction was made to the petitioner to deposit the amount of Rs.4,42,314/- in the Rail Police Office, Katihar which was allegedly paid in excess to the husband of the petitioner in the head of salary on the basis of wrong fixation of pay in his lifetime.

4. Learned counsel for the petitioner further submits that the respondent no. 3 has categorically informed to the petitioner that unless and until the said amount shall not be refunded, the death-cum-retiral dues could not be considered. As such, the petitioner have got no option. So, she arranged money from her relatives and deposited the cheque of Rs.4,42,314/- in the name of respondent no. 3 on 30.12.2017. He further submits that it is a well known decision of the Hon'ble Supreme Court of India in *State of Punjab & Ors. Vs. Rafiq Masih & Ors.* reported in *2015(4) SCC 334* that recoveries by the employers



would be impermissible in law from the employee belonging to Class-III and Class-IV services or Group C-and Group-D services. He further submits that recovery from retired employee or the employees who are due to retire within one year of order of recovery shall also not be made.

5. Learned counsel for the petitioner further submits that admittedly, here in the present case, husband of the petitioner was Class-III employee, who has alleged to receive excess amount towards salary, for which he has neither committed any fraud or misrepresented anyone. He further submits that the employee who has taken or received excessive payment is no more and, therefore, recovery from the widow is absolutely illegal and not be sustainable in the eye of law, and it is due to this reason, the writ petition has been filed with prayer to quash the said letter for recovery, as well as direction to refund the same amount which has been received from the petitioner by the respondent no. 3 in coercion.

6. In the light of the above facts and circumstances, learned counsel for the petitioner has filed the writ petition and prays to allow the same.

7. Learned counsel for the State on the other hand opposes the writ petition and submits that from the order



impugned, it becomes crystal clear that there was no direction for recovery of the said amount. He further submits that the petitioner herself decided to return the said excessive money received by her husband to respondent no. 3 and for which she has prepared a cheque and deposit the same in the official account through respondent no. 3. He further submits that Section 115 of the Indian Evidence Act which is clearly applicable in the present case and paid amount cannot be recovered in the light of applicability of doctrine of estoppel. He further submits that the State has not put pressure or made any recovery but the petitioner herself opted to return the said amount, hence the judgment of *State of Punjab & Ors. Vs. Rafiq Masih & Ors.* is not applicable in the present case and it shall not help the petitioner in any manner. He further submits that the said impugned order has been challenged after compliance of the same.

8. After going through the pleadings, documents and the position of laws discussed by the parties, it transpires to this Court that the husband of the petitioner was in service of the respondent. According to the respondent, excessive payment towards salary was paid to him during his lifetime. He was admittedly died during the course of discharge of his duties on



12.07.2016 and the said letter which is impugned here is dated 09.12.2016, which it has been intimated to the wife of the deceased employee that excessive payment has been made by her husband and direction has been made for refund of same.

9. This Court is of the firm view that recovery, if any has to be made from the employee who has received the excessive payment, but not from the wife of the employee. In addition to that it is nowhere alleged that husband of the petitioner is anyway responsible for wrong fixation or due to his misrepresentation or fraud. It also becomes clear from the decision of *State of Punjab & Ors. Vs. Rafiq Masih & Ors.* that paragraph 18 of the judgment is basically guideline under which it has been mentioned that recoveries by the employers would be impermissible in the law in the following situations which are as follows:-

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

10. So far as the applicability of doctrine of Section 115 of the Evidence Act is concerned, it has been categorically pleaded by the learned counsel for the petitioner in his petition that the said money was basically in the form of recovery and coercion has been made by the respondent authorities as petitioner has specifically pleaded that it was clearly stated by respondent no. 3 that until and unless the said excessive amount shall not be paid, nothing shall be paid towards death-cum-retiral benefit.

11. From the statement of paragraph 10 of the counter-affidavit also, it transpires that the stand of the respondent is that the death/retiral benefit of the deceased



husband of the petitioner would be only paid when the petitioner shall return and deposit the excessive amount in the Rail Police Office.

12. In this view of the matter, this Court decides that issuance of such order to the petitioner's wife for refund of money is bad in law, particularly, in the light of the ratio laid down in judgment decided by the Hon'ble Supreme Court of India in case of *State of Punjab & Ors. Vs. Rafiq Masih & Ors. (Supra)* and hence, Order No. 1410 of 2016 passed by the respondent no. 3 contained in Memo No. 626 dated 09.12.2016 is hereby set aside.

13. It is directed to the Rail Police (respondent no. 3) to return the amount of cheque which they have received Rs.4,42,314/- within six months from the date of production of the order along with the simple interest chargeable on same.

14. With this direction, the present writ application stands allowed.

(Dr. Anshuman, J)

sadique/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.07.2024
Transmission Date	NA

