**(2025) 09 BOM CK 0339**

**In the Bombay High Court, Aurangabad Bench**

**Case No :** Writ Petition No. 8355 Of 2025

Smt. Jayashri Wd/o Sunil Kolhe APPELLANT

Vs

State Of Maharashtra, Through its Secretary RESPONDENT

**Date of Decision :** 11-09-2025

**Acts Referred:**

**Citation :** (2025) 09 BOM CK 0339

**Hon'ble Judges :** Manish Pitale, J;Y. G. Khobragade, J

**Bench :** Division Bench

**Advocate :** Yogesh B. Bolkar, A.B. Girase, Sandesh R. Patil

**Final Decision :** Allowed

# Judgement

Y.G. Khobragade, J

1. Rule. Rule made returnable forthwith. With the consent of both the sides, it is heard finally at the stage of admission.

2. In the case in hand, a very short question falling for our consideration is that, whether the employer can recover the amount paid in excess to the deceased employee from his legal heirs i.e. the Petitioner the widow of the employee. On face of record it appears that, Shri Sunil Kolhe, the deceased husband of the Petitioner was working as "Assistant" with the establishment of Respondent No.5 University w.e.f. 01.01.1996. The husband of the Petitioner expired on 02.10.2022. Thereafter, the Petitioner had requested the Respondents to release all monetary and pensionary benefits arising out of service of her deceased husband. However, the Petitioner was asked to obtain heirship certificate, which was obtained by the petitioner on 12.06.2023. Thereafter, the Petitioner approached the Respondents with the request to process family pension and other monetary benefits accumulated to the service of her husband. Accordingly, the Respondent No.5 submitted the proposal for releasing the family pension. However, on 20.09.2024 the Respondent No.3/ Joint Director of Higher Education issued impugned certificate, certifying that excess payment to the tune of

Rs.14,96,836/-(Rs.8,79,172/- w.e.f. 01.01.2006 to 31.12.2015 and Rs.6,17,664/- w.e.f. 01.01.2016 to 02.10.2022) was made to the Petitioner's deceased husband. Thereafter, on 03.01.2025, the Respondent No.5 submitted the proposal of family pension with the Respondent No.2. However, the Respondent Nos.2 to 4 have neither paid family pension nor any monetary benefits to the Petitioner. Therefore, the Petitioner submitted representations on 27.02.2025 and 03.04.2025, thereby requesting for release of pensionary and other monetary benefits accumulated due to service of the Petitioner's husband. Thereafter, on 29.04.2025, the Respondent No.2 sanctioned family pension in favour of the Petitioner but amount of Rs. 14,96,836/- was directed to be recovered from the monetary benefits.

3. The learned counsel appearing for the Petitioner canvassed that, the Respondent Nos.2 to 4 have directed to effect recovery from the monetary and pensionary benefits payable to the Petitioner after sad demise of the Petitioner's husband and as such no undertaking was obtained from the Petitioner's husband while fixing the pay at the time of implementing 6th and 7th Pay Commission. The husband of the Petitioner was discharging duty being a Class-3 employee, therefore, alleged excess payment made to the deceased husband of the Petitioner cannot be recovered from the monetary and pensionary benefits payable to the Petitioner on account of death of her husband.

4. In support of these submissions, the learned counsel appearing for the Petitioner placed reliance on the cases of State of Punjab & Ors. V/s. Rafiq Masih (White Washer) & Anr.; 2015 (4) SCC 334, Jagdish Prasad Singh V/s. State of Bihar; 2024 SCC OnLine SC 1909, Thomas Danial V/s. State of Kerala; 2022 SCC OnLine SC 536 and unreported Judgment dated 27.03.2023 passed by the Coordinate Bench of this Court at Nagpur in Writ Petition No.4835/2021 (Smt. Sudha wd/o Bhagirath Meshram)

5. Per contra, the Respondent No.5 University has filed affidavit in reply and resisted the claim of the Petitioner. The Respondent No.5 contended that, Shri Sunil Kolhe, the deceased husband of the Petitioner was appointed to the post of "Assistant" w.e.f. 01.01.1996 and subsequently he was promoted to the post of "Senior Assistant". The Petitioner's husband died in harness on 02.10.2022. Thereafter, the Respondent No.5 submitted proposal of family pension and other monetary benefits accumulated out of the Petitioner's husband. However, the Respondent No.4/ Accountant, Joint Director of Higher Education issued recovery certificate dated 20.09.2024, wherein it was revealed about excess payment was made to the Petitioner's husband during the period from 01.01.2006 to 31.12.2015 and from 01.01.2016 to 02.10.2022 amounting to Rs.14,96,836/- and said certificate was issued conditionally effecting recovery of excess payment made to the Petitioner's husband from the monetary and pensionary benefits payable to the Petitioner. It is further contended that, on 08.12.2020, the Respondent No.1/ State Government issued a Notification for fixation pay scale w.e.f. 01.01.2016 which was made applicable w.e.f. 01.11.2020 but no arrears of

 

salary were payable w.e.f. 01.01.2016 to 03.10.2020. However, excess payment than the admissible salary was made to the Petitioner's husband due to wrong fixation, hence, recovery is directed. It if further contended that, on 25.05.2024, the Petitioner submitted an undertaking based on the notification dated 08.12.2020, therefore, the Petitioner is not entitled for any relief, hence prayed for dismissal of the petition.

6. It is canvassed on behalf of the Respondent Nos.1, 3 & 4 that, the husband of the Petitioner was working as an "Assistant" with the Respondent No.5 and he expired on 02.10.2022. After submitting legal Heirship Certificate the proposal for pensionary and other monetary benefits was processed, however, Respondent No.4 issued recovery certificate on 20.09.2024 directing recovery of Rs. 14,96,836/- for the excess payment made to the Petitioner's deceased husband due to wrong pay fixation while implementing 6th and 7th pay commissions and husband of the Petitioner was not entitled for the said revised pay scale, hence, prayed for dismissal of the petition.

7. Needless to say that in case of Rafiq Masih (White Washer) & Anr. cited (supra) the Hon'ble Supreme Court in para 18 held 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 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."

8. In case of Jagdish Prasad Singh cited (supra) it is held that, the excess unauthorized payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery and

 

further held that any recovery from an employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. The action of recovery on account of non-adherence to the principles of natural justice is also held to be unsustainable in the eyes of law.

9. In the case of Thomas Danial cited (supra) it is held that, the recovery is unsustainable, when the employee has not played any fraud or made any misrepresentation.

10. On 27.03.2023, the Coordinate Bench of this Court at Nagpur Bench passed the judgment in Writ Petition No.4835/2021 (Smt. Sudha wd/o Bhagirath Meshram), wherein it is held in paragraph nos.14 and 15 as under:

"14. Here is the case, where the deceased employee died in the year 2016 while he was in service. In the year 2002, his grade pay was fixed. In the year 2009, he had given an undertaking to refund the amount if excess amount is paid due to incorrect fixation of pay grade by the respondent no.2. Now, after 16 years and almost five years after the death of the deceased employee, the respondent no.2 comes up with the case that it had fixed the grade pay of the deceased employee incorrectly and the petitioner - widow of the deceased employee has been asked to consent for recovery of the excess amount paid to the deceased employee from family pension.

15. It appears from the record that the petitioner, who is widow is not earning and is doing household work. Considering her age, it is also obvious that her children are also dependent upon her. She is getting Family Pension of Rs.14,250/- per month which is already 50% of the original pension. Whereas, an excess amount of Rs.2,62,841/- is sought to be recovered. Considering the facts that the deceased employee who died in his early during his service leaving behind him, a widow and children; the time gap of 16 years, when the amount has been sought to be recovered; the quantum of recovery amount and the amount of Family Pension; we are of the opinion, that it would be iniquitous and harsh to effect the recovery from the Family Pension of the petitioner, who is a widow and dependent entirely on her Family Pension. Though, the deceased employee had, at the time of fixation of his salary, given the undertaking but considering the situation mentioned above, it will not be permissible to recover the excess amount of Rs.2,62,841/-from the Family Pension of the petitioner."

11. Considering the law laid down by the Hon'ble Supreme Court in the referred case laws, on 03.03.2023, this Court passed an order in Writ Petition No.2605/2023 (Suresh Rupchand Sonawane V/s. The State of Maharashtra & Ors.) and other connected petitions and held that, when the employees/ Petitioners were not involved in any mischief, fraud or deceit in orchestrating their wrongful pay revision, recovery is not permissible.

12. Similarly,in the case in hand, it is not in dispute that the Petitioner is a widow of an employee of the Respondent No.5 and she is entitled for monetary and pensionary benefits arising out of services of her husband, who died on

 

02.10.2022. However, on 20.09.2024 the Respondent No.3 issued impugned recovery certificate directing recovery of Rs.14,96,836/- from the monetary and pensionary benefits payable to the Petitioner. The Respondents have not brought anything on record to show that, deceased husband of the Petitioner had derived any benefits by playing mischief, fraud or deceit in orchestrating his wrongful pay revision.

13. Indeed, the Respondent No.5 tried to bring on record that, the Petitioner has furnished an undertaking that, if any anomaly or excess payment is made then such excess payment shall be adjusted or paid to the Government from the amount payable to the Petitioner. However, said undertaking is obtained from the Petitioner on the verge of release of monetary and pensionary benefits, which does not appear to be by free will but the same seems to be forcible. Therefore, the said undertaking is having no force and it is not binding upon the Petitioner.

14. In the case in hand, admittedly, the Petitioner's husband was never subjected to any departmental enquiry and no proceeding was initiated for recovery of the said amount, when the Petitioner's husband was alive and the relationship of "Employer" and "Employee" was in existence. The Respondents have failed to bring any adverse material on record to show that, after the death of the employee, the recovery in respect of excess payment made to the employee during his lifetime can be made from his legal heirs. Therefore, considering the law laid down in the above cited cases, we are of the view that the impugned recovery certificate dated 20.09.2024 issued by the Respondent No.4 and the order dated 29.04.2024 passed by the Respondent No.2 for recovery of amount of Rs.14,96,836/- are liable to be quashed and set aside. Accordingly, we answer the question framed in para 2.

15. In view of the above discussion, the present petition is allowed. The impugned recovery certificate dated 20.09.2024 issued by the Respondent No.4 and order dated 29.04.2024 passed by the Respondent No.2 for recovery of amount of Rs.14,96,836/- are hereby quashed and set aside. Rule is made absolute in the above terms.