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**(2008) 04 JH CK 0033**

**Jharkhand High Court**

**Case No:** None

Smt. Kiran Devi

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision:** April 1, 2008

**Citation:** (2008) 3 JCR 128

**Hon'ble Judges:** Narendra Nath Tiwari, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

N.N. Tiwari, J.

The petitioner, in this writ petition, has prayed for quashing the order dated 17th May, 1997 passed by the Deputy Commissioner, whereby a sum of Rs. 18,430/- (rupees eighteen thousand four hundred thirty) was sought to be recovered from the death-cum-retiral benefits payable to the petitioner after the death of her husband.

2. It has been stated that the petitioner's husband retired from the post of Panchayat Sewak under Katkamsandi Block, on attaining the age of superannuation, on 31st January, 1997. After his retirement, an enquiry was initiated, alleging the charge of defalcation during his service period. The Enquiry Officer was appointed. However, before completion of the enquiry, the petitioner's husband died. After the death of her husband, no notice or opportunity of hearing was given to the petitioner and suddenly the impugned order was passed, holding the petitioner's husband liable for recovery of a sum of Rs. 18,430/- (rupees eighteen thousand four hundred thirty) and the same was sought to be recovered from the death-cum-retiral benefits, payable to the petitioner after the death of her husband.

3. Mr. S. Shrivastava, learned Counsel, appearing on behalf of the petitioner, submitted that during the lifetime of the petitioner, the liability was not fixed

against him, neither he was found guilty of the charges and liable for recovery of the said amount in the said enquiry, which was initiated against the petitioner's husband. The said amount after the death of the petitioner's husband cannot be recovered out of the death-cum-retiral benefits, payable to the petitioner. By the impugned order, the respondents directed to deduct the amount of Rs. 18,430/- (rupees eighteen thousand four hundred thirty) from the sanctioned amount, payable to the petitioner on different heads. Under the said order of deduction, the petitioner was forced to pay the said amount as a condition for payment of the remaining benefits to her. Learned counsel submitted that the liability has not been fixed in any legal proceeding and the impugned order, fixing liability, without giving any opportunity of hearing, is wholly illegal and without jurisdiction and as such, the said order is not sustainable.

4. A counter affidavit has been filed on behalf of the respondents, stating, inter alia, that the enquiry was made during the lifetime of the petitioner's husband and an amount of Rs. 18,430/- (rupees eighteen thousand four hundred thirty) was found recoverable from the petitioner's husband. On the basis thereof, the said order has been passed for recovery of the amount from the death-cum-retiral benefits of the petitioner's husband. Subsequently, it was found that the petitioner's husband was liable for recovery of lesser amount and as such, a sum of Rs. 7,600/- (rupees seven thousand six hundred) has been refunded to the petitioner on 7th September, 2003.

5. Learned J.C. to S.C.II appearing on behalf of the respondents submitted that since the enquiry was made during the lifetime of the petitioner's husband, no further opportunity of hearing is required for deducting the amount from the death-cum-retiral benefits.

I have heard learned Counsel for the parties and considered the facts and materials on record.

6. On perusal of the impugned order (Annexure-2), it is evident that the petitioner's husband died during the pendency of the enquiry. The Deputy Commissioner, while fixing the liability and directing recovery of Rs. 18,430/- (rupees eighteen thousand four hundred thirty), by the impugned order, out of the death-cum-retiral benefits, payable to the petitioner, has further directed to conclude the departmental enquiry within one week of the receipt of the said order. The stand of the respondents that the enquiry was completed and in that enquiry, the said liability was found could not be substantiated by any document or material brought on record. The determination of liability of recovery of Rs. 18,430/- (rupees eighteen thousand four hundred thirty) from the petitioner without following the due procedure of law is arbitrary and perverse.

7. The impugned order, fixing liability of Rs. 18,430/- (rupees eighteen thousand four hundred thirty), thus, is not sustainable and the same is, hereby, quashed.

8. This writ petition is allowed. Any amount deposited or recovered towards the same shall be refunded to the petitioner within a period of four weeks from the date of receipt/production of a copy of this order.