GAHC040018792025

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

WP(C)/536/2025

Smti Nyai Sora
Age: 50
Occupation :
Address:Wife of Late (Er.) Kirba Sora
Yodi Momen Village
PO and PS Aalo
West Siang District
Arunachal Pradesh.

VERSUS

The State of AP and 4 Ors
Age: 0
Occupation :
Address:represented by the Commissioner/ Secretary
(PHE and WS)
Govt of Arunachal Pradesh
Itanagar.
2:The Secretary
Age: 0
Occupation :
Address:Finance
Planning and Investment Department
Arunachal Pradesh Civil Secretariat
Itanagar.

3:The Chief Engineer (E/Z)
Age: 0

Occupation :
Address:Public Health Engineering and Water Supply Department
Namsai.

4:The Superintending Engineer
Age: 0
Occupation :
Address:PHE and WS Circle Bene (Aalo)
West Siang District
Arunachal Pradesh.

5:The Director of Audit and Pension
Age: 0
Occupation :
Address:Govt of Arunachal Pradesh
Naharlagun.

Advocate for : T T Tara
Sr. Adv
Advocate for : GA (AP) appearing for The State of AP and 4 Ors: Advocate ,

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, appearing for 2,

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4,

5, respectively.

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

14.10.2026

Heard Mr. T. T. Tara, learned Senior Counsel assisted by Mr. G. Bam, learned counsel for the petitioner and Mr. Y. Riram, learned State Counsel appearing for all the respondents.

2. By filing this writ petition, the petitioner who is the wife of Late (Er. Kirba Sora) has sought for setting aside the recovery order dated 15.10.2025 (Annexure-7) issued by Superintending Engineer, PHE & WS Circle, Bene, Aalo directing the recovery of total amount of ***Rs.32,48,682***/-. The petitioner's Late husband was initially appointed as a Junior Engineer on 26.04.1993 in the Rural Works Department, Government of Arunachal Pradesh and he joined the department on 29.04.1993. Upon the bifurcation of the Rural Works Department into two separate departments, namely, the Public Health Engineering Department (for short, 'PHE') and the Irrigation and Flood Control Department (for short, 'IFC'), the petitioner joined PHE in the same capacity on 14.09.1995. He was subsequently promoted to the post of Assistant Engineer on an *ad-hoc* basis on 07.10.1996 and later on regularized on 29.04.1998. Thereafter, he was promoted to the post of Executive Engineer on 07.09.2007 but unfortunately, he died in harness on 10.07.2021.

3. Mr. Tara, learned Senior Counsel submits that after the death of the petitioner's Late husband, the petitioner being his legal heir was given a sum of ***Rs.14,25,280***/- towards Leave Encashment and ***Rs.5,28,780***/- as provisional pension vide PPO No.PHECB/PF-74/2011-12/361-66 for a period of 6 (six) months w.e.f. 01.08.2021 to 31.01.2022 @ ***Rs.54,000***/- per month. The petitioner was also given Death Gratuity of ***Rs.19,94,392***/-. However, when the pension papers and service book of the petitioner was being scrutinized, an objection was raised by the Director of Audit and Pension,

Government of Arunachal Pradesh vide communication dated 18.07.2022 to the effect that there was no entry regarding Late husband of the petitioner having passed the Departmental Examination prescribed for Assistant Engineer as well as Executive Engineer in the service sheet. Despite the same, increments have been granted periodically. Resultantly, the petitioner was served with the impugned order dated 15.10.2025 asking her to deposit a sum of ***Rs.32,48,682***/- for the excess drawl of leave salary and excess salary after deducting a sum of ***Rs.7,86,264***/- which had already been deposited by the petitioner, upon being asked to do so.

4. Mr. Tara, learned Senior Counsel also submits that as per the Office Memorandum No.F.No.18/03/2015-Esstt. (Pay-I) issued by the Government of India in the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training on 02.03.2016 (Annexure-8 series), which is adopted in the State of Arunachal Pradesh and which has also been issued pursuant to the Hon'ble Apex Court decision in the case of ***State of Punjab and Others-vs-Rafiq Masih (White Washer) and Others***; reported in ***(2015) 4 SCC 334,*** the 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 is not permissible.

5. Considering the same, the impugned order seeking recovery of the excess payment towards leave salary and excess salary for the period w.e.f 01.04.2001 to 10.07.2021 would not be permissible. In

fact, the Government employee had also expired on 10.07.2021 and therefore, having regard to the Office Memorandum and the decision of the Hon'ble Apex Court in the case of ***Rafiq Masih*** (supra), the impugned order dated 15.10.2025 is not sustainable and should be set aside. He further submits that the aforesaid amount which has also been deducted should also be refunded to the petitioner.

6. Mr. Riram, learned State Counsel appearing for all the respondents submits that the recovery so made is not simply towards excess payment to Late husband of the petitioner but it is for the reason that he had not cleared the examination that was required to be cleared while holding the post of AE and EE in terms of relevant provisions of CPWD Manual can. However, Late Government servant was given the increment without he having passed the required examination in accounts and therefore, the recovery had to be initiated.

7. I have heard the submissions of the learned counsel for the rival parties and I have also perused the materials available on record.

8. The facts projected by the petitioner is not in dispute. The petitioner's Late husband was working as Executive Engineer at the time of his death on 10.07.2021. He was also promoted to the post of Assistant Engineer earlier on *ad-hoc* basis on 07.10.1996 and regularized on 29.04.1998. On his death, the Executive Engineer, HQ, PHE & WS, Bene, Aalo had given a recovery notice to the petitioner

asking her to deposit an amount of ***Rs.7,86.264***/- which was for the overdrawn salary of Late husband w.e.f. 01.04.2001 to 10.07.2021.

9. The Hon'ble Apex Court in the case of ***Rafiq Masih*** (supra) had laid down the principles with regard to recovery from employees from the employer. It is held amongst others that recovery from the employees when the excess payment have been made for the period in excess of five years before the order of recovery issued would not be permissible in law. As already noticed hereinabove, based on the Hon'ble Apex Court decision, the Office Memorandum dated 02.03.2016 has been issued by the Government of India in the Ministry of Personnel, Public Grievances and Pensions and the same admittedly is applicable in the State of Arunachal Pradesh.

10. Having regard to the principles enunciated by the Hon'ble Apex Court, recovery of the excess amount as claimed by the official respondent, in the considered view of this Court would not be permissible. It is also nobody's case that Late Government servant by means of fraud or otherwise had gained the increments.

11. Under the facts and circumstances and upon due consideration of the materials available on record, the impugned recovery dated 15.10.2025 is not sustainable and the same stands set aside and quashed. The amount which was already recovered from the petitioner is also liable to refunded. Accordingly, the respondent authorities shall refund the same amount to the

petitioner within a period of 6 (six) weeks from the date of presentation of a certified copy of this order, failing which, the same shall carry 5% interest per annum.

With the above observations and directions, this writ petition stands disposed of, as allowed.

CHECKED
&
VERIFIED

Digitally signed
by Talom Tali
Date: 2026.10.15
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JUDGE