

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 776 OF 2018**

**DIST. : DHULE**

Nana s/o Bhuta Salunkhe, )  
Age : 59 years, Occu. Retired Civil )  
Engineering Assistant, )  
R/o Plot No. 14, Sai Samarth Colony, )  
Borse Nagar, Gondur Road, )  
Taluka & District – Dhule. )

**.. APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra, )  
Through the Principal Secretary, )  
Water Resources Department, )  
Mantralaya, Mumbai – 32. )
- 2) The Superintending Engineer, )  
Irrigation Project Circle, Dhule, )  
Sakri Road, Opp. Civil Hospital, )  
Dhule. )
- 3) The Executive Engineer, )  
Nandurbar Medium Project Division,)  
Sakri Road, Nandurbar, )  
District Nandurbar. )
- 4) The Accountant General, )  
Maharashtra State, Pratishta Bhavan,)  
2<sup>nd</sup> Floor, 101 Maharshi Karve Road,)  
New Mrline Lines, )  
Mumbai 400 020. )

**.. RESPONDENTS.**

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**APPEARANCE** :- Shri A.D. Sugdare, learned counsel for  
the applicant.

: Smt. Deepali S. Deshpande, learned  
Presenting Officer for the State  
authorities.

: Smt. Sunita D. Shelke, learned counsel  
for respondent no. 3.

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**CORAM** : **Hon'ble Shri Justice P.R. Bora,**  
**Vice Chairman**

**DATE** : **12<sup>th</sup> October, 2023**  
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### **O R A L - O R D E R**

Heard Shri A.D. Surdare, learned counsel for the applicant, Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent authorities and Smt. Sunita D. Shelke, learned counsel for respondent no. 3.

2. Aggrieved by the dated 18.01.2018, whereby respondent No. 3 recovered amount of Rs. 3,23,630/- from the amount of gratuity payable to the applicant on account of wrong fixation of pay and consequential payments made in the period between 16.06.1998 and 30.09.2017.

3. The applicant was working as Civil Engineering Assistant which is a class-III post and got retired on 30.09.2017 on attaining the age of superannuation. Learned counsel for the applicant submitted that at the time of his retirement on attaining the age of superannuation, no Departmental Enquiry or Criminal prosecution was pending against the applicant. After his retirement, on 18.01.2018 aforesaid order came to be issued and amount as aforesaid was recovered from the gratuity

amount payable to the applicant. In the present matter, the applicant has prayed for setting aside the aforesaid order and consequently has sought refund of the aforesaid amount.

4. Respondents have opposed the contentions raised in the Original Application and the prayers made therein by filing their affidavit in reply. It is the contention of the respondents that some mistake had occurred in extending time bound promotion to the applicant because of which excess payment was made to the applicant during the period between 16.06.1998 and 30.09.2017. It is further contended that the Government is having right and authority to recover any amount, which has been wrongly paid to the Government employee for which he is not entitled. Respondents have therefore, justified the order of recovery and prayed for dismissal of the present Original Application.

5. Learned counsel for the applicant relying on the judgment of the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., AIR 2015 SC 596** submitted that in view of the circumstances laid down by the Hon'ble Supreme Court in the aforesaid judgment, recovery as has been directed against the applicant is impermissible. Learned counsel referred to the findings

recorded by the Hon'ble Supreme Court in para No. 12 of the said judgment. Learned counsel submitted that the recovery so effected from the gratuity amount of the applicant caused great hardship to the applicant in his old age and from all angles the recovery so effected was unjust and improper.

6. In the argument though learned counsel appearing for respondent No. 3 sought to contend that the applicant had given an undertaking to refund the amount if it is subsequently noticed that was wrongly paid to him without his entitlement. The said undertaking is placed on record by respondent No. 3 along with his affidavit in reply, which is at page No. 43 of the paper book. I have gone through the said document. It is true that undertaking is submitted and the signature of the applicant is appearing below the said undertaking. However, there is no date mentioned below the said undertaking. There is every reason to believe that the said undertaking was obtained subsequently and may be at the time of recovery made of the alleged amount from the gratuity of the applicant. In the circumstances, said undertaking has to be ignored and to be considered.

7. Considering the circumstances laid down by the Hon'ble Apex Court in the case of **State of Punjab and others Vs.**

**Rafiq Masih (White Washer) etc.** (cited supra) the case of the present applicant is squarely covered and no recovery was liable to be made from the retiral benefits of the applicant after his retirement. The order of recovery therefore, deserves to be set aside and quashed. In the result, the following order is passed :-

**ORDER**

- (i) The order dated 18.01.2018 is quashed and set aside.
- (ii) Amount recovered from the applicant amounting to Rs. 3,23,630/- be refunded to the applicant within 12 weeks from the date of this order.
- (iii) The Original Application is allowed in the aforesaid terms.
- (iv) There shall be no order as to costs.

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 12.10.2023**