

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 03 of 2022 (S.B.)**

Raju S/o Hiranman Mate,  
Aged 60 yrs.; Occ: Retired,  
R/o. Ghat Road, Bajaj Ward, Opposite  
Sharma Glass, Sai Mandir, Gondia.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
Through its Secretary,  
Public Health Department, 10th Floor  
GT Hospital Campus Building,  
New Mantralaya, Fort, Mumbai-01.
- 2) Deputy Director of Public Health,  
Nagpur Region, Mata Kacheri Compound,  
Nagpur.
- 3) Civil Surgeon,  
K.T.S. General Hospital, Gondia.

**Respondents.**

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**S/Shri N.D. & T.N. Thombre, Advocates for the applicant.**  
**Shri H.K. Pande, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

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**Date of Reserving for Judgment : 13<sup>th</sup> March,2023.**

**Date of Pronouncement of Judgment : 28<sup>th</sup> March,2023.**

**JUDGMENT**

**(Delivered on this 28<sup>th</sup> day of March,2023)**

Heard Shri N.D. Thombre, learned counsel for the  
applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The case of the applicant in short is as under -

The applicant was initially appointed on the post of Sweeper with respondent no.3 and joined on the said post on 11/01/1984. The applicant was promoted on the post of Junior Clerk by order dated 04/08/2008. The applicant came to be retired from the said post on 31/10/2020 after attaining the age of superannuation.

3. Before the retirement, the service book of applicant was sent for verification and the Pay Verification Unit had raised objection that the pay fixation of applicant on promotion was wrongly fixed and he was paid excess salary w.e.f. 01/09/2008 to 31/10/2020. Therefore, the respondents issued order for recovery of Rs.7,65,373/-. It was deducted from D.C.R.G. The applicant was also directed to deposit the remaining amount by Challan. Hence, the applicant challenged the impugned order of recovery.

4. Heard Shri V.A. Kulkarni, learned P.O. for the respondents. The O.A. is strongly opposed by the respondents. It is submitted that the pay of applicant on promotional post was wrongly fixed and therefore as per the direction of Pay Verification Unit, the recovery of Rs.7,65,373/- was directed to be recovered from the D.C.R.G. There is no illegality. The Judgment of Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih (White Washer) [(2015)] 4 SCC 344*** cannot be applied in the present case.

5. Heard learned counsel for applicant Shri N.D. Thombre. He has submitted that the recovery for more than five years cannot be made. The applicant was working as a class-III employee. There was no any undertaking and therefore in view of the Judgment of ***State of Punjab Vs. Rafiq Masih (White Washer) (cited supra)***, amount cannot be recovered after the retirement. The learned counsel for applicant has pointed out Para-18 of the said Judgment and submitted that the amount recovered from the applicant shall be refunded along with interest. In support of his submission pointed out the Judgment of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.1844/2022, decided on 09/01/2023 and the Judgment of Hon'ble Bombay High Court in Writ Petition No.1191/2021, decided on 12/01/2022.

6. Heard Shri V.A. Kulkarni, learned P.O. for the respondents. He has strongly objected the same. It is submitted that in view of the Judgment in the case of ***High Court of Punjab and Haryana & Others Vs. Jagdev Singh reported in 2016 AIR (SCW),3523***, recovery can be made from the retirement benefits. In support of his submission pointed out the decision of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.4919/2018, decided on 23/07/2019.

7. On 20/02/2023, the Id. P.O. submitted before this Tribunal that he will take instructions as to whether the applicant had given undertaking at the time of pay fixation of promotional pay or not. But no such undertaking is produced on record. There is nothing on record to show that at the time of pay fixation of promotional pay, the applicant had given any undertaking. Without any undertaking, the amount of excess payment which was not at the fault of applicant, cannot be recovered. The Hon'ble Supreme Court in the case of **State of Punjab Vs. Rafiq Masih (White Washer) (cited supra)** in para-18 has observed as under-

*"18. 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 of 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. The Judgment in the case of ***High Court of Punjab and Haryana & Others Vs. Jagdev Singh*** (*cited supra*) is not applicable, because, the applicant had not given any undertaking. In view of the Judgment of Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** (*cited supra*), the recovery from a retired Class-III & IV employee cannot be made after retirement. The applicant is a retired employee, he was working as a Class-III employee, he was not at fault for the excess payment. Therefore, recovery order which was issued is not legal and proper.

9. In respect of interest, the Hon'ble Division Bench of Bombay High Court in Writ Petition No.1192/2021, decided on 12/01/2022 and also the Hon'ble Division Bench of Bombay High Court, Bench at Nagpur in Writ Petition No. 1844/2022, decided on 09/01/2023 granted interest @ 6% p.a. The Hon'ble Division Bench of Bombay High Court have directed to refund of the amount with interest @6% p.a. from the date of recovery till the refund is made. Hence, the following order –

**ORDER**

- (i) The O.A. is allowed.
- (ii) The respondents are directed to refund the amount of Rs.7,65,373/- along with an interest @ 6% p.a. from the date of recovery till the actual refund is made.
- (iii) No order as to costs.

**Dated** :- 28/03/2023.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

\*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 28/03/2023.