

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1045 of 2019 (S.B.)

Shri Dilip S/o Mahadeo Khandarkar,
Aged about 60 years, Occ. Retired,
R/o 850, near Hanuman Mandir, Pardhi Nagar,
Post MIDC, Hingna Road, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Home Department, Mantralaya, Mumbai-32.
- 2) Director General of Police,
Police Head Quarters,
Shahid Bhagatsingh Marg, Kulaba,
In front of Regal Cinema, Mumbai-400 005.
- 3) The Commissioner of Police,
Civil Lines, Nagpur.
- 4) The Deputy Commissioner of Police,
Civil Lines, Nagpur.
- 5) The Deputy Commissioner of Police (Special Branch),
Civil Lines, Nagpur.

Respondents.

Shri D.R. Rupnarayan, Advocate for the applicant.

Shri A.M. Khadatkar, learned P.O. for the respondents.

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

Dated :- 13/12/2022.

JUDGMENT

Heard Shri D.R. Rupnarayan, learned counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. The applicant has prayed as under –

“(i) to quash and set aside the order dated 31/05/2016 passed by the respondent Dy. Commissioner of Police, Nagpur as Annex-A-5 and direct the respondent to refund the amount of Rs.1,05,646/- with 18% per annum from the date of realization at full and final to the applicant and thereby be pleased to allow the instant original application.”

3. The case of the applicant in short is as under –

The applicant was working as a Police Constable w.e.f. 01/08/1981. The applicant was promoted as Naik Police Constable and thereafter Head Constable and ASI.

4. The applicant is retired from service on 16/08/2016. The respondents issued recovery order dated 31/05/2016. The applicant applied for information and he was informed by the respondents that because of the wrong fixation of 5th Pay Commission and 6th Pay Commission, the recovery of Rs. 1,05,646/- is made. The applicant made representation on 23/08/2018, but the respondents have not replied the same. Hence the present O.A. for refund of amount of Rs. 1,05,646/- along with interest.

5. The O.A. is strongly opposed by the respondents. It is submitted by respondent no.5 that because of the objection raised by the A.G. Office, the recovery is started, there was mistake in the pay fixation of 5th Pay Commission and 6th Pay Commission, therefore, recovery order was issued and the respondents have started recovery from the retiral gratuity.

6. The learned counsel for the applicant has pointed out the Judgment of **Hon'ble Supreme Court in case of State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014** in Civil Appeal No. 11527 OF 2014 (Arising out of SLP(C) No. 11684 of 2012). The learned counsel for applicant has also pointed out the letter dated 05/09/2018 issued by the Director General of Police, M.S., Mumbai and the letter dated 14/11/2018 issued by the Deputy Commissioner of Police (Head Quarter), Nagpur.

7. It appears that there was no fault on the part of applicant about the pay fixation. The applicant is a retired employee. The **Hon'ble Supreme Court in case of State Of Punjab & Ors vs. Rafiq Masih (White Washer)**, in para12 has given following guidelines—

“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 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. On the basis of guidelines given by the Hon'ble Supreme Court, the respondents / Director General of Police issued letter to the concerned departments of Police stating that in view of the Judgment of the **Hon'ble Supreme Court in case of State Of Punjab & Ors vs. Rafiq Masih (White Washer)**, the order of recovery be corrected. On the same line, letter was issued by the Deputy Commissioner of Police (Head Quarter), Nagpur dated 14/11/2018 to the Pay

Verification Unit, Nagpur stating that as per the guidelines given by the Hon'ble Supreme Court and guidelines issued by the Director General of Police, the recovery cannot be made.

9. The respondents without following the directions given by Hon'ble Supreme Court and also by the Superior Officer of the Police Department, started the recovery of Rs. 1,05,646/-

10. As per the submission of learned counsel for the applicant, the applicant has made representation dated 23/08/2018 with a request to refund the amount, but the amount of Rs. 1,05,646/- which is deducted from the pension and gratuity of the applicant, is not refunded.

11. As per the specific guidelines of Hon'ble Supreme Court, the recovery cannot be made from the retired employee or when the employee was not at fault etc. The applicant was not at fault. The applicant is a retired employee. Hence, in view of the Judgment of Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)**, the following order –

ORDER

1) The O.A. is allowed.

2) The respondents are directed to refund the amount of Rs. 1,05,646/- along with simple interest @ 6% per annum from the date of recovery till the refund of the said amount.

3) No order as to costs.

Dated :- 13/12/2022.

(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 : 13/12/2022.

Ok**