

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 46 of 2022 (S.B.)

Sitaram Namdeo Daberao,
Aged about 48 years,
Senior Clerk to Taluka Agriculture Officer, Jalgaon (Jamod),
Distt. Buldana, R/o Jalgaon (Jamod), Distt. Buldana.

Applicant.

Versus

- 1) The Secretary,
Department of Agriculture,
Animal Husbandry, Dairy Development & Fisheries Department,
Mantralaya, Mumbai-32.
- 2) The Joint Director of Agriculture,
Amravati Region Camp area Amravati,
District Amravati.
- 3) The Taluka Agriculture Officer,
Shegaon, Distt. Buldana.
- 4) The Taluka Agriculture Officer,
Jalgaon (Jamod), Taluka Jalgaon (Jamod),
District Buldana.

Respondents.

S/Shri Bharat Kulkarni, Sunil Pande, Advocates for the applicant.

Shri M.I. Khan, learned P.O. for the respondents.

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

Dated :- 02/01/2023.

JUDGMENT

Heard Shri Bharat Kulkarni, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

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

The applicant is working in the office of Taluka Agriculture Officer, Jalgaon (Jamod), District Buldhana as a Senior Clerk from 07/11/2016. Prior to that he was working in the office of Taluka Agriculture Officer, Shegaon as a Peon and thereafter he was promoted as a Junior Clerk. The applicant is aggrieved by the letter of respondents dated 06/12/2021 for recovery of Rs.42,135/- for the year 2009-2010. It is submitted that the applicant has no concern about the said recovery for the year 2009-2010 as he was working as a Peon at that time. The applicant had submitted this fact to respondent no.2 vide representation dated 09/12/2021. The respondents have not decided his representation, but recovered the amount of Rs.42,135/-. Hence, he approached to this Tribunal for quashing the impugned order and for the refund of said amount.

3. The O.A. is strongly opposed by the respondents. It is submitted that the applicant is responsible for payment of Rs.42,135/-. In para-11 of the reply, it is specifically stated as under –

“ (11) Without prejudice to what is stated above, the representation made by the applicant to respondent no.2 on 09/12/2021 is yet to be decided. Hence, the present application of the applicant is premature. The applicant cannot prefer the original application unless and until he exhausts the remedy from respondent no.2.”

4. At last, submitted that the O.A. is liable to be dismissed.

5. As per the submission of learned counsel for the applicant, the respondents cannot recover the amount without any inquiry. He has pointed out the provisions of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, more particularly Rule 5 (iii) of the said Rules. As per his submission without conducting any inquiry, the recovery is done.

6. The learned P.O. has submitted that the applicant was responsible for the payment of Rs.42,135/-. His representation is still not decided. Hence, the O.A. is liable to be dismissed.

7. There is no dispute that there was no any inquiry against the applicant. The penalty is provided in Rule 5. As per Rule 5 (iii), the recovery from the salary of employee is not permitted without any inquiry. This penalty is provided after conducting the departmental inquiry. The Rule 5 (iii) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 reads as under –

“5 (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to Government, by negligence or breach of orders;”

8. The respondents have not given any opportunity to the applicant by initiating any departmental inquiry to show that he is

responsible to pay Rs.42,135/- to the respondents. No any inquiry was conducted. Moreover, as per the submission of applicant, in the year 2009-2010 he was working as a Peon and therefore he was not authorised to receive any amount and therefore he is not liable to pay any amount. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned recovery order dated 23/12/2021 issued by respondent no.4 and letter dated 06/12/2021 of respondent no.3 are hereby quashed and set aside. The amount of Rs.42,135/- if recovered, be refunded to the applicant within a period of two months from the date of receipt of this order.
- (iii) The respondents are at liberty to conduct the inquiry as per the rules of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.
- (iv) No order as to costs.

Dated :- 02/01/2023.

(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 : 02/01/2023.*