

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 654 of 2020 (S.B.)

Mukund S/o Vithobaji Tawale,
Aged 65 yrs. Occ: Retired,
R/o New Shukrawari Road, House No. 242,
Jog Galli, Mahal, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary,
Public Health Department, 10th Floor GT Hospital
Campus Building, New Mantralaya, Fort, Mumbai-01.
- 2) Civil Surgeon, District Hospital, Chandrapur.
- 3) Senior Treasury Officer,
Nagpur Treasury, Collector Office Compound,
Civil Lines, Nagpur.
- 4) Accountant General-II (A & E), Maharashtra,
Civil Lines, Nagpur.

Respondents.

Shri N.D. Thombre, Advocate for the applicant.
Shri A.M. Khadatkhar, learned P.O. for respondents.

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

Dated :- 29/11/2023.

JUDGMENT

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

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

The applicant was working on the post of Administrative Officer, Class-II with respondent no.2 and retired on superannuation

from the said post on 29/02/2012. After the retirement, he was granted pension and all pensionary benefits. Thereafter, respondent no.2 by order dated 12/02/2019 revised the pay scale of applicant and submitted the reduced revised pension case of the applicant to the respondent no.4. Accordingly, the respondent no.4 revised the commutation and pension of the applicant and directed the respondent no.3 to recover the excess amount.

3. The respondent no.3 by order dated 03/08/2020 issued notice for recovery of excess amount of Rs.16,565/- towards commutation and an amount of Rs.1,58,862/- towards pension which was paid to the applicant in excess as per revised pay from 01/03/2012.

4. The applicant is a retired employee and therefore recovery cannot be made from the applicant. Hence, the applicant approached to this Tribunal for the following reliefs –

“(i) Quash and set aside the impugned Order dated 03/08/2020 issued by the Respondent No. 3, Senior Treasury Officer, Nagpur, at ANNEXURE NO. A-2 being illegal and violative of provisions of law;

ii) Grant Ad-Interim Stay to the impugned Order dated 03/08/2020 issued by the Respondent No. 3, Senior Treasury Officer, Nagpur, at ANNEXURE NO. A-2, during the pendency of the Original Application.”

5. The O.A. is strongly opposed by the respondents. It is submitted that one step promotion was wrongly granted to the

applicant. His pension was wrongly fixed calculating one step promotion which was wrongly granted. Therefore, the respondents have submitted revised pension case of the applicant and directed the recovery of Rs.16,565/- towards commutation and an amount of Rs.1,58,862/- towards pension which paid to the applicant in excess as per revised pay from 01/03/2012.

6. During the course of submission, the learned counsel for the applicant has pointed out the Judgment of the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.7047/2022. In the cited Judgment excess payment was directed to be recovered on the ground that wrongly increment was granted to the petitioner. It was observed by the Hon'ble High Court that exemption was not granted to the petitioner to pass Marathi examination. The Hon'ble Bombay High Court relying on the Judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and Others reported in 2015 (4) SCC,334*** quashed and set aside the recovery order. The Hon'ble Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (supra)*** has given the guidelines as under –

- (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."*

7. As per the guideline no.(ii), the recovery from retired employees or employees who are due to retire within one year, of the order of recovery shall not be permissible. In the present O.A., the applicant is retired in the year 2012. As per the submission of respondents, excess payment was made due to wrong fixation of pension case. The said pension case was forwarded by counting the wrongly granted one step promotion. The applicant was not responsible for the same.

8. The learned P.O. has pointed out undertaking given by the applicant to recover the amount. The learned P.O. pointed out the Judgment of the Hon'ble High Court of ***Punjab and Haryana and Others Vs. Jagdev Singh reported in 2016 AIR (SCW) 3523.***

9. From the perusal of this undertaking, it appears that this undertaking is obtained by the respondents at the time of submitting the pension case. There is no date mentioned in the undertaking. The Judgment of the Hon'ble Supreme Court in the case of the ***State of Punjab and others Vs. Rafiq Masih (supra)*** is very clear. As per the guideline no.(ii), the recovery from retired employees or the employees who are due to retire within one year from the order of recovery is not permissible. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The impugned order dated 03/08/2020 is hereby quashed and set aside.

(iii) No order as to costs.

Dated :- 29/11/2023.

(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 P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 29/11/2023.