

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 971 of 2021 (S.B.)**

Rushi S/o Ragho Meshram,  
Aged about 63 years, Occ. Retired Govt. Servant,  
R/o At Katli, Post Sakhara,  
Tah. & Distt. Gadchiroli.

**Applicant.**

**Versus**

- 1) State of Maharashtra through its  
Secretary, Water Supply and Sanitation Department,  
Mantralaya, Mumbai-32.
- 2) Deputy Director of Ground Water Survey &  
Development Agency, Nagpur Division, Maharashtra  
Jeevan Pradhikaran Building, Wing "A", Second Floor,  
Telankhedi, Nagpur.
- 3) Senior Geologist, Ground Water Survey &  
Development Agency, Gadchiroli.
- 4) Accountant General (A&E)-II, Civil Lines,  
Nagpur-440 001.
- 5) Treasury Officer, Gadchiroli.

**Respondents.**

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**Shri P.V. Thakre, Advocate for the applicant.**  
**Shri A.M. Ghogre, learned P.O. for respondents.**

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

**Dated :- 28/09/2022.**

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**JUDGMENT**

Heard Shri P.V. Thakre, learned counsel for applicant and  
Shri A.M. Ghogre, learned P.O. for respondents.

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

The applicant was appointed as a Chowkidar on 01/08/1984. In the year 2009, promotions were given to the juniors of the applicant. Therefore, the applicant approached to this Tribunal by filing O.A.No. 145/2012 challenging the promotion order of his juniors. This Tribunal had passed the order directing the respondents to grant promotion to the applicant on the post of Junior Clerk and deemed date be given from 08/07/2009.

3. The applicant was not given the promotion as per the order of this Tribunal in O.A. No.145/2012 before his retirement. He was continued on Class-IV post till his retirement. The retirement age of Class-III employee is 58 years, whereas, the retirement age of Class-IV employee is 60 years. The applicant continued his service till the age of 60 years. Now the respondent no.3 issued the impugned order dated 05/07/2021 directing the recovery of Rs.8,45,276/-. In the impugned order, it is mentioned that the applicant was to retire at the age of 58 years, but the applicant continued his service till the age of 60 years and therefore the recovery is directed.

4. It is contention of the applicant that he had worked on Class-IV post till the age of superannuation. The order of this Tribunal in O.A. No.145/2012 was not complied before his retirement. He has already worked on Class-IV post, therefore, recovery cannot be made.

It was not his fault, but, the fault on the part of the respondents to continue him till the age of 60 years.

5. In the reply, the respondent nos.1 to 3 have submitted that as per order of this Tribunal, the promotion order was issued on 30/07/2019 and the applicant was promoted from the post of Chowkidar to Clerk. The applicant was to retire at the age of 58 years, but he retired at the age of 60 years. He got more salary of two years and therefore recovery is rightly directed.

6. Heard learned counsel for applicant Shri P.V. Thakre. He has pointed out the decision of Hon'ble Supreme Court in the case of **Hon'ble Apex 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) and submitted that it was not fault on the part of applicant. The applicant was continued on the Class-IV post till his retirement. Before his retirement, the promotion order was not passed. Therefore, in view of the guidelines of Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) (cited *supra*)**, the recovery cannot be made.

7. Heard learned P.O. for respondents Shri A.M. Ghogre. As per his submission, the applicant has worked for more than two years and got the salary of two years more. The applicant was to retire at

the age of 58 years, but he was continued till the age of 60 years and therefore the recovery was directed.

8. There is no dispute that the applicant approached to this Tribunal by filing O.A. No.145/2012. The O.A. was decided on 03/09/2018.

9. The operative part of the O.A. shows that the respondents were directed to promote the applicant on the post of Junior Clerk w.e.f. 08/07/2009. This order was not timely complied. The applicant was continued on Class-IV post. Instead of issuing any promotion order, the respondents themselves continued the applicant to work on Class-IV post for two more years. The applicant got the salary on the post of Class-IV and not Class-III post. As per the order of this Tribunal in O.A. No.145/2012, the applicant was to be promoted immediately and salary of Class-III post was to be given to him, but instead of doing the same, the respondents have continued the applicant to work on Class-IV post. The applicant came to be retired at the age of 60 years. There was no any fault on the part of the applicant to continue his service upto the age of 60 years on Class-IV post. The respondents have issued promotion order on 30/07/2019. The applicant came to be retired on 31/07/2019. As per the guidelines of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors**

**vs. Rafiq Masih (White Washer) (cited supra)**, the recovery cannot be done. Para no. 12 of the said Judgment is reproduced below:-

*“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.”*

10. The applicant worked as a Class-IV employee. He was not at fault to continue his service upto the age of 60 years. Hence, the recovery cannot be made from the applicant. Therefore, the impugned recovery order dated 05/07/2021 is liable to be quashed and set aside. Hence, the following order –

**ORDER**

- (i) The O.A. is allowed.
- (ii) The impugned recovery order dated 05/07/2021 is hereby quashed and set aside.
- (iii) No order as to costs.

**Dated** :- 28/09/2022.

dnk.

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

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 : 28/09/2022.

Uploaded on : 30/09/2022.

ok