

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1001 of 2022 (S.B.)

Manohar S/o Bhimrao Kapse,
Aged about 60 years, Occu.: Retired,
R/o Plot No.13, Behind Bank of India,
Arjun Nagar at Post and Tah. Mouda, District Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Water Resources Department,
Mantralaya, Mumbai-32.
- 2) Superintending Engineer,
Irrigation Project Investigation Board,
Sinchan Bhavan, Third Floor,
Civil Lines, Nagpur – 440 001.
- 3) Executive Engineer,
Irrigation and Hydro Electric Project,
Investigation Division, Wainganga Nagar,
Ajni, Nagpur-440 003.

Respondents.

Shri R.M. Fating, Advocate for the applicant.
Shri A.P. Potnis, learned P.O. for respondent no.1.
Shri T.M. Zaheer, Advocate for respondent nos.2 and 3.

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

Dated :- 14/12/2023.

JUDGMENT

Heard Shri R.M. Fating, learned counsel for applicant, Shri A.P. Potnis, learned P.O. for respondent no.1 and Shri T.M. Zaheer, learned counsel for respondent nos.2&3.

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

The applicant was initially appointed on the post of Technical Assistant on 05/08/1992. Subsequently the applicant was absorbed on the post of Civil Engineering Assistant as per the order dated 01/01/1989. The respondents have granted 1st time bound promotion on 12/07/2007. On 25/07/2018, pay fixation was made and pay of the applicant was fixed of Rs.15,580. On 12/07/2018, 2nd time bound promotion was granted to the applicant after completion of 24 years of continuous service. The applicant is retired on 31/07/2019. After the retirement, the respondents have passed the impugned order dated 03/07/2020 for the recovery of Rs.1,77,218/- from the DCRG of applicant. Therefore, the applicant has approached to this Tribunal for the following reliefs –

“(i) Hold and declare that the impugned Order of Recovery dated 03.07.2020 is illegal, arbitrary and bad in law in view of law laid down by the Hon'ble Apex Court on the case of Thomas Daniel versus State of Kerala & Ors.

(ii) Quash and set aside the impugned order dated 03.07.2020 (Annexure A10) issued by the Respondent No.2, in the interest of justice.

(iii) Direct the Respondents to refund amount of Rs.1,77,218/- to the Applicant along with interest thereon @ 18% till the date of actual payment.”

3. The respondent nos.2 and 3 have filed their reply. It is submitted that the pension case was submitted to the A.G. Office. The A.G. Office has raised objection stating that 1st time bound promotion was wrongly granted and therefore it needs to be corrected.

Therefore, the fresh calculation was done and the recovery of Rs.1,77,218/- was found and therefore order dated 03/07/2020 was issued.

4. The learned counsel for the applicant has pointed out the Judgment of the Hon'ble Supreme Court in the case of the **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 the Judgment in the case of the **Thomas Daniel Vs. State of Kerala & Ors. in Civil Appeal No.7115/2010**, decided on 02/05/2022.

5. The Hon'ble Supreme Court in the case of the **State Of Punjab & Ors vs. Rafiq Masih** (cited supra) has given following guidelines. Para-12 of the 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."*

6. The Hon'ble Supreme Court in the case of the **Thomas Daniel Vs. State of Kerala & Ors. (cited supra)** has held in para nos.14 and 15 as under –

"(14) Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

(15) Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified."

7. The applicant is a retired employee. After the retirement, the impugned recovery order was issued by the respondents. As per

the submission of learned counsel for applicant, the applicant was a Class-III employee and therefore as per the guideline no.(i) of the Hon'ble Supreme Court in the case of the **State Of Punjab & Ors vs. Rafiq Masih** (cited supra), the recovery cannot be made.

8. The learned counsel for applicant has pointed out the Judgment of the Hon'ble Bombay High Court in the case of **Prasad Vinayak Sohoni Vs. The Treasury Officer, Thane and Ano. in W.P. No.1192/2021**, decided on 12/01/2022 in which the Judgment of the Hon'ble Supreme Court in the case of the **State Of Punjab & Ors vs. Rafiq Masih** (cited supra) was considered and the respondents were directed to refund the amount along with the interest @ 6% p.a. from the date of recovery, till the actual refund is made. The applicant was a Class-III employee. After the retirement, the impugned recovery order is issued by the respondents. In view of the Judgments of the Hon'ble Supreme Court in the case of the **Thomas Daniel Vs. State of Kerala & Ors. (cited supra)** and in the case of **State Of Punjab & Ors vs. Rafiq Masih** (cited supra), the recovery cannot be made. The applicant is entitled for interest as per the Judgment of the Hon'ble Bombay High Court in the case of the **Prasad Vinayak Sohoni Vs. The Treasury Officer, Thane and Ano.** (cited supra). Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to refund the amount of Rs.1,77,218/- along with the interest @ 6% p.a. from the date of recovery till the actual refund is made within a period of three months from the date of receipt of this order.

(iii) No order as to costs.

Dated :- 14/12/2023.

(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 : 14/12/2023.