

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 110 of 2020 (S.B.)

Shri Shashishekhar S/o Dinakarrao Deshpande,
Aged 59 years, Occu : Retired,
R/o S-2, Pawansut Apartment Deo Nagar Chowk,
Khamla Road, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra through
Secretary Home Department, Mantralaya,
Mumbai-32.
- 2) Director General of Police Mumbai
Police Head Quarter,
Shahid Bhagat Singh Marg, Colaba,
I/F Regal Cinema, Mumbai.
- 3) The Commissioner of Police,
Civil Lines, Nagpur.

Respondents.

Shri D.R. Rupnarayan, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.

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

Dated :- 01/03/2023.

J U D G M E N T

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

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

The applicant was appointed as a Police Constable on 15/02/1988. The applicant was promoted and he was working as Assistant Sub Inspector at the time of retirement. The applicant came

to be retired on 31/07/2019. The respondent no.3, i.e., the Commissioner of Police, Nagpur issued order dated 07/12/2019 directing the recovery of excess amount of Rs.1,83,193/-. The applicant made representation pointing out the Circular issued by Director General of Police, Mumbai, but the recovery was not stopped as per Circular of Director General of Police, Mumbai dtd. 05/09/2018. Hence, he approached to this Tribunal for the following reliefs –

“ (i) The applicant humbly prays that kindly be quashed and set aside the order dated 07/12/2019 passed respondent Commissioner of Police, Nagpur as Annexure-A-3 and direct the respondent no.3 not to be recovered the amount of Rs.1,83,193/- from Retirement Gratuity of the applicant and thereby be pleased to allow the instant original application.

(ii) Grant any other relief which this Tribunal deems fit and proper in the facts and circumstances of the instant application in the interest of justice;

(iii) Interim relief to be sought.

(iv) During the pendency of the instant be pleased to stay and effect and operation to the impugned order dated 07/12/2019 passed by respondent no.3, Commissioner of Police, Nagpur.

(v) Be pleased to grant of ad-interim relief in terms of application clause.

(10) Interim order, if any prayed for –

Pending final decision of the application, the effect and operation of the impugned order dated 07/12/2019 at Annexure-A-3 may kindly be stayed.”

3. Heard Shri V.A. Kulkarni, learned P.O. for the respondents. The O.A. is strongly opposed by the respondents. It is submitted that the A.G. Office has raised objection and therefore recovery of Rs.1,83,193/- was directed to be recovered from DCRG. It is submitted that the amount of Rs.1,83,193/- was in respect of excess payment made to the applicant and therefore the recovery is proper.

4. During the course of argument, the learned counsel for the applicant Shri D.R. Rupnarayan has pointed out the Circular issued by Director General of Police, Mumbai, dated 05/09/2018 (P-21). The material portion of the Circular is reproduced as under –

“यासंदर्भात काही पोलीस कर्मचारी मा. उच्च न्यायालय, मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण (मॅट) येथे याचिका दाखल करतात. तसेच शासनास सुध्दा याबाबत मार्गदर्शन होणेस विनंती करावी लागते. मा. उच्च न्यायालय, खंडपीठ औरंगाबाद यांनी रिट याचिका क्र.६९५/२०१६ मध्ये दिलेल्या निर्णयानुसार तसेच शासनाने सुध्दा विधि व न्याय विभागांचे अभिप्रायात नमुद केल्यानुसार, मा. सर्वोच्च न्यायालयाने Appellate Jurisdiction Civil Appeal No. 11527 of 2014 (Arising out of SPL (C) No. 11684 of 2012) State of Punjab and others etc. Appellants Vs Rafiq Masih (White Washer) etc. Respondents च्या न्यायनिर्णयातील परि. १२ (i ते v) मध्ये दिलेल्या आदेशानुसार, अतिप्रदान झालेल्या रक्कमेची वसुली करता येणार नसल्याचे कळविलेले आहे. तरी सर्व घटकप्रमुखांनी त्यानुसार आवश्यक ती कार्यवाही करावी.”

5. The learned counsel for the applicant has pointed out the Judgment of this Tribunal in O.A.No.1045/2019, delivered on 13/12/2022. In view of the Judgment 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), the recovery cannot be made from Class-III and Class-IV employees. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The order issued by respondent no.3, i.e., the Commissioner of Police, Nagpur dated 07/12/2019 to recover amount of Rs.1,83,193/- from retirement gratuity of the applicant, is hereby quashed and set aside.
- (iii) If the amount is recovered, be refunded to the applicant.
- (iv) No order as to costs.

Dated :- 01/03/2023.

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 : 01/03/2023.