

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 336 of 2022 (S.B.)

Prabhakar Jagannath Bhute,
Aged 60 years, Occ. Retired,
Resident of Anchaleshwar Ward, Chandrapur,
District Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary in the Public Works Department,
Mantralaya, Mumbai.
- 2) Chief Engineer, Public Works Department, Nagpur.
- 3) Superintendent Engineer, Public Works Department,
Chandrapur.
- 4) Executive Engineer, Public Works Department, Zone No.2,
Chandrapur.

Respondents.

**S/ Shri Y.J. Maheshwari, M.K. Thakkar, N.Linsay, Advs. for the
applicant.**

Shri A.M. Khadatkhar, P.O. for respondents.

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

Dated :- 16/09/2022.

JUDGMENT

Heard Y.J. Maheshwari, Id. counsel for applicant and Shri
A.M. Khadatkhar, Id. P.O. for respondents.

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

The applicant was working as a Draftsman Grade-III
(Tracer). The applicant was exempted from passing eligibility

examination for promotion w.e.f. 11/03/2006 as per order dated 30/09/2006.

3. In pursuance of the exemption, the applicant has been promoted and was getting all consequential service benefits thereof. The applicant has subsequently come to know that by communication dated 26/11/2012, the respondent no.1 informed the Chief Engineers of the various divisions of Public Works Department in the State of Maharashtra, including the respondent no.2 that the exemption from clearing the eligibility examination for promotion of Draftsman (Tracer), such as the applicant, was not intended to be granted.

4. The respondent no.2 was therefore directed to revoke the exemption from clearing the eligibility examination for promotion to all such candidates who had been granted the same.

5. In pursuance of the same communication, the office of respondent no.2 informed the decision of respondent no.1 to the respondent no.3 and further directed to the respondent no.3 to cancel the exemption from clearing the eligibility examination for promotion to all such employees who received such benefits.

6. The applicant is retired on 31/03/2019. The respondent no.4 Executive Engineer, Public Works Department, Chandrapur passed order dated 09/11/2017 directing the recovery of Rs.6,57,135/-

Accordingly, the said recovery was made from the retiral benefits of the applicant. Now all the amount of Rs.6,57,135/- is recovered by the respondents.

7. The learned counsel for applicant has pointed out the Judgment of Hon'ble Supreme Court in the 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). He has pointed out the guidelines given by the Hon'ble Supreme Court in para-18 of the Judgment which are as follows –

“18. 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."*

8. The Id. counsel for applicant has submitted that the applicant was working as Class-III employee and therefore recovery is not permissible.

9. Heard Shri A.M. Khadatkar, Id. P.O. He has submitted that the applicant was not eligible for promotion. He was wrongly given promotion and therefore recovery was rightly directed, there is no illegality for recovering the amount from the salary and pensionary benefits of the applicant. Hence, the O.A. is liable to be dismissed.

10. There is no dispute that the applicant was working as Class-III employee. He was given exemption from passing examination for promotion. As per the office order dated 30/09/2006, the applicant was given exemption from passing examination as he had completed 45 years of age. In the office order, the G.R. was mentioned and it is stated in the office order that as per the G.R. the applicant need not to pass the departmental examination, because, he has completed 45 years of age. Nothing is on record to show that the order was wrongly passed. Nothing to show that G.R. was wrongly issued by the Govt. to grant exemption after completion of 45 years

age. No any undertaking was given by the applicant for recovery of the said amount.

11. 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 from the employees belonging to Class-III and IV shall not be made. As per the guidelines no. (ii), the recovery from retired employees who are due to retire within one year, of the order of recovery shall not be recovered. As per guidelines no. (iii), the recovery from the employees, when the excess payment has been made in excess of five years, before the order of recovery is also not permissible.

12. In the present case, the applicant was Class-III employee. He is retired employee. At the time of recovery, he was in the service. The recovery of the amount was for more than 10 years, it is not permissible as per guidelines no.(iii). Hence, in view of the Judgment of the Hon'ble Supreme Court in the **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (cited supra), following order is passed –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order dated 09/11/2017 passed by the Executive Engineer, Public Works Department, Chandrapur for recovery of amount of 6,57,135/- is hereby quashed and set aside.

(iii) The respondent are directed to refund the amount of Rs. 6,57,135/- to the applicant within a period of three months from the date of receipt of this order.

(iv) No order as to costs.

Dated :- 16/09/2022.

(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 : 16/09/2022.

Uploaded on : 20/09/2022.

ok*