

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 447 of 2019 (S.B.)

Waman S/o Urkudaji Ramteke,
Aged about 58 years, Occ. Retired Govt. Servant,
R/o Behind Rajiv Gandhi Sabhagruh, At Brahampuri,
Dist. Chandrapur-441206.

Applicant.

Versus

- 1) The Secretary, Department of Finance,
State of Maharashtra, Mantralya, Mumbai-32.
- 2) The Director, Local Fund Account Audit,
Kokan Bhawan, Mantralaya, Mumbai-32.
- 3) The Joint Director,
Local Fund Audit,
Nagpur Division, near Treasury Office,
Civil Lines, Nagpur-01.
- 4) The Assistant Director,
Local Fund Audit,
Building of Prashant Khewale,
Gadchiroli-442 605.

Respondents.

Shri S.M. Khan, Advocate for the applicant.
Shri A.M. Khadatkhar, learned P.O. for the respondents.

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

Date of Reserving for Judgment : 14th December,2022.

Date of Pronouncement of Judgment : 3rd January, 2023.

JUDGMENT

(Delivered on this 3rd day of January,2023)

Heard Shri S.M. Khan, learned counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

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

The applicant was appointed as an Adult Education Supervisor. He joined the said post on 12/03/1986. The applicant came to be retired on 31/01/2018 as Local Fund Account Auditor, Class-III employee. The pension and other pensionary benefits were already given to the applicant.

3. The Government of Maharashtra has released Ordinance dated 20/02/1980, the Schedule 2 (b) of the Ordinance has consist a list of 16 posts, the post of Adult Education Supervisor had not been included in the list of 16 posts, hence the applicant was exempted to appear and clear departmental examination. However, the applicant was permitted to appear and clear the Bachelor of Education (B.Ed.) The applicant has passed the B.Ed. degree examination in November, 1999.

4. The Government of Maharashtra has taken an administrative decision of merging / amalgamating posts which falls under the School Education Department with other departments. The

post of Adult Education Supervisor merged with Local Fund Account Auditor with same scale of pay and salary. That time the pay scale of applicant was Rs.4000-6000/-.

5. The Department of School Education vide G.R. No.1000/103, dated 05/11/2008 has implemented the revised pay scale for employees who had obtained B.Ed. and were granted new pay scale of Rs.6000-175-10000 w.e.f. 01/03/2000 in place of Rs.4000-100-6000/-. Thereafter the 6th Pay Commission came to be implemented w.e.f. 01/01/2006 and the revised pay scale of Rs.9300-34800/- (GP Rs. 4400/-) has been made effective to the applicant w.e.f. 01/01/2006.

6. The applicant was also given the benefit of one step promotion of working in tribal and naxal affected areas of district Gadchiroli. After 11 years of payment and after implementing pension and given retiral benefits, issuance of any recovery order from the pension and other retiral benefits is unjustified.

7. The applicant has approached this Tribunal challenging the order dated 2/3/2019 for recovery from the pension and retiral benefits. Recovery has been issued after 11 years of payment without any mistake of the applicant and without issuing any show cause notice.

8. The O.A. is opposed by the respondents. It is submitted that the applicant was absorbed in the Directorate of Local Funds Audit by order dated 29/12/2003 as a Junior Auditor in the pay scale of Rs.4000-100-6000/-. The applicant has been posted at Gadchiroli. The applicant was granted one step promotional pay. The applicant has not passed the departmental examination when he absorbed on the establishment of respondents and therefore the applicant's pay was wrongly fixed, hence, the impugned order passed by the respondents for recovery is legal and proper.

9. Heard Shri S.M. Khan, Id. counsel for the applicant and Shri A.M. Khadatkhar, Id. P.O. for the respondents.

10. The applicant was appointed on the post of Adult Education Supervisor on 12/03/1986. The applicant has passed the B.Ed. examination in the year 1999 which was the criteria for the said post. The Government has found the applicant and others excess in the concerned Department, therefore, issued G.R. dated 25/11/2002. As per the G.R., the pay of the excess employees who were absorbed in another Department, were protected. Para-3 of the G.R. reads as under-

“३. सोबतच्या विवरणपत्रात नमूद करण्यात आलेली २३७ अतिरिक्त पदे या शासन निर्णयानुसार रद्द करण्यात येत असून या पदावर काम करणा-या कर्मचा-यांचे समावेशन अन्य पदावर होईपर्यंत अथवा कर्मचारी सेवानिवृत्त होईपर्यंत यापैकी जे आधी घडेल त्या कालावधीसाठी त्याच पदनामाची व त्याच वेतनश्रेणीमधील अधिसंख्य पदे निर्माण करण्यास शासनाची मंजूरी देण्यात येत आहे. या कर्मचा-यांच्या वेतन

व भल्याचा खर्च ते यापूर्वी ज्या लेखाशिर्षाखाली वेतन घेत होते त्याच लेखाशिर्षाखाली यापुढेही खर्ची टाकण्यात यावा. या पदावर काम करणा-या कर्मचा-यांचे अन्य पदावर समायोजन झाल्यानंतर अथवा कर्मचारी सेवानिवृत्त झाल्यानंतर ही पदे आपोआपच रद्द होतील. शासन निर्णय, वित्त विभाग, दि. १० सप्टेंबर २००९ सोबतच्या परिशिष्ट ३-ब मध्ये विहित केल्यानुसार अतिरिक्त म्हणून घोषित करण्यात आलेल्या पदावर कार्यरत असलेल्या कर्मचा-यांची माहिती संबंधित विभागीय शिक्षण उपसंचालक यांनी संबंधित विभागीय आयुक्तांना उपलब्ध करून द्यावी.”

11. The name of the applicant is in the list. The applicant was absorbed on the post of Supervisor in the pay scale of Rs.4000-6000/. The Government has issued letter dated 03/07/2010. As per para-2 of the letter, the Supervisor who had not passed B.Ed. / B.P.Ed. examination, but who are in service continuously for 12 years, are entitled for pay fixation in the pay scale of Rs.6000-10000. Para nos.1&2 of the letter reads as under –

“विषयांकित प्रकरणी नमूद करण्यात येते की, अतिरिक्त ठरलेल्या ज्या पर्यवेक्षकांनी बी.एड./बी.पी.एड. ही प्रशिक्षणिक अर्हता धारण केलेली आहे व ज्या पर्यवेक्षकाची प्रौढ शिक्षण विभागात पर्यवेक्षक म्हणून १२ वर्षांची सलग नियमित सेवा पूर्ण झालेली आहे, अशा ज्या पर्यवेक्षकांना सहाय्यक प्रकल्प अधिकारी पदाची वेतनश्रेणी अनुज्ञेय आहे, त्या अतिरिक्त ठरलेल्या पर्यवेक्षकांना शासन निर्णय शालेय शिक्षण व क्रिडा विभाग क्र.शिसंमा -१०००/(१०३/२०००)/प्रशा-५, दि.५/११/२००८ नुसार अनुज्ञेय असणारी रु.६०००-१०००० ही वेतनश्रेणी दि.१/३/२००० पासून मंजूर करून त्यानुसार वेतननिश्चिती करून, त्या पुढील कालावधीसाठी काल्पनिक वेतनवाढी जमेस धरून दि.१/९/२००८ पासून वेतनाचा फायदा द्यावा. तथापि, दि.१/३/२००० पासून संबंधित अतिरिक्त कर्मचा-यांचे समावेशन होईपर्यंतच्या कालावधीची थकबाकीची रक्कम अनुज्ञेय राहणार नाही, या अटीच्या अधिन राहून मंजूर करण्यात येत आहे.

२. ज्या अतिरिक्त पर्यवेक्षकांचे विभागीय आयुक्तांमार्फत अन्य कार्यालयात समावेशन झालेले आहे. त्यापैकी ज्या अतिरिक्त पर्यवेक्षकांनी बी.एड./बी.पी.एड. ही प्रशिक्षणिक अर्हता धारण केली आहे. अशा प्रशिक्षणिक अर्हता धारण केलेल्या अतिरिक्त पर्यवेक्षकांपैकी ज्या पर्यवेक्षकांनी दि.१/३/२००० पूर्वी १२ वर्षांची पर्यवेक्षक पदावर नियमित सेवा पूर्ण केली आहे. अशा पर्यवेक्षकांना देखिल त्यांच्या समावेशनाचा दिनांक विचारात घेवून त्यानुसार वेतननिश्चिती करावी. तथापि, दि.१/३/२००० पासून त्यांच्या समावेशनाच्या दिनांकापर्यंत काल्पनिकरित्या वेतनवाढी जमेस धरल्यात, मात्र कोणतीही थकबाकी अनुज्ञेय राहणार नाही, या अटीच्या अधिन राहून वेतननिश्चिती करावी.”

12. From the reply, it appears that the recovery is started by the respondents on the ground that the applicant has not passed the

departmental examination, i.e., B.Ed. examination etc. but the G.R. / letter issued by the Government clearly shows that the applicant was exempted, because, he had continued in service more than 12 years and therefore the recovery started by the respondents appears to be not proper. Moreover, the applicant is a retired Class-III employee, he was not at fault for the fixation of pension.

13. Hence, in view of the Judgment of Hon'ble Supreme 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 impugned recovery order dated 02/03/2019 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 02/03/2019 for recovery of amount from the arrears of retiral benefits and pension, is hereby quashed and set aside.

(iii) No order as to costs.

Dated :- 03/01/2023.

(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 Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 03/01/2023.