

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 527 of 2021 (S.B.)**

Dr. Vinodkumar s/o Sudhakar Waghmare,
Aged about 62 years, Occ. Retired,
R/o Plot No.45, Gudadhey Layout, Bhamti, Nagpur-35.

Applicant.

Versus

1] The State of Maharashtra,
Through its Secretary, Public Health Department,
Mantralaya, Mumbai-32.

2] Director,
Public Health Department, Arogya Bhavan,
C.S.T., Mumbai.

3] Account Officer,
Pay Unit Verification, Civil Lines, Nagpur.

4] Civil Surgeon,
General Hospital, Wardha,
Tah. and District- Wardha.

Respondents.

S/Shri B.B. Pantawane, P.P. Ramteke, Advs. for the applicant.

Shri S.A.Sainis, P.O. for respondents.

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

Dated :- 13/03/2024.

J U D G M E N T

Heard Shri P.P. Ramteke, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

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

The applicant was appointed on the post of Medical Officer in the year 1985. He was appointed in the year 1985, but he was given deemed date from the year 1992, because, he has passed the MPSC examination in the year 1992.

3. The applicant is retired on 31/07/2018. The respondents have issued letter dated 31/01/2020 directing to recover Rs.3,42,582/- on the ground that his pay fixation was wrongly done. Hence, the applicant approached to this Tribunal for the following reliefs –

“(10) A) By way of appropriate order or direction declare that the order issued by respondent no.4 on 31/1/2020 and by respondent no.2 on dated 23/3/2007 are illegal, arbitrary and malafide;

B) By way of appropriate order or direction to quash and set aside the impugned order dated 31/1/2020 issued by respondent no.4 and order dated 23/3/2007 issued by respondent no.2;

C) By way of appropriate order or direction to the respondent nos. 3 and 4 not to recover the excess pension amount which is going to be paid to the applicant and be pleased to issue direction to respondent nos.3 and 4 not to make any recovery from gratuity are from other pensionary benefits of applicant, illegally and arbitrarily by respondent no.3 and 4, in the interest of justice;

D) Be pleased to grant benefits under First Ashwashit Pragati Yojana from 1985 i.e. from initial date of joining;

(11) Stay the effect and operation of the letter dated 31/1/2020 (Annexure-A1) issued by the respondent no.3 and 4 and order dated 23/3/2007 issued by respondent no.2, till the final decision of Original Application, in the interest of justice;”

4. The respondents have not filed any reply. During the course of submission, the learned P.O. has submitted that the pay

fixation was wrongly done. Therefore, the amount is to be recovered from the applicant.

5. The learned counsel for applicant has pointed out the decision 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). The Hon'ble Supreme Court in the case of the **State Of Punjab & Ors vs. Rafiq Masih** (cited supra) has given the 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. As per the guideline no.(ii), excess amount from the retired employee cannot be recovered. The applicant is a retired employee. Therefore, as per the guidelines given by the Supreme Court in the case of the **State of Punjab & Ors vs. Rafiq Masih** (cited supra), recovery cannot be done. Nothing is on record to show that the applicant had given any undertaking for recovery. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The impugned communication / order dated 31/01/2020 is hereby quashed and set aside.

(iii) No order as to costs.

Dated :- 13/03/2024.

**(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 : 13/03/2024.