

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 630 of 2020 (SB)**

Darbar Khan S/o Sahdat Khan,  
Aged about    years, Occ. Retired,  
R/o Kamgar Nagar, Nagpur, Dist. Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through Secretary,  
Irrigation Department,  
Mantralaya, Mumbai-32.
- 2) The Executive Engineer,  
Mechanical Engineer Work Division,  
Irrigation Department, Sadar, Link Road,  
Nagpur.
- 3) Superintendent Engineer (Mechanical),  
Circle Office, Irrigation Department,  
Mechanical Division, Wanganga Nagar,  
Ajni, Nagpur-03.
- 4) Chief Engineer (Mechanical),  
Irrigation Department, Mechanical Division,  
North Maharashtra Region, MICO Circle,  
Timbak Road, Nasik.

**Respondents.**

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**Shri Y.B. Sharma, Advocate for the applicant.**

**Shri Sainis, P.O. for the respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Member (J).**

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**Date of Reserving for Judgment        : 21<sup>st</sup> March,2022.**

**Date of Pronouncement of Judgment : 25<sup>th</sup> March,2022.**

## **JUDGMENT**

**(Delivered on this 25<sup>th</sup> day of March, 2022)**

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

2. The applicant was appointed as a Majdur (Labour) in Class-IV on 15/10/1981 under the authority of respondent nos.1 and 2. In the month of October,2014, i.e., just 8 months before retirement of applicant from his service, the respondents had proceeded for recovery of excess payment made to the applicant. The respondents have recovered of Rs.1,02,519/- from the applicant from his salary and pensionary benefits. Hence, prayed to direct the respondents to refund the said amount.

3. The respondents have filed reply. It is submitted that mistakenly his pay scale was fixed in the pay scale of Rs.3050-4590 instead of Rs.2610-3200 as per pay fixation dated 2/5/1997. The mistake was rectified by the respondents. Therefore, the O.A. is liable to be dismissed.

4. Heard Shri Y.B. Sharma, learned counsel for the applicant. He has pointed out decision 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)

and decision in case of **Rajan Madathil Vs. State of Goa & Ors.,2021 (7) ALL MR 268.**

5. As per the submission of learned counsel for the applicant, the respondents started recovery in the month of October, 2014 just 8 months before the retirement of the applicant. They also continued deducting the said amount from the pensionary benefits. The respondents have recovered Rs.1,02,519/-. The learned counsel has submitted that in view of the Judgment of Hon'ble Bombay High Court and Hon'ble Supreme Court, the respondents authority cannot deduct the said amount. At last, prayed to allow the O.A.

6. Heard Shri S.A. Sainis, learned P.O. for the respondents. He has submitted that there was mistake while granting the pay scale. That mistake was rectified. The applicant had given undertaking that if any excess amount is paid to him, that will be recovered. Hence, there is no illegality on the part of respondents. Therefore, the O.A. is liable to be dismissed.

7. There is no dispute that the respondents have recovered the amount of Rs.1,02,519/- on the ground that it was excess amount, the correspondence of the respondents shows that the pay fixation was made in the year 1997. The applicant was entitled for pay scale of Rs.2610-4000 (P-28), but he was wrongly given pay scale of Rs.3050-4590. Therefore, it is clear that it was the mistake on the part

of the respondents, but that cannot be rectified in view of the Judgment of Hon'ble Apex Court in case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (cited supra). In para-18 of the Judgment following guidelines are given –

*“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 Hon'ble Bombay High Court in case of **Rajan Madathil Vs. State of Goa & Ors., (cited supra)** has held that “error in pay fixation, leading to excess payment--Correction in the error,

*cannot be found fault with-- However, recovery of excess amount from retiral benefit, considering Petitioners are Group-C employees not Justified'. In the present case, the applicant was a Group-IV employee. He is a retired employee as per the guidelines given by the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (cited supra), the respondents should not have recovered the amount of excess payment. In that view of the matter, the following order is passed –*

**ORDER**

- (i) The O.A. is allowed.
- (ii) The respondents are directed to refund the amount recovered from the applicant of Rs.1,02,519/- within a period of two months from the date of receipt of this order.
- (iii) No order as to costs.

**Dated** :- 25/03/2022.

**(Justice M.G. Giratkar)  
Member (J).**

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 Member (J).

Judgment signed on : 25/03/2022.

Uploaded on : 26/03/2022<sub>ok</sub>