

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 71/2019 (S.B.)

Shri Prakash S/o Tulsiram Nagdeve,
Aged about 57 Yrs. Occ. Service,
R/o F-16, Parvati Complex, near Padole Hospital,
Swalambi Nagar Square, Ring Road, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Medical Education & Drugs Department,
G.T. Hospital Complex Building 9th floor,
B-Wing, new Mantralaya, Mumbai-01.
- 2) Dean,
Indira Gandhi Government Medical College,
Central Avenue, Nagpur-440 018.

Respondents.

S/Shri N.D. Thombre, S.P. Chavhan, Advocates for the applicant.

Shri H.K. Pande, P.O. for the respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 21st November, 2019.

Date of Pronouncement of Judgment : 7th January, 2020.

JUDGMENT

(Delivered on this 7th day of January, 2020)

Heard Shri N.D. Thombre, learned counsel for the
applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The applicant was appointed in service as Dental Hygienist. The respondent no.2 passed the order dated 17/12/2018 and directed to recover amount of Rs.65,575/- from the monthly salary of the applicant in 20 instalments. The recovery was ordered on the ground that wrong pay fixation was done by the office. It is submission of the applicant that he was not responsible for the wrong fixation of the pay, he did not play any role in the fixation of the pay and therefore the case of the applicant is covered in the guidelines issued by the Hon'ble Apex Court in case of **State of Punjab Vs. Rafiq Masih**. It is contention of the applicant that in absence of undertaking from him, the respondents have no right to recover the amount on the ground that pay of the applicant was wrongly fixed. It is submitted by the applicant that he is Class-III government servant and he was aged about 57 years when O.A. was filed and therefore the recovery is illegal.

3. The respondents have filed their reply at page no.35. It is not disputed that the applicant was appointed as Dental Hygienist and he was Class-III government servant. The respondents have contended that the pay of the applicant was fixed by the respondent no.2 w.e.f. 1/1/2006 as per the 6th Pay Commission. The Pay Verification Unit raised objection as per the Clause 14 (3) that the pay scale of the applicant was wrongly fixed and consequently decision

was taken to recover excess amount Rs.65,575/- paid to the applicant from 1/1/2006 to 30/6/2018. It is contention of the respondents that they have right to recover the amount paid in excess due to error and therefore the recovery is legal. In view of these contentions, it is contended by the respondents that there is no substance in the application.

4. In case of **Rafiq Masih** the Hon'ble Supreme Court has laid down the guidelines in Para no.12 which is as follows -

“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."

5. In the present case it is undisputed that the applicant is Class-III government servant and he was on verge of retirement. It is nowhere contended by the respondents that when the pay of the applicant was fixed, undertaking was obtained from him to the effect that in the event if it is held that the pay was wrongly fixed, then he would refund the excess amount. The law laid down in case of **Rafiq Masih, 2015 (4) SCC, 334** was considered by the Hon'ble Apex Court in case of **High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh, 2016 SCC, online SC,748**. In case before the Hon'ble Apex Court, undertaking was furnished by the respondents while opting for the revised pay scale, therefore, it was held that he was bound by the undertaking.

6. In the present case it is not contention of the respondents that at the time of pay fixation undertaking was furnished by the applicant to refund the excess amount in case of wrong fixation of pay. In view of this, in my opinion the present case is governed by the guidelines issued by the Hon'ble Apex Court in case of **Rafiq Masih,**

consequently, the impugned order of recovery cannot be justified as the applicant is Class-III government servant. Hence, the following order-

ORDER

- (i) The O.A. stands allowed.
- (ii) The impugned order dated 17/12/2018 is set aside. The respondents are directed to refund the amount recovered from the applicant in pursuance of the order dated 17/12/2018.
- (iii) The respondents to comply the order within three months from the date of this order.
- (iv) No order as to costs.

Dated :- 07/01/2020.

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(A.D. Karanjkar)
Member (J).

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 : 07/01/2020.

and pronounced on

Uploaded on : 07/01/2020..