

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 781/2018 (S.B.)

Arun S/o Patwari Madankar,
Aged 60 years, Occ. Retired Govt. Servant,
R/o C/o Rajesh Sambhaji Zade,
Near new Bus Stand at and Post Armori,
Tq. Aromori, Dist. Gadchiroli.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Technical Education Department,
Mantralaya, Mumbai-32.
- 2) Director,
Regional Vocational and Training Centre,
Off. At Municipal Corporation, Mumbai
Post Box no.3, Mumbai.
- 3) Deputy Director,
Regional Vocational and Training Centre,
Office at Civil Lines, Nagpur.
- 4) Principal,
Industrial Training Institute,
At Navakhala, Post Nagbhid,
Tahsil Nagbhid, Dist. Chandrapur.
- 5) Accountant General-II,
Office at Civil Lines, Nagpur.

Respondents.

Shri V.K. Gulhane, Advocate 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 : 9th December, 2019.

Date of Pronouncement of Judgment : 8th January, 2020.

JUDGMENT

(Delivered on this 8th day of January, 2020)

Heard Shri V.K. Gulhane, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The applicant was appointed as Peon on 1/4/1985 in Chandrapur District. In the month of June, 2018 the applicant was discharging duties as Peon in the Industrial Training Institute (I.T.I.), Nagbhid, District Chandrapur. The applicant stood retired on superannuation on 30/06/2018. After retirement of the applicant, the Principal I.T.I., Nagbhid, District Chandrapur (R/4) passed the impugned order and directed to recover amount Rs. 1,91,414/- excess payment made to the applicant on account of giving premature time bound promotion. This order passed by the respondent no.4 is under challenge in this proceeding.

3. The learned counsel for the applicant submitted that the applicant is Class-IV employee. The benefit of time bound promotion was given to him long back and later on when the service book of the applicant was forwarded to the Pay Verification Unit at the time of his retirement, objection was raised that the applicant was entitled to the time bound promotion from 1/4/1997, but wrongly benefit was extended to the applicant from 1/1/1996. It is submitted by the applicant that recovery of this amount after retirement of the applicant

is highly unjust and inequitable and therefore, the impugned order be quashed and amount recovered be re-paid to the applicant.

4. The applicant has placed reliance on the Judgment in case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc., AIR 2015 SC, 696.** The learned counsel for the applicant submitted that in this case in Para-12 of the Judgment guidelines are issued by the Hon'ble Apex Court that no recovery shall be made from the Class-III and Class-IV employees or retired employees or the employees due for retirement within one year. It is submitted that the action of the respondents to recover the amount from retiral benefits of the applicant is in contravention of the law laid down by the Hon'ble Apex Court, therefore, the impugned order is liable to be set aside.

5. The learned P.O. has submitted that the applicant was appointed in service on 1/4/1985 and he was entitled for the benefit of time bound promotion after completion of 12 years of service. The time bound promotion should have been given to the applicant w.e.f. 1/4/1997, but due to error this benefit was given to the applicant from 1/1/1996 and therefore, the applicant has received excess amount Rs. 1,91,414/- . It is submission of the respondents that the applicant wrote letter dated 4/7/2018 and gave consent for the recovery of the amount. It is submission of the respondents that as consent was given by the applicant for recovery, therefore, the applicant cannot take

benefit of the Judgment in case of **Rafiq Masih** and there is no illegality in the order.

6. It is submitted by the learned P.O. that in case of **High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh, 2016 SCC, online SC,748**, the matter came up before the Court in which undertaking was furnished by the Government servant while opting for the revised pay scale. In that situation, it was observed by the Hon'ble Apex Court that the undertaking has a force of law and as it was given by the Government servant when he opted for the revised pay scale, it was binding on him and he was not entitled for the relief as per the law laid down in case of **Rafiq Masih**.

7. In the present case, it is contention of the applicant that after his retirement he was informed by the respondent no.4 to execute such letter under threat that on his refusal to execute the letter, the office would not prepare his pension case. I have gone through the reply submitted by the respondents. The reply submitted by the respondent no.4 is at page no.17 of the P.B. In this case, it is not contention of the respondents that when time bound promotion was given to the applicant and his pay was fixed, undertaking was given by him that in the event it is held that due to error excess payment was made to him, it would be recovered. It is case of the respondents that the applicant on his own accord voluntarily executed

the letter dated 4/7/2018 and gave consent to recover the amount from the amount of gratuity in lump sum. The copy of the letter executed by the applicant is Annex-R-4, it was received by the office of the respondent no.4 on 5/7/2018 and impugned order is passed by the respondent is on 6/7/2018.

8. In this background, one question arose that the applicant was already retired on 30/6/2018 then what propelled the applicant to execute the consent letter Annex-R-4, no clarification is given by the respondents. As a matter of fact, it seems from the circumstances that the applicant was not aware that he was liable to re-pay excess amount of Rs.1,91,414/-. Even the applicant was not aware that excess salary was paid to him. If the facts are appreciated keeping in view this situation, then there appears substance in case of the applicant that he was forced by the respondent no.4 to execute the consent letter. It is pertinent to note that when Annex-R-4 was executed by the applicant, immediately on 6/7/2018 the impugned order of recovery was passed and machinery moved to pay the retiral benefits of the applicant. In the present case as the undertaking was not given by the applicant when time bound promotion was given to him, therefore, the case of the applicant is not covered by the ratio in case of **High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh.** On the contrary, the circumstances disclose that under suspicious

circumstances the Annex-R-4 was executed by the applicant and what is contemplated by the law laid down by the Hon'ble Apex Court is that the undertaking must be simultaneous while fixation of the pay scale it should not be subsequent. In the present case when there was a direction by the Hon'ble Apex Court in case of **Rafiq Masih** that after retirement of Class-III and Class-IV employees, no recovery shall be made, there was no propriety to ask for any such consent to recover the entire amount from the amount of gratuity. It is not cleared by the respondents as to on whose instructions, such consent letter was handed over by the applicant to the office. Under these circumstances, in my opinion it was necessary for the respondents to clear whether opportunity of hearing was given to the applicant to establish how he was rightly promoted.

9. In view of all the circumstances, I am compelled to say that as the recovery is subsequent to the retirement from the retiral benefits of the Class-IV Government servant who never gave any undertaking at the time of giving him time bound promotion, therefore, the consent letter given by the applicant in suspicious circumstances cannot take out the case out of swing of the law laid down in case of **Rafiq Masih**. I, therefore, hold that the application is required to be allowed. Hence, the following order –

ORDER

The O.A. is allowed in terms of prayer clause nos. 8 (a) & (b). If the amount is already recovered, then it shall be re-paid to the applicant. No order as to interest and cost.

Dated :- 08/01/2020.

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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 : 08/01/2020.
and pronounced on

Uploaded on : 09/01/2020.