

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 803/2017 (S.B.)**

Nandkishor S/o Shyamraoji Raipure,  
Aged about 58 years,  
R/o Carnal Bag, Cement Road, Mahal,  
Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Principal Secretary,  
Public Health Department,  
Mantralaya, Mumbai-440 001.
- 2) Deputy Director of Health Services,  
Nagpur Region, Mata Kacheri Compound,  
Shradhhanandpeth, Nagpur
- 3) Medical Superintendent,  
Regional Mental Hospital,  
Chhindwara Road, Nagpur-440 013.

**Respondents.**

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**Shri S.P. Kshirsagar, Advocate for the applicant.**

**Shri A.M. Khadatkhar, P.O. for the respondents.**

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

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**Date of Reserving for Judgment : 5<sup>th</sup> December, 2019.**

**Date of Pronouncement of Judgment : 7<sup>th</sup> January, 2020.**

**JUDGMENT**

**(Delivered on this 7<sup>th</sup> day of January, 2020)**

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

2. The applicant is serving as Pharmacy Officer, Grade-III (Compounder) on the establishment of the respondents. The O.A.233/2011 was filed by the applicant as benefit of 6<sup>th</sup> Pay Commission was not given him. This Bench decided O.A.No. 233/2011 on 29/9/2014 and directed the respondents to fix the pay of the applicant as per the 6<sup>th</sup> Pay Commission and pay him the arrears within six months.

3. The respondents committed default and not complied the order passed by this Bench, consequently, the Contempt Petition was filed by the applicant.

4. It is contention of the applicant that during pay fixation, the respondent no.3 passed order dated 14/8/2017 and fixed the pay of the applicant as per the 6<sup>th</sup> Pay Commission, but while doing so the respondent no.3 came to the conclusion that when the applicant was serving at Kurkheda, District Gadchiroli in naxal affected area, he was not entitled to draw the pay in scale Rs.9300-34800/- + Grade Pay Rs.4200/-. The respondent no.3 held that the amount Rs.2,66,489/- was wrongly paid to the applicant and consequently the respondent no.3 directed to recover this much amount till 31/6/2018. It is contention of the applicant that the law laid down by the Hon'ble Apex

Court in case of **State of Punjab & Ors. Vs. 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** and in of this law the action of the respondents is illegal, the respondents have no right to recover the amount alleging that the applicant was not entitled to draw salary in the pay scale Rs.9300-34800+ Grade Pay Rs.4200/-. It is submitted by the applicant that as he served in naxalite area, therefore, salary was paid to him as per the policy of the Government in pay scale Rs.9300-34800+ Grade Pay Rs.4200/-. It is submitted by the learned counsel for the applicant that without giving opportunity of hearing, unilaterally decision was taken by the respondent no.3 and the impugned order was passed. It is therefore submitted that order dated 14/8/2017 be quashed and set aside and the respondents be directed to refund the amount deducted.

5. The respondents have contended in their written statement that the applicant filed Contempt Petition No.37/2017 as order passed in O.A.233/2011 was not complied. It is contended by the respondents that as per the order dated 14/8/2017 the respondent no.3 has directed the recovery of the excess amount paid to the applicant. It was noticed by the respondent no.3 that the applicant was not entitled to draw salary in pay scale Rs.9300-34800+ Grade

Pay Rs.4200/- during his tenure at Kurkheda, District Gadchiroli a naxal affected area. The respondent no.3 came to the conclusion that amount Rs.2,66,489/- was wrongly paid to the applicant during this period, therefore, he directed to recover this much amount. It is further contended that as the applicant served in naxal affected area, therefore, he was entitled one step promotional scheme and as per the scheme, the applicant was entitled to pay scale Rs.5200-20200 with Grade Pay Rs.3100/-. It is submitted that instead of paying this pay scale to the applicant, Gadchiroli office paid him the pay scale in the scale Rs. Rs.9300-34800+ Grade Pay Rs.4200/- it was wrong.

6. The respondents have contended that the Pay Verification Unit, Nagpur verified the fixation of pay of the applicant w.e.f. 1/1/2006 and put condition therein that the applicant was liable to re-pay the excess amount. It is submitted by the respondents that in the service book of the applicant specific endorsement is made in his service book and this gives right to the respondents to recover the excess amount of **Rs.2,82,109/-**. It is submission of the respondents that law in case of **Rafiq Masih** is not applicable in the present case and therefore there is no substance in the O.A.

7. After hearing both the sides, it seems that when the pay scale of the applicant was fixed in Gadchiroli District no undertaking was obtained from him that in case of excess payment, he would

refund the amount. Even after going through the para-8 of the reply submitted by the respondents, it seems that as per the scheme of the Government, the applicant was entitled to draw pay in scale of one step promotional post and accordingly his pay was fixed in the promotional post pay scale Rs. Rs.9300-34800+ Grade Pay Rs.4200/. According to the respondents, the applicant was entitled higher pay Rs.300/- in his grade pay which was Rs.2800/- he was not entitled for scale Rs.9300-34800 + Grade Pay Rs.4200/. In my opinion before taking any decision in this matter, it was incumbent on the respondents to give opportunity of hearing to the applicant. In the present matter the respondents did not call upon the applicant to show cause how he was entitled to draw his pay in the scale Rs. Rs.9300-34800+ Grade Pay Rs.4200/-. Thus it is crystal clear that without following the principles of natural justice unilateral decision was taken, for arriving to the conclusion that while serving in naxalite area, the applicant was entitled only for Rs.300/- higher pay and he was not entitled to draw the salary in pay scale admissible to the next promotional post.

8. Secondly, the respondents have placed reliance on the Judgment of Hon'ble Apex Court in case of **High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh, 2016 SCC, online SC,748**. In this case it is explained by the Hon'ble Apex Court that whenever

undertaking is furnished by the Government servant, then he cannot take benefit of the law laid down in case of **Rafiq Masih**. In the present case when salary of the applicant was fixed in Gadchiroli District, undertaking was not taken from him that in the event of wrong fixation, he would refund the excess amount. It is pertinent to note that in the reply it is nowhere alleged by the respondents that any such undertaking was furnished by the applicant. The respondents are giving emphasis on the note of the Pay Verification Unit that the applicant shall be liable to refund the amount. In my opinion, this will not take away the case of the applicant out of the swing of the guidelines issued by the Hon'ble Apex Court in case of **Rafiq Masih** . Once it is held that opportunity of hearing was not given to the applicant and no undertaking was furnished by him when his salary was fixed in Gadchiroli District, the impugned order of recovery dated 14/8/2017 cannot be sustained. In the result, the following order –

### **ORDER**

The O.A. is allowed in terms of prayer clause nos. 10 (a) & 10 (b). 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.