

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH: NAGPUR
ORIGINAL APPLICATION NO. 825/2015

Sirajul Haq Mehafuz Ali,
Aged about 61 years,
R/o Plot No. 32-C, Near Noori Masjid,
Rathod Layout, Anant Nagar, Katol Road,
Nagpur.

-----**Applicant.**

Versus

1. The State of Maharashtra,
Through its Secretary,
Irrigation Department (Mechanical),
Mantralaya, Mumbai. 32
2. The Chief Engineer,
Irrigation Department (Mechanical),
Trambak Road, Nashik.
3. The Superintending Engineer,
Mechanical Circle, Vainganga Nagar,
Ajani, Nagpur.
4. The Executive Engineer,
Mechanical Engineering Workshop Division,
Link road, Sadar, Nagpur.
5. Accounts Officer (Pay Unit),
Payment Inspection Department,
Near Police Control Room,
Nagpur.

----- **Respondents.**

1. Shri M.R. Johrapurkar, Advocate for the applicant.
 2. Shri P.N. Warjurkar, P.O. for the Respondents.
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CORAM : S.S. Hingne : Member (J)

DATE : 11th August, 2016

ORDER

The applicant has filed the O.A. to quash the order dtd. 4/4/2015 (Annexure-A-1, Page-13), challenging the order of recovery of the excess payment.

2. Heard Shri M.R. Johrapurkar, Id. Counsel for the applicant and Shri P.N. Warjurkar, Id. P.O. for the respondents.

The matter is heard and decided finally at the stage of admission with consent of both the parties.

3. The applicant was working as a Naik with the respondents and retired on 28/2/2015. By way of advance increments excess payment was made from 1/10/2007 and therefore the recovery is ordered as per the order dtd. 4/4/2015 from the gratuity amount of the applicant.

4. The respondent No. 4 has filed the affidavit-in-reply (Page-25) and contended that the advance increments were granted to the applicant for his excellent work. However, the Govt. has withdrawn that benefit vide G.R. dtd. 3/7/2009 consequent to the report of the 6th Pay Commission. The Id. Counsel for the applicant relied on a case of **State of Punjab –vs. Rafiq Masih (White Washer)/ 2015 LAB.I.C. 1743 (S.C.)** wherein Their Lordships have summarized the situation in para 12 by observing that recoveries by the employers, would be impermissible in law. Para 12 runs as under :-

“ 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 hereinabove, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employer, 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. The applicant is a Group-'D' employee and is already retired. The case is covered under clause (i) and (ii). Thus, the respondents cannot recover the amount from the applicant. Hence the impugned order deserves to be quashed and set aside. Consequently the O.A. is allowed. The impugned order of recovery dtd. 4/4/2015 is quashed and set aside.

No order as to costs.

(S.S. Hingne)
Member (J)

Skt.