

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 928 of 2018 (SB)**

Smt. Nilima widow of Dipak Bhadke,  
LR of Dipak Bhadke : Age 33 years,  
R/o Shanti Nagar (Tukum Ward),  
Behind Prerna offset printer, Desaiganj,  
District : Gadchiroli.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary, Skill Development,  
Employment & entrepreneurship Department,  
Mantralaya, Mumbai-32.
- 2) The Joint Director, Vocational Education  
and Training, Regional Office, Civil Lines,  
Nagpur-400 001.
- 3) The Principal, Industrial Training Institute (ITI),  
Rajura, District Chandrapur.
- 4) The Accountant General, Mah-02,  
Civil Lines, Nagpur.

**Respondents.**

---

**Shri Bharat Kulkari, Advocate for the applicant.**

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

---

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

**Dated :- 16/03/2022.**

---

**JUDGMENT**

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

2. The case of the applicant in short is as under –

Deceased husband of applicant namely Deepak Bhadke died on 9/10/2015. He was working as a Store Keeper under the respondent no.3, Principal, I.T.I., Rajura. After the death of Deepak Bhadke, provisional pension of Rs. 6,006/- is started by the respondents and the applicant is receiving the same. The provisional pension is granted to the applicant on the ground that deceased Deepak Bhadke, when he was working as Store Keeper committed misappropriation of Government amount about Rs.1,05,43,575/-. But lateron, the respondents have calculated the amount of Rs.14,48,188/-. There was no any departmental enquiry during lifetime of deceased Deepak Bhadke. After his death, the respondents have started inspection of accounts and thereafter found that he has committed misappropriation of Rs.14,48,188/-.

3. Heard Shri Bharat Kulkarni, learned counsel for the applicant. He has pointed out the decision of Hon'ble Supreme court in the case of State of Jharkhand v. Jitendra Kumar Srivastava" reported in (2013) 12 SCC 210 and 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).

4. The learned P.O. for the respondents Shri H.K. Pande strongly objected the O.A. on the ground that the employer / state can

withhold or withdraw the amount of pension as per the Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "Pension Rules").

5. There is no dispute that there was no any departmental enquiry when the respondents have started deducting the amount from family pension of the applicant. During lifetime of Deepak Bhadke, there was no any show cause notice given by the respondents. There was no any enquiry against deceased Deepak Bhadke. The Rule 27 (1) of the Pension Rules is very clear. As per the Rule 27 (1) of the Pension Rules "*Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or a specified period, and also the order of recovery from such pension, the whole or part of any pecuniary loss caused to Government, if , in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service-----*"

6. The Rule 27 (1) of the Pension Rules specifically says that in the departmental enquiry, if it is found that government servant has committed grave misconduct, then the government can withhold or withdraw the amount of pension to recover the same. In sub clause 6 (a) of the said Rule, it is specifically stated that "*departmental*

*proceedings shall be deemed to be instituted on the date on which the statement of charges is issued -----”*

7. After the death of Deepak Bhadke, it appears that the respondents have started the enquiry and found misappropriation of amount of Rs.14,48,188/-. The act of the respondents starting recovery of the said amount from the family pension, is not proper. The Rule 27 of the Pension Rules does not give any right to the respondents, because, there was no any departmental enquiry against deceased Deepak Bhadke, during his lifetime.

8. The Hon'ble Supreme Court in the case of State of Jharkhand v. Jitendra Kumar Srivastava (cited supra) has held that *“It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. It is thus hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of [Article 300 A](#) of the Constitution of India”*.

9. In the case of State Of Punjab & Ors vs. Rafiq Masih (White Washer) (cited supra), the Hon'ble Supreme Court has given the guidelines in para-12 of the Judgment as under –

*“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.”*

10. In the present O.A. there is no dispute that during the lifetime of deceased Deepak Bhadke, there was no any departmental enquiry. The applicant is the wife depending on the family pension. The respondents have started provisional pension of Rs.6006/- after deducting 30% of the pension, for recovery of Rs.14,48,188/-. It is not

permissible under the Rule 27 of the Pension Rules and also in view of the above cited Judgments.

11. The Id. P.O. has relied on the Rule 27 of the Pension Rules, but the Rule 27 is very specific, which says that if there was any departmental enquiry and in that enquiry if it is found that employee has committed grave misconduct, then that amount can be recovered, but in the present O.A. there was no any departmental enquiry against the deceased employee. Hence, the act of respondents deducting 30% of the pension amount from the family pension is not proper.

12. In that view of the matter, the following order –

**ORDER**

(i) The O.A. is allowed.

(ii) The order dated 21/8/2018 of respondent no.3 for recovery of Rs.14,48,188/- from the family pension, gratuity and other retiral benefits of the deceased employee during the lifetime of deceased Deepak Bhadke, is hereby quashed and set aside.

(iii) The respondents are directed to grant all the pensionary benefits of deceased to his legal heirs.

(iv) The respondents are directed to refund the amount whatever recovered from the family pension of the deceased within a period of six months.

(v) No order as to costs.

**Dated** :- 16/03/2022.

**(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 : 16/03/2022.

Uploaded on : 17/03/2022.ok