

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 958 of 2017 (SB)**

Kashiram S/o Narayan Meshram,  
Aged about 59 years, Occ. Retired ASI,  
R/o Vaishali Nagar, Hingna Road,  
Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
- 2) The Commandant, SRPF,  
Group no.13, Wadsa (Desaiganj),  
District Gadchiroli, Camp Nagpur,  
Situating at SRPF Group no.4, Hingna Road,  
Nagpur.

**Respondents**

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**Shri P.V. Thakre, Mrs. V. Thakre, Advocates for the applicant.**

**Shri S.A. Sainis, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**JUDGMENT**

**(Delivered on this 13<sup>th</sup> day of August,2018)**

Heard Shri P.V. Thakre, learned counsel for the  
applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The applicant was appointed as an Armed Police Constable in 1978. He has retired on superannuation from the post of Assistant Sub-Inspector on 30/04/2017.

3. Vide order dated 1/9/2017 the respondent no.2 issued an order whereby it was directed that an amount of Rs.92,494/- was paid in excess towards salary and therefore the same be recovered from the gratuity of the applicant. Similarly vide order dated 8/9/2017, an amount of Rs.70,742/- has also been recovered. The applicant is claiming back the said amount. It is his case that the impugned orders of recoveries have been issued without giving any notice to the applicant and the same are arbitrary and malafide. It is therefore prayed that the impugned orders dated 1/9/2017 and 8/9/2017 issued by respondent no.2 at Annex-A-1 and A-2 respectively be quashed and set aside and the respondent no.2 be directed the amount of Rs.92,494/- recovered vide order dated 1/9/2017 and Rs.70,742/- recovered vide order dated 8/9/2017 be refunded to the applicant.

4. The respondent nos. 1&2 have filed their reply-affidavit. It is stated that before applicant's retirement, the respondents vide letter dated 25/10/2016 sent the service record of the applicant to the Pay Verification Accounts Officer. Another

letter was also issued on 20/01/2017 to the Pay Verification Department, Nagpur. The Pay Verification Department verified the pay of the applicant and accordingly the pay scale was revised for the period from 1/1/1996 to 1/7/2011. Vide letter dated 20/5/2017 the amount of Rs.92,794/- was recovered from the pension of the applicant. The matter was sent to the A.G. Office and in pursuance of the letter dated 18/8/2017 and the pay was fixed. The amount of Rs.92,494/- was paid in excess to the applicant and the same was required to be recovered.

5. The respondent in pursuance of the letter dated 8/9/2017 has revised the pay scale of the applicant w.e.f. 1/7/2012 and it was found that the amount of Rs.70,742/- was already paid to the applicant in excess and therefore the same was required to be recovered. The respondents have referred to the Judgment given by the Hon'ble High Court in W.P.No. 3113/1996 decided on 13/9/2012. The learned P.O. also reliance on the Judgment reported in 2012 (6) Mh.L.J., 341 in the case of **Z.H. Lambak versus Accountant General-II (A&E), Maharashtra, Nagpur**, the Hon'ble High Court, Bench at Nagpur in the said judgment has held that if the amount is released inadvertently, the same shall be

recovered from a person who is otherwise not entitled to it. The respondents therefore justified the recovery.

6. The learned counsel for the applicant submits that so far as alleged excess payment is concerned, the same relates to the period from 1/1/1996 to 1/7/2011 and the applicant got retired on superannuation on 30/04/2017. The applicant is a Class-III employee and such recovery cannot be allowed after such a long period. The learned counsel for the applicant placed reliance on the Judgment in the case of **State of Punjab & Others etc. Versus Rafiq Masih (White Washer) etc. in Civil Appeal No.11527/2014 (arising out of SLP (c) No.11684 of 2012)**. In para no.12 of the said Judgment the Hon'ble Apex Court has observed 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.”*

7. Admittedly, the so called excess amount has been paid in this case is since 1996. Admittedly, the applicant was not responsible for so called excess payment and therefore in such circumstances recovery of such huge amount from Class-III employee will definitely cause great hardship to the applicant. Such amount cannot be recovered after such a long period. The applicant's case is therefore covered by the Judgment in the case of **State of Punjab & Others etc. Versus Rafiq Masih (White Washer) etc. in Civil Appeal No.11527/2014 (arising out of SLP (c) No.11684 of 2012)**. Hence, the following order :-

**ORDER**

The O.A. is allowed. The respondent no.2 is directed to refund the amount of Rs. 92,492/- recovered vide letter dated 1/9/2017 (Annex-A-1) and amount of Rs.70,742/- recovered vide letter dated 8/9/2017 (Annex-A-2). The aforesaid amount shall be refunded to the applicant within three months from the date of this order, failing which, the applicant will be entitled to claim interest as per the admissible rate and rules. No order as to costs.

**Dated :- 13/08/2018.**

**(J.D. Kulkarni)  
Vice-Chairman (J).**

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