

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 970 of 2021 (S.B.)**

Shri Bapurao S/o Sadashiv Gandhewar,
Aged about 61 years, Occ. Retired Peon,
R/o Gurumauli Mandir, Mahakali Ward,
Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Chief Secretary,
Minister of Revenue and Forest,
Mantralay, Mumbai-32.
- 2) Chief Conservator of Forests,
Chandrapur Circle,
Van Bhavan, Civil Lines, Nagpur Road,
Chandrapur, Tah. and District Chandrapur.
- 3) Dy. Conservator of Forest (Working Plan 1),
Mul Road, Chandrapur.
Tah. and District Chandrapur.

Respondents.

**Shri G.N. Khanzode, Mrs. P.T. Joshi, Advocates for the applicant.
Shri S.A. Sainis, learned P.O. for respondents.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 14/12/2023.

JUDGMENT

Heard Ms. Renuka Gosavi, learned counsel holding for
Shri G.N. Khanzode, learned counsel for the applicant and Shri S.A.
Sainis, learned P.O. for the respondents.

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

The applicant was appointed in Class-IV category by respondent no.3 on 19/02/1985. The applicant retired on 31/10/2018 after completion of 60 years of age. On 15/11/2018, the impugned order regarding recovery of excess payment made to the applicant was issued. The respondent nos.2 and 3 recovered the amount of Rs.5,78,723/-. The applicant is a retired employee. After retirement, the respondents have recovered the amount. Hence, the applicant approached to this Tribunal for the following reliefs –

“(9) (i) quash and set aside the impugned communication/ order dated 15/11/2018 & 29/08/2019 passed by respondent no.3 being arbitrary, unreasonable and illegal;

ii) be further pleased to direct the respondents to refund the amount of Rs.5,78,723/- deducted from leave encashment and DCRG amount by the respondent no.3, along with 10% interest thereon till realization;

iii) be further please to decide the present application at the stage of admission considering the fact that he is senior citizen and suffering from age related ailments, to meet the ends of justice;

iv) Grant any other relief in favour of the applicants which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

3. The respondents have not filed reply even though many chances were granted to file reply. This O.A. is covered by the Judgment of the Hon'ble Supreme Court in the case of the **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) and the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.695/2016, decided on 12/02/2018.

4. The Hon'ble Supreme Court in the case of the **State Of Punjab & Ors vs. Rafiq Masih** (cited supra) has given following guidelines. Para-12 of the Judgment is reproduced below –

“(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."*

5. The applicant is a retired Class-IV employee. As per guidelines nos.(i) and (ii) of the Hon'ble Supreme Court in the case of the **State Of Punjab & Ors vs. Rafiq Masih** (cited supra), the excess amount paid to the Class-IV employees shall not be recovered after the retirement or who are about to retire within one year. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to refund the amount of Rs.5,78,723/- along with interest @ 6% p.a. from the date of recovery till the actual refund of the said amount, within a period of three months from the date of receipt of this order.

(iii) No order as to costs.

Dated :- 14/12/2023.

**(Justice M.G. Giratkar)
Vice Chairman.**

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 14/12/2023.