

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 728 OF 2021

DISTRICT:- NANDED

Shaikh Abdul Gafur Md. Sarwar
Age : 61 years, Occ: Pensioner,
R/o. Khajababa Nagar Gumadas Road
Degloor Tal. Degloor,
Dist. Nanded.

.. APPLICANT

V E R S U S

- 1) Additional Chief Conservator of Forest, Maharashtra State Nagpur, Office at Vanbhavan, Ramgiri Road, Civil Line Nagpur, Dist. Nagpur.
- 2) The Conservator of Forest Social Forestry, Aurangabad Plot No. 3, Kalpataru Housing Society, Pundlik Nagar, Third Floor, Aurangabad.
- 3) The Divisional Forest Officer, Social Forestry Division Nanded Near Jayaram Motor Showroom, Anand Nagar Road Nanded.
- 4) The Deputy Director Social Forestry Division Nanded, H. No. 1-18-1120 Shardanagar, Anand Nagar Road Nanded, Dist. Nanded.
- 5) The Accountant General-II (A&E) Pension Wing Old Building In front of Ravi Bhavan, Nagpur.

.. RESPONDENTS

APPEARANCE : Shri A.B. Rajkar, learned counsel
for the applicant.

: Shri M.P. Gude, learned Presenting
Officer for the respondent authorities.

CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN

DATE : 24.01.2023

ORAL ORDER

Heard Shri Ashish B. Rajkar, learned counsel for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondent authorities.

2. The applicant has filed the present Original Application seeking quashment of the order dated 20.9.2016, whereby respondent No. 4 has directed the recovery of the amount of Rs. 1,36,105/- from the amount of gratuity payable to the applicant. The applicant has also challenged the order dated 27.10.2016. It is the case of the applicant that he retired on 31st August, 2016 while working as Plantation Officer, Group-C in the office of respondent No. 3. After his retirement the order dated 20.9.2016 came to be served upon the applicant, whereby the recovery of amount of Rs. 1,36,105/- has been directed. The recovery is directed on account of excess payment made to the applicant by mistake. It is the case of the respondents that in giving the benefit of second Assured Career Progression Scheme inadvertent mistake has occurred, which has resulted in making excess payment to the applicant in the period

between 1.4.2010 and 31.8.2016. Learned counsel submits that the applicant is challenging the recovery in view of the judgment of the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., AIR 2015 SC 596.**

3. Learned counsel submitted that in view of the law laid down by the Hon'ble Apex Court in the aforesaid judgment no recovery can be made from the employees falling in the category of Class-III or Class-IV category. Learned counsel submitted that the applicant falls in the category of Class-III employees. Learned counsel submitted that in view of the aforesaid judgment the respondents could not have recovered the aforesaid amount from the amount of gratuity payable to the applicant. Learned counsel in the circumstances prayed for setting aside the said order and consequently to direct the respondents to refund the said amount recovered from the amount of gratuity of the applicant.

4. Learned Presenting Officer has opposed the contentions raised in the application, as well as, prayer made therein. Learned P.O. submitted that in the pay verification done at the time of calculating the retiral benefits payable to the applicant, it was noticed that the benefit of second Assured Career

Progression Scheme was liable to be given to the applicant from 1.4.2010, whereas it was given w.e.f. 1.10.2006. The respondents have calculated the said amount being paid in excess to the tune of Rs. 1,36,105/-. Learned P.O. submitted that the applicant did not raise any objection for recovery of the said amount when it was actually recovered and even no protest was lodged by the applicant that the said amount was not liable to be recovered from him and, as such, he is now estopped from raising any objection for the amounts so recovered. Learned P.O. in the circumstances, prayed for dismissal of the original application.

5. I have carefully considered the submissions advanced by the learned counsel for the parties. Learned counsel was fair in submitting that he is not challenging the order to the extent that the benefit of second Assured Career Progression Scheme was liable to be given from 1.4.2010. Learned counsel submitted that accordingly the amount of pension has been revised and has been decreased to some extent than the amount which was determined initially. Learned counsel submitted that the respondents however, in view of the law laid down by the Hon'ble Apex Court in the case of **Rafiq Masih (White Washer)** (cited supra) could not have recovered the said

amount from the retiral benefits of the applicant. It appears to me that the contention as has been raised on behalf of the applicant must succeed in view of the law laid down by the Hon'ble Apex Court in the case of **Rafiq Masih (White Washer)** (cited supra). The Hon'ble Apex Court in paragraph No. 12 of its judgment has recorded certain circumstances in which the recoveries are made impermissible from the Government employees. I deem it appropriate to reproduce the said paragraph, which reads thus: -

“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, summarize 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 the 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 employees, 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."

6. In view of the above, the recovery made from the amount of gratuity of the applicant cannot be sustained and deserves to be set aside. Accordingly, it is set aside. The respondents are directed to refund the said amount to the applicant within 12 weeks from the date of this order. It is clarified that the pay as has been revised by the Pay Verification Unit and the decision so taken to give the benefit of second Assured Career Progression Scheme to the applicant from 1.4.2010 is not interfered with. The order of recovery, however, deserves to be set aside and it is accordingly set aside.

There shall be no order as to costs.

VICE CHAIRMAN