

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 974 / 2018 (S.B.)

Kishore Balkrishna Jagnekar,
 Aged about 44 Yrs., Occupation : Service,
 R/o At Post Ward No. 6, Shankar Nagar Kandri, Kanhan, Parseoni,
 Nagpur- 441 401.

Applicant.

Versus

- 1) The State of Maharashtra,
 Through it's Secretary,
 Food and Civil Supplies and Consumer Protection Department,
 Mantralaya, Mumbai- 400 032,
- 2) The Food Grain Distribution Officer,
 The District Supply Office,
 Near Central Museum, Nagpur.
- 3) The Collector,
 The Collector Office, Nagpur,
 Civil Lines, Nagpur.
- 4) The Tahsildar,
 The Tahsil Office, Ramtek,
 Tah. Ramtek, Dist. Nagpur.

Respondents

Shri A.D.Patil, the Id. Advocate for the applicant.

Shri A.M.Khadatkar, the Id. P.O. for the respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.

JUDGMENT

PER : VICE CHAIRMAN

Judgment is reserved on 07th August 2019.

Judgment is pronounced on 07th August 2019.

Heard Shri A.D.Patil, Id. counsel for the applicant and Shri A.M.Khadatkar, Id. P.O.
 for the respondents.

2. The applicant (Ex-Army) was appointed as Godown Pahrekari vide order dated
 08.09.2014 of Collector, Nagpur as per Annexure-A-1, Pg. No. 12. Subsequently, applicant was
 promoted to the post of Clerk-cum-typist from open category as per seniority vide Collector,

Nagpur order dated 23.05.2018 (Annexure-A-2, Pg. No.14). Applicant's pay was fixed as in the scale of Junior Clerk in the pay scale of 5200-20200 (G.P. 1900) and he joined on 02.06.2018 (Annexure-A-3, Pg. No. 16) afternoon. However, after objection taken by pay verification committee, respondent no. 2 issued an order of recovery of Rs. 3,47,153 vide impugned order dated 16.10.2018 (Annexure-A-3, Pg. No.16). Aggrieved with this order applicant approached to this Tribunal and this Tribunal vide its order dated 18/12/2018 passed following order:-

"2. Vide impugned order dated 16.10.2018 (A-3), the respondents are recovering the amount of Rs. 3,47,153/- form the salary of the applicant in 60 instalments. The amount of Rs. 5838/- should be recovered as first instalment and Rs. 5785/- for rest of the 59 instalments on the ground that the pay fixation was wrongly done and the amount has been paid in excess to the applicant. The learned counsel for the applicant submits that no show cause notice was even issued to the applicant before such recovery. The applicant is a Class-III employee and, therefore, in the interest of justice, recovery for alleged so-called excess payment is stayed till further orders."

3. During course of hearing, Id. Counsel for the applicant relied on following Judgments:-

A. Hon'ble Supreme Court Judgment in State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc. Reported in group of cases Civil Appeal No. 11527 of 2014 arising out of S.L.P. (C) No. 11684/2012 delivered on 18/12/2014.

B. Hon'ble High Court, Mumbai Bench at Nagpur in Writ Petition No. 1765/2015 in Maruti Tukaram Bagawe & Ors. Vs. State of Maharashtra & Another delivered on 18.06.2018.

C. M.A.T., Principle Bench in O.A No. 820/2016 in Dilip M. Diwane Vs. State of Maharashtra & 3 Ors. delivered on 13.06.2017, he is mainly relying on para nos. 18, 20 & 21.

4. The Id. P.O. submitted that the impugned order at Annexure-A-3, P. No. 16 is due to wrong fixation of pay and so recovery has been affected vide this order due to excess payment done to the applicant by way of wrong fixation of pay.

5. However, respondents in their reply have not filed any documents where it is written that undertaking was taken by the candidate to the effect that he will refund any excess amount paid to him in future due to wrong fixation of pay. Id. P.O. was repeatedly given chance to produce such documents by respondents. However, respondents have failed to produce such document. Even today during hearing Id. P.O. submitted that he tried his best, even to the extent

of contacting the respondents office to get this documents, however, respondents are unable to produce such documents.

6. The applicant had made several representations to the respondents but no cognizance has been taken regarding grievance of the applicant.

7. After the Judgments of **Hon'ble Supreme Court Judgment in State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc. Reported in group of cases Civil Appeal No. 11527 of 2014 arising out of S.L.P. (C) No. 11684/2012 delivered on 18/12/2014**. Several Judgments have been pronounced by Hon'ble High Court and MAT also. The present O.A. is covered by all these Judgments and now it is well settled principle that in such situation recovery cannot be affected. Hence, impugned order dated 16.10.2018 requires to be quashed and set aside and if any amount is recovered till today needs to be refunded to the applicant. Hence, following order:

ORDER

1. O.A. is partly allowed.
2. The impugned order dated 16.10.2018 (A-A-3, Pg. No. 16) is quashed and set aside.
3. Relief clause 10 (1) is fully allowed and 10 (2) is allowed without interest.
4. No order as to costs.

**(Shri Shree Bhagwan)
Vice Chairman**

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 07/08/2019.
and pronounced on

Uploaded on : 08/08/2019.