

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 108 of 2023 (S.B.)**

1. Murari S/o Udaram Pandhare,
Aged 62 Years, Occ: Retired, R/o Arjuni/ Morgaon,
Ward No. 11, Near Police Station,
Tahsil Arjuni/ Morgaon, Gondiya-441701.
2. Patiram S/o Kewalram Shiwankar,
Occ: Retired, Aged 64 Years, R/o Mu. Arattindi /Dabhna,
Arjuni/ Morgaon, Gondiya- 441701.
3. Arun S/o Madhorao Gadkari,
Aged 62 Years, Occ: Retired, R/o Arjuni/ Morgaon,
Gondiya- 441701.

Applicants.**Versus**

1. State of Maharashtra,
through Secretary, Water Resources Dept.,
Mantralaya, Fort Mumbai-400032.
2. Additional Chief Secretary,
Ministry Water Resources Department,
Mantralaya, 400032. Fort Mumbai.
3. Supdt. Engineer,
Bhandara Irrigation Circle, Bhandara (Girola Pahadi),
Gondiya- 441924.
4. Executive Engineer, Bagh Etyadoh Irrigation Division,
Opposite Subhash Garden,
Civil Lines, Gondiya - 441924.
5. Sub-Divisional Engineer,
Etiadoh Irrigation Management Sub-Division,
Arjuni/ Morgaon, Gondiya - 441701.

Respondents.

**N.M. Gaikwad, R.N. Gaikwad, Advocates for the applicants.
Shri H.K. Pande, learned P.O. for respondent nos.1 to 4.
U.A. Patil, S. Handa, K.A. Patil, Advs. for respondent no.5.**

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

Dated :- 11/12/2023.

JUDGMENT

Heard Ms. Rashmi Gaikwad, learned counsel for the applicants, Shri H.K. Pande, learned P.O. for respondent nos.1 to 4 and Smt. U.A. Patil, learned counsel for respondent no.5.

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

The applicant no.1 was working as Wireless Operator, Grade-III in Group-D and retired on 31/01/2019. The applicant no.2 was working as Wireless Operator, Grade-III in Group-D and retired on 31/12/2017. The applicant no.3 was working as Wireless Operator Grade-III in Group-D and retired on 31/12/2019.

3. The respondents have issued the order dated 11/03/2022 (P-27) to recover the amount from the applicants which was wrongly paid to them. The respondents directed to recover the amount of Rs.2,37,480/- from applicant no.1, the amount of Rs.2,38,426/- from applicant no.2 and the amount of Rs.3,17,865/- from applicant no.3.

4. The applicants are retired employees and they were not at fault to get the amount. The respondents have issued the recovery

order and therefore they approached to this Tribunal for the following reliefs –

“(a) to quash and set aside the recovery order No.7 dated 11.03.2022 issued by Respondent No.5 to the Applicant No.1 as Annex-A-6 and direct the respondents to refund the amount of Rs.2,37,480/- with 18% interest per annum from the date of realization at full and final to the applicant No.1 and thereby be pleased to allow the original application.

(b) to quash and set aside the recovery order dated 29.01.2021 issued by Respondent No.5 to the Applicant No.2 as Annex-A-12 and direct the respondents to refund the amount of Rs.2,38,426/- with 18% interest per annum from the date of realization at full and final to the applicant No.2 and thereby be pleased to allow the original application.

(c) to quash and set aside the recovery order dated 29.01.2021 issued by Respondent No.5 to the Applicant No.3 as Annex-A-13 and direct the respondents to refund the amount of Rs.3,17,865/- with 18% interest per annum from the date of realization at full and final to the applicant No.3 and thereby be pleased to allow the original application.

(d) The Hon'ble Court may saddle the cost of this proceeding on respondents.

(d) Grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present application.”

5. The O.A. is strongly opposed by the respondents. It is submitted that the excess amount were paid to the applicants in respect of pay fixation. At the time of pay fixation, the applicants have given undertaking to refund the said amount to the respondents. Therefore, it is submitted that once the undertakings are given by the

applicants, they cannot claim that amount cannot be recovered. Hence, the O.A. is liable to be dismissed.

6. During the course of submission, the learned counsel for applicants has pointed out the decision 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). She has pointed out the Judgment of Hon'ble Bombay High Court in the case of the **State of Maharashtra Vs. Mrs. Rekha Vijay Dubey** in Writ Petition No.7154/2019 with connected petitions, decided on 24/09/2021. The learned counsel for applicants has also pointed out the Judgment of this Tribunal in O.A. 527/2022, decided on 30/10/2023.

7. 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."

8. As per the guidelines no.(i) the excess amount from retired Class-III and Class-IV employees shall not be recovered and as per guideline no.(ii) recovery from retired employees, or employees who are due to retire within one year, of the order of recovery shall not be recovered.

9. The learned counsel for respondent no.5 Smt. U.A. Patil has pointed out the Judgment of the Hon'ble Supreme Court in the case of the **High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh (2016) 4 SCC,267**. The case of **High Court of Punjab and**

Haryana & Ors. Vs. Jagdev Singh is considered by the then Chief Justice Dipankar Datta in the case of the **State of Maharashtra Vs. Mrs. Rekha Vijay Dubey** in Writ Petition No.7154/2019 with connected petitions. The para-8 of the said Judgment is reproduced below –

*“(8) First, the undertaking given by the respondent in **Jagdev Singh** (supra), while opting for the revised pay-scale, was in pursuance of the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001. Since the respondent had submitted an undertaking under the said Rules that he would refund to the Government any amount paid to him in excess either by adjustment against future payment due or otherwise, he was held to be bound by such undertaking. Additionally, the respondent had not retired from service on superannuation but he was compulsorily retired from service. Also, the respondent being a judicial officer was not holding a Class III/Group 'C' post on the date he was compulsorily retired. It is in such circumstances that the Supreme Court held that the respondent was bound by the undertaking given by him and that the Government was justified in its action of seeking to recover excess payment that was made. That is not the case here. The facts here are quite dissimilar and, therefore, having regard to the settled proposition of law that a judgment is an authority for what it decides and not what can logically be deduced therefrom, we hold the decision in **Jagdev Singh** (supra) to be distinguishable on facts.”*

10. The applicants are Class-III retired employees. As per guideline nos.(i) and (ii) of Hon'ble Supreme Court in the case of the **State Of Punjab & Ors vs. Rafiq Masih** (cited supra), excess amount paid to the retired Class-III employees cannot be recovered. Hence,

the applicants are entitled for the relief as prayed. Therefore, the following order is passed –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to refund the amount of Rs.2,37,480/- to applicant no.1, the amount of Rs.2,38,426/- to applicant no.2 and the amount of Rs.3,17,865/- to applicant no.3, along with the interest @ 6% p.a. from the date of recovery, till the actual payment is made to the applicants.

(iii) No order as to costs.

Dated :- 11/12/2023.

(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 : 11/12/2023.