

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 146 of 2017 (S.B.)

Shri Madhao Arjun Khutemate,
Aged about 63 years,
Occ. Retired, State Pensioner,
R/o Shriram Nagar (Tukum), Chandrapur,
Tq. and District Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Ministry of Revenue, Mantralaya, Mumbai.
- 2) The Settlement Commissioner and
Director of Land Records,
Pune, Maharashtra.
- 3) The Deputy Director of Land Record,
Nagpur Region, Nagpur.
- 4) The Deputy Superintendent of Land Record,
Chandrapur.

Respondents.

**S/Shri M.P. Kariya, H.N. Potbhare, K.R. Prajapati, Advocates for
the applicant.**

Shri M.I. Khan, P.O. for the respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Dated :- 27/01/2020

JUDGMENT

Heard Shri M.P. Kariya, learned counsel for the applicant
and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicant joined the service on 08/11/1974 on the post of Surveyor. It is case of the applicant that on 1/10/1989 considering his excellent performance he was awarded one advance increment and vide order dated 1/10/1990 he was awarded two advance increments. It is submitted that the applicant took V.Rs. on 31/5/2011 and his pension case was forwarded to the Accountant General II, Nagpur. The Accountant General II, Nagpur raised objection that the applicant was not entitled for the advance increments and consequently the pay of the applicant was reduced and accordingly his pension. It was held by the A.G. that the excess amount of Rs.19,570/- was received by the applicant and consequently the amount was deducted out of DCRG of the applicant.

3. The learned counsel for the applicant submitted that after retirement of the applicant the respondents do not have right to say that the advance increments were granted to the applicant violating the service rules and he was not eligible for it and to recover the amount. It is submitted that in view of the settled law as the applicant was Class-III Government employee, therefore, the action of the respondents to recover the amount Rs.19,570/- out of amount of gratuity is illegal and it be refunded to the applicant along with 18% interest.

4. It is submission of the respondents that the action of the respondents is justified, because, undertaking was given by the applicant when his pay was fixed on 27/1/1999 and 15/5/2009. It is submitted that as the applicant himself has given the undertakings and given consent for the recovery, therefore, the applicant cannot turn round and say that the recovery is illegal.

5. There is no dispute about the facts that the first advance increment was awarded to the applicant vide order dated 29/6/1991 and two advance increments were awarded to the applicant vide order dated 1/12/1992. The learned P.O. accepted that when these advance increments were awarded to the applicant and his pay was fixed, no undertaking was obtained from him. In view of this position, it is necessary to consider whether on the basis of the undertaking given by the applicant on 27/1/1999 and 15/5/2009, the respondents have right to recover the amount of advance increments from the applicant. It seems that Annex-A-2, Page no.78A, dated 27/1/1999 was executed by the applicant while working as Junior Clerk at Chandrapur and in the undertaking it is mentioned that in the event the pay fixation was found to be wrong, then he would re-pay the excess amount paid to him. Similar undertaking was executed on 15/5/2009 when pay of the applicant was fixed in the year 2009. After reading both the undertakings it seems that both the undertakings

have no relation with the grant of advance increments to the applicant. It further seems that before arriving to the conclusion that the applicant was not entitled for the advance increments, opportunity of hearing was not given to the applicant, but on the contrary unilateral decision was taken and order was issued to recover the amount Rs.19,570/- from the allowances of the applicant. In my opinion this procedure was bad in law.

6. The law is well explained in case of **Rafiq Masih, 2015 (4), SCC, 334** that after retirement of Class-III or Class-IV Government servant the amount paid in excess shall not be recovered from him, if the Government servant not played fraud on the office for seeking the monetary relief. The Hon'ble Supreme Court in case of **High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh, 2016 SCC online SC 748,** again examined the law laid down in case of **Rafiq Masih** and cleared that if undertaking is given by the Government servant while opting for the revised pay scale, then such undertaking is binding on the Government servant and he cannot take benefit of the Judgment in case of **Rafiq Masih**. The guidelines given in case of **Rafiq Masih** are as under -

“10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.” (emphasis supplied)”.

7. After considering the legal position as explained above, as no undertaking was given by the applicant when advance increments were awarded to him that in the event if it is found that he was not entitled for the advance increments, then he would refund the amount, therefore, in my opinion the order of recovery unilaterally passed cannot be sustained.

8. In view of this, the O.A. is allowed. The respondents are directed to refund the amount of Rs.19,570/- which is recovered from the gratuity of the applicant together with interest @ 6% p.a. from the

date of recovery till realization. The rest of the prayers stand dismissed. No order as to costs.

Dated :- 27/01/2020.

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(A.D. Karanjkar)
Member (J).

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 27/01/2020.

Uploaded on : 29/01/2020.