

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 342/2023 (S.B.)

Asuraj S/o Rushiji Dhanvijay,
Aged about 65 years, Occ. Retired,
R/o Mokhala (Neri), Tah. Chimur,
District – Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Revenue Ministry,
Mumbai.
- 2) Collector, Chandrapur,
Tah. & Dist. Chandrapur.
- 3) Tahsildar, Chimur,
Tahsil Officer, Chimur,
Tah. Chimur, District Chandrapur.
- 4) Joint Director,
Treasury & Accounts,
Pay Verification Unit, Civil Lines,
Nagpur.

Respondents

Shri I.G.Meshram, Id. Advocate for the applicant.

Shri A.P.Potnis, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 10th Jan., 2024.

Judgment is pronounced on 16th Jan., 2024.

Heard Shri I.G.Meshram, ld. counsel for the applicant and Shri A.P.Potnis, ld. P.O. for the Respondents.

2. The applicant was working as Peon in the respondent department. By representation dated 20.02.2017 (A-7) he raised a grievance that since January, 2016 he was getting less salary. He retired on superannuation on 31.01.2018. By judgment dated 02.08.2022 in O.A. No. 382/2017 (A-15) this Bench directed the respondents to decide representation dated 20.02.2017 within a period of six months from the date of receipt of the order. Pursuant to this direction respondent no. 3 decided representation dated 20.02.2017 by order dated 14.12.2022 and proceeded to reject it. Respondent no. 3 passed consequential order also dated 14.12.2022 directing recovery from the applicant. Both the orders dated 14.12.2022 are A-1, collectively. The order of recovery states:-

वाचा:-

1) मा. लेखाधिकारी, वेतन पडताळणी पथक, नागपुर यांनी नोंदविलेले आक्षेप क्र. 113/22/3/2016.

2) सहाय्या वेतन आयोगाचे तरतुदीनुसार केलेल्या वेतननिश्चितीची पडताळणी दिनांक 30/07/2016.

3) मा. लेखाधिकारी, वेतन पडताळणी पथक, नागपुर यांनी नोंदविलेले दिनांक 04/08/2020.

आदेश :

श्री असुराज रुषीजी धनविजय शिपाई तहसिल कार्यालय चिमूर हे दिनांक 31/01/2018 रोजी शासन सेवेतून नियत वयोमान प्राप्तीमूळे सेवानिवृत्त झाले. त्यापूर्वी त्यांचे सेवापुस्तकातील वेतनपडताळणी करणे आवश्यक असल्याने त्यांचे मुळ सेवापुस्तक मा. लेखाधिकारी, वेतनपडताळणी पथके नागपूर यांचेकडे पाठविण्यात आले असता आक्षेप क्र. 113 दिनांक 22/03/2016 अन्वये वेतननिश्चिती चुकीची असल्यामूळे दिनांक 01/01/2006 ची वेतननिश्चिती सुधारीत करून त्यानुसार अतिप्रदान झाले असल्यास सुधारीत वेतननिश्चिती करून सादर करून अतिप्रदान वसुलीचे विवरणपत्रासह मा. लेखाधिकारी वेतन पडताळणी पथके नागपूर यांना सादर केले असता करण्यात आले होते.

प्रकरण फेरसादर केल्यानंतर वेतन पडताळणी करून मा. लेखाधिकारी, वेतन पडताळणी पथके नागपूर यांनी दिनांक 04/05/2020 रोजी करून आक्षेप नोंदविले, त्यांनी आक्षेपात "वित्त विभाग शासन निर्णय दिनांक 01/09/2015 नुसार दिनांक 01/07/2012 ला कमाल टप्प्यावर रु. 7440/- वेतन देय आहे. दिनांक 01/07/2012 पासून चुकीच्या वेतनवाढी दिल्या असल्यास वसुली विवरण जोडून वसुलीची नोंद घ्यावी व फेरसादर करण्यात यावे". असे आक्षेप नोंदविले आहेत. त्यानुसार श्री असुराज रुषीजी धनविजय शिपाई तहसिल कार्यालय चिमूर यांचे सेवापुस्तकातील आक्षेपानुसार "वित्त विभाग शासन निर्णय दिनांक 01/09/2015 नुसार दिनांक 01/07/2012 ला कमाल टप्प्यावर रु. 7440/- वेतन देय असल्याचे निर्देश दिलेले असल्याने त्यांचे दिनांक 01/07/2011 चे वेतनावरून पुढील वेतनवाढी खालीलप्रमाणे सुधारीत करण्यात येत आहे.

1. कर्मचारी यांचे नांव व पदनाम- श्री असुराज रुषीजी धनविजय, शिपाई
2. दिनांक 1/7/2011 रोजी नियमित वेतनश्रेणी: 4440-7440 ग्रेड वेतन रु. 1600/-
3. दिनांक 01/07/2011 रोजीचे वेतनवाढी नंतरचे वेतन 7250 ग्रेड वेतन रु. 1600/-

त्यापुढील वेतनवाढी खालीलप्रमाणे आहेत.

अ.क्र.	पुढील वार्षिक वेतनवाढी	वेतनवाढी नंतरचे वेतन
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	निर्गमित दिनांक	करण्याचा
1	1/7/2012	बँड वेतन 7250+270=7520 ग्रेड वेतन 1600/- वित्त विभाग शासन निर्णय क्र. वेपुर 1210/प्र.क्र.1244/सेवा 9 दिनांक 01.09.2015 नुसार कमाल टप्पा रुपये 7440/- त्यानुसार दिनांक 1/7/2012 चे वेतन रु.7440 ग्रेड वेतन 1600/-
2	1/7/2013	रोजीचे वेतनवाढी नंतरचे वेतन
3	1/7/2014	रोजीचे वेतनवाढी नंतरचे वेतन
4	1/7/2015	राजीचे वेतनवाढी नंतरचे वेतन

सदर वेतननिश्चितीमूळे अतिप्रदान झाल्याचे दिसून येत असल्याने अतिप्रदान फरकाचे विवरण तयार करण्यात यावे.

Hence, this O.A. impugning revised pay fixation, recovery and seeking direction to the respondents to release retiral benefits with interest.

3. Respondents 2 & 3 have resisted the O.A. on following grounds. The applicant was to retire on 31.01.2018. Pay Verification Unit

raised an objection dated 22.03.2016 that pay fixation of the applicant made on 01.01.2006 was wrong. His pay was revised and recovery of excess payment proposed. The applicant challenged it in O.A. No. 382/2017. An error was noticed in his pay fixation. It was found that by 01.07.2012 he had already reached the maximum stage i.e. pay of Rs.7,400/- and hence further increments were not payable since then necessitating recovery of what was paid in excess. His pay as per 7th Pay Commission w.e.f. 01.01.2016 was also required to be revised and on revision it transpired that excess payment of Rs. 2,16,001/- was made. In accordance with this conclusion orders dated 14.12.2022 were passed holding that pay of the applicant was rightly revised and hence recovery of excess payment was to be effected.

4. It was submitted by Shri Meshram, ld. counsel for the applicant that the applicant was holding a Class-IV post, recovery was directed to be made after his retirement and such recovery was not permissible. This submission is fully supported by **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. (2015) 4 SCC 334** wherein it is held:-

18. 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 hereinabove, 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 impugned order refers to revised pay fixation, and recovery. So far as pay fixation is concerned, there is nothing to demonstrate that it was wrong. However, for the reasons given above recovery of excess payment would be impermissible. Hence, the order:-

ORDER

A. The O.A. is **partly allowed**.

B. Impugned orders dated 14.12.2022 (A-1, collectively) are maintained to the extent of affirming revised pay of the applicant, and set aside to the extent of recovery of excess payment.

C. The respondents are directed to take steps for release of retirement benefits of the applicant **within three months from today.**

D. Issue of interest is kept open.

E. No order as to costs.

Member (J)

Dated :- 16/01/2024
aps

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 Member (J).

Judgment signed on : 16/01/2024
and pronounced on

Uploaded on : 17/01/2024