

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 56/2020 (S.B.)

Shyamsundar Daulatram Rathi,
Aged about 59 years,
Occ. Ritered from service, R/o 4, S.B.I. Colony,
Shegaon, Dist. Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Department of Public Health,
Mumbai- 32.
- 2) Dy. Director of Health Services,
Akola Circle, Akola.
- 3) Medical Superintendent,
Rural Hospital, Jalgaon Jamod,
Dist. Buldhana.

Respondents

Shri N.R.Saboo, Id. Advocate for the applicant.

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

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

JUDGMENT

Judgment is reserved on 14th March, 2024.

Judgment is pronounced on 19th March, 2024.

Heard Shri N.R.Saboo, Id. counsel for the applicant and Shri M.I.Khan, Id. P.O. for the Respondents.

2. The applicant retired as Pharmacist on 31.10.2018, on superannuation. In this O.A. he initially raised a grievance about delay in payment of retiral benefits. By amending the O.A. he has given details of receipt of retiral benefits as follows:-

Sr. No.	Description Matter	Amounts	Due Date	Actual Date	Late period
1A	Provisional Pension (2 Months)	67,228/-	31.12.2018	23.01.2020	
B	Provision Pension (4 Months)	1,34,456/-	31.12.2018	19.03.2020	
2	G.I.S.	1,52,304/-	31.12.2018	17.09.2019	
3A	Leave Encashment Difference	6,72,280/-	31.12.2018	04.10.2019	
B	D.C.R.G. Deducted	1,03,800/-	31.12.2018	08.07.2020	
4	D.C.R.G. Deducted	4,45,005/- 4,20,224/-	31.12.2018	05.02.2021	
5	Communication Deducted	5,41,839/-	31.12.2018	11.05.2021	
6	Pension, Nov., 2018 to Apr., 2021	7,85,712/-	31.12.2018 to 30.04.2021	11.05.2021	

He has further raised a grievance about order dated 24.11.2020 (A-9) to the extent of recovery of amount of Rs. 4,20,224/- said to have been paid in excess. This recovery is assailed on the basis of judgment of the **Hon'ble Apex Court in case of State of Punjab & Ors. Vs. Rafiq Masih & Ors., (2015) 4 SCC, 334.**

Reliefs claimed after amending the O.A. as per order dated 06.11.2023 are as follows:-

I (a) By appropriate order be pleased to quash and set aside order of recovery of Rs. 4,20,224/- as referred in pension order dated 24.11.2020 with further direction to refund the said amount along with interest to the applicant.

I (b) By appropriate order be pleased to direct the respondents to pay interest on delayed payment of retirement benefits as described in para 6 (j) of O.A..

3. Respondents 2 & 3 filed their reply on 22.10.2020. Additional reply was not filed by them to traverse pleading incorporated in the O.A. by amendment on 06/07.11.2023.

4. There is absolutely nothing on record to conclude that the applicant had contributed to the extent of delay in getting retiral benefits. Therefore, on delayed payment interest will have to be paid as

per Rules 129-A and 129-B of the Maharashtra Civil Services (Pension) Rules, 1982.

5. The applicant has placed on record his representation dated 29.09.2022. On internal page 3 of this representation the applicant has stated that recovery was for the period from 01.01.2006 to 30.06.2018. This assertion has not been answered by the respondents.

In Rafiq Masih (Supra) it is held:-

"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 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."

Contingencies (ii) and (iii) in this judgment are attracted in the instant case. Consequently, the impugned recovery cannot be sustained. Hence, the order:-

ORDER

The O.A. is allowed in the following terms:-

- A. The applicant is held entitled to get interest on retiral benefits as per Rule 129-A/Rule 129-B of the M.C.S. (Pension) Rules, 1982.
- B. The interest shall be paid to him within two months from today.
- C. The impugned recovery of Rs. 4,20,224/- is held to be impermissible. **The recovery amount shall be refunded to the applicant within two months from today with interest @ 6% per annum.**
- D. No order as to costs.

Dated :- 19/03/2024
aps

Member (J)

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 : 19/03/2024
and pronounced on

Uploaded on : 20/03/2024