

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 564/ 2019 (S.B.)**

Shri Shyamsunder s/o Gajadhar Tiwari,  
Aged about 60 years, Occupation : Retired,  
R/o Plot No. 49, Behind Gurudwara,  
Patankar Chowk, Kamptee Road,  
Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Department of Home,  
Mantralaya, Mumbai- 32.
- 2) Director General of Police,  
Mumbai Police Head Quarters,  
Shahid Bhagat Singh Marg,  
Colaba, In front of Regal Cinema,  
Mumbai-400 005.
- 3) The Commissioner of Police,  
Civil Line, Nagpur.

**Respondents**

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**Shri D.R.Rupnarayan, Id. Advocate for the applicant.**

**Shri A.M.Khadatkar, Id. P.O. for the Respondents.**

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

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**JUDGMENT**

**Judgment is reserved on 02<sup>nd</sup> May, 2023.**

**Judgment is pronounced on 04<sup>th</sup> May, 2023.**

Heard Shri D.R.Rupnarayan, Id. counsel for the applicant and  
Shri A.M.Khadatkar, Id. P.O. for the Respondents.

2. Case of the applicant is as follows. The applicant joined the respondent department as Police Constable on 25.11.1978. At the time of his retirement on superannuation on 31.05.2018 he was holding the post of Assistant Sub Inspector which is a Group-C post. By order dated 07.02.2018 (A-2) respondent no. 3 directed recovery of Rs. 2,01,276/- from his salary for the months of February to May, 2018 @ Rs. 6,000/- per month, and the remainder from his D.C.R.G.. The applicant made a representation (A-3) praying that said recovery be not effected but to no avail. The recovery was effected contrary to Circular dated 05.09.2018 (A-8). Hence, this O.A. seeking direction to the respondents to refund the recovered amount of Rs. 2,01,276/- with interest.

3. Stand of respondent no. 3 is that wrong pay fixation of the applicant was made by order dated 31.01.2018 (A-R-2) as a result of which excess payment was made and in respect of admissibility of recovery correspondence (A-R-3) was made to which reply (A-R-4) was received from Pay Verification Unit, Nagpur.

4. In support of his prayer the applicant has relied on **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) AIR 2015 SC 1267** wherein 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.*

The applicant has further relied on the judgment of this Tribunal dated 13.12.2022 in O.A. No. 1045/2019 wherein it is observed:-

*8. On the basis of guidelines given by the Hon'ble Supreme Court, the respondents / Director General of Police issued letter to the concerned departments of Police stating that in view of the Judgment of the **Hon'ble Supreme Court in case of State Of Punjab & Ors vs. Rafiq Masih (White Washer)**, the order of recovery be corrected. On the same line, letter was issued by the Deputy Commissioner of Police (Head Quarter), Nagpur dated 14/11/2018 to the Pay Verification Unit, Nagpur stating that as per the guidelines given by the Hon'ble Supreme Court and guidelines issued by the Director General of Police, the recovery cannot be made.*

*9. The respondents without following the directions given by Hon'ble Supreme Court and also by the Superior Officer of the Police Department, started the recovery.*

In view of this legal position I pass the following order:-

**ORDER**

1. The O.A. is allowed.
2. The impugned order dated 07.02.2018 is quashed and set aside.  
Respondents are directed to refund the amount of Rs. 2,01,276/-  
to the applicant with simple interest @ 6% per annum from the  
date of recovery till the date of refund.
3. No order as to costs.

**(Shri M.A.Lovekar)**  
**Member (J)**

**Dated :-04/05/2023.**  
**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 : 04/05/2023.  
and pronounced on

Uploaded on : 04/05/2023.