

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 618 / 2019 (S.B.)**

Prakash Bhanudas Gote,
Aged about 59 years, Retd. Dy. Commissioner of State Tax,
R/o Laxminagar, Sevagram Road,
Ward No. 3, Wardha-442 001.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Ministry of Finance,
Mantralaya, Mumbai- 32.
- 2) Spl. State Tax Commissioner (GST),
Office of the Spl. State Tax Commissioner (Mah. State),
GST Bhawan, 9th Floor, H-4,
Mazgaon, Mumbai- 400 010.
- 3) Jt. Commissioner of State Tax (GST),
Nagpur Division, GST Bhawan, 1st Floor,
In front of High Court, Civil Lines,
Nagpur-440 001.

Respondents

Shri B.Lahiri, Id. Advocate for the applicant.

Shri H.K.Pande, Id. P.O. for the Respondents.

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

JUDGMENT

Judgment is reserved on 04th April, 2022.

Judgment is pronounced on 08th April, 2022.

Heard Shri B.Lahiri, Id. counsel for the applicant and Shri
H.K.Pande, Id. P.O. for the Respondents.

2. Case of the applicant is as follows. The applicant superannuated on 31.05.2018. He was holding the post of Deputy Commissioner of State Tax. By letters (A-1, A-2) recovery of Rs. 1,68,600/- was proposed from the amount of DCRG payable to the applicant. From respondent no. 3 the applicant received a letter dated 23.07.2018 (A-3) to show cause as to why the aforesaid amount be not recovered as proposed since the recovery was to be effected on account of excess payment made to the applicant due to wrong pay fixation. The applicant submitted reply dated 30.07.2018 (A-4) that proposed recovery was bad in law. He relied on the Office Memorandum of DoPT dated 02.03.2016 (A-5) in which certain guidelines were issued on the basis of what is laid down by the Hon'ble Supreme Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih**. The recovery was, however, effected. Hence, this application.

3. Reply of respondent nos. 1 & 2 is at pages 22 to 27. It is their contention that recovery was made because of excess payment, it did not cause extreme hardship to the applicant, it was not iniquitous and it was effected only after giving an opportunity of hearing to the applicant.

4. In support of the prayer made in the application the applicant has relied on the following rulings :-

(A) **Syed Abdul Qadir and Ors. Vs. State of Bihar & Ors. (2009) 1 SCC (L & S) 744.** In this case it is observed :-

"The excess payment amount that has been paid to the appellant teachers, was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. The Finance Department of the respondent State has admitted that it was a

bona fide mistake. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the respondent Government."

(B) State of Punjab and Ors. Vs. Rafiq Masih (White Washer) etc – 2015 1 CLR 398 (S.C.). In this case 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."

(C) Common judgment dated 12.12.2012 of Bombay High Court delivered in a batch of 14 writ petitions. In this case by relying on "**Syed Abdul**" (**Supra**) recovery towards excess payment was held to be bad.

(D) Judgment dated 20.03.2017 delivered by the Bombay High Court in W.P. No. 3792/2016. In this case, by relying on "**Rafiq Masih**" (**Supra**) recovery on account of excess payment was held to be bad.

(E) Common Judgement dated 22.08.2011 delivered by the Bombay High Court in W.P. Nos. 9054/2010 and 2868/2011. In this case it is held :-

"By now, it is a settled position of law that recovery from the salary/ pension of an employee cannot be made, if the amount in excess was paid to such an employee for the reasons not attributed to such an employee."

5. Thus, legal position fully supports case of the applicant that recovery should not have been made. It is not the case of the respondents that at the time of pay fixation the applicant had given an undertaking that in case of excess payment due to wrong pay fixation he would be liable to refund the amount received in excess. For all these reasons the application succeeds. Hence, the order:-

ORDER

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

1. The amount of recovery from the applicant shall be refunded to him **within two months** from the date of this order.
2. No order as to costs.

(Shri M.A.Lovekar)
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 : 08/04/2022.
and pronounced on

Uploaded on : 11/04/2022.