

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 672/2023 (S.B.)

Dhnyaneshwar Harishchandra Parate,
Aged about 59 years,
Occ. Retired, R/o 350, Mahalaxmi Nagar,
Narasala Road, Behind Besa Power House,
Nagpur – 440 034.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Skill Development, Employment & Entrepreneurship Department,
Mantralaya, Mumbai- 400 032.
- 2) The Commissioner,
Skill Development, Employment & Entrepreneurship Department,
Directorate, Kokan Bhavan (Extension), 3rd Floor,
CBD, Belapur, New Mumbai – 400 614.

Respondents

Shri B.Kulkarni, 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 06th March, 2024.

Judgment is pronounced on 13th March, 2024.

Heard Shri B.Kulkarni, Id. counsel for the applicant and Shri
M.I.Khan, Id. P.O. for the Respondents.

2. Facts leading to this Original Application are as follows. The applicant was appointed as Guide on 01.07.1985. By order dated 24.02.1999 (A-R-VI) first benefit under the Assured Progress Scheme was granted to him w.e.f. 01.07.1997. By order dated 15.05.2013 (A-R-I) his caste certificate of Halba was invalidated. Certificate of Koshti which falls in Special Backward Class was issued. By order dated 20.10.2016 (A-R-XII) benefit of Assured Progress Scheme given to the applicant w.e.f. 01.07.1997 was withdrawn. As per G.R. dated 21.12.2019 (A-R-II) his services were continued on a supernumerary post (A-R-VII) w.e.f. 31.12.2019. The applicant stood retired on 31.12.2020 (at P. 103). By the impugned order dated 02.03.2023 (A-1) respondent no. 2 declined to interfere with the order dated 20.12.2016. Hence, this Original Application.

3. Stand of the respondents is that a conjoint consideration of G.R. dated 14.12.2022 and the fact that the applicant was working on a supernumerary post because his caste certificate was invalidated, will clearly show that the applicant cannot derive any benefit from **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) (2015) 4 SCC, 334**. G.R. dated 14.12.2022 states:-

शासन निर्णय :

अनुसूचित जमातीचे जात प्रमाणपत्र अवैध ठरल्यामुळे ज्या शासकीय अधिकारी/कर्मचारी यांना अधिसंख्य पदावर वर्ग केले आहे अशा अधिसंख्य पदावरील अधिकारी व कर्मचारी यांना सेवा विषयक तसेच सेवा निवृत्तीचे लाभ देण्यात यावेत. यामध्ये पदोन्नती व अनुकंपा धोरण याचा लाभ मिळणार नाही.

In Rafiq Masih (Supra) it is held:-

"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."

4. The respondents, on the other hand, have relied on the judgment of the **Hon'ble Bombay High Court dated 23.07.2019 (State**

of Maharashtra & 2 Ors. Vs. Suresh Chandra S/o Dharamchand Jain & 5 Ors. in W.P. No. 4919 of 2018). In this case it is held :-

*The reason weighing with the Hon'ble Apex Court imposing prohibition against recovery of excess payment in Rafiq Masih (supra) was of hardship resulting from creation of awkward situation because of the mistake committed by the employer and there being no fault whatsoever on the part of the employee. In order to balance the equities created in such a situation, the Hon'ble Apex Court in Rafiq Masih, gave the direction that so far as Class-III and IV employees were concerned, and who were found to be not having very sound economic footing, would have to be exempted from the consequence of recovery of the excess payment, if considerable period of time has passed by in between. But, as stated earlier, even in case of such an employee, there would be no hardship for something which has been accepted by him consciously with an understanding that it could be taken away at any point of time, if mistake is detected. Clarifying the law on the subject, the Hon'ble Apex Court, in its recent judgment rendered in the case of **High Court of Punjab and Haryana and others vs. Jagdev Singh reported in 2016 AIR (SCW) 3523**, in paragraph 11 it observed thus :*

"the principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

The fact situation of the present case is squarely covered by the above referred observations. These are the crucial aspects of the present case and the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur appears to have missed out on them and the result is of passing of an order which cannot be sustained in the eye of law.

5. The applicant is fully justified in relying on Rafiq Masih (Supra). The judgment of Bombay High Court on which the respondents sought to rely had a fact situation which can be distinguished with the

fact situation prevailing in this O.A.. In this O.A. contingencies (i) to (iii) envisaged in Rafiq Masih (Supra) are attracted. Hence, the order:-

ORDER

- A. The O.A. is allowed.
- B. The impugned order dated 02.03.2023 (A-1) is quashed and set aside.
- C. No order as to costs.

Member (J)

Dated :- 13/03/2024
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 : 13/03/2024
and pronounced on

Uploaded on : 14/03/2024