

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 869/ 2022 (S.B.)

Shri Ramesh S/o Rambhau Kharat,
Aged about 60 years, Occu. Retired,
R/o Plot No. 2, Vyankatesh Nagar,
Chikhali, Tahsil & District Buldhana,
Chikhali-44320.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Home,
Mantralaya, Mumbai- 32.
- 2) Additional Director General of Police,
Director Communication & Transport Division,
Body Gate, Aundh,
Pune-411 067.
- 3) Superintendent of Police,
Buldhana, Opposite Collector Office,
Buldhana, SBI Square, Buldhana-443 001.
- 4) Accounts & General A&E (II),
Office Maharashtra,
Civil Lines, Nagpur-440 001.
- 5) Pay Verification Unit, Amravati,
O/o Jt. Director of Account & Treasury Building,
"Lekha Kosh Bhavan", Near Dr. P.K.V.,
Shivneri Colony, District Amravati-444 602.

Respondents

Shri A.P.Sadavarte, Id. Advocate for the applicant.

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

Coram :- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated :- 13.06.2023.

JUDGEMENT

Heard Shri A.P.Sadavarte, ld. counsel for the applicant and Shri A.P.Potnis, ld. P.O. for the Respondents.

2. The case of the applicant is as under. The applicant was selected/appointed on the post of Police Constable at S.R.P.F., Group-III, Jalna. Thereafter, applicant was promoted as a Motor Vehicle Fitter-III/ Police Naik. Again he was promoted as a Motor Vehicle, Fitter-II. The applicant was transferred to the establishment of respondent no. 2. Lastly before his retirement, applicant was working as a Motor Vehicle Fitter-I (Class-III). The applicant stood superannuated on 25.10.2021. Respondents have recovered of Rs. 4,29,587/- from the gratuity. Therefore, applicant approached to this Tribunal for the following relief.

3. The O.A. is strongly opposed by the respondents. It is submitted by the ld. P.O. that applicant has given undertaking for the recovery of any excess amount. Respondents have found excess amount was paid to the applicant. Therefore, it was rightly recovered from the applicant. Hence, O.A. is liable to be dismissed.

4. Ld. Counsel for the applicant Shri Sadavarte pointed out judgment of **Hon'ble Apex Court in case of State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014** in Civil Appeal No. 11527 OF 2014 (Arising out of SLP(C) No.11684 of 2012) and

submitted that after retirement recovery from Class-III & Class-IV employee is not permissible. He further submitted that as per Maharashtra Civil Services, Rule 134-A without notice to the applicant, amount cannot be recovered.

5. Ld. Counsel for the applicant has pointed out judgment of **Hon'ble Bombay High Court in the case of Prasad Vinayak Sohoni Vs. The Treasury Officer, Thane & Another in W.P. No. 1192 of 2021 decided on 12.01.2022.** He has pointed out judgment of this Tribunal in O.A. No. 781/2018 & O.A. No. 484/2019. Ld. Counsel for the applicant has further submitted that applicant is entitled to get refund of deducted amount from the amount of gratuity along with interest. Hence, prayed to allow this original application.

6. Heard ld. P.O.. He has pointed out documents filed along with reply. He has submitted that applicant had given undertaking and, therefore, he cannot say that recovery is not proper. In support of his submission he has pointed out judgment of Hon'ble Supreme Court in the case of **Jagdev Singh & Another Vs. State of Punjab decided on 16.12.1983.**

7. The **Hon'ble Apex Court in case of State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014** in

Civil Appeal No. 11527 OF 2014 (Arising out of SLP(C) No.11684 of 2012). In para no. 12 following guidelines are given:-

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 herein above, 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.

8. As per the judgement of Hon'ble Apex Court in the case of Rafiq Masih (Supra) recovery from retired Class-III and Class-IV employees is not permissible. After the judgement of Rafiq Masih (Supra) in the case of Jagdev Singh (Judicial Officer) Hon'ble Apex Court has held that once the undertaking is given to recover excess amount then recovery is proper. In the present O.A., ld. P.O. has pointed out the undertaking given by the applicant. From the perusal of this undertaking, there is no date mentioned in the undertaking moreover it is not a legible copy. No any date is mentioned then it cannot be said that applicant had given any undertaking on a particular date. Hon'ble Apex Court in the case of Rafiq Masih (Supra) has given guideline that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. In the present matter nothing is on the record to show the prescribed time limit in respect of excess payment. Ld. P.O. submits that applicant has given undertaking therefore, excess amount is recovered.

9. Rule 134-A of the Pension Rules reads as under-

“134-A-Recovery and adjustment of excess amount paid – If in the case of a Government servant, who has retired or has been allowed to retire, it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including Service rendered upon re-employment after retirement or any amount is found to be payable by the pensioner during such period and which has not been paid by , or recovered from him, then the excess amount so paid or the amount so found payable shall be recovered from the amount of pension sanctioned to him: Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him : Provided further that, the amount found due may be recovered from the pensioner in instalment so that the amount of pension is not reduced below the minimum fixed by Government.”

10. As per Rule 134-A of Maharashtra Civil Service (Pension) Rule, 1982, notice is to be given to the employee, but no any notice was given to the applicant for recovery. It is pointed out by the Id. P.O. that undertaking is given by the applicant. The said document of undertaking is not dated. Hence, the recovery from retired Class-III employee/ applicant is not permissible.

11. Ld. Counsel for the applicant prayed to grant interest on the recovered amount. In support of this he has pointed out judgment of **Hon'ble High Court in the case of Prasad Vinayak Sohoni Vs. The Treasury Officer in W.P. NO. 1192 of 2021 decided on 12.01.2022.** The Hon'ble High Court directed the respondents to refund the amount with interest @ 6% from the date of recovery. The Hon'ble High Court has held in para no. 11 is as under:-

"11. Having regard to the difficulties that the petitioner is likely to face during his retired life, if the order of recovery of Rs.3,60,580/- is not interdicted and he is refunded such amount, we are inclined to so interdict and direct refund with interest for the ends of justice. This writ petition, therefore, succeeds. The respondents are directed to refund to the petitioner Rs.3,60,580/- with interest @ 6% p.a. from the date recovery was made till such time the refund is made in terms of this order, within eight weeks."

12. In view of the judgement of **Hon'ble Bombay High Court in the case of Prasad Vinayak Sohoni Vs. The Treasury Officer, Thane & Another in W.P. No. 1192 of 2021 decided on 12.01.2022.** The applicant has entitled for 6% interest from the date of recovery. Hence, the following order:-

O R D E R

- A. The O.A. is allowed.
- B. The impugned order (A-7) of recovery of Rs. 4,29,587/- is hereby quashed and set aside.
- C. Respondents are directed to refund the recovered amount of Rs. 4,29,587/-.
- D. The respondents are directed to pay interest @ 6% from the date of recovery till the actual refund is made.
- E. Respondents are further directed to complete this exercise within three months from the date of receipt of this order.
- F. No order as to costs.

(Shri Justice M.G.Giratkar)
Vice Chairman

Dated :- 13/06/2023.
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 Vice Chairman.

Judgment signed on : 13/06/2023.
and pronounced on

Uploaded on : 13/06/2023.