

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 878/ 2022 (S.B.)**

Shri Devaji S/o Shridhar Borde,  
Aged about 60 years, Occu. Retired,  
R/o Nagsen Nagar, Village Sunderkhed,  
Khamgaon Road, Tahsil & District Buldhana,  
Pin-443 001.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Department of Home,  
Mantralaya, Mumbai- 32.
- 2) The Director General of Police,  
Near Regal Talkies, Culaba,  
Mumbai.
- 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**

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

**Shri S.A.Sainis, Id. P.O. for the Respondents.**

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

**Dated :- 13.06.2023.**

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## **JUDGEMENT**

Heard Shri A.P.Sadavarte, ld. counsel for the applicant and Shri S.A.Sainis, 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 Police Head Quarter, Buldhana on 14.08.1987. He was promoted from time to time. Lastly he was working on the post of Assistant Police Sub Inspector. The applicant came to be retired on 30.08.2020 after attaining the age of superannuation. The pension case of the applicant was forwarded to the A.G. office. Respondents have recovered the amount of 87,719/-. Applicant was Class-III employee. Hence recovery is not proper. Therefore, he approached to this Tribunal by filing the present O.A..

3. The respondents 3 & 4 have filed their reply. It is submitted that while forwarding the pension paper after scrutiny of the service book it came to then office that excess payment of Rs.87,719/- was to be recovered from the applicant. Therefore, the said amount was recovered from the gratuity.

4. It is submitted by the respondents that recovery is legal and proper. Hence, O.A. is liable to be dismissed.

5. Ld. Counsel for the applicant pointed out the 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. Hence, prayed to allow this O.A.. Ld. P.O. submits that over payment was made and, therefore, it was recovered from gratuity.

6. 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.*

7. There is no dispute that applicant is a retired Class-III employee. As per guideline no. 1 in para no. 12 of the judgment of Hon'ble Apex Court in the case of Rafiq Masih (Supra) the recovery from Class-III and Class-IV employee is not permissible after the retirement. Nothing is on record to show that any notice was given to him as required under Rule 134-A of the Maharashtra Civil Services (Pension) Rule, 1982 which is below:-

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.”*

8. As per the said rule if any recovery is to be made then notice is to be given to the employee. Ld. Counsel submits that applicant is entitle for interest, in support of his submission, 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.** The

Hon'ble High Court has held that for wrongful recovery employee is entitled to get interest @ 6% from the date of the recovery till the actual refund is made. Hence, the following order:-

**ORDER**

- A. O.A. is allowed.
- B. The impugned order of recovery is hereby quashed and set aside.
- C. The respondents are directed to refund the excess amount of Rs. 87,719/-.
- 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.