

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 976/ 2020 (S.B.)

Shri Ghanshyam S/o Bhavanipher Choube,
Aged about 59 years, Occupation : Retired,
R/o Plot No. 40, Mateshwari Nagar,
Hingana 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.
- 4) Dy. Commissioner of Police,
Zone – 1, Nagpur City,
Nagpur.

Respondents

Shri D.R.Rupnarayan, 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 02nd May, 2023.

Judgment is pronounced on 04th May, 2023.

Heard Shri D.R.Rupnarayan, ld. counsel for the applicant and Shri H.K.Pande, ld. P.O. for the Respondents.

2. Case of the applicant is as follows. The applicant joined the respondent department as Police Constable on 03.03.1986. At the time of his retirement on superannuation on 30.11.2018 he was holding the post of Assistant Sub Inspector which is a Group-C post. By order dated 26.07.2018 (A-2) respondent no. 4 directed recovery of Rs. 1,50,043/- from his salary and the amount of D.C.R.G.. The applicant made representations (A-3 to A-6) praying that said recovery be not effected but to no avail. The recovery was effected contrary to Circular dated 05.09.2018 (A-7). Hence, this O.A. seeking direction to the respondents to refund the recovered amount of Rs. 1,50,043/- with interest to the applicant.

3. Stand of respondents 3 & 4 is that recovery of amount of salary paid in excess was effected. The difference between what was payable and what was in fact paid was pinpointed by A-R-3 and A-R-4. By Circular dated 07.10.2022 (A-R-5) the Government has directed all the departments to effect recovery of amount paid in excess, in time.

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.

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

ORDER

1. The O.A. is allowed.
2. The impugned order dated 26.07.2018 (A-A-2) is quashed and set aside. Respondents are directed to refund the amount of Rs. 1,50,043/- 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.