

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.1120/2021(S.B.)

Naresh S/o Namdeorao Deshmukh,
Aged about 61 years, R/o. Yerkheda,
Kamptee, Dist. Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Department of Home,
Mantralaya, Mumbai-32.

- 2) The Director General of Police (M.S.),
Hutatmachauk, near Regal Cinema,
Mumbai.

- 3) Police Superintendent, (Rural)
Civil Lines, Near Providence Girls School,
Nagpur.

Respondents

Shri S.Katkar, Ld. Counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).
Dated: - 21st March, 2024.

JUDGMENT

Judgment is reserved on 19th March, 2024.

Judgment is pronounced on 21st March, 2024.

Heard Shri S.Katkar, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. The applicant who joined the respondent department on 24.04.1981 as Police Constable, retired on superannuation on 31.05.2018 as Police Hawaldar. At the time of his retirement his basic salary was Rs.13760 + G.P. Rs.2500. An amount of Rs.79640/- was deducted after his retirement from arrears of 7th Pay Commission on the ground that excess payment was made to him. Under the R.T.I. Act he received the following information from respondent no.3-

<p>मुद्दा कमांक 4:- अतिप्रदान रक्कम कशी. त्याचा कालावधी काय.</p>	<p>उत्तर: सेवानिवृत्त पोहचा/33, नरेश देशमुख याना ज्यावेळी पोलीस हवालदार या पदावर पदोन्नती मिळाली त्यावेळी वेतननिश्चिती करतांना त्यांना एक इनक्रिमेंट जादा लावण्यांत आले होते. सेवानिवृत्तीच्या वेळी सेवापट वेतनपडताळणी करीता लेखापडताळणी पथकाकडे पाठविण्यांत आले. त्यावेळी वेतन पडताळणी पथकाने घेतलेल्या आक्षेपानुसार या कार्यालायाचे आदेश कमांक नाजिया/डि-9 सी/सु.वे.नि./से.नि. पोहवा सफौ 2019-8749, दिनांक 11/10/2019 अन्वये सुधारित वेतननिश्चिती करण्यांत आलेली आहे. सदर वेतननिश्चिती नुसार विवरणपत्र तयार केले असता माहे 07/2010 पासून ते सेवानिवृत्तीच्या</p>
---	---

	<p>दिनांकापर्यंत रक्कम रू. 79,640/- अतिप्रदान झाले आहे. सदर अतिप्रदानाची रक्कम रू. 79,640/- त्यांना मिळणा-या 7 वे वेतन आयोगाच्या थकबाकीच्या रकमेमधून कपात करण्यांत आलेली आहे. याबाबत सदर कर्मचारी यांनी दिनांक 15/07/2021 रोजी माहिती अधिकारांतर्गत माहिती मागविली असता या या कार्यालयाचे 'पत्र कमांक नाजिगा/डि-19 अ/मा.अ./4759/2021, दिनांक 27/07/2021 अन्वये माहिती पुरविण्यांत आलेली आहे.</p>
--	--

According to the applicant, the impugned recovery is impermissible in view of Judgement of **the Hon'ble Supreme Court in case of State Of Punjab & Ors vs. Rafiq Masih (White Washer) (2015) 4 SCC, 334.** Hence, this O.A..

3. Stand of respondent no.3 is that Rafiq Masih (Supra) will not be applicable to the facts of the case.

4. In Rafiq Masih (Supra) 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."

5. The applicant retired on 31.05.2018. He was holding a Group - C post. The recovery is for the period from July 2010 to 31.05.2018. Thus, contingencies (i), (ii) and (iii) envisaged in Rafiq Masih (Supra) are present. Hence, the recovery cannot be sustained. In the result, the O.A. is allowed. The respondents are directed to refund to the applicant amount of Rs.79640/- with interest @ of 6% p.a.. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 21/03/2024
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 21/03/2024.
and pronounced on
Uploaded on : 21/03/2024.