

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****REVIEW APPLICATION NO.209/2021(S.B.)**

Shri Devidas Ganjidhar Badhe,  
Aged about : 59 years, Occu. : Service,  
R/o. Tara Building, Government Quarter,  
Near Krida Sankul, Akola, Dist. : Akola.

**Applicant.**

**Versus**

- 1) The State of Maharashtra  
through its Secretary,  
Department of Education,  
Mantralaya, Mumbai-32.
- 2) The Secretary Finance Department,  
Mantralaya Mumbai.
- 3) The Joint Director of Education Amravati.
- 4) The Joint Director, Account and Treasury,  
Treasury Office, Near Amravati University,  
Amravati.
- 5) The Account Officer,  
Education Department Akola.

**Respondents**

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Shri G.G.Bade and P.P.Khparde, Ld. counsel for the applicant.  
Shri M.I.Khan, Ld. P.O. for the respondents.

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**Coram:- Hon'ble Shri M.A.Lovekar, Member (J).**

**Dated: - 10<sup>th</sup> March, 2023.**

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**JUDGMENT**

**Judgment is reserved on 8<sup>th</sup> February, 2023.**

**Judgment is pronounced on 10<sup>th</sup> March, 2023.**

Heard Shri G.G.Bade, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. The applicant was serving as Peon in the respondent department since 26.03.1993. He was to retire on superannuation on 31.05.2021. On receipt of his service book Pay Verification Unit raised an objection that an error was committed while fixing his pay as per Rule 7 of M.C.S. (Revised Pay) Rules, two increments were granted instead of one, and an excess payment of Rs.2,12,077/- was thereby made to him for the period 01.01.2016 to 31.01.2021. This amount was sought to be recovered by the impugned communication dated 10.02.2021 (Annexure A-1). However, by letter dated 25.05.2021 (Annexure A-8 at page 83) the proposed amount of recovery was recalculated at Rs.1,88,435/-. It is the contention of the applicant that said recovery cannot be allowed to be effected in view of ratio laid down in **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others (2015) 4 SCC 334.**

3. In their reply respondents 3 and 5 have attempted to show how pay of the applicant was wrongly fixed resulting in excess payment over a period of

time. According to these respondents, relief against recovery cannot be granted in this case in view of **“High Court of Punjab and Haryana and Others Vs. Jagdev Singh (2016) 14 SCC 267”** since the applicant had executed an undertaking on 01.03.2019 (Annexure R-2 at page 73) that he would be liable to refund excess payment made on account of wrong pay fixation.

4. Following facts are not in dispute. The applicant was holding a Group-D post. He retired on superannuation on 31.05.2021. According to the department excess payment was made to him for the period 01.01.2016 to 31.01.2021. For the first time recovery was proposed by letter dated 10.02.2021. This was followed by letter dated 25.05.2021 recalculating the amount of proposed recovery at Rs.1,88,435/- from the initial figure of Rs.2,12,077/-.

5. In Rafiq Masih (supra) it is held-

**10. State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. (2015) 4 SCC 334.** *In this case 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. ”*

In Jagdev Singh (Supra) principles laid down in Rafiq Masih (Supra) were considered and it was observed –

***“11. 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.”***

6. I have referred to the undisputed facts. These facts show that in the instant case Clauses i and iii of Rafiq Masih (Supra) would be attracted rendering the proposed recovery impermissible. Hence, the order.

**ORDER**

1. The O.A. is allowed.
2. Communications dated 10.02.2021 (Annexure A-1) and 25.05.2021 (Annexure A-8) proposing recovery are quashed and set aside. It would, however, be permissible to refix benefits payable to the applicant, with prospective effect, after correctly fixing his pay. No order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 10/03/2023

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 : 10 /03/2023.  
and pronounced on