

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 641/2018(S.B.)

Gulabchand S/o Rupchand Hirave,
Aged about 60 years,
Occupation : Retired, Govt.Servant,
R/o. Dharani, Near Church Shriram Nagar,
Ward No.12, Tah.Dharani, District-Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai - 32.

- 2) The Deputy Conservator of Forest,
West Melghat Division Paratwada,
Tah. Achalpur, District – Amravati.

- 3) Senior Account Officer-PR-4
Office of Accountant General
(Accounts & Establishment) – I,
Pension Wing, Old Building,
Post Box No.114, G.P.O. Civil Lines,
Nagpur – 440001.

- 4) District Treasury Officer,
Amravati, District –Amravati.

Respondents

Shri D.T.Kamble, Ld. Counsel for the applicant.
Shri A.M.Ghogre, Ld. P.O. for the respondents.

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

Dated: - 5th September 2023.

JUDGMENT

Judgment is reserved on 23rd August, 2023.

Judgment is pronounced on 5th September, 2023.

Heard Shri D.T.Kamble, learned counsel for the applicant and Shri A.M.Ghogre, learned P.O. for the respondents.

2. Facts leading to this O.A. are as follows. The applicant who was holding the post of Vanpal, opted for and stood voluntarily retired on 31.12.2015. He would have superannuated on 30.11.2016. By order dated 30.12.2016 (Annexure A-1) respondent no.2 refixed pay of the applicant and directed that payment made in excess be recovered. In order dated 31.12.2016 (Annexure – I) it was stated that scale of promotional post was wrongly given to the applicant w.e.f. 01.10.2006, it should have been given w.e.f. 01.04.2010 and due to this mistake excess payment was made which was liable to be recovered from retiral

benefits of the applicant. Pursuant to these orders, recovery of Rs.5,05,063/- was effected from retiral benefits of the applicant. According to the applicant, no excess payment was made to him and in any case the recovery as made by the respondents without giving him an opportunity of hearing was illegal. He ventilated these grievances by making a representation to respondent no.2 (Annexure A-2) and by sending a notice (Annexure A-3) to respondents 2 to 4. Hence, this O.A. seeking direction to the respondents to refund the recovered amount, with interest.

3. Stand of respondent no.2 is that promotional pay scale ought to have been given to the applicant w.e.f. 01.04.2010, by mistake it was given w.e.f. 01.10.2006 and thereby excess payment was made. Details of excess payment to the applicant are as follows.

01.	Sipana Wild Life Division, Paratwada	3,11,367/-
02.	West Melghat Division, Paratwada	32,718/-
03.	Leave Encashment	54,244/-
04.	Voluntary Retirement dated 31.12.2015 on day payment	1,297/-
05.	Provisional Pension Paid	1,05,438/-
Total :		05,05,064/-

4. To his reply respondent no.2 has annexed the following communication made by respondent no.4 (Annexure – 5)-

महोदय

उपरोक्त विषयास अनुसरून संदर्भाकीत पत्रा नुसार कळविण्यात येते की मा. महालेखाकार व्दितीय नागपुर यांच्या कडुन, पी.पी.ओ.क्र. 111701015689 दि. 02/06/2017 प्राप्त झाला आहे. मा. उपवनसंरक्षक, पश्चिम मेळघाट वनविभाग, परतवाडा यांच्या कडुन या कार्यालयास 04/09/2017 नुसार नमुना अ, प्रमाणपत्र ब, एम. टि. आर 42 ए या कार्यालयास प्राप्त झाल्या नंतर त्यांची आनलाईन पध्दतिने ओळख पटविण्यात आलेली आहे. श्री जि. आर. हिरावे यांच्या कडे रु 399625/- + तात्पुरते नि. वे रु. 105438/- = रु 505063/- एवढी रक्कम शासनाची वसुली असल्यामुळे व त्यांना दि. 01/01/2016 पासुन मा. महालेखाकार नागपुर यांच्या कडुन 9435/- प्रमाणे निवृत्तीवेतन मंजुर झालेले असल्याने त्यांना दि. 01/01/2016 ते 31/11/2017 पर्यंतचे रु 499377/- एवढे नि. वे निघत होते व त्यांचे कडे असलेली शासनाची वसुली 505063/- त्यामुळे त्यांच्याकडे 5686/- रक्कम अतिप्रदान होत होती. त्यामुळे त्यांच्याकडुन रु 5686/- चालान व्दारे शासनखाती जमा करण्यात आलेली आहे. त्यानुसार त्यांच्या कडिल शासन वसुली पुर्ण झालेली असुन दि.01/01/2016 ते 28/02/2018 पर्यंतचे प्रथम प्रदानाचे एकूण 545295/- एवढ्या रकमेचे देयक तयार करुन त्यापैकी शासन वसुली रु 499377/- रु 45918/- त्यांना नि.वे. अदा करण्यात आलेले आहे. तसेच त्यांना अंशराशीकरण रु 382503/- एवढ्या रकमेचे प्रदान करण्यात आलेले आहे. त्यानुसार त्यांना निवृत्ती वेतन सुरळीत सुरु आहे. कोषागार कार्यालया कडे त्यांची कोणतीही रक्कम अदा करावयाची राहिलेली नाही.

5. To assail the recovery the applicant has relied on **the State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others (2015) 4 Supreme Court Cases 334** wherein it is held-

18. 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:

(1) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.

6. In this case the applicant was holding a Class - 3/Group - C post and recovery was effected after his retirement which was impermissible as per Clauses (i) and (ii) reproduced above. Hence, the order.

ORDER

- A. The O.A. is allowed.
- B. The impugned recovery is held to be impermissible in law.
- C. The respondents are directed to refund the amount so recovered, to the applicant.
- D. The recovered amount shall carry interest @ 6% p.a. from the date of recovery till the date of refund.
- E. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 05/09/2023
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 : 05/09/2023.
and pronounced on