

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 868/2019(S.B.)**

1. Smt. Mayawati wd/o Shamrao Burade,
Aged about 61 yrs.
R/o Khadki, Post-Palora,
Teh.- Mohadi, Dist.- Bhandara.
2. Amit s/o Shamrao Burade,
Aged about 39 yrs.
R/o Khadki, Post-Palora,
Teh.- Mohadi, Dist.- Bhandara.
3. Shailesh s/o Shamrao Burade,
Aged about 31 yrs.
R/o Khadki, Post-Palora,
Teh.- Mohadi, Dist.- Bhandara.

Applicant.**Versus**

- 1) The State of Maharashtra,
Through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
- 2) Deputy Conservator of Forest
Bhandara Forest, Bhandara.
- 3) Accountant General
(Accountant & Entitlement)II,
Maharashtra, Nagpur, 440001.

Respondents

Shri N.R.Saboo, Ld. counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri M.A.Lovekar, Member (J).**Dated: - 25th August 2022.**

JUDGMENT

Judgment is reserved on 17th August, 2022.

Judgment is pronounced on 25th August, 2022.

Heard Shri N.R.Saboo, learned counsel for the applicants and
Shri S.A.Sainis, learned P.O. for the Respondents.

2. The Original applicant retired on superannuation on 30.09.2006 (Annexure A-1). By communication dated 24.12.2008 (Annexure A-2) respondent no.2 requested Accountant General II to consider revised pay of the applicant as per G.R. of G.A.D. dated 06.08.2002 for fixation of pension i.e. by granting one step pay scale of higher post because the applicant was posted in Naxal Affected Area at the relevant time. As per communication dated 29.04.2009 received from the Accountant General respondent no.2 took necessary entry and forwarded revised proposal dated 11.10.2010 (Annexure A-3) for grant of pension. Respondent no.3, vide order dated 07.04.2011 (Annexure A-4) issued authorisation to disburse retirement benefits and fix pension of the applicant accordingly. On 23.09.2016 respondent no.2 issued revised proposal (Annexure A-5) also for recovery and forwarded it to respondent no.3 seeking revision of order dated 07.04.2011. Respondent no.2 issued order dated 08.05.2019 (Annexure A-6) reducing pension from Rs.8,807/- to Rs.6,030/-. On 16.01.2019

respondent no.2 issued the impugned communication (Annexure A-7) stating therein as follows-

श्री. शामराव मंगरजी बुराडे, वनपाल हे दिनांक ३०-०९-२००३ रोजी नियत वयोमानाने शासकीय सेवेतुन सेवा निवृत्त झाले. त्याचा पीपीओ नं.१३३७८९ आहे. त्यांचे सहाय्या वेतन आयोगानुसार संदर्भ क्रमांक २ चे शासन निर्णयान्वये वेतन निश्चिती करून उपरोक्त संदर्भ क्रमांक ३ अन्वये त्यांचे सुधारीत निवृत्ती वेतनाचे प्रकरण वरीष्ठ लेखा अधिकारी पीआर-११ नागपूर यांना मंजुरी करिता पाठविण्यात आले होते.

वरीष्ठ लेखा अधिकारी पीआर-११ नागपूर यांचेकडील पत्र क्रमांक ४ अन्वये श्री. शामराव मंगरजी बुराडे, वनपाल सेवा निवृत्त यांना नक्षलग्रस्त क्षेत्रांतर्गत एकस्तर पदोन्नतीच्या वेतन निश्चिती नुसार निवृत्ती वेतन रु.८८०७/- उपदान रु.२८२३१५/- मंजूर केल्यामुळे त्यांना अदा करण्यात आले.

उपरोक्त संदर्भ क्रमांक ३ चे शासन निर्णयातील परिच्छेद १ नुसार निवृत्ती वेतन दिनांक ३० ऑक्टोबर, २००९ च्या शासन निर्णयातील परिच्छेद ५.१, ५.२, ५.३ व ५.४ आणि उपदान ६, ६.१ मधील तरतुदी दिनांक ०१-०१-२००६ पासुन लागु राहतील. तथापी परिच्छेद ५ नुसार निवृत्तीवेतन सुधारीत केल्यामुळे देय फरकाची रक्कम एकत्रितरित्या थकबाकीच्या स्वरुपात देण्यात येत असल्याने आता पुन्हा निवृत्तीवेतनाचे अंशराशिकरणाची रक्कम अनुज्ञेय राहणार नाही. त्यानुसार दिनांक ०१-०१-२००६ ते २६-०२-२००९ या कालावधीत सेवानिवृत्त झालेल्या निवृत्ती वेतनधारकांना सुधारीत निवृत्ती वेतनाचा लाभ अनुज्ञेय होईल अशी तरतुद आहे.

त्या अनुषंगाने वरील ५,५.१ तरतुदीनुसार श्री.शामराव मंगरजी बुराडे, वनपाल सेवा निवृत्त यांना निवृत्ती वेतन सुधारीत मंजूर करण्याकरिता सुधारीत नमुना-६ व मुळ सेवा पुस्तक पाठविण्यात येत आहे. श्री.बुराडे वनपाल यांना नक्षलग्रस्त क्षेत्रांतर्गत एकस्तर पदोन्नतीच्या वेतन निश्चितीनुसार उपदान रु.२८२३१५/- मंजूर केल्यामुळे त्यांना रु.

८३३२५/- अतिप्रदान उपदान झालेले आहे. तसेच निवृत्ती वेतन रु.८८०७-६०३०=२७७७ प्रत्येक महिन्यात अतिप्रदान झाले. सदर अतिप्रदान रक्कम त्यांचे निवृत्ती वेतनामधुन वसुली करावी. तरी सेवा पुस्तक पान क्रमांक ६१ वरील केलेल्या वेतन निश्चिती नुसार खालील प्रमाणे सुधारीत निवृत्ती वेतन मंजूर करून प्राधिकार पत्र या कार्यालयास पाठविण्यास विनंती आहे.

According to the applicant, no recovery could have been effected pursuant to the impugned order and recovery effected till that point of time as well as reduction in pension way arbitrary and bad in law.

3. Since the death of the original applicant the application is being prosecuted by his legal heirs viz wife and two sons.

4. Reply of respondent no.2 is at pp.24 to 29. Respondent no.2 has relied on G.R. dated 17.12.2013 (Annexure R-1). It states-

३. या संदर्भातील शासनाचा निर्णय प्रलंबित असल्यामुळे अशा सुचना देण्यात येत आहेत की, आदिवासी व नक्षलग्रस्त भागातून दि.०१.०१.२००६ रोजी किंवा त्यानंतर सेवानिवृत्त झालेल्या अधिकारी/कर्मचारी यांना निवृत्तीच्या दिनांकास ते ज्या मूळ पदावर कार्यरत आहेत (एकस्तर पदोन्नतीचे पद वगळून), त्या पदाच्या पे-बॅंड मध्ये ते घेत असलेले वेतन + अनुज्ञेय ग्रेड वेतनावर निवृत्तीवेतनाची परिगणना करावी. ज्या कर्मचा-यांना अशा परिगणनेनुसार अनुज्ञेय निवृत्तीवेतनापेक्षा जास्त निवृत्तीवेतन अदा करण्यात आले आहे, त्या निवृत्तीवेतनधारकांकडून जास्त अदा केलेले निवृत्तीवेतन महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील नियम १३४ (ए) (दि.३०.०७.२००७ नुसार केलेली सुधारणा) नुसार वसूल करण्याची कार्यवाही या नियमातील परंतुकानुसार करण्यात यावी.

Aforesaid position was reiterated by G.R. dated 11.10.2014 (Annexure R-2) by stating as under-

दिनांक ०१.०१.२००६ रोजी किंवा त्यानंतर आदिवासी व नक्षलग्रस्त भागातून सेवानिवृत्त झालेल्या अधिकारी/कर्मचारी यांच्या निवृत्तीवेतन परिगणनेसंदर्भात संदर्भाधिन क्रमांक २ येथील क्रमांक सेनिवे २०१३/प्र.क्र.४६/सेवा-४, दिनांक १५ फेब्रुवारी, २०१४ च्या अनुषंगाने दिलेली स्थगिती उठविण्यात येत आहे. त्यामुळे संदर्भाधिन क्रमांक १ येथील क्रमांक सेनिवे २०१३/प्र.क्र.४६/सेवा-४, दिनांक १७ डिसेंबर, २०१३ च्या परिपत्रकान्वये दिलेल्या सूचनांप्रमाणे कार्यवाही करण्यात यावी.

5. According to the learned P.O., in the facts and circumstances of the case the impugned order cannot be faulted.

6. Shri. N.R. Saboo, learned Advocate for the applicant invited attention to para 6 of reply of respondent no.2 wherein it is averred-

It is pertinent to point out at this juncture that, the Hon'ble High Court in W.P.No.4212/15 has taken the view that the pension be revised on basis of the G.R. and such incentives or other benefits cannot be given to the person till he is working in the Naxal affected area. The respondent is relying on the said Judgment of Hon'ble High Court which squarely covers the case of the respondents.

It was submitted by Advocate Shri N.R.Saboo, that respondent no. 2 did not properly appreciate ratio of the above referred judgment.

7. The applicants have placed on record communication dated 08.07.2022 which states-

उपरोक्त विषयान्वये मा.महालेखाकार, महालेखाकार कार्यालय, नागपूर यांचे आदेशान्वये वेतनात झालेल्या वसुली करणेबाबत या कार्यालयाला कळविण्यात आलेले होते.

त्या अनुषंगाने वसुली करावयाची रक्कम रु.८३१८४५.०० पैकी रु.३८४०७५.०० इतकी रक्कम निवृत्तीवेतनातुन दिनांक ३१/०१/२०२२ पर्यंत वसुल करण्यात आलेली आहे.

त्यानंतर मा.महालेखापाल, महालेखापाल कार्यालय, नागपूर यांचे आदेश दिनांक १७/०२/२०२२ अन्वये सदरची अतिप्रदान वसुली दिनांक ३१/०१/२०२२ पासुन तात्पुरत्या स्वरुपात थांबविण्यात आलेली आहे.

8. The judgment dated 09.03.2016 on which the respondents want to rely lays down the following-

2. During arguments learned Government pleader sought an adjournment to enable her to obtain further instructions, however, we find that the issue is concluded in favour of petitioner by judgment of Hon'ble Apex Court in case of State of Punjab and others. vrs. Rafiq Masih (2014 (14) Scale 300).

3. 5 principles to be kept in mind while considering the recovery from an employee are laid down by the Hon'ble Apex Court there. Here the petitioner, a State Government employee has reached his age of superannuation on 28.02.2009. At that time he was working in Naxal affected area, and therefore getting special allowance. While working out his last pay for computation of pension, this special allowance has been taken into account. Accordingly his pension was fixed on a higher side and he continued to receive it till today.

4. The State Government has in the meanwhile applied its mind to this aspect and found that allowance paid to such employees could not have been

treated as part of their emoluments, and therefore, their pension could not have been calculated by including the special allowance. Accordingly petitioner has been informed on 10.06.2015, that he has been paid extra amount towards pension and it needs to be recovered.

5. Petitioner has not challenged the correctness or otherwise of the policy decision. According to the petitioner, he was not at fault in the matter and as he is retired, in meagre pension he and his dependents are managing his household, hence, if recovery is allowed, it will be cruel.

6. In this connection, the Hon'ble Supreme Court in the above judgment has considered the issue and we find that present facts are covered by principle nos. (ii) and (iii) of the said judgment.

7. Thus, recovery for amount already paid to the petitioner as part of his pension is not legally open. It is open to respondents to scale down his pension after revising his last pay, by deleting the allowances paid to him, and therefore re-fix his monthly pension and pay it in future. Hence, with said directions, we quash and set aside the recovery for amounts paid to the petitioner in past. Writ Petition is disposed of accordingly. No costs.

9. In the instant case the contingency at Sr.No.(ii) in the case of Rafiq Masih (Supra) is attracted since recovery was initiated after retirement of the original applicant. In view of the above referred binding precedent

recovery made in the past is quashed and set aside. This amount shall be refunded to the applicant. It would be open to the respondents to appropriately scale down pension in the manner laid down by the Hon'ble Bombay High Court in the above referred case. The O.A. is allowed in these terms with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 25/08/2022

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 : 25/08/2022.
and pronounced on
Uploaded on : 25/08/2022.