

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 578 of 2016

Shri Sureshchandra S/o Dharamchand Jain,
Aged about 58 years, Occ. Retired
R/o Modi Bhawa, Fawara Chowk,
Nikalas Mandir Road, Itwari, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Public Health Department,
G.T. Hospital Complex Building,
10th floor, B-Wing, New Mantralaya,
Mumbai-01.
- 2) Deputy Director of Health Services,
Nagpur Region, Mata Kacheri Compound,
Sraddhanand Peth, Nagpur.
- 3) Medical Superintendent,
Daga Memorial Government Ladies Hospital,
Nagpur.

Respondents

Shri N.D. Thombre, Advocate for the applicant.

Smt. M.A. Barabde, Id. P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 613 of 2016

Shri Sheshrao S/o Baburao Uikey,
Aged about 57 years, Occ. Service,
R/o Pauni, District Nagpur.

Applicant.+

Versus

- 1) State of Maharashtra,
through Secretary Department of Revenue & Forest,
Mantralaya, Mumbai.
- 2) The Chief Conservator of Forest (territorial),
Nagpur.
- 3) The Deputy Conservator of Forest,
Nagpur.
- 4) Range Forest Officer, Pauni Range,
District Nagpur.

Respondents

Shri G.G. Bade, P.P. Khaparde, Advocates for the applicant.

Smt. M.A. Barabde, Id. P.O. for the respondents.

WITH
ORIGINAL APPLICATION No. 677 of 2016

Shri Dharamdas S/o Mahadeorao Likhari,
Aged about 52 years, Occ. Service,
R/o Plot No.14, Gajanan Nagar, near Sainagar,
Water Tank, Manewada Rind Road, Nagpur.

Applicant.**Versus**

- 1) State of Maharashtra,
through its Principal Secretary,
Public Health Department,
G.T. Hospital Complex Building,
10th floor, B-Wing, New Mantralaya,
Mumbai-01.
- 2) Deputy Director of Health Services,
Nagpur Region, Mata Kacheri Compound,
Sraddhanand Peth, Nagpur.
- 3) Medical Superintendent,
Rural Hospital, Deolapar,
Nagpur.

Respondents

Shri N.D. Thombre, Advocate for the applicant.

Smt. M.A. Barabde, Id. P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 728 of 2016

Shri Arun S/o Pandurang Thengre,
Aged about 53 years, Occ. Service,
R/o 226/3, Bhagyashri Layout,
Trimurti Nagar, Nagar.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Public Health Department,
G.T. Hospital Complex Building,
10th floor, B-Wing, New Mantralaya,
Mumbai-01.
- 2) Deputy Director of Health Services,
Nagpur Region, Mata Kacheri Compound,
Sraddhanand Peth, Nagpur.
- 3) Medical Superintendent,
Sub District Hospital, Kamptee,
District Nagpur.
- 4) Civil Surgeon,
General Hospital, Wardha.

Respondents

Shri N.D. Thombre, Advocate for the applicant.

Smt. M.A. Barabde, Id. P.O. for the respondents.

WITH
ORIGINAL APPLICATION No. 729 of 2016

Shri Madhukar S/o Keshavrao Pande,
Aged about 51 years, Occ. Service,
R/o Plot No.70, Kalpataru Nagar,
Manewada Besa Road, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Public Health Department,
G.T. Hospital Complex Building,
10th floor, B-Wing, New Mantralaya,
Mumbai-01.
- 2) Deputy Director of Health Services,
Nagpur Region, Mata Kacheri Compound,
Sraddhanand Peth, Nagpur.
- 3) Medical Superintendent,
Rural Hospital, Bhiwapur,
District Nagpur.

Respondents

Shri N.D. Thombre, Advocate for the applicant.

Smt. M.A. Barabde, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

COMMON JUDGEMENT

(Delivered on this 18th day of April,2017)

Heard Shri N.D. Thombre, Id. counsel for the applicants
and Smt. M.A. Barabde, Id. P.O. for the respondents (in O.A.Nos. 578,

677,728 & 729 of 2016) and Shri G.G. Bade, Id. counsel for the applicant and Smt. M.A. Barabde, Id. P.O. for the respondents (in O.A.613 of 2016).

2. All these matters are being disposed of by this common Judgment. The applicants in O.A.Nos. 578,677,728 & 729 of 2016 are of the year 2016 are Pharmacy Officers, Class-III (Group-C). The applicant in O.A. No. 613 of 2016 is a Forest Guard. The applicant in O.A.No.578 of 2016 has retired on superannuation on 31/05/2016. Whereas the applicant in O.A.No.613 of 2016 is retiring on 17/05/2017. The applicants in other O.As. are in service.

3. The respective applicants have challenged the orders of recovery of alleged excess amount paid to them in the respective O.As. Particulars of the impugned order of recovery are given as below:-

Sr. No.	O.A.No.	Name of the applicant	Whether retired/ if retired, date of retirement	The date and name of the Officer who passed the impugned order	Amount to be recovered
1.	578 of 2016	S.D. Jain	31/05/2016	11/08/2016 issued by Resp.no.3, Medical Superintendent, Daga Hospital, Nagpur.	Rs.4,09,361/-
2.	613 of 2016	S.B. Uikey	17/05/2017 (retiring)	16/08/2016 issued by resp. No.3, Dy. Conservator of Forest, Nagpur.	Rs.1,60,816/-

3.	677 of 2016	D.M. Likhari	---	28/12/2015 issued by resp.no.3 Medical Superintendent, Rural Hospital, Deolapar, Distt. Nagpur.	Rs.3,09,372/-
4.	728 of 2016	A.P. Thengre	--	05/09/2013 issued by resp.no.3 Medical Superintendent, Sub District Hospital, Kamptee, Dist. Nagpur.	1,36,530/-
5.	729 of 2016	M.K. Pande	--	26/04/2016 issued by resp. No.3 Medical Superintendent, Rural Hospital, Bhiwapur, Dist. Nagpur.	Rs.2,99,872/-

4. The perusal of the impugned orders passed in all these O.As. shows that the Competent Authorities have re-fixed the pay of the respective applicants and it was found that their pay was fixed wrongly and it was necessary to recover the excess amount. The period of recovery however ranges for the period from 1/1/2006 to 31/7/2015 or so. The recovery has been ordered on the ground that the amount was wrongly paid to the applicants during the course of their service.

5. The learned counsel for the applicants submit that all the cases are covered by the Judgment delivered by the Hon'ble Apex

Court in the case of **State of Punjab and Ors Vs. Rafiq Masih (White Washer), dated 18/12/2014 in Civil Appeal No.11527/2014 (arising out of SLP (c) No.11684/2012).** All the applicants are Class-III servants and therefore the recovery from their account met with the applicants to hardship and therefore the applicants have prayed that the order of recovery be quashed and set aside and the respective amount if recovered, same be refunded to them.

6. The respondents have filed reply-affidavit and submitted that the pay fixation was wrongly done and therefore it was necessary to re-fix the pay of respective applicants and while re-fixing the pay, it was found that an amount was paid in excess and therefore it was ordered that the excess amount paid, be recovered. The respondents therefore tried to justify the recovery.

7. The learned counsel for the applicants placed reliance on the Judgment in the case of **State of Punjab and Ors Vs. Rafiq Masih (White Washer)** as referred above, which is also reported Judgment. In the said Judgment, the Hon'ble Apex Court has given guidelines and have observed in the para-12, which are as under :-

“(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 the 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."

8. The learned counsel for the applicants also placed reliance on the Judgment delivered on 09/03/2017 by this Tribunal at its Mumbai Bench in O.A.No.342/2016 in the case of **Shri Prakash Laxman Hotkar Vs. The Principal, I.T.I., Mumbai & 4 ors.** In the said case also the case of **State of Punjab and Ors Vs. Rafiq Masih (White Washer)** has been discussed. The issue regarding

undertaking taken from the applicants while re-fixing pay is also considered in the said Judgment.

9. The present applicants admittedly belongs to Group-C employee and vide respective impugned orders of recovery, their pay scales have been revised for a long period, i.e., from 1/1/2006 to 31/7/2015, which amount is recovered from them. It is no doubt that the respondent authorities are at liberty and authorised to fix the proper pay of the employees, but recovery of such huge amount for a long period may cause hardship to the applicants who are Class-III employees. Some of them have already been retired, whereas, some are on the verge of retirement and the alleged recovery pertains to the period more than five years prior to date of recovery. Considering all these aspects, I am satisfied that the cases of the applicants are covered by the cases reported in the case of **State of Punjab and Ors Vs. Rafiq Masih (White Washer)** (*cited supra*). Hence the following order :-

ORDER

All the impugned orders directing recovery of excess amount paid to the respective applicants due to wrong fixation are quashed and set aside to the extent of recovery of excess amount. The respondents are restrained from recovering excess amount as

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alleged against the applicants, though they are entitled to re-fix proper pay of the applicants. If the amount is recovered in view of the impugned orders of recovery, the same be refunded to the respective applicants within a period of two months from the date of this order.

No order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).

dnk.