

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 144 of 2020 (S.B.)

Pitamber S/o Wasudeo Armorikare,
aged 58 years, Occu- Retd Employee,
R/o 109, Gawande Nagar, Nagpur-22.

Applicant.

Versus

- 1) The Secretary, Deptt. of Agricultural,
Animal Husbandry, Dairy Development and Fisheries,
Mantralaya, Mumbai- 32.
- 2) Dairy Development Commissioner,
Administrative Building Khan Abdul Gaffar Khan Marg,
Worli Sea Face, Mumbai -18.
- 3) The Regional Dairy Development Officer (Nagpur Region),
Telang Khedi, Civil Lines, Nagpur-01.

Respondents.

Shri S.M. Khan, Advocate for the applicant.
Shri M.I. Khan, learned P.O. for respondents.

WITH
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**Shri S.M. Khan, Advocate for the applicant.
Shri M.I. Khan, learned P.O. for respondents.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Date of Reserving for Judgment : 9th August,2023.

Date of Pronouncement of Judgment : 30th August,2023.

COMMON JUDGMENT

(Delivered on this 30th day of August,2023)

Heard Shri S.M. Khan, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. Both the O.As. are filed by the applicant by challenging the recovery notice dated 27/12/2018 for the recovery of amount of Rs.1,73,848/- (in O.A.No.144/2020) and notice dated 23/02/2018 for the recovery of amount of Rs.4,16,572/.50/- (in O.A.No.145/2020).

3. The cases of the applicant in short is as under –

O.A. 144/2020 –

It is submitted that the applicant was appointed on 19/11/1982. He was working on the post of Shift Manager from April,2001 to March,2006. His nature of work was to take care of production work. Quality Control Department is responsible to test the milk quality in lab and pass / approve the milk based on the quality. The applicant while working at Wardha as a Dairy Manager, while he

was on the verge of retirement, the respondents issued show cause notice dated 12/12/2018 pertain to the quality problem of milk scheme Gondia of the period April,2001 - March,2006. The aforesaid quality problem was never intimated to the applicant while he was posted at Milk Scheme, Gondia. It is submitted that in view of the Judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (2014) 8 SCC,883*** and the Judgment of Hon'ble Punjab and Haryana High Court in the case of ***Jaspal Singh and others Vs. State of Punjab and others 2017 (6) SLR 169 (Pb. & Hry.)***, the respondents cannot recover the amount because the applicant was on the verge of retirement when the notice was issued. In both the O.As., reply are filed. In reply in O.A.144/2020, it is submitted that the applicant is not entitled for full pension as per the Rule 130 of the Maharashtra Civil Services (Pension) Rules,1982 because the departmental inquiry is pending against him.

2. It is further submitted that the applicant has sold out the milk to some of the suppliers on credit and has not recovered the amount of Rs.7,05,375/- from the said milk suppliers, therefore, show cause notice was issued.

3. In O.A.145/2020, in reply in para-6 and 7 it is submitted that the applicant has sold out the milk to some suppliers on credit and

has not recovered the amount from the said milk suppliers and therefore he is liable for departmental inquiry.

4. Notices issued in both matters are material documents. Notice dated 27/12/2018 challenging in O.A. No.144/2020 is reproduced as under -

“श्री.पी.व्ही. आरमोरीकर, तत्कालिन पाळी व्यवस्थापक, शासकीय दूध योजना, गोंदीया यांना याद्वारे असे कळविण्यात येते की, त्यांच्याविरुद्ध महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ च्या नियम १० अन्वये कारवाई करण्याचे ठरविण्यात आले आहे. ज्या बाबतीत प्रस्तावित कारवाई करण्याचे योजिले आहे, त्या गैरशिस्तीच्या किंवा गैरवर्तणूकीच्या दोषारोपाचे विवरणपत्र सोबत जोडले आहे.

२. श्री. आरमोरीकर यांना या प्रस्तावाविरुद्ध जे कोणतेही अभिवेदन करावयाची इच्छा असेल ते करण्याची संधी त्यांना याद्वारे देण्यात येत आहे.

३. श्री. आरमोरीकर यांनी हे ज्ञापन मिळाल्यापासून १० दिवसांचे आत त्यांचे अभिवेदन सादर करण्यास कसूर केली तर त्यांना कोणतेही अभिवेदन करण्याची इच्छा नाही, असे गृहीत धरण्यात येईल आणि श्री. आरमोरीकर यांचेविरुद्ध एकतर्फी आदेश काढण्यात येतील.

४. श्री. आरमोरीकर यांनी हे ज्ञापन मिळाल्याची पोच द्यावी. ”

5. Notice dated 23/02/2018 challenging in O.A.No.145/2020 is reproduced below –

“श्री.पी.वा.आरमोरीकर, तत्कालीन पाळी व्यवस्थापक/ दुग्धशाळा व्यवस्थापक, शासकीय दूध योजना, नागपूर सांप्रत दुग्धशाळा व्यवस्थापक, शासकीय दूध योजना, वर्धा यांना याद्वारे असे कळविण्यात येते की, त्यांच्याविरुद्ध महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ च्या नियम १० अन्वये कारवाई करण्याचे ठरविण्यात आले आहे. ज्या बाबतीत प्रस्तावित कारवाई करण्याचे योजिले आहे. त्या गैरशिस्तीच्या किंवा गैरवर्तणुकींच्या दोषारोपाचे विवरणपत्र सोबत जोडले आहे.

२. श्री. आरमोरीकर यांना या प्रस्तावाविरुद्ध जे कोणतेही अभिवेदन करावयाची इच्छा असेल ते करण्याची संधी त्यांना याद्वारे देण्यात येत आहे.

३. श्री. आरमोरीकर यांनी हे ज्ञापन मिळाल्यापासून १० दिवसांच्या आत त्यांचे अभिवेदन सादर करण्यास कसूर केली तर त्यांना कोणतेही अभिवेदन करण्याची इच्छा नाही, असे गृहीत धरण्यात येईल आणि श्री. आरमोरीकर यांच्याविरुद्ध एकतर्फी आदेश काढण्यात येतील.

४. श्री. आरमोरीकर यांनी हे ज्ञापन मिळाल्याची पोच द्यावी. ”

6. Heard Shri S.M. Khan, learned counsel for the applicant. He has relied on the Judgment of the Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (2014) 8 SCC,883** and the Judgment of Hon'ble Punjab and Haryana High Court in the case of **Jaspal Singh and others Vs. State of Punjab and others 2017 (6) SLR 169 (Pb. & Hry.)**.

7. Heard learned P.O. Shri M.I. Khan. As per the submission of learned P.O., the Judgments cited by the side of applicant are not applicable to the case in hand, because, it is not a recovery from the pension for wrongful payment / excess payment etc. It was a show cause notice issued to the applicant directing him to show cause as to why departmental inquiry should not be initiated against him.

8. From the perusal of the notices challenged in both the O.As., it appears that those are the notices not in respect of recovery, but in respect of initiating departmental inquiry. The Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (2014) 8 SCC,883** and the Hon'ble Punjab and Haryana High Court in the case of **Jaspal Singh and others Vs. State of Punjab and**

others 2017 (6) SLR 169 (Pb. & Hry.) held that a recovery from the pensioner or employee about to retire within one year cannot be made, if the excess payment is made by the employer wrongly. Those Judgments are in respect of recovery of the amounts which were wrongly paid to the employee by employer / Government. Therefore, the cited Judgments are not applicable to the case in hand.

9. Both the notices challenged in both the O.As., show that the show cause notices were issued to the applicant for initiating departmental inquiry. The respondents / employer is at liberty to conduct the departmental inquiry. From the reply, it appears that the applicant has sold out the milk of Rs.7,05,675/- to the various purchasers / dealers, but those amounts are not recovered by the applicant, therefore, notice was issued by the respondents. Notices issued by the respondents dated 27/12/2018 and 23/02/2018 show that those notices are in respect of initiating departmental inquiry against the applicant. Hence, the Judgment of the Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (2014) 8 SCC,883** and the Judgment of the Hon'ble Punjab and Haryana High Court in the case of **Jaspal Singh and others Vs. State of Punjab and others 2017 (6) SLR 169 (Pb. & Hry.)** are not applicable in the present matters. The respondents are at liberty to conduct the departmental inquiry in respect of misconduct committed

by the applicant. Hence, the applicant is not entitled for relief as prayed in the O.A. Therefore the following order is passed –

ORDER

The O.A.Nos.144/2020 and 145/2020 are dismissed with no order as to costs.

Dated :- 30/08/2023.

**(Justice M.G. Giratkar)
Vice Chairman.**

*dnk.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 30/08/2023.