

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 43/2021(S.B.)**

Abhiman Gyanba Tagade,  
Aged about 61 years,  
Occupation : Service,  
R/o Behind Dongre Petrol Pump,  
Zasi Rani Nagar, Gadchiroli,  
Tah. & Dist. Gadchiroli.

**Applicant.**

**Versus**

1. The State of Maharashtra,  
through its Additional Chief Secretary,  
Tribal Development Department,  
Mantralaya, Mumbai-32.
2. The Commissioner,  
Tribal Development Department (M.S.),  
Nashik, Tah. & Dist. Nashik.
3. The Additional Commissioner,  
Tribal Development Department,  
Tribal Development Bhavan, Giri Peth,  
Amravati Road, Nagpur.
4. Accounts Officer,  
Pay Verification Unit, Nagpur.  
Tah. & Dist. Nagpur.

**Respondents**

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Shri S.N.Gaikwad, Ld. Counsel for the applicant.  
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

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**Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.**  
**Dated: - 29<sup>st</sup> February, 2024.**

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### **JUDGMENT**

Heard Shri S.N.Gaikwad, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the Respondents.

2. Case of the applicant in short is as under-

The applicant was appointed on 04.12.1997 as Secondary School Teacher. He was posted at Pernili Project, thereafter, he was posted at various places. The applicant is retired on 31.03.2018 on completion of age of superannuation. After the retirement, the respondent has issued impugned communication dated 29.04.2020 directing the respondent no.3 to recover the excess payment paid to the applicant.

3. It is submitted that the applicant is a Group-III employee. He is retired employee. Therefore, recovery cannot be made after the retirement.

4. The O.A. is strongly opposed by the respondents 1 to 3. It is submitted that because of the wrong calculation excess amount was paid to the applicant. Show cause notice was issued to the

applicant, as per Rule 134-A of the M.C.S. (Pension) Rules, 1982. The recovery order by the respondent is perfectly legal and correct. Hence, the O.A. is liable to be dismissed.

5. During the course of submission, the learned counsel for the applicant has pointed out decision of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014** in Civil Appeal No. 11527 OF 2014 (Arising out of SLP(C) No.11684 of 2012) and submitted that the amount cannot be recovered after retirement. The applicant was a Group-III employee. Hence, the impugned communication dated 29.04.2020 is liable to be quashed and set aside.

6. The learned P.O. has submitted that show cause notice issued by the respondent is perfectly legal and correct, in view of Rule 134-A of the M.C.S. (Pension) Rules, 1982, the O.A. is liable to be dismissed.

7. The Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** has given guidelines 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 herein above, 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."*

8. As per the above guidelines of the Hon'ble Supreme Court, recovery cannot be made from Group-III employees. Recovery cannot be made from retired employees. Hence, the impugned communication of recovery after the retirement of the applicant is not legal and correct. Hence, following order is passed-

### **ORDER**

1. The O.A. is allowed.

2. The impugned communication dated 29.04.2020 issued by the respondent no.4 directing the respondent no.3 to recover the amount from the applicant is hereby quashed and set aside.

3. No order as to costs.

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

**Dated - 29/02/2024.**

**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 Vice Chairman.  
Judgment signed on : 29/02/2024.  
Uploaded on : 01/03/2024.

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