

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 527/2022(S.B.)**

Vilas s/o Vasantao Kulkarni,  
Aged about 62 years, occupation retired  
As Civil Engineering Assistant,  
r/o Janata Chowk, Ramnagar,  
Wardha Tehsil and District Wardha.

**Applicant.**

**Versus**

1. State of Maharashtra,  
Through Secretary,  
Jalsampada Department,  
Mantralaya, Mumbai - 32.
2. Superintending Engineer,  
Nagpur Patbandhare Circle,  
Nagpur.
3. The Executive Engineer,  
Lower Wardha Canal Division,  
Wardha.
4. Deputy Executive Engineer,  
Lower Wardha Canal Division,  
Pipri Meghe, Wardha.

**Respondents**

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Shri M.R.Rajgure, Ld. Counsel for the applicant.  
Shri A.P.Potnis, Ld. P.O. for the respondent no.1.  
Shri T.M.Zaheer, Ld. Counsel for the respondents 2 to 4.

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**Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.**  
**Dated: - 30<sup>th</sup> October, 2023.**

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### **JUDGMENT**

Heard Shri M.R.Rajgure, learned counsel for the applicant, Shri A.P.Potnis, learned P.O. for the Respondent no.1 and Shri T.M.Zaheer, learned counsel for the respondents 2 to 4.

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

The applicant was working on work charge basis w.e.f. 01.07.1981 with the respondents' establishment. On 01.07.1986, he was brought on CRTE on the post of Karkun. The applicant was granted first time bound promotion on 01.07.1998. The applicant was thereafter appointed as a Civil Engineering Assistant on 9.05.2008. The applicant retired from service after attaining the age of superannuation from 30.06.2018. Pay Verification Unit has raised some objections and therefore the respondents have recovered the amount of Rs.28,430/- from the applicant. Therefore, the applicant has approached to this Tribunal for the following relief-

*(2) Set aside the recovery order of alleged excess payment passed by Deputy Engineer shown at Annexure A-*

*1 and be pleased to order that applicant should be refunded the amount, deducted from him with interest and to restore the position of his pay as before effecting deduction as per order dated 13.12.2021 purported to be as per instructions contained in objection of accounts officer dated 12.10.2021.*

*(3) Grant costs as thought expedient and proper.*

3. The respondents 2 to 4 have filed reply. As per the submission of respondents 2 to 4, the applicant had given undertaking. There was excess payment of Rs.28,430/-. Therefore, the said amount was recovered by the respondents.

4. During the course of submission, learned Advocate for applicant has pointed out Judgment of the Hon'ble Supreme Court in the case of **the State of Punjab and others Vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334 : 2015(1) ALL MR 957 (S.C.)** and submitted that the applicant was a Class-III employee. He is a retired employee. Therefore, recovery cannot be made from the applicant. He has also pointed out the Judgments of the Hon'ble Bombay High Court in the case of **the State of Maharashtra Vs. Rekha Vijay Dube (Mrs.) [2021 (2) Bom. LC 551(Bom)]** and **Shri Rajan Madathil Vs. State of Goa and others [2021 (2) Bom. LC 722 (Bom)]**.

5. Heard Shri T.M.Zaheer, learned counsel for the respondents 2 to 4. He has pointed out Judgment of the Hon'ble Supreme Court in the case of **High Court of Punjab and Haryana and Others Vs. Jagdev Singh (2016) 14 Supreme Court Cases 267** and the Judgment of the Hon'ble Bombay High Court in the case of **Ananda s/o Vikram Baviskar Vs. State of Maharashtra and others [2022 (2) Mh.L.J. 698.**

6. The Hon'ble Supreme Court in the case of **the State of Punjab and others Vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334 : 2015(1) ALL MR 957 (S.C.)** has given guidelines in para 18 as under-

*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:*

*(i) Recovery from the employees belonging to Class III and 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."*

7. As per the Judgment of the Hon'ble Supreme Court in the Case of **the State of Punjab and others Vs. Rafiq Masih (White Washer) and others**, recovery cannot be made from the retired Class-III employee.

8. In the case of **High Court of Punjab and Haryana and Others Vs. Jagdev Singh (2016) 14 Supreme Court Cases 267** undertaking was given by the Petitioner for the recovery of excess amount. He was a Judicial Officer. Therefore, it was held that because of the undertaking the excess amount can be recovered.

9. In the case of **Ananda s/o Vikram Baviskar Vs. State of Maharashtra and others** the Judgment of Division Bench of Hon'ble Bombay High Court, Bench at Aurangabad, the case of **the State of**

**Maharashtra Vs. Rekha Vijay Dube (Mrs.)** is not considered. Other Judgment also in the case of **Shri Rajan Madathil Vs. State of Goa and others** is not considered.

8. In the case of **the State of Maharashtra Vs. Rekha Vijay Dube (Mrs.)** in para 9 the Division Bench of Hon'ble Bombay High Court has held as under-

*9. The other reason for which we are not inclined to hold that Jagdev Singh (supra) has application to the facts of this case is because of situations (i) and (iii) forming part of paragraph 18 of Rafiq Masih (supra). Situation (i) clearly bars recovery from employees belonging to Class III/Group 'C' service. Further, situation (iii) bars recovery from employees when excess payment has been made for a period in excess of 5 (five) years before the order of recovery is issued. We are not inclined to accept the contention of Mr. Pathan that although recovery from employees belonging to Class III/Group 'C' cannot be made in terms of situation (i) (supra) while in service, such recovery could be made from retired Class III/Group 'C' employees who have either retired or are due for retirement within one year of the order of recovery. If we were to accept Mr. Pathan's contention, it would lead to a situation that although there could be a declaration given by a Class III/Group 'C' employee while in service that excess payment could be recovered from him from future salary to be paid to him, which cannot be recovered in terms of situation (i), but in terms of situation (ii), as*

*interpreted in Jagdev Singh (supra), recovery could be effected from his retirement benefits after the relationship of employer-employee ceases to subsist. Rafiq Masih (supra), very importantly, carves out situation (v) (supra) too, proceeding on the premise that recovery from retirement benefits, by asking the retired employee to refund excess amount, if any, received by him, if found to be iniquitous and arbitrary and thereby causing hardship, such a step ought to be avoided. This being the reasoning it would be far-fetched that what the employer (State) cannot resort to against a Class III/Group 'C' employee while he is in service, such employer would be empowered to do so after retirement of the Class III/Group 'C' employee. If accepted, the same would amount to a distorted interpretation of the situations in Rafiq Masih (supra), which has to be eschewed. We are of the considered opinion that the Tribunal was right in distinguishing Jagdev Singh (supra) by observing that paragraph 11 of the said decision must be confined to Class I/Group 'A' and Class II/Group 'B' officers. Mr.Pathan has not been able to show that the original applicants gave the declaration/undertaking in pursuance of a statutory rule. That not having been shown, the contention raised by him on the basis of Jagdev Singh (supra) has to be rejected. We, however, leave the question open as to whether Jagdev Singh (supra) would apply to cases of Class III/Group 'C' employees who by giving declaration, mandated by a statutory rule, undertake to refund any sum received in excess of their entitlement.*

9. Hence, in view of the Judgment of Division Bench of Hon'ble Bombay High Court in the case of **the State of Maharashtra Vs. Rekha Vijay Dube (Mrs.)** even if the undertaking was given that cannot be a ground to recover the excess amount from Class-III retired employee.

10. In view of the Judgment of the Hon'ble Bombay High Court in the case of **Prasad Vinayak Sohoni Vs.The Treasury Officer, Thane and Anr. decided on 12.01.2022**, the applicant is entitled for interest @ 6% p.a. of deducted amount. Hence, the following order.

**ORDER**

1. The O.A. is allowed.
2. The respondents are directed to refund the amount of Rs.28,430/- along with interest @ of 6% p.a. from the date of the recovery, till the actual refund of the amount to the applicant.
3. No order as to costs.

(Justice M.G.Giratkar)  
Vice Chairman

Dated – 30/10/2023  
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 Vice Chairman.  
Judgment signed on : 30/10/2023.  
Uploaded on : 06/11/2023.