

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 812/2021(S.B.)

Sheikh Salim Sheikh Rahman,
Aged 59 yrs., Occ.- Pensioner,
R/o. Yadav Nagar, Housing Board,
Pachpaoli, Nagpur.

Applicant.

Versus

1. State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-440032.
2. The Director General of Police,
Maharashtra State,
Shahid Bhagatsingh Marg, Mumbai-400001.
3. The Commissioner of Police,
Nagpur City, Patel bungalow,
Chhaoni, Sadar, Nagpur.

Respondents

Shri S.M.Khan,Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 14th March, 2024.

JUDGMENT

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

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

The applicant was appointed on 14.01.1989 on the post of Police Constable. Applicant is retired on 30.06.2020. After the retirement, the respondents have recovered amount of Rs.85,697/- on the ground that his pay fixation was wrongly done i.e. by calculating the wrong Grade Pay. Hence, applicant has approached to this Tribunal for the following reliefs-

A) That the impugned order of respondent No. 3 vide Annexure-AI to be quashed and set aside as it is unfair, arbitrary and illegal.

B) Issue direction to the respondent to refund the money of Rs. 85,697/- which was recovered from the gratuity of applicant by the respondent with interest at the rate of 12% per annum within time framed period.

C) That any other relief including that cast be saddle upon the respondent as this Hon'ble Tribunal deem fit and proper in the fact and circumstances of the case.

3. The O.A. is strongly opposed by the respondents. It is submitted that there was mistake while granting Grade Pay and that mistake is corrected and therefore recovery was made against the applicant. Therefore, the O.A. is liable to be dismissed.

4. During the course of submission, learned counsel for the applicant submitted that in view of the Judgment of **the Hon'ble Supreme Court in case of State Of Punjab & Ors vs. Rafiq Masih (White Washer) (2015) 4 SCC, 334** - recovery cannot be made from the retired employees. The learned counsel for the applicant has submitted that the applicant is a Class-III employee and therefore recovery cannot be made.

5. The learned P.O. has submitted that applicant had filled the form in which he had duly stated that he received excess amount of Rs.85,697/- and therefore recovery is started. The applicant was prosecuted for the offence under the I.P.C. Therefore, he is not entitled for pension and pensionary benefits. This is not a case in respect of withholding of pension and therefore Rule 27 is not applicable to the case in hand. This case is in respect of the recovery of amount which is already recovered from gratuity in respect of wrong payment of Grade Pay. **The Hon'ble Supreme Court in case of State Of Punjab & Ors vs. Rafiq Masih (White Washer) (2015) 4 SCC, 334** has given following guidelines -

"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 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."

6. As per the guideline nos.(i) and (ii), recovery from the retired employee or the Class – III employee who are due to retire within one year, the order of recovery cannot be made. The applicant is retired on 30.06.2020 and respondents have recovered the amount of Rs.85697/- on 18.01.2020. Applicant was Class-III employee. As per the guideline in para (ii), the recovery cannot be made from the retired employee or who are to be retired within one year and

therefore recovery made by the respondents is not legal and proper.

Hence, the following order is passed-

ORDER

1. The O.A. is allowed.
2. The respondents are directed to refund the amount of Rs. 85,697/- along with interest @ 6% from the date of recovery till the actual payment is made to the applicant.
2. The respondents shall refund the amount along with interest within a period of four months from the date of receipt of this order.
3. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated - 14/03/2024.
rsm.

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

Name of Steno : RakshaShashikantMankawde
Court Name : Court of Hon'bleViceChairman.
Judgment signed on : 14/03/2024.
Uploaded on : 26/03/2024.
