

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 835/2022(S.B.)

Sarang S/o Digambarrao Akarte,
Aged about 58 years, Occ. Retired,
R/o Gurukrupa Colony,
Near Dental College, Amravati – 444602.

Applicant.

Versus

1. The State of Maharashtra,
Throughits Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Superintendent of Police,
Amravati Rural,
Having its Office Camp Road,
Amravati - 444602.
3. The Deputy Superintendent of Police,
Amravati Rural,
Having its office, Camp Road,
Amravati – 444602.

Respondents

Shri C.A.Babrekar, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 04th October, 2023.

JUDGMENT

Heard Shri C.A.Babrekar, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. The applicant was working as a Class-III employee in the establishment of respondents. The applicant came to be retired on 31.05.2021. After his retirement, the respondents have issued order dated 25.05.2021 for the recovery of Rs.92,284/-. The respondents have recovered the same on the ground that those were wrongly paid to the applicant. Hence, the applicant approached to this Tribunal for refund of the said amount along with interest.

3. The application is strongly opposed by the respondents. It is submitted that the applicant had given undertaking and therefore amount of Rs.92,284/- which was over payment was to be recovered from the applicant. There is no illegality by recovering the said amount because the applicant had given undertaking. Hence, the O.A.is liable to be dismissed.

4. The learned counsel for the applicant has pointed out the decision of Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014**, the Judgment of Hon'ble Bombay High Court in the case of **the State of Maharashtra and Others Vs. Rekha Vijay Dubey decided**

on 24 September, 2021 and the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Ravindra S/o Ramchandra Patil Vs. the State of Maharashtra and Others** **decided on 18 July, 2017.**

5. The learned P.O. has relied on the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Ravindra S/o Ramchandra Patil Vs. the State of Maharashtra and Others** **decided on 18 July, 2017.**

6. The learned P.O. has also relied on the Judgment of the Hon'ble Supreme Court in the case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh reported in (2016) 14 SCC 267,** and submitted that once the undertaking is given by the employee, the employer is at liberty to recover excess payment paid to the employee.

7. The Hon'ble Supreme Court in case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014** in which following guidelines are given-

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:

(1) 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 guidelines no.(i) and (ii)for Class-III and Class-IV employees, the excess amounts are not to be recovered after their retirement.

In the case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh reported in (2016) 14 SCC 267**, the petitioner was a Judicial Officer and undertaking was given at the time of re-fixation. The Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Ravindra S/o Ramchandra Patil Vs. the State of Maharashtra and Others decided on 18 July, 2017** has held that the decision in the case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh reported in (2016) 14 SCC 267** are not applicable because he was not a Class-III employee. In the present case the applicant was Class-III employee. He was not at fault to get

excess payment. The Judgment in the case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh** is also considered by High Court, Bench at Aurangabad in **Ravindra S/o Ramchandra Patil Vs. the State of Maharashtra and Others.** In the case **The State of Maharashtra and Others Vs. Rekha Vijay Dubey** as per para 9 of the Judgment it is held:-

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 (1) 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 (1) (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. In view of the Judgment of the Hon'ble Supreme Court in the case of *Rafiq Masih (supra)*, the respondents cannot recover excess amount of Rs.92,284/- i.e. excess amount paid to the applicant. Moreover, undertaking of the applicant filed a record does not show the date on which it was given. The respondents have wrongly recovered the said amount from the applicant. Hence, the following order.

ORDER

- 1) The O.A. is allowed.
- 2) The respondents are directed to refund the amount of Rs.92,284/- along with interest at the rate of 6% till the actual payment to the applicant.
- 3) No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 04/10/2023
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 : 04/10/2023.
Uploaded on : 09/10/2023.