

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 854/2022(S.B.)

Shri Dildar s/o Baldar Tadavi,
Aged about 60 years, Occu. : Retired,
R/o Shivashankar Nagar, Chikhali Road,
Near SBI, Oppo. Dr.Khedekar, Buldana,
Tahsil and District Buldana.

Applicant.

Versus

1. The State of Maharashtra,
through its Secretary,
HomeDepartment,
Mantralaya, Mumbai - 400032.
2. The Director General of Police,
State of Maharashtra,
Near Regal Talkies, Culaba, Mumbai.
3. Superintendent of Police,
Buldana, Opposite Collector Office,
Buldana, Tahsil and District Buldana
443001.
4. Accounts and General A & E (II) Office,
Maharashtra, Civil Lines, Nagpur 440001.

5. District Treasury Office, Buldana,
Near District Collector Office Tahsil and
District Buldana 443001.

Respondents

Shri A.P.Sadavarte, Ld. counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 21st August, 2023.

JUDGMENT

Judgment is reserved on 08th August, 2023.

Judgment is pronounced on 21st August, 2023.

Heard Shri A.P.Sadavarte, learned counsel for the applicant and
Shri V.A.Kulkarni, learned P.O. for the Respondents.

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

The applicant was initially appointed on the post of Police Sub Inspector. He was promoted on the post of Police Inspector and thereafter on the post of Deputy Superintendent of Police. He was transferred from Buldana on the same post as Sub Divisional Police Officer, Malkapur, District Buldana. On 31.05.2021 the applicant was retired as Sub Divisional Police Officer, Malkapur, District Buldana. On 08.04.2021 revised pay fixation was made by the office of respondent no.3. It was found that there

is a over payment of Rs.4,23,761/-. Respondent no.3 has issued communication on 23.08.2021 thereby directed to deduct the said over payment from gratuity amount of the applicant. Accordingly, respondent no.4 (A.G.) has adjusted the same. The respondents have recovered the amount of Rs.4,23,766/- from the amount of gratuity.

3. Respondent no.2 has issued a Circular on 05.09.2018 and thereby directed not to recover the pay and allowances, additional increment amount, time bound promotion amount, revised pay fixation amount from the retiral benefits of the Government servant in view of the Judgment of the Hon'ble Apex Court in the case of the **State of Punjab and Others Vs. Rafiq Masih (White Washer)**. Therefore, the applicant approached to this Tribunal for the following reliefs-

(1) quash and set aside the impugned communication dated 24.12.2021 (Annexure-A-5) issued by respondent no.3 whereby the respondent has declared that the overpayment of pay and allowances amount of Rs.4,23,761/- was deducted and recovered from the gratuity of applicant and the same is directly been paid in the account of Treasury Office, Buldana/respondent no.5;

(ii) direct the respondents to refund the said deducted excess amount of Rs.4,23,761/- to the applicant along with the interest @ 10% p.a.; NOT A. 8.

(iii) held that the respondents are not entitled for deduction of any excess amount from the gratuity made applicable to the applicant on the verge of his retirement.

4. The O.A. is opposed by the respondent nos.3 and 4. The respondent no.3 has submitted that in the revised pay it was found that amount of Rs.4,23,761/- was found as excess payment paid to the applicant and therefore the said amount was recovered from the amount of gratuity. The respondent no.4 has submitted that as per the recommendation of the respondent no.3, the said amount was recovered from the amount of gratuity. Hence, the O.A. is liable to be dismissed.

5. The learned Advocate Shri A.P.Sadavarte has pointed out the decision of this Tribunal in O.A.No.878/2022. He has pointed out the Judgment of the Hon'ble Apex Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer)** and submitted that excess payment cannot be recovered from the employees who are due to retire within one year or of the order of recovery. The applicant was not at fault. The learned counsel for the applicant has pointed out the Judgment of the Hon'ble Bombay High Court in the case of **Prasad Vinayak Sohoni Vs. the**

Treasury Officer, Thane & Another in W.P.No.1192/2022 decided on 12.01.2022. At last submitted that the respondents be directed to refund the amount of Rs.4,23,761/- along with interest @ 10% p.a..

6. Heard P.O. Shri V.A.Kulkarni, for the respondents. He has submitted that excess amount was paid to the applicant and therefore the said amount was recovered from the gratuity. There was a mistake at the time of pay fixation and revised pay, therefore, the said amount was recovered. At last submitted that the O.A. is liable to be dismissed.

7. There is no dispute that the applicant was retired on 31.05.2021. Revised pay fixation was made on 08.04.2021 and it was found that the Rs.4,23,761/- was wrongfully paid to the applicant. Therefore, the respondent no.3 issued recovery order/notice dated 08.04.2021 directing to recover of Rs.4,23,761/- from the pensionary benefits. Thereafter, the said amount was recovered from the amount of gratuity.

8. The applicant was not at fault for the over payment. The applicant was retired within one year from the date of re-fixation dated 08.04.2021.

9. The Hon'ble Apex Court in the case of **the 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).

In para no.12 following guidelines are given as-

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:

(1) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(1) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(H) 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 for outweigh the equitable balance of the employer's right to recover.

10. After the Judgment of the Hon'ble Apex Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer)**, the Special Director General of Police, Mumbai(M.S.) Maharashtra has issued Circular dated 05.09.2018. In the said Circular, it is reproduced as below-

परिपत्रक :-

राज्य पोलीस दलामध्ये पोलीस कर्मचाऱ्यांना पो.ना. / पो.हवा. / स.पो.उ.नि. या पदावर पदोन्नती. कालबद्ध पदोन्नती, आगाऊ वेतनवाढी, मानीव तारीख इ. दिल्यानंतर वेतन निश्चिती करण्यांत येते. त्यास वेतन पडताळणी पथकाने आक्षेप नोंदविल्यास, त्यांची सुधारित वेतन निश्चिती करण्यांत येते. सुधारित वेतन निश्चिती केल्यानंतर अतिप्रदान झालेली रक्कम ही सदरहू कर्मचारी सेवेत असतांना किंवा सेवानिवृत्त झाल्यानंतर त्यांचेकडून वसूल करण्यांत येते.

यासंदर्भात काही पोलीस कर्मचारी मा. उच्च न्यायालय, मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण (मॅट) येथे याचिका दाखल करतात. तसेच शासनास सुध्दा याबाबत मार्गदर्शन होणेस विनंती करावी लागते. मा. उच्च न्यायालय, खंडपीठ औरंगाबाद यांनी रिट याचिका क्र.६९५/२०१६ मध्ये दिलेल्या निर्णयानुसार तसेच शासनाने सुध्दा विधि व न्याय विभागाचे अभिप्रायात नमुद केल्यानुसार, मा. सर्वोच्च न्यायालयाने Appellate Jurisdiction Civil Appeal No. 11527 of 2014 (Arising out of SPL (C) No. 11684 of 2012) State of Punjab and others etc-Appellants Vs Rafiq Masih (White Washer) etc Respondents च्या

न्यायनिर्णयातील परि १२ (i ते v) मध्ये दिलेल्या आदेशानुसार अतिप्रदान झालेल्या रक्कमेची वसुली करता येणार नसल्याचे कळवलेले आहे. तरी सर्व घटक प्रमुखांनी त्यानुसार आवश्यक ती कार्यवाही करावी.

11. There is no dispute about the recovery of Rs.4,23,761/- from the amount of gratuity of the applicant. As per the Government Circular and the Judgment of the Hon'ble Apex Court in the case of **State of Punjab and Others Vs. RafiqMasih (White Washer)**, the recovery is not permissible. The Hon'ble Bombay High Court in the case of Prasad Vinayak Sohoni Vs. Treasury Officer, Thane and another in W.P.No.1191/2021 has held that for wrongfully recover of pensionary benefits the employees is entitled to get interest @ Rs.6% from the rate of recovery till the actual refund is made. It is clear that the respondent no.3 has wrongly recovered excess amount of Rs.4,23,761/- from the amount of gratuity. Therefore, the applicant is entitled for interest @ 6% from the date of recovery till the actual refund is made. Hence, the following order.

ORDER

1. The O.A. is allowed.
2. The impugned order of recovery of Rs.4,23,761/- is hereby quashed and set aside.

3. The respondents are directed to refund the excess amount of Rs.4,23,761/- along with interest @ 6% from the date of recovery till the actual refund is made.
4. The respondents are directed to complete the exercise of refund of the said amount within a period of three months from the date of receipt of this order.
5. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 21/08/2023

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 : 21/08/2023.
Uploaded on : 22/08/2023.