

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.591/2024 (S.B.)**

Vilas Vistari Pullakwar,
Aged about 59 years, Occupation: Retired,
R/o Behind Panchayt Samiti, Ward no. 15,
Mul, Tah. Mul, Dist. Chandrapur.

... **APPLICANT**

// V E R S U S //

- 1] The State of Maharashtra,
Through it's Principal Secretary,
Law & Judicial Department,
Mantralaya, Mumbai-32.
- 2] The Assistant Charity Commissioner,
Chandrapur, Madhuban Plaza,
Mul Road, Chandrapur.

... **RESPONDENTS**

Shri S.N. Gaikwad, A. Joshi, Adv. for the Applicant.

Shri A.P. Potnis, Ld. P.O. for the Respondents.

**Coram :- Hon'ble Shri Justice M. G. Giratkar,
Vice Chairman.**

Dated :- 11/02/2025.

J U D G M E N T

Heard Shri A. Joshi, learned counsel for the applicant and Shri A.P. Potnis, learned P.O. for the respondents.

2. The case of applicant in short is as under:-

Applicant was working with respondent No.2 as a Night Guard. Applicant retired on 30/06/2023. The respondents have issued recovery order dated 06/05/2024. Therefore, applicant has challenged the said order before this Tribunal.

3. O.A. is strongly opposed by the respondents by filing reply. It is submitted that objection was raised by Pay Verification Unit and therefore Pay Verification Unit is necessary party. Except this objection, nothing is on record to show that whether any undertaking was given by the applicant or not.

4. During the course of submission, learned counsel for applicant has pointed out the Judgment of 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. 11527/2014 (Arising out of S.L.P. (C) No.11684/2012. The Hon'ble Supreme Court has given the 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."

5. Applicant was Class-IV employee. He is a retired employee. After the retirement of applicant, the respondents have issued order dated 06/05/2024. Applicant came to be retired on 30/06/2023, therefore, in view of the Guideline nos.(i) & (ii) given by the Hon'ble Supreme Court in the case of ***Rafiq Masih*** (*cited supra*), the recovery order is liable to be quashed and set aside. Hence, the following order:

O R D E R

- (i) The O.A. is allowed;
- (ii) The impugned order dated 06/05/2024 is hereby quashed and set aside;
- (iii) No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman.

Dated :- 11/02/2025.
PRM.

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

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 11/02/2025.