

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.1135/2023 (S.B.)

Diwakar S/o Jairamji Gaikwad,
Aged 61 years, Occupation : Retired,
R/o Plot No.21, Sai Nagar,
Gokul Dham Road, Manmode Layout,
Nagpur-440030.

... **APPLICANT**

// V E R S U S //

- 1] State of Maharashtra,
Through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2] Commissioner of Police,
Nagpur City, Civil Lines,
Nagpur-440001.

... **RESPONDENTS**

S/Shri N.D. & T.N. Thombre, Id. Advs. for the Applicant.

Shri M.I. Khan, Id. P.O. for the Respondents.

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

J U D G M E N T**Judgment is reserved on 04/02/2025.****Judgment is pronounced on 20/02/2025.**

Heard Shri N.D. Thombre, learned counsel for the Applicant and Shri M.I. Khan, learned P.O. for the Respondents.

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

Applicant was initially appointed on the post of Police Constable. Applicant joined on the said post on 22/08/1985. Thereafter, he was promoted on the post of Assistant Sub Inspector, Class-III and retired from the said post on 31/01/2021.

3. After the retirement, applicant made request to Respondent No.2 for release of his regular pension and pensionary benefits. The Accountant General, Nagpur issued appropriate order for release of regular pension and pensionary benefits on 18/05/2022. After perusal of the said order, applicant found that an amount of Rs.6,65,092/- (Rupees Six Lacs Sixty Five Thousand Ninety Two only) is recovered from D.C.R.G.

4. Before initiating any recovery from the pension and pensioner benefits, it is necessary for the respondent to conduct

an enquiry as per rule, but no such enquiry is conducted and without any notice by respondent no.2, the Accountant General, Nagpur recovered Rs.6,65,092/- directly from D.C.R.G. of applicant. Whole service record of applicant is clean and unblemished. No opportunity of hearing was granted to the applicant. Hence, the impugned order is against the principles of natural justice. Before the recovery, no any notice was given to the applicant. Applicant was not also informed how the excess amount was paid to him during the course of his unblemished service.

5. Applicant is not aware about the undertaking, if any, from him at the relevant time. But assuming even if it is taken, the Principal Bench of the Hon'ble High Court in Writ Petition No.3128/2018, decided on 08/03/2019 considering the decision of the Hon'ble Supreme Court in the case of the ***High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh (2016) 4 SCC ,267*** in which it is held that, "Though styled as an undertaking the said document was in effect, in the nature of her consent for recovery from admissible Death-Cum-Retirement Gratuity benefits faced with the prospects of either losing out, or inordinate delay in

getting retiral benefit, such consent can hardly be said to be of the Petitioner's own volition and freewill, so as to bind her inexorably." The applicant was retired on 31/01/2021 on superannuation and the impugned recovery is effected by order dated 18/05/2022. Hence, the applicant approached to this Tribunal for the following reliefs:-

"i) Quash and set aside the impugned recovery for Rs. 6,65,092/- (Rupees Six Lacs Sixty Five Thousand Ninety Two only) by the Respondent No.2 without any Order from D.C.R.G. of the Applicant being illegal against the law laid down by the Hon'ble Supreme Court and violation of provision of law;

ii) Direct the Respondent No.2 to return the amount of Rs.6,65,092/- (Rupees Six Lacs Sixty Five Thousand Ninety Two only) recovery from the D.C.R.G. of the Applicant illegally with interest at the rate of 12% per annum;

iii) Saddle the cost on instant Original Application upon the Respondent No.2."

6. The O.A. is strongly opposed by the respondents. It is submitted in Paras 4, 5 and 6 of the reply as under:-

"4. Applicant has given consent letter to the present respondent thereby requesting to deduct from DCRG fund. In the same letter the applicant has categorically admitted that Rs. 6,65,092/- was paid in excess to him. A copy of which is annexed as ANNEXURE NO.R-3.

5. *The respondent issued a certificate dated 28-10-2021 and thereby stating that aforesaid amount to be recovered from the applicant, a copy of which is annexed as ANNEXURE NO. R-4. Therefore communication was forwarded by the Deputy Commissioner of Police Nagpur V on 28-10-2021 to the office of the Commissioner of Police, Nagpur City for the said amount.*

6. *The applicant contended that the respondent ought to have conducted enquiry before initiating any recovery on the letter permitting the respondent to recover that much amount from the aforesaid fund. The fact of excess payment of aforesaid amount was not denied by the applicant and he had permitted vide his letter to recover that much amount. Since there was no denial and consent cum Retirement Gratuity (DCRG) ”*

7. Heard learned Advocate Shri N.D. Thombre for the applicant. As per his submission, the recovery of Rs.6,65,092/- is not permissible after the retirement. The applicant was Class-III employee, therefore, it is not permissible in view of the Judgment of the 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. He has submitted that the Judgment of the Hon’ble Supreme Court in the case of the ***Jagdev Singh (cited supra)*** is not applicable to the case in hand. Applicant had given

undertaking for the purpose of getting his pension and pensionary benefits.

8. Respondents have not issued any notice to applicant before the recovery. In support of his submission, pointed out the Judgment of the Hon'ble High Court, Bench at Nagpur in Writ Petition No.7047/2022 in the case of ***Manoharan S/o K. Jegatheesan VS. State of Maharashtra & Ors.***, decided on 08/09/2023. At last submitted that the impugned recovery order is liable to be quashed and set aside. Respondents be directed to refund the amount of Rs.6,65,092/- alongwith interest.

9. Learned P.O. Shri M.I. Khan has pointed out the undertaking given by applicant at the time of pay fixation in the Year 2009. In the year 2019, there was pay fixation after 7th Pay commission. Applicant had given undertaking that any excess amount paid or deducted may be recovered from him. Learned P.O. has pointed out the Judgment of the Hon'ble Supreme Court in the case of ***Jagdev Singh (cited supra)***. He has pointed out the Judgment of the Hon'ble High Court, Bench at Nagpur in the case of ***State of Maharashtra & Ors. VS. Suresh Chandra s/o Dharamchand Jain & Ors.***, in Writ Petition No.4919/2018. The

said Judgment was challenged before the Hon'ble Supreme Court in S.L.P. and the said S.L.P. came to be dismissed. Learned P.O. has further pointed out the Judgment of this Tribunal in O.A. No.109/2021 in the case of ***Datatrav Narayan Nirmal VS. State of Maharashtra & Ors.***, decided on 24/09/2024. Learned P.O. has submitted that applicant had given undertaking to recover the excess amount paid to him after pay fixation. Applicant has given undertaking on 02/08/2009 in respect of 6th Pay commission and he has also given undertaking in the year 2019 after the pay fixation of 7th pay commission. Therefore, in view of the above cited Judgments, the O.A. is liable to be dismissed.

10. Learned Advocate Shri N.D. Thombre has pointed out the Judgment of the Hon'ble Bombay High Court, Bench at Nagpur in the case of ***Manoharan Jegatheesan (cited supra)*** and submitted that even if any undertaking was given, that cannot be considered as an undertaking because employee after retirement was expecting to get the retirement due and therefore the O.A. be allowed as prayed.

11. There is no dispute that applicant had given undertaking. Applicant had suppressed the material fact of his

undertaking given to the respondents. Copies of undertaking of the Year 2009 in respect of pay fixation of 6th Pay commission of 2019 in respect of pay fixation of 7th pay commission are reproduced below:-

“UNDERTAKING

मी असे वचन देतो की, चुकीच्या वेतननिश्चितीमुळे किंवा पुढे वेतननिश्चितीमध्ये विसंगती आढळून आल्यामुळे मला अतिप्रदान झाल्याचे निदर्शनास आल्यास ते भविष्यात मला प्रदान करण्यात येणाऱ्या रकमेतून समायोजित करून किंवा इतर प्रकारे मी शासनास परत करीन.

I, hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.”

दिनांक / Date 2.8.2009

Sd/
सही/Signature

Copy of undertaking in respect of pay fixation of 7th Pay Commission is reproduced below:-

*“जोडपत्र - चार
[पहा नियम ६ (२) (३)]*

वचन पत्र

मी दिवाकर गायकवाड असे वचन देतो की, महाराष्ट्र नागरी सेवा (सुधारित वेतन) नियम २०१९ मधील तरतुदीशी विसंगत वेतननिश्चितीच्या परिणामी किंवा पुढे वेतननिश्चितीमध्ये विसंगती आढळून आल्यामुळे मला अतिप्रदान झाल्याचे निदर्शनास आल्यास ते भविष्यात मला प्रदान करण्यात येणाऱ्या रकमेतून समायोजित करून किंवा इतर प्रकारे शासनास परत करीन.”

ठिकाण : नागपूर

Sd/
सही

12. The applicant was well aware that objection was raised before his retirement by the Pay Verification Unit. Therefore, he had given consent to recover amount of Rs.6,65,092/- from his D.C.R.G. amount. The said letter is reproduced below:-

“प्रती,

पोलीस उपआयुक्त

परिमंडल कृ 05 नागपूर शहर.

अर्जदार - सफौ. दिवाकर जयरामजी गायकवाड / 374 पो.
स्टे. कोराडी.

विषय - "अतिप्रदानाची वसुली" डि.सी.आ.जी मधून
मीळणाऱ्या रक्कामे मधून कपात करण्या बाबत.

महोदय,

उपरोक्त विषयान्वये सादर आहे की मी दि 31/01/2021 रोजी पो. स्टे. कोराडी नागपूर शहर येथून सेवानिवृत्त होत आहे.

माझे सेवापट वेतन पळताळणी करीता गेली असता वेतन पळताळणी अधिकारी" यांनी 6,65,092/- रुपये अतिप्रदान झालेली आहे असे कळविले.

तरी अतिप्रदान झालेली रक्कम 6,65,092/- रुपये माझ्या मिळणाऱ्या डि.सी. आर.जी म्हणून मिळणाऱ्या रक्कमे मधून करण्यात यावी.

आपला नम्र

सफौ. दिवाकर ज. गायकवाड
व. न. 374 पो. स्टे. कोराडी "

13. After going through the documents filed on record, it appears that the Judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih (cited supra)** is not applicable to the case in hand.

14. The Hon'ble Supreme Court in the case of **Jagdev Singh (cited supra)**, has held in Para 11 as under:-

"11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly

placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

15. The same issue was before the Hon'ble High Court, Bench at Aurangabad in Writ Petition No.6844/2024 in the case of ***Hanmant s/o Pundaji Makhanikar VS. The State of Maharashtra & Ors.***, decided on 02/08/2024. The Hon'ble High Court in the case of ***Hanmant Makhanikar (cited supra)*** has held that “the undertaking which was given at the time of pay fixation that if employee has received any amount in excess to what he was legitimately entitled to, then said amount would be repaid by him or same can be recovered by the employer. Therefore, if such undertaking is ignored, it would be reduced to the value of waste paper. An undertaking has its own meaning and effect. If an undertaking is not to bind a person issuing it, there would be no sanctity to an undertaking. We cannot accept such an argument canvassed by the employee that an undertaking is a mere formality and should be ignored.”

16. The Hon'ble High Court, Bench at Nagpur in Writ Petition No.4919/2018 in the case of ***State of Maharashtra & Ors.***

VS. Suresh Chandra s/o Dharamchand Jain & Ors., decided on 23/07/2019 has held in Paras 6 & 7 as under:-

“6. The reason weighing with the Hon'ble Apex Court imposing prohibition against recovery of excess payment in Rafiq Masih (supra) was of hardship resulting from creation of awkward situation because of the mistake committed by the employer and there being no fault whatsoever on the part of the employee. In order to balance the equities created in such a situation, the Hon'ble Apex Court in Rafiq Masih, gave the direction that so far as Class-III and IV employees were concerned, and who were found to be not having very sound economic footing, would have to be exempted from the consequence of recovery of the excess payment, if considerable period of time has passed by in between. But, as stated earlier, even in case of such an employee, there would be no hardship for something which has been accepted by him consciously with an understanding that it could be taken away at any point of time, if mistake is detected. Clarifying the law on the subject, the Hon'ble Apex Court, in its recent judgment rendered in the case of High Court of Punjab and Haryana and others vs. Jagdev Singh reported in 2016 AIR (SCW) 3523, in paragraph 11 it observed thus:

"the principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an

undertaking while opting for the revised pay scale. He is bound by the undertaking."

7. The fact situation of the present case is squarely covered by the above referred observations. These are the crucial aspects of the present case and the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur appears to have missed out on them and the result is of passing of an order which cannot be sustained in the eye of law"

17. The Judgment of the Hon'ble High Court, Bench at Nagpur in Writ Petition No.4919/2018 in the case of **Suresh Chandra Jain (cited supra)** was challenged before the Hon'ble Supreme Court in S.L.P. No.24418/2019. The said S.L.P. was dismissed on 25/10/2021. Therefore, it is clear that the Judgment of the Hon'ble High Court, Bench at Nagpur in Writ Petition No.4919/2018 has attained finality. In view of the Judgments of the Hon'ble High Court in the case **Suresh Chandra Jain (cited supra)** and in the case of **Hanmant Makhanikar (cited supra)**, it is clear that if the undertaking was given by the employee that the excess amount, if any, paid to him in respect of pay fixation, that excess amount shall be refunded by him. In such a situation, the Judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih (cited supra)** is not applicable. Applicant had given

specific undertaking at the time of pay fixation in respect of 6th Pay commission. The said undertaking is dated 02/08/2009. Applicant had also given undertaking after pay fixation of 7th Pay commission. The said undertaking is of the year 2019. Applicant himself has given consent to recover the excess amount of Rs.6,65,092/- from his D.C.R.G. amount. This undertaking / consent letter was given by the applicant himself before his retirement. Therefore, it cannot be said that at the time of retirement undertakings were obtained by the respondents.

18. The cited Judgment of the Hon'ble High Court, Bench at Nagpur by the side of applicant in the case of ***Manoharan Jegatheesan (cited supra)*** is not applicable because in the cited Judgment, the fact is very much different. The recovery was in respect of increments which were granted to him for not passing the Marathi Examination. It is observed as under:-

“In the present case, the petitioner was informed during his service tenure that he has to clear the Marathi Examination and first time undertaking was obtained from him at the time of preparing his pension papers. It is submitted on behalf of the petitioner that he had to incur the substantial expenditure for”

Therefore, it is clear that the undertaking which was given by the applicant was at the time of retirement. In the present case, the applicant had given undertaking at the time of pay fixation of 6th Pay Commission and 7th Pay Commission. Applicant has clearly given consent letters to the respondents to deduct Rs.6,65,092/- from his D.C.R.G. amount. These letters appears to be given to the respondents before his retirement. Therefore, it cannot be said that undertakings were given by the applicant at the time of retirement. Hence, in view of the Judgment of the Hon'ble Supreme Court in the case of *Jagdev Singh (cited supra)*, recovery made by the respondents is perfectly legal and correct. Hence, the following order:

O R D E R

The O.A. is dismissed with no order as to costs.

(Justice M.G. Giratkar)
Vice Chairman.

Dated :- 20/02/2025.

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 : 20/02/2025