

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.665/2024 (S.B.)**

Sewak Kashiram Sawsakde,  
Aged about 61 years, Occ. - Retired,  
R/o. Behind Nayara Petrol Pump,  
Bhrahmapuri Rd, Nagbhid,  
Tah. Nagbhid, Dist. Chandrapur.

... **APPLICANT**

**// V E R S U S //**

- 1] State of Maharashtra,  
Through its Secretary,  
Public Works Department,  
Madame Cama Road,  
Mantralaya, Mumbai-400032
- 2] Chief Engineer Public Works,  
Nagpur Division, Nagpur.
- 3] Superintendent of Engineer,  
Public Works Division.
- 4] Executive Engineer Public Works Division,  
Nagbhid, Tah. Nagbhid,  
Dist. Chandrapur.
- 5] Treasury Officer (Pension),  
Treasury office,  
Collector Office Premises,  
Chandrapur

6] Accountant General (A & E) II,  
Maharashtra, Civil Lines Nagpur-01.

... **RESPONDENTS**

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**S/Shri N.S. & P.N. Warulkar, S.K. Bhattacharya,  
Advocates for the Applicant.**

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

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

**Dated :- 18/02/2025.**

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**J U D G M E N T**

Heard Shri N.S. Warulkar, learned counsel for the applicant and Shri A.P. Potnis, learned P.O. for the respondents.

2. Learned P.O. has filed reply of Respondent No.6. It is taken on record.

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

Applicant was initially appointed on the post of Typist w.e.f. 10/12/1982. He was absorbed in a regular service as Karkoon w.e.f. 10/12/1987. Applicant was continued as a Civil Engineering Assistant. Respondents have not conducted examination as per Rules for about 08 years. Therefore, applicant

was absorbed as Civil Engineering Assistant. The pay fixation was done by the respondents. The respondents have illegally recovered Rs.5,96,801/- after retirement of applicant. Therefore, applicant filed original application. Respondents have not paid any terminal benefits within time, therefore, applicant prayed to refund the recovered amount and also direct the respondents to pay interest on the terminal benefits.

4. The O.A. is strongly opposed by the respondents. It is submitted that there was excess payment made to applicant. It is submitted that the Treasury Officer, Chandrapur vide communication dated 11/08/2022 informed respondent No.4 for grant of Provisional Pension. The Pay Verification Unit, Nagpur has raised objection on 01/09/2021 about pay fixation of applicant. Therefore, Pay Fixation was made and it was found that excess payment of Rs.5,96,801/- was paid to applicant. Therefore, respondents have recovered the said amount from applicant. Delay is caused because of the objection raised by the Pay Verification Unit. Hence, the O.A. is liable to be dismissed.

5. As per the submission of learned counsel for applicant, applicant is retired on 31/03/2021 and the recovery order is issued by the respondents on 26/05/2023. He 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).

6. Learned P.O. has submitted that the Pay Verification Unit has raised objection, therefore, pay was fixed by the respondents. It was found that excess payment was made to applicant. Therefore, recovery order was issued. Hence, the O.A. is liable to be dismissed.

7. There is nothing on record to show that any undertaking was given by applicant at the time of Pay Fixation. Hence, in view of 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, recovery cannot be made from the retired employee as per Guideline No.(ii). Hence,

recovery order dated 26/05/2023 is liable to be quashed and set aside. The Hon'ble Supreme Court in the case of **Rafiq Masih** (cited supra) 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."*

8. In respect of the interest of terminal benefits it is clear from the submission of respondents that Pay Verification Unit raised objection. Thereafter, the pay fixation was made and it was found that excess payment was made to applicant. Therefore, there was delay in paying the terminal benefits. Hence, there is reasonable cause on the part of respondents to pay the terminal benefits. Hence, applicant is not entitled for any interest in respect of terminal benefits. Therefore, the following order is passed:-

### **O R D E R**

- (i) The O.A. is partly allowed;
- (ii) The respondents are directed to refund the recovered amount of Rs.5,96,801/- to the applicant within a period of three months from the date of receipt of this order;

- (iii) If the amount is not refunded within a stipulated period of three months, then amount shall carry interest @ 6% p.a. from the date of recovery till the actual refund;
- (iv) Prayer in respect of interest on terminal benefits is rejected;
- (v) No order as to costs.

**(Justice M.G.Giratkar)**  
**Vice Chairman.**

**Dated :- 18/02/2025.**  
**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 : 18/02/2025.