

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.844/2022 (S.B.)

Purushottam S/o Jangluji Bawankar,)
 Aged about 60 years, Occupation: Retired,)
 R/o Plot No. 92, Balaji Nagar Extension,)
 Manewada Road, Nagpur.)

... **APPLICANT**

// V E R S U S //

1] **State of Maharashtra,**)
 Through Secretary,)
 Home Department,)
 Mantralaya Mumbai -32.)

2] **Police Commissioner,**)
 Nagpur City, Civil Lines, Nagpur.)

3] **Accountant General, (A&E)-II,**)
 Maharashtra Nagpur.)

... **RESPONDENTS**

Shri M.R. Khan, Learned Counsel for the Applicant.

Shri S.A. Sainis, Id. P.O. for the Respondents.

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

Dated :- 02/04/2025

O R A L J U D G M E N T

Heard Shri M.R. Khan, learned counsel for the Applicant and Shri S.A. Sainis, 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. Thereafter, applicant was promoted from time to time and lastly he was promoted on the post of Assistant Police Inspector. Applicant came to be retired on 31/08/2020 after completion of the age of superannuation. After the retirement, Respondent No.2 issued orders of recovery dated 25/10/2021 and 08/08/2022 for recovery of amount of Rs.1,18,454/- in respect of excess amount paid to the applicant. Hence, applicant has approached to this Tribunal for the following reliefs:-

“9.A) quash and set aside the impugned order dated 25.10.2021 (Annexure A / 1) issued by the Accountant General (A&E) II, Maharashtra Nagpur, wherein the amount of Rs. 1,18,454/- (Rs.One Lacs Eighteen Thousand Four Hundred Fifty Four) has been recovered from the retiral benefits of the applicant, in the interest of justice;

B) Issue an appropriate order or directions to the respondent authorities to refund the amount of Rs.

1,18,454/- (Rs. One Lacs Eighteen thousand Four hundred Fifty Four) along with an interest @9% per annum till realization, in the interest of justice;

C) Issue an appropriate order or direction to the respondents authorities to decide the representation made by the applicant on 13.01.2021 (Annexure - A/ 4) and 8.10.2021 (Annexure- A/5), in the interest of justice;

D) Saddle the costs of the proceedings upon the respondents;

E) Grant any other relief or reliefs which this Hon'ble Tribunal deems fit, just and proper in the facts and circumstances of the matter, may also kindly be granted to the applicant, in the interest of justice.

10. Issue an appropriate order or directions to the respondent authorities to refund the amount of Rs. 1,18,454/- (Rs. One Lacs Eighteen thousand four hundred fifty four) along with an interest @ 9% per annum forthwith to the applicant with the decision of original application, in the interest of justice.”

3. The O.A. is strongly opposed by respondent No.2. The Pay Verification Unit has raised objection about the excess payment made to the applicant. Therefore, respondent No.2 issued recovery order.

4. During the course of submission, learned counsel for applicant has pointed out the Judgment of the Hon'ble Supreme

Court in the case of *State of Punjab & Ors VS. Rafiq Masih (White Washer)* reported in AIR 2015 SC, 696. As per his submission, in view of Guideline No. (ii), recovery cannot be made from retired employee. Applicant was working as a Class-III employee, therefore, recovery cannot be made. The material portion of the Judgment of the Hon'ble Supreme Court in the case of *Rafiq Masih (cited supra)* is reproduced below:-

“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. There is no dispute that applicant was working as Class-III employee. He was retired employee. He was retired on 31/08/2020 after completion of the age of superannuation. The recovery order was issued by Respondent No.3 on 25/10/2021 i.e. after the retirement of applicant. In view of Guideline Nos.(i) and (ii) in the Judgment of the Hon'ble Supreme Court in the case of ***Rafiq Masih (cited supra)***, the respondents cannot recover the excess amount paid to the applicant. Hence, the following order:-

ORDER

- (i) O.A. is allowed;
- (ii) The impugned order dated 25/10/2021 of Rs.1,18,454/- issued by respondent no.3 is hereby quashed and set aside;

- (iii) Amount, if any, recovered by the respondents shall be refunded to the applicant within a period of three months from the date of receipt of this order;
- (iv) If the said amount is not refunded within a stipulated time of three months, then amount shall carry interest @6% p.a. from the date of recovery till the actual refund;
- (v) No order as to costs.

(Justice M.G. Giratkar)
Vice Chairman.

Dated :- 02/04/2025.

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 : 02/04/2025