

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No.299 of 2024 (S.B.)**

Smt. Sunita Wd/o Balkrushna Bambole
a/a 70 yrs., Occ.- Household,
r/o Indira Nagar Ward, Near Zulelal Mandir,
At & Post- Mul, Dist.- Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya, Mumbai- 32.
- 2) The State of Maharashtra,
Through its Secretary, Finance Department,
Mantralaya, Mumbai- 32.
- 3) The Superintendent of Police,
Chandrapur, Dist.- Chandrapur
- 4) The Additional Treasury Officer,
District Treasury Office, Chandrapur,
Dist.- Chandrapur.
- 5) The Accountant General (A & E)-II,
Pension Branch Office, Nagpur,
Dist.- Nagpur.

Respondents.

Shri V.R. Borkar, Advocate for the applicant.

Shri M.I. Khan, learned P.O. for respondents.

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

Dated :- 15/04/2025.

JUDGMENT

Heard Shri V.R. Borkar, learned counsel for applicant and Shri M.I. Khan, learned P.O. for respondents.

2. The case of applicant in short is as under –

The husband of applicant namely Balkrushna S/o Shyamsunder Bambole was initially appointed as a Constable in the Police Department in the year 1972. Thereafter, he was promoted to the post of Assistant Sub Inspector. Deceased Balkrushna Bambole retired from service on attaining the age of superannuation on 28/02/2010. Thereafter, respondent no.5 sanctioned the pension and gratuity amount of deceased Balkrushna Bambole as per the last drawn salary / pay. Husband of applicant Balkrushna Bambole died on 25/10/2016.

3. After the death of applicant's husband, the applicant was / is getting family pension. On 27/08/2019 and 28/05/2020 respondent nos.4 and 5 issued order of recovery of Rs.2,53,840/- and DCRG amount of Rs.31,350/-. It is submitted by the learned counsel for applicant that after retirement of husband of applicant excess amount paid by the respondents cannot be recovered. Hence, the applicant approached to this Tribunal for the following reliefs –

“(7) (i) That, by issue of suitable writ, order or direction, the order of recovery of allegedly paid excess amount of Rs. 2,85,190/- (Rs.

2,53,840 + Rs. 31,350) from family pension by orders dtd. 27.8.2019 & 28.5.2020 produced at Annexure- A4 & A1 respectively issued by the Respondent nos. 4 & 5 may kindly be quashed and set aside in the interest of justice.

(ii) That, by issue of suitable writ, order or direction the respondents may kindly be directed to refund the recovered amount with interest as per law.

(8) (i) That, by ad-interim relief further recovery of amount from family pension by order dtd. 28.5.2020 produced at Annexure-A1 may kindly be stayed till the decision of this original application.”

4. The O.A. is strongly opposed by the respondents. It is submitted that the applicant's husband was working in naxalite area at Chandrapur District. He was granted promotional pay as the G.R. dated 06/08/2002. As per condition mentioned in the G.R., the promotional pay is to be paid to the employee working in the naxalite area, till he / she actually works in the said area. While sanctioned the pension, respondents have wrongly taken into consideration the promotional pay paid to the applicant's husband as a last drawn salary / pay and therefore excess amount was paid to the husband of applicant. Hence, the recovery is proper. Therefore, the O.A. is liable to be dismissed.

5. During the course of submission, the learned counsel for applicant has pointed out guideline nos. (i) and (ii) of 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, husband of applicant was working as Class-III employee. Husband of applicant retired in the year 2010 and impugned recovery orders are issued by respondents in the year 2019 and 2020, i.e., after the retirement of husband of applicant.

6. The learned P.O. has strongly objected this O.A. As per his submission, pension was wrongly fixed by taking into consideration the promotional pay paid to the husband of applicant. As per G.R. dated 06/08/2002, husband of applicant was not entitled to get promotional pay after the retirement. Therefore re-fixation is made by the respondents and excess amount was / is to be recovered from family pension. Hence, the O.A. is liable to be dismissed.

7. The Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) reported in AIR 2015 SC 696** 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 herein above, 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 view of guideline no. (i) excess amount paid to the Class-III & Class-IV employee cannot be recovered and as per guideline no. (ii) excess amount cannot be recovered from retired employees or who are about to retire within one year from the date of recovery order.

9. In view of guideline nos. (i) and (ii) of the Hon'ble Supreme Court in the case of ***State Of Punjab & Ors vs. Rafiq Masih (White Washer) (cited supra)*** the impugned recovery orders issued by the respondents after the retirement of deceased husband of applicant are not legal and proper. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned orders dated 27/08/2019 and 28/05/2020 are hereby quashed and set aside in respect of recovery only.
- (iii) The 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) No order as to costs.

Dated :- 15/04/2025.

dnk.

(Justice M.G. Giratkar)
Acting Chairman.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Acting Chairman.

Judgment signed on : 15/04/2025.