

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.474/2019 (S.B.)

Bhojraj s/o Motiram Walde,)
 Aged about 60 years, Occ.: Retd.,)
 R/o. Ashok Nagar Layout, Adyal,)
 Tah. Paoni, District – Bhandara.)

... **APPLICANT**

// V E R S U S //

1] The State of Maharashtra,)
 Through its Secretary,)
 Tribal Development Department,)
 Mantralaya, Mumbai - 32.)

2] The Commissioner,)
 Tribal Development Department,)
 Nashik.)

3] The Additional Commissioner,)
 Tribal Development Department,)
 Adviwasi Vikas Bhawan, 1st Floor,)
 Giripeth, Amravati Road, Nagpur.)

4] Project Officer,)
 Tribal Development Department,)
 Deori, Tah. Deori,)
 District – Gondia.)

... **RESPONDENTS**

Shri I.N. Choudhari, Learned Counsel for the Applicant.
Smt. A.D. Warjurkar, Id. P.O. for the Respondents.

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

Dated :- 16/04/2025

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

Heard Shri I.N. Choudhari, learned counsel for the Applicant and Smt. A.D. Warjurkar, learned P.O. for the Respondents.

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

Applicant was appointed as Assistant Teacher in Government Ashram School. Applicant was transferred at various places in the Ashram School in the Naxalite Area. Applicant came to be retired on 31/10/2017. Respondent No.3 issued recovery order dated 09/04/2019 for the recovery. In the impugned order, it is mentioned that applicant was wrongly paid monthly pay of Rs.4800/- instead of Rs.4400/-. Hence, the applicant approached to this Tribunal for the following reliefs:-

“10.(i) quash and set aside the order dated 09.04.2019 passed by the respondent no.3 - the Additional Commissioner, Tribal Development, being bad and illegal;

(ii) direct the respondents not to recover any amount from pensionary benefits of the applicant towards alleged over paid vide impugned order from the applicant;

(iii) held that benefit of one step promotional pay scale given to the applicant in grade pay of Rs. PB-2 9300-34800-Grade Pay-4800 as per Govt. Resolution dated 06.08.2002 till his superannuation was just and proper;

(iv) grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case and in the Interest of justice.

11. By interim order grant stay to the effect and operation of impugned order dated 09.04.2019 passed by respondent no.3 - Additional Commissioner, Tribal Development Department, Nagpur, during pendency and final decision of the present original application.”

3. Respondent Nos. 3 and 4 have filed their reply. It is submitted that applicant was working in the Naxalite area. The Government of Maharashtra has issued G.R. dated 06/08/2002. As per the said G.R., promotional pay i.e. Grade Pay was to be paid to the applicant, instead of Rs.4,400/- respondents have granted Rs.4,800/-. Applicant is retired on 31/10/2017. At the time of

calculating pension, the respondents have wrongly taken into account Promotional Pay / Grade Pay. Hence, the excess payment was made to the applicant. Hence, the recovery is proper. Therefore, O.A. is liable to be dismissed.

4. Learned counsel for applicant has submitted that applicant was working as Class-III employee. He was retired on 31/10/2017. The recovery order is issued on 09/04/2019 i.e. after the retirement of applicant. Recovery 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. Hence, prayed to quash and set aside the impugned order.

5. Learned P.O. has submitted that excess amount was paid to the applicant. Applicant's pension was wrongly fixed. Therefore, recovery is legal and proper. Hence, the O.A. is liable to be dismissed.

6. There is no dispute that applicant was working as Class-III employee. There is no dispute that applicant came to be

retired on 31/10/2017 and the recovery order was issued on 09/04/2019. The Hon'ble Supreme Court in the case of **Rafiq Masih (cited supra)** has given 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.”*

7. In view of Guideline Nos.(i) and (ii) of the above said Judgment, recovery cannot be made from Class-III and Class-IV employee, recovery cannot be made from retired employee or the employee who are about to retire within one year from the date of recovery order. Applicant was working as a Class-III employee. Applicant was retired on 31/10/2017 and the recovery order was issued on 09/04/2019. Hence, in view of Guideline Nos.(i) and (ii) of the Judgment of the Hon'ble Supreme Court in the case of *Rafiq Masih (cited supra)*, the following order is passed:-

O R D E R

- (i) O.A. is allowed;
- (ii) The impugned recovery order dated 09/04/2019 is hereby quashed and set aside in respect of recovery only;
- (iii) No order as to costs.

(Justice M.G. Giratkar)
Acting Chairman.

Dated :- 16/04/2025.

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 Acting Chairman.

Judgment signed on : 16/04/2025