

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO.1026/2024 (S.B.)**

**Dashrath s/o Sitaram Mandhre,** )  
Aged about 73 years, Occ. - Retired, )  
R/o. Panchwati Chowk, Old Basti, )  
Tirora, Tah. Tirora, District - Gondia. )

... **APPLICANT**

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

**1] The State of Maharashtra,** )  
Through its Secretary, )  
Home Department, )  
Mantralaya Mumbai - 400 032. )

**2] The Principal Accountant General (A&E) - II,**  
Maharashtra, Civil Lines, Nagpur. )

**3] The Superintendent of Police,** )  
Gondia, Tah. & District - Gondia. )

**4] The Treasury Officer,** )  
Collectorate Compound, Gondia, )  
Tah. And District - Gondia. )

... **RESPONDENTS**

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**Shri I.N. Choudhari, A.K. Khobragade, Learned Counsel**  
**for the Applicant.**

**Smt. S.R. Khobragade, Id. P.O. for the Respondents.**  
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**Coram :- Hon'ble Shri Justice M.G. Giratkar,**  
**Acting Chairman.**

**Dated :- 16/04/2025**  
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**O R A L J U D G M E N T**  
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Heard Shri I.N. Choudhari, learned counsel for the Applicant and Smt. S.R. Khobragade, learned P.O. for the Respondents.

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

Applicant was appointed on the post of Constable in the office of Respondent No.1. Applicant was promoted on the post of Hawaldar and subsequently on the post of Assistant Sub-Inspector. Applicant came to be retired upon attaining the age of superannuation from the post of Assistant Sub-Inspector on 28/02/2009 while working at Police Station, Tiroda. The respondents have issued recovery order dated 15/07/2024 for recovery of amount of Rs.41,250/- from D.C.R.G. and recovery from pension of Rs.7,765/- per month in respect of excess amount paid to the applicant. Hence, the applicant approached to this Tribunal for the following reliefs:-

*“10(i) issue appropriate order or direction, thereby quash and set aside the order dated 15.07.2024 issued by respondent no.2 to the extent of recovery of alleged excess paid pension and retiring gratuity of the applicant;*

*(ii) direct the respondent no.2 to release the recovered amount Rs.41,250/- towards alleged excess paid gratuity to the applicant along with 12% interest thereon and refund the amount recovered from the pension amount of the month of August & September 2024;*

*(iii) direct the respondents to restore the superannuation pension and gratuity as per Pension Payment Release Order and Gratuity Release Order dated 11.12.2008, in the interest of justice;*

*(iv) allow the original application and saddle the cost of proceedings on the respondents;*

*(v) grant any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case and in the interest of justice.*

*11(i) The applicant is praying for grant of stay to the impugned order dated 15.07.2024 issued by respondent no.2 to the extent of alleged recovery of excess paid*

*pension and gratuity during the pendency and final decision of the present original application;*

*(ii) grant ad-interim / interim relief thereby direct the respondents not to recover any alleged excess pension amount from forth-coming monthly pension of the applicant during pendency and final decision of the present original application;”*

**3.** O.A. is strongly opposed by the Respondent Nos.2 and 3 by filing reply. It is submitted that applicant was working in the Naxalite area. He was paid promotional pay as per the Government G.R. dated 06/08/2002. As per the condition mentioned in the G.R. dated 06/08/2002, the promotion pay is to be paid to the employee working in the Naxalite area, till his actual working in that area. Applicant came to be retired from Naxalite area, his promotional pay was wrongly taken into account. Therefore, pension of the applicant was wrongly fixed. Hence, the Treasury Officer i.e. Respondent No.4 issued recovery order.

**4.** During the course of submission, learned counsel for the applicant has submitted that applicant was Class-III employee. Applicant was retired in the year 2009 and the recovery order was

issued on 15/07/2024. 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) decided on 18 December, 2014*** in Civil Appeal No. 11527/2014 (Arising out of S.L.P. (C) No.11684/2012 and submitted that excess amount cannot be recovered from Class – III and Class-IV retired employee.

**5.** There is no dispute that applicant was working as a Class – III Employee. There is no dispute that applicant came to be retired on 28/02/2009 and the recovery order was issued on 15/07/2024. 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."*

**6.** In view of Guideline Nos.(i) and (ii) of the above said Judgment, 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 28/02/2009 and the recovery order was issued on 15/07/2024 i.e. after 15 years. It is not permissible 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)*. Hence, the following order :-

**O R D E R**

- (i) O.A. is allowed;
- (ii) The impugned recovery order dated 15/07/2024 is hereby quashed and set aside in respect of recovery only;
- (iii) Respondents are directed to refund the amount, if any, recovered from the applicant;
- (iv) No order as to costs.

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

**Dated :- 16/04/2025.S**

**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