

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1200 OF 2022

**DISTRICT : Mumbai
SUB : Recovery**

Shri Laxman Janardan Thakur, Age-54 Years,)
(DOB : 19.09.1966), Occ : Chaukidar (Group D) at)
Uran Range, Forest Officer JNPT Town Ship)
District : Raigad.)
R/at Elephanta Island via Nariman Point,)
Mumbai 21.)....**Applicant**

Versus

- 1) Chief Conservator of Forest (Territory), Thane)
Near Microwave Tower, Bara Bunglow Area,)
Krishna Borker Marg, Kopri, Thane East,)
Thane 400 603.)
- 2) The Deputy Conservator of Forest, Alibagh,)
Near Collector Office, at Post Taluka Alibagh,)
Dist. Raigad 402201.)....**Respondents**

Shri K. R. Jagdale, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman

Reserved on : 28.01.2025

Pronounced on : 05.05.2025

JUDGEMENT

Heard Shri K. R. Jagdale, learned Advocate for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

2. Case of the Applicant is as follows. The Applicant was appointed as Gardener on 30-9-1997 and absorbed on a Group-D post of Choukidar on 2-12-1997. By order dated 6-1-2010 First Time Bound Promotion was given to him w.e.f.14-10-2009. By order dated 15-3-2012 date of applicability of benefits of First Time Bound Promotion was altered from 14-10-2009 to 7-6-2011. By order dated 19-8-2019 benefits of First Time Bound Promotion were withdrawn. The Applicant challenged consequent order of recovery in O.A.No.262/2020. For refixation of pay of the Applicant proposal was resubmitted to Pay Verification Unit. Pay was then refixed and recovery of excess payment directed. Hence, this Original Application assailing the recovery.

3. Stand of Respondents 1 to 3 is as follows. At the time of pay fixation as per Seventh Pay Commission it was revealed that for the period from 1-7-2006 to 31-6-2010 Grade Pay of Rs.1600 and for the period from 1-7-2010 to 31-6-2019 Grade Pay of Rs.1,800/- p.m.to which the Applicant was not entitled was paid to him. The error was rectified by order dated 19-8-2019. By the time the error

was rectified excess payment was made to the Applicant which he is liable to refund in view of undertakings dated 5-5-2009, 26-3-2012 and 30-7-2019.

4. To impugn the recovery, the Applicant has relied on **{State of Punjab & Others Vs. Rafiq Masih (White Washer)}, (2015) 4 SCC 334**, wherein it is held -

“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, summarize 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 services (or Group ‘C’ and Group ‘D’ services).*
- (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.”*

The Applicant is a Group-D employee. Excess payment is stated to have been made for the period from 1-7-2006 to

31-6-2019. Considering these two facts clauses (i) and (v) in '**Rafiq Masih**' (*supra*) are clearly attracted.

5. For all these reasons, the Original Application is allowed in the following terms. The impugned recovery is held to be impermissible. Amount of recovery made, if any shall be refunded to the Applicant within 2 months from today failing which it shall carry interest @ 6% p.a. from today till the date of repayment. No order as to costs.

Sd/-
(**M. A. Lovekar**)
Vice-Chairman

Place: Mumbai
Date: 05.05.2025
Dictation taken by: V. S. Mane
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