

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 1241 of 2023 (S.B.)**

Shamrao Shripatrao Thakre,  
Aged 65 years, Occu.: Retired,  
Plot No.90, Shri Colony, Hudkeshwar Road,  
Nagpur-440034.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Principal Secretary,  
Water Works Department, Mantralaya, Mumbai-32.
- 2) Superintending Engineer,  
Irrigation Project, Investigation Circle, Sinchan Bhavan,  
Civil Lines, Nagpur- 4440001.
- 3) Executive Engineer,  
Irrigation Project Investigation Bhavan, R. R. Colony,  
Bhandara-441904.
- 4) Treasury Officer, Collector Office Premises,  
Civil Lines, Nagpur-440001.

**Respondents.**

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**Shri R.M. Fating, Advocate for the applicant.**  
**Shri V.A. Kulkarni, learned P.O. for respondent nos.1 and 4.**  
**Mrs. U.A. Patil, S/ Shri A.S. Deshpande, K.A. Patil, Advocates for**  
**resp.nos.2&3.**

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

**Dated :- 08/07/2024.**

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**J U D G M E N T**

Heard Shri R.M. Fating, learned counsel for applicant,  
Shri V.A. Kulkarni, learned P.O. for respondent nos.1 and 4 and A.S.  
Deshpande, learned counsel for respondent nos.2 and 3.

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

The applicant was initially appointed on 17/08/1979 on the post of Technical Assistant. After five years of continuous service, the service of applicant was converted into Casual Regular Temporary Establishment (CRTE) on 17/08/1984. The respondents extended the first time bound promotion on 18/09/2013. The applicant came to be retired on attaining the age of superannuation on 31/03/2016. After six years from the date of retirement, respondent no.3 issued recovery order. Therefore, the applicant approached to this Tribunal for the following reliefs –

*“(11) (i) Stay the effect, operation and implementation of impugned order dated 17.05.2023 (ANNEXURE A-9) issued by the Respondent No.4-Treasury Officer, Nagpur, in the interest of justice;*

*(ii) Direct the Respondent No.4 to stop monthly recovery from the pension of the Applicant, till decision of the Original Application, in the interest of justice;*

*(12) (i) Hold and declare that the impugned Order of Recovery dated 17.05.2023 is illegal, arbitrary and bad in law in view of law laid down by the Hon'ble Apex Court and directions in G.R. dated 18.10.2022;*

*(ii) Quash and set aside the impugned order dated 17.05.2023 (Annexure A-9) issued by the Respondent No.4, Treasury Officer, Nagpur, in the interest of justice;*

*(iii) Direct the Respondents to refund an amount of Rs.1,01,328/- to the Applicant along with interest thereon @ 18% till the date of actual payment.*

3. Respondents have submitted that there was excess payment to the applicant while re-fixating the pay of the applicant after granting time bound promotion, therefore, recovery is proper and legal. Hence, the O.A. is liable to be dismissed.

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) decided on 18 December, 2014** in Civil Appeal No. 11527 of 2014 (Arising out of SLP(C) No.11684 of 2012) and submitted that recovery from retired employee is not permissible. As per the Judgment of the Hon'ble Supreme Court, the State Government has issued G.R. dated 18/10/2022. As per the G.R., recovery from retired employee is not permissible. Recovery is in respect of excess payment for benefit of time bound promotion is not permissible.

5. The Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (*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 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."*

6. As per above guideline no. (i), recovery cannot be made from Class-III and Class-IV employees. As per guideline no.(ii), recovery cannot be made from retired employees or who are about to retire within one year from the date of recovery order. The applicant is retired in the year 2016 and respondent no.4 issued order of recovery dated 17/05/2023.

7. As per the submission of learned counsel for applicant, the applicant was Class-III employee and he is retired employee,

therefore, as per guideline nos.(i) and (ii), recovery cannot be made from Class-III and Class-IV employees and also from retired employee or who are about to retire within one year.

8. In view of the Judgment of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (*cited supra*), the impugned order dated 17/05/2023 is liable to be quashed and set aside. Hence, the following order—

**ORDER**

(i) The O.A. is allowed.

(ii) The impugned recovery order dated 17/05/2023 issued by respondent no.4 for recovery of Rs.1,01,328/- is hereby quashed and set aside.

(iii) The amount if any recovered by the respondents, shall be refunded to the applicant along with interest @ 6% from the date of recovery till the actual payment.

(iv) No order as to costs.

**Dated** :- 08/07/2024.

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

\*dnk.

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 Vice Chairman.

Judgment signed on : 08/07/2024.

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