

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 210 of 2021 (S.B.)**

Shri Madhukar S/o Ramchandra Chavan,
 Aged about: 59 years, Occu.: Service,
 R/o Watorkar Layout, ATNT Tower,
 Khadan Naka, Akola, Distt: Akola.

Applicant.**Versus**

- 1) The State of Maharashtra through its Secretary,
 Department of Education Department, Mantralaya, Mumbai-32.
- 2) The Secretary, Finance Department,
 Mantralaya, Mumbai.
- 3) The Director of Higher Education, Maharashtra State,
 Mantralaya, Mumbai.
- 4) The Joint Director of Higher Education, Amravati.
- 5) The Joint Director, Account & Treasury, Treasury Office,
 Near Amravati University, Amravati.
- 6) The Head Master,
 Government Technical High School cum Industrial Training
 Institute, Akola.

Respondents.

**S/Shri G.G. Bade, P.P. Khaparde, Advocates for the applicant.
 Shri A.M. Khadatkhar, learned P.O. for respondents.**

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

Dated :- 09/05/2024.

J U D G M E N T

Heard Shri G.G. Bade, learned counsel for the applicant
 and Shri A.M. Khadatkhar, learned P.O. for the respondents.

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

The applicant was appointed on the post of Peon on 18/10/1985 in the office of the respondents. The applicant was extended the benefit of 1st time bound promotion as per the order dated 18/03/1998. Subsequently, 2nd time bound promotion was extended as per the order dated 06/09/2014 on completion of 24 years of service.

3. The Department has issued letter dated 08/02/2021 by virtue of which the grade pay, applicant was entitled to the tune of Rs.1,900/- sanctioned w.e.f. 01/07/2010 was reduced to Rs.1,800/-.

4. The respondents has issued letter / order dated 08/02/2021 for the recovery of Rs.1,59,528/- on account of excess payment to the applicant. Hence, the applicant approached to this Tribunal for the following reliefs –

(i) Quash and set aside Letter dated 08/02/2021 by virtue of which recovery of Rs. 1,59,528/- was effected at (Annexure-A1).

ii) Quash and set aside the Letter dated 08/02/2021, by virtue of Grade Pay was reduced to Rs. 1800/- w.e.f. 01/10/2007, specially when applicant was entitled for Grade Pay of Rs. 1900/- w.e.f. 01/10/2007 and subsequent rise thereof of Rs. 100/- in view of the G. R. dated 06/09/2014.

5. The O.A. is strongly opposed by the respondents. It is submitted that the applicant's pay fixation was wrongly done and the

Pay Verification Unit raised objections and therefore respondent no.6 issued recovery notice of Rs.1,59,528/-. Hence, the O.A. is liable to be dismissed.

6. The applicant has filed Pursis on 29/06/2022 stating that the sanction letter dated 28/03/2016 of one Liladhar Manikrao Bolakhe and Shri Nandkishore Mandirkar dated 13/04/2017 and representation dated 30/03/2016, who are getting Grade Pay of Rs.2,000/- they are similarly situated employees like the applicant.

7. The leaned counsel for the applicant has submitted that the applicant is retired on 31/07/2021. The recovery order is dated 08/02/2021. The applicant was a Class-IV employee. In support of his submission pointed out the decision 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).

8. The learned counsel for applicant submits that in view of the guidelines given by the Hon'ble Supreme Court, the recovery from the retired employees or who are to be retired within one year from the date of the recovery notice and who are Class-III and Class-IV employees cannot be made.

9. The Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (*cited supra*) has given guidelines in para-12 as under –

“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.”

10. As per the guidelines no. (i) the recovery from Class-III and Class-IV employees and as per the guidelines no.(ii) the recovery from retired employees or those who are to be retired within one year from the date of recovery notice, cannot be made. The applicant was Class-IV employee. The applicant is retired on 31/07/2021. The recovery notice / order is dated 08/02/2021 i.e. within one year. Hence, as per the guidelines 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*), recovery is not permissible. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The impugned recovery notice / letter dated 08/02/2021 is hereby quashed and set aside.

(iii) No order as to costs.

Dated :- 09/05/2024.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 09/05/2024.