

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 248 of 2022 (S.B.)

Smt. Alka wd/o Ramesh Zoting,
Aged 41 years, Occu.: Housewife,
R/o. Plot No. 8, K. K. Nagar,
Gaurav Nagar, Parsoda,
Tah.: Ramtek, Distt. Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra through its Secretary,
Department of Revenue & Forest, Mantralaya,
Mumbai -32.
- 2) The Chief Conservator of Forest, (Territorial), Nagpur.
- 3) The Deputy Conservator of Forest, Nagpur Forest Division, Nagpur.
- 4) The Range Forest Officer,
Paoni (Territorial), Tah. Ramtek, Distt. Nagpur.

Respondents.

Shri G.G. Bade, Advocate for the applicant.
Shri S.A. Sainis, learned P.O. for respondents.

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

Dated :- 15/04/2024.

J U D G M E N T

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

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

The husband of applicant namely Ramesh Zoting was in service of Forest Department. He was working as a Forester. The husband of applicant retired on 31/03/2018. The respondents have recovered the Rs.1,42,214/- on 01/02/2022 after the retirement of husband of applicant. He died on 26/04/2021. The applicant is wife of deceased employee has filed this O.A. for the following reliefs –

“(9) (i) Quash and set aside the letter dated 01/02/2022 issued by the respondent no.3 at (Annexure-A1).

(10) The applicant is seeking stay to the effect and implementation of letter dated 01/02/2022 issued by respondent no.3, during the pendency of the present Original application.”

3. The O.A. is strongly opposed by respondent no.3. It is submitted that deceased husband of applicant had given undertaking on 05/02/2019 for the recovery of any excess amount and therefore excess amount is recovered from the pension and pensionary benefits of the deceased employee. Hence, the O.A. is liable to be dismissed.

4. During the course of submission the learned counsel for applicant Shri G.G. Bade 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 submits that the recovery cannot be made from the retired employee.

5. The learned P.O. has pointed out the Judgment of the Hon'ble Supreme Court in the case of ***High Court of Punjab and Haryana and Others Vs. Jagdev Singh (2016) 14 SCC 267*** and submitted that once the undertaking is given by the employee, then excess amount can be recovered.

6. In one of the Judgment of the Hon'ble Bombay High Court, Bench at Nagpur both the Judgments were considered. The case of the ***High Court of Punjab and Haryana and Others Vs. Jagdev Singh (2016) 14 SCC 267 (cited supra)*** is related to the Judicial Officer. He had given undertaking and before his retirement excess amount was recovered. 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."

7. As per guideline nos. (i) and (ii) as above the excess amount cannot be recovered from the retired employee. The husband of applicant was retired in the year 2018. The respondents have recovered the amount of Rs.1,42,214/- on 01/02/2022, i.e., after near about four years from the date of retirement of the deceased husband of the applicant.

8. Even submission of the learned P.O. is taken into consideration, then also it appears that undertaking was obtained by the respondents on 05/02/2019. The husband of applicant was retired on 31/03/2018. Therefore, it is clear that whatever undertaking was obtained by the respondents was after the retirement of deceased husband of applicant.

9. Hence, 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 recovery cannot be made from the retired employee. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The impugned order / communication dated 01/02/2022 is hereby quashed and set aside.

(iii) The amount of Rs.1,42,214/- if recovered, then it be refunded to the applicant within a period of three months from the date of receipt of this order.

(iv) No order as to costs.

Dated :- 15/04/2024.

(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 : 15/04/2024.