

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1156 of 2021 (S.B.)

Bansi S/o Piraji Dabhade,
 Aged about 73 years, Occupation: Retired,
 R/o Solanke lay out, Near Water Tank, Krida Sankul road,
 Buldana, Tq.& Dist.Buldana.

Applicant.

Versus

1. State of Maharashtra,
 through its Secretary, Finance department,
 Mantralaya, Mumbai-32.
2. Treasury Officer,
 Treasury Office, Buldana, Dist. Buldana.
3. Senior Geologist,
 Ground Water Survey DEVPT agency,
 Buldana, Dist. Buldana.

Respondents.

Shri M.L. Vairagade, Advocate for the applicant.

Shri A.M. Khadatkhar, learned P.O. for respondents.

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

Dated :- 15/07/2024.

J U D G M E N T

Heard Shri M.L. Vairagade, learned counsel for applicant
 and Shri A.M. Khadatkhar, learned P.O. for respondents.

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

The applicant was working as a Draftsman in the office of
 respondent no.3. It is submitted that applicant is a Class-III employee

and he retired in the year 2006. The recovery order is issued in the year 2020. Hence, recovery is illegal. Therefore, the applicant prayed to quash and set aside the order of recovery Rs.4,45,000/- and also prayed to direct the respondent no.2 to refund the recovered amount.

3. The O.A. is strongly opposed by the respondents. It is submitted that due to wrong fixation, excess amount was paid to the applicant and therefore the amount was recovered from the applicant.

4. The learned counsel for applicant has submitted that the applicant was a Class-III employee. The applicant was retired in the year 2006 and recovery is started in the year 2020 as per the direction of A.G. office. It is not permissible as per 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. At last submitted that the O.A. be allowed.

5. Heard learned P.O. Shri A.M. Khadatkar. He has strongly objected the O.A. As per his submission, the excess amount was paid because of wrong fixation. Hence, the recovery was / is legal and correct.

6. 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 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 likely to retire within one year from the date of recovery order. There is no dispute that the applicant was working as a Class-III employee. The applicant is retired in the year 2006 itself. Hence, amount recovered by the respondents on the ground of excess payment is not permissible as per guideline nos.(i) and (ii) of the Judgment of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (*cited supra*).

8. The learned counsel for applicant has pointed out the Judgment of the Hon'ble Bombay High Court in Writ Petition No.1192/2021 in the case of **Prasad V. Sohoni Vs. The Treasury Officer, Thane & Ors.**, decided on 12/01/2022 and prayed to grant interest on deducted amount.

9. The applicant was retired in the year 2006 and respondents recovered the amount of Rs.4,45,000/- in the month of June,2020 and thereafter continued the recovery of Rs.10,000/- p.a. from his pension amount. It is illegal as per the Judgment of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (*cited supra*).

10. As per the Judgment of the Hon'ble Bombay High Court in the case of ***Prasad V. Sohoni Vs. The Treasury Officer, Thane & Ors*** (cited supra), the applicant is entitled to get interest @ 6% p.a. from the date of recovery till the actual refund of deducted amount. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The impugned recovery order issued by respondents is hereby quashed and set aside.

(iii) The respondents are directed to refund the deducted amount of Rs.4,45,000/- + Rs.10,000/- p.m. recovered from the applicant from his pension along with @ 6% p.a. from the date of recovery till the actual refund by the respondents.

(iv) The order should be complied within a period of three months from the date of receipt of this order.

(v) No order as to costs.

Dated :- 15/07/2024.

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 P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 15/07/2024.