

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 1187 of 2023 (S.B.)**

Ramdas Devidas Patil,
Age 59 yrs., Occu.: Ret. Jr. Engineer,
R/o. Behind Jain Mandir Dadawadi Malkapur,
Dist. Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Irrigation Department,
Mantralaya, Mumbai 32.
- 2) The Superintendent Engineer,
Akola Irrigation Circle, Akola.
- 3) The Executive Engineer,
Buldhana Irrigation Department, Buldhana.
- 4) The Accountant General Office,
Maharashtra State, Civil Lines, Nagpur.

Respondents.

S/Shri P.S. Kshirsagar, Gaurav Gadge, Advs. for the applicant.
Mrs. Aditi Warjekar, learned P.O. for respondent nos.1 and 4.
Shri T.M. Zaheer, Advocate for respondent nos.2 and 3.

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

Dated :- 18/07/2024.

J U D G M E N T

Heard Shri P.S. Kshirsagar, learned counsel for the
applicant, Mrs. Aditi Warjekar, learned P.O. for respondent nos.1 and
4 and Shri T.M. Zaheer, learned counsel for respondent nos.2 and 3.

2. The matter is heard and decided finally at the admission stage.

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

The applicant was appointed on 14/08/1985 on the post of Technical Assistant, Land Development Works Department, Bhandara. He was promoted on 18/04/2022 on the post of Junior Engineer from the post of Civil Engineering Assistant. The applicant is retired from the post of Junior Engineer on 30/04/2023. After retirement, on 08/09/2023, the Executive Engineer issued order of recovery of Rs.12,71,440/-. The applicant is a retired employee.

4. The respondents have withheld the amount of Rs.12,71,440/- and also the pension of applicant. The respondents have not released the pension of the applicant. Hence, the applicant approached to this Tribunal for the following reliefs –

“ (9) (I) Quash and set aside the communication issued by Executive Engineer Irrigation Department Buldhana dated 08/09/2023 (Anex. No. 12) and recovery amount of Rs. 12,71,440/- shown recoverable from the applicant showing excess paid from 01/01/1989 to 30/04/2023 by way of increment in which the applicant is not in any fault and recover after retirement is not permissible from the applicant in view of the judgment of Rafiq Masih reported in (2015) 4 S.C.C. 334;

II. Direct the respondent No. 4 to sanction the pensionary benefits and pension to the applicant within stipulated time as the applicant

is retired on 30/04/2023 to till date the applicant is not received any benefit or pension.

(10) By way of interim order direct the respondents for not to recover the amount of Rs, 12,71,440/- from the pensionary benefits of the applicant during the pendency of the present application.”

5. The O.A. is strongly opposed by respondents. It is submitted that the applicant had given undertaking on 16/05/2009. The amount is to be recovered if the excess payment in respect of wrong increment given to the applicant.

6. As per the submission of respondents the excess amount is in respect of wrongly paid increment of the year 1989 and therefore recovery is to be made.

7. The learned counsel for applicant has pointed out the Judgment of this Tribunal in O.A.No.47/2022. As per his submission, similarly situated employee namely Bhagwat A. Tupkar was also working with respondent nos.2 and 3. He was retired on the post of Junior Engineer and recovery was made against him. This Tribunal has directed to refund the amount of Rs.11,17,581/- along with interest @ 6% to the co-employee namely Bhagwat A. Tupkar. At last submitted that in view of 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 the Judgment

in Civil Appeal No.1985 of 2022 in the case of the **State of Maharashtra and Another Vs. Madhukar Antu Patil and Another**, decided on 21/03/2022 and 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, the respondents cannot recover the amount from the applicant after his retirement.

8. There is no dispute that applicant was a Class-III employee. Shri T.M. Zaheer, learned counsel for respondent nos.2 and 3 has pointed out the undertaking given by the applicant. It is dated 16/05/2009. It is the case of the respondents that increment was wrongly given in the year 1989. There is no such undertaking in the year 1989 executed by the applicant. The amount is to be recovered more than five year from the date of the recovery order.

9. Shri T.M. Zaheer, learned counsel for respondent nos.2 and 3 has pointed out the decision of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **V.D. Ganesh S. Magar Vs. State of Maharashtra and Ors., 2024 (3) Mh.L.J.,365**. In para-11 the Hon'ble High Court has observed as under –

“(11) Admittedly, the petitioner does not fall within the ambit of class III or class IV Employee. It is not the case of petitioner that, he did not furnish an undertaking for recovery of payment from his pensionary benefits due to excess payment made to him while

granting three non compounded increments. On the other hand, the petitioner executed an undertaking tendered to the respondent Authorities agreeing for the deduction of any excess payment, if made to him on account of three non compounded increments wrongly paid to him as on 1-4- 2011 as per the GR dated 27-2-2018 regarding wrong pay fixation. Therefore, certainly the principle of estoppel applies and the petitioner is estopped from raising grievance about recovery of excess payment made to him. So also, considering the ratio laid down in cases of Jagdev Singh and Balbir Singh Bhandari cited (supra), the petitioner is not entitled for the relief as prayed.

10. The cited decision is not applicable in the case in hand because undertaking which was given by the applicant was not in respect of increment which was wrongly given to the applicant. The undertaking is dated 16/05/2009 and as per the submission of respondents, the recovery is in respect of the increment wrongly granted in the year 1989.

11. As per the submission of learned counsel for applicant Shri P.S. Kshirsagar amount is not recovered from the applicant, but it is withheld.

12. 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."

13. As per guideline no. (ii) as above the recovery cannot be made from retired employee or who are likely to retire within one year from the date of recovery order.

14. As per guideline no.(iii) if the excess payment is of more than 5 years from the date of recovery order, then that amount cannot be recovered. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The impugned order dated 08/09/2023 is hereby quashed and set aside.

(iii) The respondents are directed to release the amount of pension and pensionary benefits to the applicant within a period of three months from the date of receipt of this order.

(iv) No order as to costs.

Dated :- 18/07/2024.

(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 : 18/07/2024.