

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 626 of 2021 (S.B.)**

Nanaji S/o Devchand Maske,
Aged about 67 years, Occupation: Retired,
R/o Kisan Chowk, Shukrawari,
Bhandara, Tah. & Distt. Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
Through Secretary, Home Department,
Mantralaya, Mumbai-32.
- 2) Superintendent of Police,
Gondia, District Gondia.

Respondents.

Shri M.R. Khan, Advocate for the applicant.

Shri V.A. Kulkarni, learned P.O. for respondents.

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

Dated :- 18/07/2024.

J U D G M E N T

Heard Shri M.R. Khan, learned counsel for the applicant
and Shri V.A. Kulkarni, learned P.O. for the respondents.

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

The applicant was initially appointed as Police Constable
on 15/06/1982. The applicant is retired on 30/10/2013 on the post of
Assistant Police Inspector on attaining the age of superannuation. The
respondent no.2, i.e., Superintendent of Police, Gondia issued

recovery notice of excess payment, therefore, the applicant has approached to this Tribunal for the following reliefs –

“(9) (A) quash and set aside the impugned order issued by the Superintendent of Police, Gondia, on 30/3/2021 (Annexure-A1), in the interest of justice;

B) Issue an appropriate order or directions to the Superintendent of Police, Gondia to decide the representation made by the applicant on 19/4/2021 (Annexure-A3), in the interest of justice.”

3. The O.A. is strongly opposed by the respondents. It is submitted that Grade pay was wrongly given to the applicant and therefore recovery of Rs.8,000/- p.m. from the pension was proposed in the notice and nothing is wrong. Hence, the O.A. is liable to be dismissed.

4. The 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 the applicant was retired in the year 2013 and recovery notice is issued in the year 2021. Hence, recovery is not permissible.

5. The learned counsel for applicant has submitted that respondent no.2 has recovered Rs.80,000/-, therefore, the applicant is entitled for refund of the said amount along with interest @ 6% p.a. In

support of his submission pointed out the decision 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.

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. There is no dispute that the applicant is retired in the year 2013 and recovery notice was issued on 30/03/2021. Therefore, as per guideline no. (ii) recovery is not permissible from the retired employee. Hence, the following order –

ORDER

- (i) The O.A. is disposed of.
- (ii) The impugned order / notice dated 30/03/2021 issued by Superintendent of Police, Gondia is hereby quashed and set aside.
- (iii) The respondents are directed to refund the amount if any along with interest @ 6% p.a. 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.

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 : 18/07/2024.