MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 696 of 2020 (S.B.)

Smt. Durga Wd/o Vijaykumar Pande,
a/a 56 yrs., Occ.- Household
r/o c/o Mahadeo Vithobaji Yerme,
Behind Police Lawn, Near Kulkarni's Hospital,
Tukum, Chandrapur, Dist.-Chandrapur.

Applicant.

Versus

1) The State of Maharashtra,
Through its Secretary, Home Department,
Mantralaya, Mumbai- 32.

2) The State of Maharashtra,
Through its Secretary, Finance Department,
Mantralaya, Mumbai- 32.

3) The Superintendent of Police,
Chandrapur, Dist.- Chandrapur

4) The Additional Treasury Officer,
District Treasury Office, Chandrapur.

5) The Account General-II (A & E),
Pension Branch Office, Nagpur, Dist.- Nagpur.

Respondents.

S/Shri R.K., V.R. Borkar, Advocates for the applicant.
Shri A.P. Potnis, learned P.O. for respondents.

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

Dated :- 19/11/2024.

J U D G M E N T

Heard Shri V.R. Borkar, learned counsel for the applicant and Shri A.P. Potnis, learned P.O. for the respondents.

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

The husband of applicant namely Vijay Kumar Pande was initially appointed as a Constable in the Police Department in the year 1973. Thereafter, he was promoted on the post of Assistant Sub Inspector (ASI). He retired from the service after attaining the age of superannuation on 31/12/2011. Respondent no.5 sanctioned the pension and gratuity amount of the deceased Vijay Kumar. Vijay Kumar died on 20/06/2019. The applicant is the wife of deceased. She is getting family pension.

3. Respondent nos.3,4 and 5 issued recovery orders of Rs.3,42,483/- on 04/10/2019, 30/10/2019 and 28/05/2020. Deceased husband of applicant was retired in the year 2011. After 8-9 years, respondent nos.3,4 and 5 issued recovery orders. Therefore, the applicant has challenged the impugned recovery orders in the present O.A.

4. The O.A. is strongly opposed by the respondents on the ground that excess payment was made to the deceased employee in respect of promotional pay as per G.R. dated 06/08/2002. His pension was wrongly calculated by taking into consideration of the promotional pay as per G.R. dated 06/08/2002. Hence, the recovery is proper and therefore the O.A. is liable to be dismissed.

5. Heard learned counsel for the applicant. He has pointed out the Judgment of the Hon'ble Supreme Court in the case of ***State***

Of Punjab & Ors vs. Rafiq Masih (White Washer) reported in AIR 2015 SC 696. As per his submission, deceased husband of applicant was Class-IIII employee and he had already retired in the year 2011 and impugned recovery orders are issued after 8-9 years. Recovery is in respect of the amount for more than five years and therefore as per guideline nos. (i), (ii) and (iii) given in 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 is not permissible.

6. Heard learned P.O. Shri A.P. Potnis. He has submitted that the applicant was granted promotional pay as per G.R. dated 06/08/2002. The G.R. is very clear. The promotional pay was to be paid till the actual working in the naxalite area. After the retirement, pension cannot be granted by calculating the amount of promotional pay. Hence, the recovery orders issued by the respondents are perfectly legal and correct and therefore the O.A. is liable to be dismissed.

7. There is no dispute that the impugned recovery orders are issued after 8-9 years from the date of retirement of the deceased husband of applicant. There is no dispute that deceased husband of applicant was working on Class-III post. The recovery amount relates to more than five years back from the date of recovery orders. Therefore, the recovery is not permissible in view of the guidelines given in the Judgment of the Hon'ble Supreme Court in the case of

State Of Punjab & Ors vs. Rafiq Masih (White Washer) (cited supra). The material guidelines of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** *(cited supra)* is reproduced below –

> "*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.*"

8. In view of the guideline nos. (i), (ii) and (iii) given by the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** *(cited supra),* the recovery is not permissible. Therefore, the following order–

ORDER

(i) The O.A. is allowed.

(ii) The impugned orders of recovery of Rs.3,42,483/- dated 04/10/2019, 30/10/2019 and 28/05/2020 issued by respondent nos.3,4 and 5 are hereby quashed and set aside.

(iii) The amount if any recovered by the respondent authorities, shall be refunded to the applicant within a period of three months from the date of receipt of this order.

(iv) If the amount is not refunded within stipulated period of three months, then amount shall carry interest @ 6% p.a. from the date of recovery till the date of refund.

(v) No order as to costs.

Dated :- 19/11/2024.

(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 : 19/11/2024.