

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 875 of 2018 (S.B.)

Dr. Babarao S/o. Vithobaji Lokhande,
Aged about 61 yrs.,
R/o. Bharti Building, B/6, Darwah Road,
Near Hero Showroom, Yavatmal.

Applicant.

Versus

1. The State of Maharashtra, Through its Secretary,
Department of Public Health, Mantralaya, Mumbai-32.
2. The Director of Health Services,
Maharashtra State, Pune.
3. The District Health Officer,
Zilla Parishad, Yavatmal.
4. District Treasury Officer, Yavatmal.
5. The Accountant General (A&E),
Maharashtra -2, Civil Lines, Nagpur-440 001.

Respondents.

Shri N.R. Saboo and Mrs.K.N. Saboo, Advocate for the applicant.
Shri A.M. Khadatkhar, learned P.O. for respondent nos.1,2,4 & 5.
Shri B.N. Jaipurkar, Advocate for respondent no.3.

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

Dated :- 20/06/2024.

J U D G M E N T

Heard Shri N.R. Saboo, learned counsel for applicant and
Shri A.M. Khadatkhar, learned P.O. for respondent nos.1,2,4 and 5.
None for respondent no.3.

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

The applicant was working as a Medical Officer and he was absorbed in the service of the respondents' health department. After completion of age of superannuation, the applicant retired on 31/07/2016. At the time of retirement of applicant, his pay was fixed in the Pay Grade of Rs.5,400/- as per recommendation of 6th Pay Commission.

3. The respondent, i.e., Zilla Parishad while finalizing the pension case of the petitioner issued communication dated 01/09/2018 informing the Treasury Officer that the applicant while in the service was paid excess amount of Rs.6,59,888/- and same is to be recovered from death-cum-retirement-gratuity (DCRG) and balance amount of Rs.1,75,700/- from the pension amount.

4. It is submitted that the applicant was not given any opportunity of hearing in respect of excess amount recovered by the respondents. It is submitted that the respondents have already recovered the amount from the applicant. Hence, the applicant approached to this Tribunal for the following reliefs –

“(9) (i) Quash and set aside impugned communication dated 01.09.18 issued by District Health Officer, Zilla Parishad, Yavatmal addressed to District Treasury Officer, Yavatmal at Annexure-A-2.

(ii) By appropriate order be pleased to direct the respondents to forthwith refund entire amount of retirement benefits recovered from the applicant along with interest from the date of retirement till the actual refund of amount recovered from the applicant.

(iii) To direct the respondent to revise the PPO order of the applicant dated 17.07.18, by directing the respondents to finalize the pension of the applicant as per pay scale 15600-39100, Grade Pay 6600.

(iii) By appropriate order be pleased to direct the respondents not to take any further recovery from the pension of the applicant.

(10) (i) Pending disposal of O.A. restrained the respondent to proceed further of recovery from the pension of the applicant.”

5. The O.A. is opposed by the respondents. It is submitted by respondent no.4 that as per the G.R. dated 18/08/2008 the excess amount paid to the applicant was recovered.

6. During the course of submission, the learned counsel for the applicant has pointed out the decision of the Hon'ble Supreme Court in the case 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).

7. The Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (*cited supra*) has given guidelines in para-12 as under –

“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. As per the guideline no.(ii) the recovery cannot be made from the retired employees or who are to be retired within one year. It appears that the applicant was retired in the year 2016 and the recovery was made by the respondents in the year 2018. Nothing is on record to show that how the excess payment was made by the respondents.

9. The learned P.O. has pointed out the G.R. dated 18/08/2008. By this G.R., the Government has authorised to recover the excess payment from the retired employee. The Hon'ble Supreme Court has delivered the Judgment in the case of **State Of Punjab &**

Ors vs. Rafiq Masih (White Washer) (*cited supra*) and thereafter the State Government has also issued the G.R. dated 17/08/2023 not to recover the amount 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 made by the respondents after the retirement of the applicant is not legal and correct. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order of recovery is hereby quashed and set aside.
- (iii) The respondents are directed to refund the amount, if recovered from the applicant along with interest @ 6% p.a. from the date of recovery till the actual payment.
- (iv) No order as to costs.

Dated :- 20/06/2024.

(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 : 20/06/2024.