

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 882 of 2021 (S.B.)**

Shri Shaligram Bhimaji Dudhe,
Aged 70 Years, Occ: Retired,
R/o Mahatma Fule Colony, Deoli Road,
Near Chetna D.Ed. College, Wardha.

Applicant.

Versus

- 1) State of Maharashtra,
through Secretary Ministry of Home,
Mantralaya, Mumbai-32.
- 2) The office of Accountant General (A&E)-II,
Civil Lines, Nagpur.
- 3) The Additional Treasury Officer,
Civil Lines, Wardha.

Respondents.

**S/Shri P.S. Kadam, D.B. Wankar, N.R. Kelzare, J.K. Wasnik,
V.R. Borkar, Advocates for the applicant.**

Shri A.M. Khadatkar, 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 V.R. Borkar, learned counsel for applicant and
Shri A.M. Khadatkar, learned P.O. for respondents.

2. The applicant was initially appointed as a Police Constable
on 25/01/1976. Thereafter, the applicant was transferred to Dhule in
SRPF Grade-IV as Wireless Operator. The applicant was working at

Police Station, Gondia (City) at the time of retirement. The applicant came to be retired on 30/04/2010 on the post of Assistant Sub Inspector. The respondents have issued order of recovery dated 09/12/2019 directing recovery of Rs.3,30,181/- from the pension of the applicant.

3. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was granted promotional pay as per G.R. dated 06/08/2002. As per the condition in the said G.R., the employees who are working in the naxalite area were entitled to get promotional pay till his actual working in the naxalite area. The applicant was paid pension by calculating promotional pay as per the G.R. dated 06/08/2002. Therefore, the pension was wrongly granted to the applicant. Hence, recovery is proper in view of the Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982 (in short "Rules of 1982"). It is also submitted by the respondents that as per Rules 9 (36) (iv) of the Rules of 1982, the recovery is proper. Hence, the O.A. is liable to be dismissed.

4. This Tribunal not granted any interim relief. While rejecting the interim relief, this Tribunal has made reference to the Larger Bench in view of the conflicting Judgment of another Single Bench. The Larger Bench, i.e., Division Bench of M.A.T., Bench at Aurangabad decided the reference on 18/06/2024. As per the

Judgment in reference, the recovery cannot be made from the retired employee. 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) is to be followed. The applicant was retired in the year 2010. The respondents have issued recovery order in the year 2019.

5. 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."

6. As per the submission of the learned counsel for applicant, the applicant was Class-III employee. The applicant is a retired employee. The amount was recovered is in respect of the amount which was paid more than 5 years from the date of recovery order. Therefore, as per guidelines nos.(i), (ii) and (iii) respondents cannot recover the amount.

7. As per guideline no.(i), recovery from Class-III and Class-IV employees is not permissible. As per guideline no. (ii), recovery from a retired employee is not permissible. As per guideline no.(iii), recovery in respect of the amount which was to be recovered for more than 5 years from the date of recovery order, is not permissible.

8. The applicant was Class-III employee. The applicant is retired in the year 2010 and recovery order is issued in the year 2019. The amount which was sought to be recovered was more than 5 years

from the date of recovery order. Hence, in view of guideline nos. (i), (ii) and (iii), in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (*cited supra*) the following order is passed-

ORDER

(i) The O.A. is allowed.

(ii) The impugned recovery orders dated 09/12/2019 and 11/09/2019 are hereby quashed and set aside.

(iii) The amount if recovered, shall be refunded to the applicant along with interest @ 6% p.a. 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.