

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 949 of 2023 (S.B.)

Gajanan s/o Ramrao Chavan,
 Aged about 60 years, Occu. Retired,
 R/o Shrikrushna Residency, 2nd floor,
 First Lane, Radha Nagar, Panchavati Chowk, Amravati-03.

Applicant.

Versus

- 1) State of Maharashtra,
 through its Principal Secretary,
 Water Resources Department, Mantralaya, Mumbai-32.
- 2) Superintending Engineer,
 Upper Wardha Irrigation Circle, Irrigation Colony,
 Shivaji Nagar, Amravati-444 603.
- 3) Executive Engineer,
 Amravati Medium Project Division,
 Near Sinchan Seva Bhavan, Shivaji Nagar, Amravati-444 603.

Respondents.

Shri R.M. Fating, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondent no.1.
U.A. Patil, K.A. Patil, Abhishek Deshpande, Adv. for Resp.nos.2&3.

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

Dated :- 11/07/2024.

J U D G M E N T

Heard Shri R.M. Fating, learned counsel for the applicant,
 Shri V.A. Kulkarni, learned P.O. for respondent no.1 and Shri A.
 Deshpande, learned counsel for respondent nos.2&3.

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

The applicant was initially appointed on the post of Skill
 Worker (Karkoon) on work charge basis w.e.f. 01/03/1991. The

applicant's post was converted into Casual Regular Temporary Establishment (CRTE). Thereafter, the applicant was absorbed on the post of Civil Engineering Assistant as per the order dated 19/05/1995. The applicant has passed the professional examination required for promotion in the year 1999. The applicant was qualified, therefore, time bound promotion was granted w.e.f. 30/12/1999 on the post of Junior Engineer. Thereafter, the respondents extended the benefit of 2nd time bound promotion to the applicant on the post of Sectional Engineer. The applicant retired on superannuation on 30/06/2021. The Pay Verification Unit raised objection in regard to 1st time bound promotion extended to the applicant. Respondent no.1 issued order denying the benefit of 1st time bound promotion w.e.f. 05/08/2007. The respondents have issued recovery of Rs.17,70,570/- by order dated 06/09/2021 from the pension and pensionary benefits. Therefore, the applicant approached to this Tribunal for the following reliefs –

“(11) i) Hold and declare that the amount of Rs.17,70,570/- recovered by impugned order dated 06.09.2021 is arbitrary, illegal and bad in law in view of law laid down by the Hon'ble Apex Court.

ii) Quash and set aside the impugned order of recovery dated 06.09.2021 (ANNEXURE A-10) issued by the Respondent No.3, in the interest of justice.

iii) Quash and set aside the impugned communication dated 25.11.2022(ANNE. A-13) issued by the Respondent No.3, thereby declining the request of the Applicant to refund amount of recovery;

iv) Direct the Respondents to refund the amount of Rs.17,70,570/- to the Applicant along with accrued interest thereon @ 18% till the date of actual payment, in the interest of justice;

3. Respondent nos.2 and 3 filed reply. As per the submission of respondents, 1st time bound promotion was wrongly granted to the applicant, therefore, as per the objection raised by the A.G. / Pay Verification Unit, recovery order is issued. Hence, the O.A. is liable to be dismissed.

4. During the course of submission 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 recovery from the retired employee is not permissible. Hence, prayed to allow the O.A.

5. The learned P.O. supported the submission of respondent nos.2 and 3. Shri A. Deshpande, Id. counsel for respondent nos.2 and 3 submitted that 1st time bound promotion was wrongly granted to the applicant and therefore recovery order was issued.

6. As per the order dated 15/06/2021, the applicant retired on 30/06/2021. The recovery order is dated 06/09/2021. The recovery order is issued after the retirement of the applicant.

7. As per the submission of learned counsel for applicant the entire amount of Rs. 17,70,570/- is recovered by the respondents.

8. 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."

9. In view of guideline no.(ii) of the above cited Judgment, the recovery cannot be made from retired employees or who are about to retire within one year from the date of recovery order. The applicant was already retired on 30/06/2021 and recovery order is dated 06/09/2021, i.e., after the retirement of the applicant. Hence, the recovery is not permissible 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*), therefore, the following order is passed –

ORDER

(i) The O.A. is allowed.

(ii) The impugned recovery order dated 06/09/2021 is hereby quashed and set aside.

(iii) The respondents are directed to refund the recovered amount of Rs. 17,70,570/- to the applicant within a period of two months from the date of receipt of this order along with interest @ 6% p.a. from the date of recovery till the actual payment.

(iv) No order as to costs.

Dated :- 11/07/2024.

(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 : 11/07/2024.