

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 992 of 2022 (S.B.)**

Namdeo S/o Marotrao Kale,  
a/a 74 yrs., Occ.- Pensioner,  
r/o Saint Gomaji Ward, Hinganghat,  
Tah.- Hinganghat, Dist.- Wardha-442 301.

**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 Accountant General-II (A&E),  
Pension Branch Office, Nagpur, Dist. Nagpur.

**Respondents.**

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**Shri V.R. Borkar, Advocate for the applicant.**  
**Shri V.A. Kulkarni, learned P.O. for respondents.**

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

**Dated :- 24/06/2024.**

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**J U D G M E N T**

Heard Shri V.R. Borkar, 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 a Constable on 21/03/1972. He was promoted on the post of Police Sub Inspector (PSI) on 15/06/1986. Thereafter, the applicant was promoted on the post of Assistant Police Inspector (API) in the year 1999. The applicant retired on 28/02/2007 after completion of age of superannuation.

3. The respondent no.5 issued letter to respondent nos.3 and 4 directing to recover the excess paid amount of DCRG and revised pension as per the letter dated 25/05/2021. The applicant received letter / order from respondent no.4 on 07/03/2022 by which the respondents ordered to recover Rs.1,86,315/- in 18 monthly instalment of Rs.10,000/- p.m. and one last instalment of Rs. 6,315/- in all total 19 instalments. The respondent no.4 recovered amount of Rs.10,000/- from the month of March,2022. **Therefore**, the applicant approached to this Tribunal.

4. The learned counsel for applicant submitted that the applicant retired in the year 2007 and the respondents have started recovery in the year 2022 after 15 years. It is not permissible as per 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).**

5. The learned P.O. supported the impugned order and submitted that the A.G. has directed respondent no.4 to recover the amount. Excess amount was paid to the applicant. Therefore, recovery was proper.

6. Nothing is on record to show that the applicant had given any undertaking for the recovery. Nothing is on record to show that the applicant was given notice in respect of excess payment before his retirement. The applicant is retired in the year 2007 and recovery order was issued in the year 2022, i.e., after 15 years. As per the Judgment of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (*cited supra*) recovery from the retired employee or who are to be retired within one year is not permissible. The specific guideline no.(ii) of the said Judgment shows that recovery is not permissible.

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. In view of the guideline no.(ii) recovery from the retired employee is not permissible. The applicant is already retired in the year 2007 and recovery order is issued in the year 2022. Hence, the following order –

### **ORDER**

(i) The O.A. is allowed.

(ii) The impugned orders of recovery 25/05/2021, 20/07/2021 and 07/03/2022 are hereby quashed and set aside.

(iii) The recovered amount by the respondents shall be refunded along with interest @6% p.a. from the date of recovery till the actual payment.

(iv) No order as to costs.

**Dated** :- 24/06/2024.

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 : 24/06/2024.