

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO. 227/2021 (S.B.)

Tulsiram s/o Kondba Nitnaware,
a/a 65yrs., Occ.- Pensioner,
r/o Plot No. 27, Vidya Nagar, Kolbaswami
Housing Society, Katol Road, Nagpur, Dist.- Nagpur

....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. **(Deleted)**
- 3) The Principal, Regional Police Training
School, Nagpur, Dist.- Nagpur.
- 4) The Additional Treasury Officer,
District Treasury Office, Nagpur.
- 5) The Accountant General-II (A & E),
Pension Branch Office,
Nagpur, Dist.- Nagpur

.,Respondents

Shri. V.R. Borkar, Advocate for the Applicant.

Shri M.I. Khan, P.O. for the respondents.

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

Vice-Chariman.

Dated:- 15/10/2024

JUDGEMENT

Heard Shri V.R. Borkar, learned counsel for the applicants in all O.As. and Shri M.I. Khan, learned P.O. (in O.A.227/2021), Shri V.A. Kulkarni, learned P.O. (in O.A.621/2021), Shri A.M. Khadatkar, learned P.O. (in O.A.623/2021) and Smt. A.D. Warjekar, learned P.O. (in O.A.808/2021) for the respondents.

2. All the applicants are retired employees. They were working in the office of respondents.

3. The applicant in O.A.No.227/2021 retired on 31/01/2014 from the post of Additional Superintendent of Police. He was working in RTPS, Nagpur. After the retirement, the respondents have issued impugned recovery orders dated 24/11/2020 and 08/02/2021 directing to recover amount of Rs.2,51,174/- in respect of excess amount paid for one step promotion.

4. In O.A. No. 621/2021, the applicant was working as Deputy Superintendent of Police in RPTS, Nagpur. The applicant retired on 31/03/2012. The respondents have issued impugned recovery orders dated 26/11/2020 and 03/02/2021 for the recovery of Rs. 1,73,136/-.

5. In O.A.No. 623/2021, the applicant was working as Deputy Superintendent of Police in RPTS, Nagpur. The applicant came to be retired on 31/12/2013 on superannuation. The respondents have issued recovery order of Rs.1,57,695/- as per orders dated 21/08/2020, 17/12/2020 and 28/01/2021.

6. In O.A. No. 808/2021, the applicant was working as Police Inspector at RTPS, Nagpur. The applicant came to be retired on 30/09/2014. The respondents have issued recovery order of Rs.79,913/-.

7. In all the O.As., the respondents have issued the recovery orders in respect of excess payment of one step promotion wrongly granted to the applicant. The Chart (Exh-X) is given below –

O.A. Nos.	Date of Appointment	Date of Retirement and post	Dates of Recovery orders	Recovery Amount
227/21	9/8/1977	31/1/2014 (Addl. S.P. RPTS)	24/11/2020, 8/2/2021	Rs. 2,51,174/-
621/21	1/3/1983	31/3/2012 (Dy. S.P. RPTS)	11/9/2020 26/11/2020 3.2.2021	Rs. 1,73,136
623/21	1/3/1983	31/12/2013 (Dy. S.P. RPTS)	21/8/2020 17/12/2020 28/1/2021	Rs. 1,57,695/-
808/21	11/4/1981	30/9/2014 (Asst. P.I., RPTS)	3/12/2020 25/1/2021 2/9/2021	Rs. 79,913/-

8. Therefore, all the applicants approached to this Tribunal to quash and set aside impugned orders of recovery.

9. The respondents have filed reply. It is submitted that the applicants were wrongly granted one step promotion. Therefore, the respondents have issued the impugned orders on the ground that amounts of pension were wrongly paid to the applicants. Therefore, the impugned orders are issued. Hence, the O.As. are liable to be dismissed.

10. During the course of submission, the learned counsel for applicants 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 the Judgment of the Hon'ble Supreme Court, recovery from retired employee is not permissible.

11. 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.”

12. In view of guideline no. (ii) recovery is not permissible from the retired employee. 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. Hence, 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 impugned orders which are issued after the retirement of the applicants are liable to be quashed and set aside. Hence, the following order –

ORDER

(i) The O.As. Nos. 227/2021, 621/2021, 623/2021 & 808/2021 are allowed.

(ii) The impugned recovery orders issued by the respondents in O.A. No. 227/2021 dtd. 24/11/2020, 8/2/2021 of Rs. 2,51,174/-; in O.A.No. 621/2021 dtd. 11/9/2020, 26/11/2020, 3.2.2021 of Rs. 1,73,136/-; in O.A. No. 623/2021 dtd. 21/8/2020, 17/12/2020, 28/1/2021 of Rs. 1,57,695/-; in O.A. No. 808/2021 dts. 3/12/2020, 25/1/2021, 2/9/2021 of Rs. 79,913/-, are hereby quashed and set aside. The amount if recovered by the respondents shall be refunded to the applicants within a period of three months from the date of receipt of this order. If the amount is not refunded within stipulated period of three months, then amount shall carry @ 6% p.a.

(iii) No order as to costs.

(Justice M.G. Giratkar)
Vice-Chairman.

Dated:15/10/2024.

***kds.**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Krushna Dilip Singadkar

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 15/10/2024.