

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 654/2022 (S.B.)

Dyaneshwar S/o. Sadhuji Kapgate
 Aged About: 62 years, Occ- retired (Ranger)
 R/o. Behind Navjivan Convent, Gajanan Nagar,
 Nagzira Road, Jamanapur,
 Mo.- Jamanapur (Sendurwafa), Ta- Sakoli,
 District- Bhandara-441802.

APPLICANT.

// V E R S U S //

1. State of Maharashtra,
 Through Its Pri. Secretary (Forest),
 Revenue & Forest Department,
 Mantralaya, Mumbai-32.
2. Principal Chief Conservator of Forest
 (Forest Force) of Maharashtra State,
 Office at: Van Bhavan, Ramgiri Road,
 Civil Lines, Nagpur-01
3. Chief Conservator of Forest
 (Territorial), Nagpur
 Office At: Near Government Printing Press,
 Zero Miles, Nagpur-01.
4. Divisional Forest Officer, (Social Forestry)
 Nagpur New Administrative Building No. 2,
 B-Wing, 7th Floor, Civil Lines, Nagpur-440001.
5. Dy. Conservator of Forest (Territorial), Gondia,
 Office At: Jaistambha Square, Gondia
6. Directorate of Accounts & Treasuries,
 Pay Verification Office, VCA Stadium Complex,
 129, Ravindra Nath, Tagore Marg, Civil Lines, Nagpur-01
7. Dist. Treasury Officer, Nagpur
 Office At: Collectorate Compound, Civil Lines, Nagpur-01

RESPONDENTS.

O.A.654/2022

**S/Shri P.M. Sinha, A.S. Siddiqui, A.R. Kalele, S.S. Chourasia,
Advs. for the applicant.**

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

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

Dated :- 22/11/2024.

J U D G M E N T

Heard Shri P.M. Sinha, learned counsel for the applicant
and Shri M.I. Khan, learned P.O. for the respondents.

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

The applicant was serving in Gondia Forest Department as a Forest Guard in the year 2015. The applicant was belatedly given first benefit of Time Bound Promotion on 22/01/2015. Applicant is retired on 31/01/2022. The respondents have issued recovery order dated 03/02/2022 by which the respondents have proposed to recover the amount of Rs.3,13,895/-. Hence, applicant approached to this Tribunal for the following reliefs:-

“ i) quash and set aside the impugned order dated 03/02/2022 (ANNEXURE-A-1) passed by the respondent no. 4 and whereby illegally and mischievously whereby after retirement of applicant as 'Round Officer' from class-C, the respondent illegally and mischievously and in derogation of direction of Hon'ble Supreme Court asking for recovery of amount of Rs. 3,13,895/- paid in excess,

ii) *further be pleased to grant stay to the effect and operation of recovery proceeding or procedure if any in furtherance of impugned order passed by the respondent no. 4 on 03/02/2022 (ANNEXURE-A-1), till the disposal of the present application*

iii) *Grant ad-interim relief in terms of prayer clause -ii.*

12) *By way of ad-interim relief this Hon'ble Tribunal may kindly be pleased direct the respondent No. 4 and 5 to 7 to stay the recovery proceeding if any till the disposal of the application in the interests of justice."*

3. The O.A. is strongly opposed by the respondents. It is submitted that, the applicant was wrongly paid benefit of 1st time bound promotion and also one step promotional pay as per the G.R. dated 06/08/2002. Therefore, the recovery is proper. Hence, O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for the applicant has submitted that no any amount is recovered as per the recovery order. He has pointed out the judgment in the case of ***State of Punjab & Ors VS. Rafiq Masih (White Washer) reported in AIR 2015 SC,696***. The material portion of the Judgment of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors VS. Rafiq Masih (White Washer) (cited supra)*** is reproduced below:-

"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 hereinabove, 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."*

5. The learned P.O. Shri M.I. Khan has strongly opposed the O.A. He has submitted that the applicant was wrongly given the excess payment and therefore the impugned recovery order is correct and proper. Hence, the O.A. is liable to be dismissed.

6. There is no dispute that the applicant was working as a Forest Guard. He was a Class-III employee. The applicant was retired

employee when the impugned order of recovery was passed. Hence, in view of the guideline nos.(i) and (ii) of Judgment of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors VS. Rafiq Masih (White Washer) (cited supra)***, the recovery order issued by respondents is liable to be quashed and set aside. Hence, following order is passed :—

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned recovery order dated 03/02/2022 is hereby quashed and set aside.
- (iii) No order as to costs.

Dated :- 22/11/2024.

PRM.

**(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 Steno : Piyush R. Mahajan
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 22/11/2024.