

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO.917/2021 (S.B.)**

Shri. Nakatu S/o. Namdeo Kumre,  
 Aged about 61 years, Occ.- Retired  
 from the post of Head Clerk, Collector Office,  
 Gadchiroli, R/o. At Post Kaneri,  
 Tah. Gadchiroli, Dist. Gadchiroli

**... APPLICANT.**

**// V E R S U S //**

- 1] The State of Maharashtra,  
 Through it's Secretary,  
 Department of Finance,  
 Mantralaya, Mumbai - 32
2. The Collector, Gadchiroli District,  
 Complex Area, Gadchiroli - 442605
3. The District Treasury Officer, Gadchiroli
4. The Incharge Officer, Establishment/ Pension Department,  
 At Office of District Collector, Gadchiroli.

**... RESPONDENTS.**

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**Shri. R.M. Vaidya, Advocate for the applicant.**

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

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

**Dated :- 26/11/2024.**

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

Heard Shri R. M. Vaidya, 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 appointed on the post of Peon in the office of Respondent No.2 on 15/10/1984. The applicant was transferred to Tahsil Office, Etapalli as a Watchman on 04/06/1986. The applicant has passed SSC examination in the month of March 1991 and also passed English Typing Test in "Grade B" in the Year 1992. The applicant has passed Marathi Typing test examination in the Year 1994. On the basis of his qualification, the applicant was promoted on the post of Junior Clerk and was posted at Tahsil Office, Dhanora by order of Respondent No.2 dated 06/12/1994. The applicant was promoted on the post of Head Clerk by order dated 01/11/2012. The applicant is retired on 30/06/2018. After the retirement, the respondents have paid the benefit of Time Bound Promotion after completion of 12 years of service as per order dated 24/08/2018. Thereafter, the respondents have issued impugned recovery order dated 31/08/2021 for the recovery of excess amount of Rs.4,37,157/-. Hence, the applicant approached to this Tribunal for the following reliefs :-

*“i) It is, therefore, most humbly prayed that this Hon'ble Tribunal be pleased to quash and set aside the order dated 31.08.2021 (ANNEXURE 6) passed by the office of the Respondent No.2 i.e. District Collector, Gadchiroli;*

*(i-a) Hold and Declare that the action of recovery of amount to the tune of Rs. 4,37,157/- dated 18.02.2022 from the pensionary benefits payable to the Applicant in one go is arbitrary, illegal, unreasonable, unjust and unsustainable in law;*

*(i-b) Direct the Respondent No. 2 Collector, Gadchiroli District to forthwith refund the amount to the tune of Rs. 4,37,157/- which is illegally recovered on 18.02.2022 from the pensionary benefits payable to the Applicant and further direct to pay an interest @ 12% on the same from 18.02.2022 till its actual realization:*

*(11) (i) By an interim order stay the effect and operation of the impugned order dated 31/08/2021 (Annex-6) passed by the office of the respondent no.2 i.e., District Collector, Gadchiroli.*

*(ii) Grant ex-parte ad-interim relief in terms of prayer clause (i) hereinabove;”*

**3.** The O.A. is strongly opposed by the respondents. It is submitted that the applicant had given undertaking on 20/04/2017 and 31/08/2021. It is submitted that, the applicant was wrongly granted benefit of Time Bound Promotion after completion of 12 years of service, therefore, excess amount is to be recovered from the applicant. It is submitted that as per the consent given by the applicant the whole amount of Rs.4,37,157/- is recovered by the Respondent. The recovery is proper. Hence, the O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for the applicant Shri. R.M. Vaidya has pointed out 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 his submission, applicant was Class-III employee. The applicant is a retired employee. Therefore, the recovery is not legal and proper. He has pointed out the guideline nos.(i) and (ii) of the said Judgment. Therefore, prayed to quash and set aside the impugned order. As per the submission of learned counsel for the applicant Shri R.M. Vaidya the respondents have recovered the amount of Rs.4,37,157/- from the applicant.

5. The learned P.O. Shri M.I. Khan has strongly objected the O.A. As per his submission, the applicant had given undertaking on 20/04/2017 and 31/08/2021. Therefore, the recovery is proper. In support of his submission, he has pointed out the Judgment of the Hon'ble Supreme Court in the case of ***High Court of Punjab and Haryana and Others Vs. Jagdev Singh (2016) 14 SCC 267.***

6. There is no dispute that the applicant was retired before the excess amount in respect of Second Time Bound Promotion was paid to the applicant. Therefore, the undertaking which was given before the retirement is not applicable to the case in hand. In respect

of undertaking dated 31/08/2021 it is not in respect of the amount which was to be recovered by the respondents. The order is dated 24/08/2018. In the case of **High Court of Punjab and Haryana and Others Vs. Jagdev Singh**, he was the Judicial Officer, he was the Registrar of High Court of Punjab and Haryana. Therefore, **Jagdev Singh's** case is not applicable to the case in hand. The respondents were at liberty not to pay any excess amount after the retirement. The applicant not prayed / requested the respondents to pay the amount. It was for the respondents to verify as to whether the applicant was entitled for the payment of Second Time Bound Promotion after completion of 12 years of service. The respondents have paid voluntarily the amount of Rs.4,37,157/- to the applicant as per order dated 24/08/2018. The applicant was already retired. The applicant was a Class-III employee. 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) reported in AIR 2015 SC, 696**, recovery is not legal and proper. 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) reported in AIR 2015 SC, 696** 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."*

7. In view of the guideline nos.(i) and (ii) of the Hon'ble Supreme Court in the case of **State of Punjab & Ors VS. Rafiq Masih (White Washer) (cited supra)**, the impugned recovery order for the recovery of amount of Rs.4,37,157/- is not legal and proper.

Hence, the following order:-

**ORDER**

- (i) O.A. is allowed.
- (ii) The impugned recovery orders of Rs.4,37,157/- dated 31/08/2021 and 18/02/2022 issued by respondent No.2 are hereby quashed and set aside.
- (iii) The recovered amount of Rs.4,37,157/- be refunded to the applicant within a period of three months from the date of receipt of this order.
- (iv) If the amount is not refunded within a stipulated period of three months, then amount shall carry interest @ 6% p.a. from the date of recovery till the actual refund.
- (v) No order as to costs.

**Dated** :- 26/11/2024.

**(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 Steno : D.N. Kadam.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 26/11/2024.

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