

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 402/2016 (S.B.)**

Shrikrushna Bhaddulal Marathe, Age 61 years,
Occu. Retired Government Servant,
R/o Gitisthan Gruh Nirman Sanstha,
Plot No.54, Chikhaldara, Distt. Amravati.

Applicant.

Versus

1. The State of Maharashtra,
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai-32.
2. Superintending Engineer
Public Works Department,
Amravati.
3. Executive Engineer,
Public Works Department,
Division Office, Achalpur, Tq. Achalpur,
Dist. Amravati.
4. Assistant Engineer
Grade-1, Public Works Department Sub-Division Office,
Achalpur, Tq. Achalpur,
Distt. Amravati.

Respondents

Shri P.D.Sharma, Id. Advocate for the applicant.

Shri A.P.Potnis, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 04th July, 2024.

Judgment is pronounced on 09th July, 2024.

Heard Shri P.D.Sharma, ld. counsel for the applicant and Shri A.P.Potnis, ld. P.O. for the Respondents.

2. The applicant was to retire on superannuation on 30.06.2013. On 13.06.2013 he submitted application (A-1) to respondent no. 2 as follows:-

मी आपल्या निर्देशनात आणु इच्छितो की माझी नियत वयोमानानुसार सेवानिवृत्ती दिनांक ३०/०६/२०१३ आहे. अद्याप पर्यंत ६ व्या वेतन पळताळणी नुसार माझे सेवा पुस्तकवेतन पळताळणी पथक अमरावती कडुण पळताळणी करुन माझे सेवा निवृत्ती प्रकरण महालेखाकार नागपुर यांच्या कडे सादर झाले नाही.

नियमानुसार हि कार्यवाही सेवानिवृत्तीच्या एक वर्षा आधिच व्हायला पाहीजे होती. व सहा महिन्यापुर्वीच माझे सेवा प्रकरण महा लेखाकार नागपुर यांना सादर झाले असते तर मला सेवानिवृत्तीच्या दिवशी लाभ मिळाले असते.

सद्यास्थीततमाझे सेवा पुस्तकवेतन पळताळणी पथक अमरावती कडे प्रलंबित आहे. माझे सेवा पुस्तकामध्ये सहा वेतन - आयोगाची अतिरीक्त वेतन घेतल्याबाबत आक्षेप घेण्यात आला आहे. तसेच माझे सोबत श्री व्हि. एम. पोकळे (टंकलेखक) व. श्री एन. आर. पाल (गवंडी) यांचा सुध्दा सा.बा.उपविभाग चिखलदरा यांनी ६ व्या वेतन निश्चीती करुन वेतन पळताळणी कडे सेवा पुस्तक पळताडणी करीता पाठवीले असता त्यांनी घेतलेल्या अतिरीक्त वेतनाची वसुली बाबत आक्षेप घेण्यात आलेले नाही.

या पत्राद्वारे आपणास विनंती करण्यात येते की माझे सेवा निवृत्तीच्या दिवशी निवृत्तीचे लाभ मिळाने करीता अर्ज सादर करित आहे.

From the amount of D.C.R.G. amount of Rs. 1,32,860/- was recovered towards excess payment by which the applicant is aggrieved. Hence, this Original Application.

3. Stand of respondent no. 3 is as follows:-

The applicant was transferred to Achalpur District Amravati from Chikhaldara on 23/06/2011 where he joined on the pay scale of Rs.3050-75-3950-80-4590/- The service book of the applicant was sent to the pay Verification Unit, Amravati, the objections were raised by the Pay Verification Unit on 18.06.2013 wherein it was mentioned that the pay scale of the applicant was wrongly fixed. The pay scale of the applicant was 3050-75-3950-80-4590/- but it was wrongly fixed and the payment was made to the applicant in pay scale Rs. 4000-100-6000/- The objection raised by the Pay Verification Unit, Amravati is correct and it was also conveyed to the applicant. The letter of Pay Verification Unit's dt. 04.01.2013. The copy of the same is also sent to the applicant. The applicant was duly informed by letter dt. 15.07.2013 regarding excess payment made to the Applicant.

According to the respondents, the impugned recovery is perfectly legal.

4. In support of his case the applicant has relied on **Thomas Daniel Vs. State of Kerala & Ors. 2022 SCC Online SC 536** wherein it is held:-

(11) In Col. B.J. Akkara (Retd.) Vs. Government of India this Court considered an identical question as under:

"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of

excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made."

(12) In Syed Abdul Qadir and Others v. State of Bihar excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/ understanding of a Rule or Order. It was held thus:

“59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

(13) In State of Punjab v. Rafiq Masih (White Washer) wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with

the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

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18. 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 the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

The applicant was Class-III employee. The impugned recovery was effected after his retirement. Thus, Clauses (i) and (ii) in **State of Punjab & Ors. Vs. Rafiq Masih & Ors., (2015) 4 SCC, 334** are attracted rendering the recovery impermissible.

5. For the reasons discussed hereinabove, the impugned recovery is held to be bad in law. The respondents are directed to refund the recovered amount to the applicant within two months from today failing which the unpaid amount shall carry interest @ 6% per annum from today till repayment. **The O.A. is allowed in these terms with no order as to costs.**

Member (J)

Dated :- 09/07/2024
aps

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 09/07/2024
and pronounced on

Uploaded on : 10/07/2024