

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 1070/2023 (S.B.)**

Suresh S/o Lalaji Tagde,
Aged about 56 years,
Occ. Service R/o At Post Goregaon,
Tah. Goregaon, Dist. Gondia.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Department of Public Health and Family,
Mantralaya, Mumbai- 400 032.
- 2) District Civil Surgeon,
K.T.S. Hospital,
Gondia, Dist. Gondia.

Respondents

Shri N. Lade, Id. Advocate for the applicant.

Smt. S.R.Khobragade, Id. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 19th Sept., 2024.

Judgment is pronounced on 25th Sept., 2024.

Heard Shri N.Lade, Id. counsel for the applicant and Smt.
S.R.Khobragade, Id. P.O. for the Respondents.

2. In this O.A. the applicant has impugned order of recovery dated 29.08.2016 (A-1) which reads as under:

विषय :- सुधारीत वेतन निश्चितीनुसार झालेल्या अतिप्रदानाची वसुली करणेबाबत

संदर्भ: १) या कार्यालयाचे पत्र क्र. सारुगों/आस्था/सुवेनि/अति-वसुली/तागडे/९१२१-२५/१६ दिनांक १८/०८/२०१६.

२) या कार्यालयाचे पत्र क्र. सारुगों/आस्था/तां/का.पदो./वाचा/तागडे/९३७८-८२/१६ दिनांक २३/०८/२०१६.

उपरोक्त संदर्भित क्र. १ व २ विषयाच्या अनुषंगाने श्री. एस. एल. तागडे वाहनचालक हे नक्षलग्रस्त भागात कार्यरत असल्याने त्यांची एकस्तर पदोन्नती करतांना पाचवे बेतन आयोगामध्ये दिनांक ०१/०७/२००२ सुधारीत वेतननिश्चिती करण्यात आली त्याअनुषंगाने त्यांना अदा करण्यात आलेली अतिप्रदान वसुली दिनांक ०१.०७.२००२ ते ३१.१२.२००५ पर्यंत रु.४२४२८/- (अक्षरी रु. बेचाळीस हजार चारशे अठ्ठावीस फक्त) व सहाव्या वेतन आयोगानुसार दिनांक ०१.०१.२००६ ते ३१.०७.२०१० पर्यंत रु.१०३५२६/- (अक्षरी रु. एक लाख तीन हजार पाचशे सव्वीस फक्त) व त्यांना पदोन्नतीची संधी उपलब्ध नसल्याने असलेली कुंठीतता घालविण्यासाठी मा. उपसंचालक आरोग्य सेवा नागपूर मंडळ नागपूर यांनी मंजूर करण्यात आलेल्या आश्वासीत प्रगती योजनेचा लाभ दिनांक ०१.०८.२०१० ते ३१.०७.२०१६ पर्यंत रु.२७७४२९/- (अक्षरी रु. दोन लाख सत्याहात्तर हजार चारशे एकोणतीस फक्त) अतिप्रदान करावयाची एकुण वसुली (४२४२८+१०३५२६+२७७४२९) रुपये ४२३३८३/- (अक्षरी चार लाख तेवीस हजार तीनशे त्र्याहांशी फक्त) करण्यात येवून १०० हप्त्यात वसुली करण्यात येईल त्यानुसार पहिला हप्ता माहे ऑगस्ट २०१६ पेड इन सप्टेंबर २०१६ रु.७५८३/- प्रमाणे व उर्वरित ९९ हप्ते माहे सप्टेंबर २०१६ पासून ४२००/- प्रमाणे अतिप्रदान वसुली त्यांना मिळणाऱ्या वेतनातून करण्यात येत आहे.

It is the contention of the applicant that he is a Group-C employee and hence, the impugned recovery is impermissible in view of

ratio laid down in the **judgment of Hon'ble Apex Court in case of State of Punjab & Ors. Vs. Rafiq Masih & Ors., (2015) 4 SCC, 334.**

3. Stand of respondent no. 2 is that due to wrong fixation of pay excess payment was admittedly made to the applicant and hence recovery was started.

4. In Rafiq Masih (Supra) it is held:-

"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. In the instant case the applicant is a Class-III/Group-C employee. Therefore, Clause (i) in Rafiq Masih (Supra) would be attracted rendering the recovery impermissible. The O.A. is accordingly allowed in the following terms. The impugned order dated 29.08.2016 (A-1) is quashed and set aside. The recovered amount shall be refunded to the applicant within three months from today. No order as to costs.

Member (J)

Dated :- 25/09/2024
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 : 25/09/2024
and pronounced on

Uploaded on : 26/09/2024