

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 1087/2023 (S.B.)**

Baban s/o Ganpati Kolhekar
a/a 71 yrs., Occ.- Pensioner
r/o At Purad, Post-Punwat,
Tah.- Wani, Dist.- Yavatmal

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.
- 3) The Superintendent of Police,
Chandrapur, Dist.- Chandrapur.
- 4) The Additional Treasury Officer,
District Treasury Office, Chandrapur.
- 5) The Accountant General-II (A & E),
Pension Branch Office, Nagpur,
Dist.- Nagpur.

Respondents

Shri V.R.Borkar, 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 11th July, 2024.

Judgment is pronounced on 18th July, 2024.

Heard Shri V.R.Borkar, ld. counsel for the applicant and Shri A.P.Potnis, ld. P.O. for the Respondents.

2. The applicant was holding the post of Assistant Sub Inspector, a Class-III post, when he retired on superannuation on 31.03.2010. G.Rs. dated 17.12.2013, 15.02.2014 and 18.10.2014 (Annexures-2 & 3, respectively) of Finance Department, Government of Maharashtra contain guidelines for computing pension of employees who were posted in Naxal/Tribal Area at the time of their retirement. On 24.01.2023 respondent no. 5 issued a letter (A-4) to respondents 3 & 4 to appropriately scale down pension of the applicant by disregarding One Step Promotion Scale which the applicant was getting, as per G.R. dated 06.08.2002 issued by G.A.D., Government of Maharashtra, by virtue of his posting in Naxal/Tribal Area. This was followed by the impugned order dated 07.09.2023 (A-1) which stated:-

उपरोक्त विषयाच्या अनुषंगाने आपणास कळविण्यात येते की, संदर्भित प्राधिकारपत्रा अन्वये आपले निवृत्तीवेतन सुधारीत करण्यात आलेले आहे. आपल्याकडे शासनाचे रुपये 490168/- एवढी रक्कम अतिप्रदान झाल्यामुळे आपल्याकडून दरमहा 5000/- रुपये प्रमाणे 98 हप्ते आणि 168/- रुपये प्रमाणे 1 हप्ता असे एकूण 99 हप्त्यात रक्कम माहे जून-2023 पासून आपल्या निवृत्तीवेतनातून कपात करण्यात येत आहे.

सबब आपले माहितीस्तव अग्रेषित.

According to the applicant, the impugned order directing recovery is not sustainable in law. Hence, this Original Application.

3. According to the respondent no. 4 the impugned recovery is legal because the applicant had admittedly received excess amount due to wrong fixation of pension.

4. By interim order dated 09.10.2023 further recovery was stayed.

5. The issue involved in the O.A. is no longer *res integra*. In **Tarachand S/o Urkudaji Gajbhiye Vs. State of Maharashtra & Ors. 2021 (2) Mh.L.J. 319** it is held:-

6] We have considered the grounds formulated by the petitioner in his Original Application, the reply on behalf of the State and the impugned judgment of the learned MAT in view of the Circular dated 17.12.2013. We find that the petitioner would not be entitled for the one step promotion increment from the moment he returns from the naxal / tribal affected area. It is a coincidence that the petitioner has superannuated on 30.6.2010 while being in the tribal/naxal affected area. This, however, would not be a ground for interpreting the Government Resolution dated 06.08.2002 and the Circular dated 17.12.2013, in any ways, differently. It is specifically provided in the Government Resolution that the said increment is temporarily extended only as an incentive to work in such areas and would not be a regular addition to his pay scale.

7] Considering the above, the issue that needs to be considered by this Court is, as to whether the respondents were justified in issuing the impugned order of recalculating the pensionary benefits of the petitioner

and seeking recovery of the excess amounts that were paid under the wrong assumption that the one step promotion increment would be a part of his salary on his superannuation. There is no dispute that such increment was included in his pay scale, when his pension was calculated and, therefore, he was paid excess retiral benefits and pension.

8] The Government Resolution and the Circular referred to above clearly indicate that an employee who superannuates while being in deployment in such area, would give him no right to have the inclusion of one step promotion increment in his salary on the basis of the principle of "last drawn salary". In this backdrop, the impugned direction recalculating the pensionary benefits of the petitioner cannot be faulted. The order of the learned MAT calls for no interference to this extent.

9] We find that the learned MAT has turned down the grievance of the petitioner against the recovery of amounts paid to him towards his pensionary benefits for a period of six years. There is no dispute and the State of Maharashtra and the respondents have not taken a stand that the petitioner was in any way responsible for the miscalculation of the pensionary benefits or that he had played a fraud on the respondents and had manipulated his calculation of retiral benefits. No laches or malafides have been attributed to the conduct of the petitioner.

10] Considering the above, the case of the petitioner would be squarely covered by the judgments delivered by the Hon'ble Apex Court in the matter of Syed Abdul Qadir Vs. State of Bihar, (2009) 3 SCC 475 and State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc., 2014 MhLJ Online (S.C.) 47 = 2014 (14) SCALE 300. In the judgment delivered by the Hon'ble Apex Court in the matter of State of Punjab & Ors etc vs. Rafiq Masih (White Washer) etc, (supra) it has been observed in paragraph No. 12, as under:

"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".

11] We have considered the impugned order of the learned MAT to the extent of upholding the action of the employer in seeking recovery of excess amounts paid, six years after his retirement. We find that the said conclusion would not stand the test propounded by the Hon'ble Apex Court in paragraph No.12 in the case of State of Punjab & Ors etc vs. Rafiq Masih (White Washer) etc, (supra) and considering the earlier law laid down in the matter of Syed Abdul Qadir Vs. State of Bihar (supra).

In this case Clauses (i) & (ii) of Rafiq Masih are attracted.

6. In view of aforestated factual and legal position, **the O.A. is allowed.** The impugned recovery is held to be unsustainable and the impugned order is quashed and set aside. The recovered amount shall be refunded to the applicant within three months from today failing which it shall carry interest @ 6% per annum from today till payment. No order as to costs.

Member (J)

Dated :- 18/07/2024

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 : 18/07/2024
and pronounced on

Uploaded on : 19/07/2024