

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 1121/2023 (S.B.)**

Amarsingh S/o Chachu Bhilawekar,
Aged about 58 years, Occ. Pensioner,
R/o Dattatraya Nagar, Ranala, Plot No. 52,
Near office of Gram Panchayat Ranal, Dist. Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Home Department,
Mantralaya, Mumbai- 400 032.
- 2) The Director General of Police,
C.S.T., Mumbai.
- 3) The Inspector General of Police,
Nagpur (Region), Near Sadar Police Station,
Civil Lines, Nagpur.
- 4) The Superintendent of Police,
Nagpur District (Rural),
Near Police Control Room,
Civil Lines, Nagpur.
- 5) The Accountant General (A & E) - II,
Nagpur, Pension Branch Office,
Nagpur - 01.
- 6) The Treasury Officer, Nagpur,
Treasury Office, Collectorate,
Nagpur.

Respondents

Shri S.Malode, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 21st Nov., 2024.

Judgment is pronounced on 29th Nov., 2024.

Heard Shri S.Malode, Id. counsel for the applicant and Shri S.A.Sainis, Id. P.O. for the Respondents.

2. Undisputed facts are as follows. The applicant retired on superannuation on 31.07.2022. He was holding a Group-C post of Assistant Sub Inspector. Pay Verification Unit raised an objection that excess payment of Rs. 1,72,126/- was made to the applicant on account of wrong pay fixation and it was liable to be recovered. By order at A-R-6-I (at P. 83) said amount was recovered from the amount of D.C.R.G. payable to the applicant. Hence, this Original Application for refund of the amount, with interest.

3. It may be mentioned that by order dated 19.10.2022 (A-3) pay of the applicant was revised. This re-fixation is not challenged by the

applicant. The challenge is confined to recovery which, according to the applicant, was impermissible in view of **State of Punjab & Ors. Vs. Rafiq Masih & Ors., (2015) 4 SCC, 334** wherein it is held:-

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.

4. In support of the recovery respondent no. 4 has *inter alia* placed on record an undertaking given by the applicant while giving option for re-fixation of pay. Pursuant to this option pay of the applicant was fixed and Pay Verification Unit found this pay fixation to be erroneous. Though, on the basis of above referred undertaking it may be

concluded that clause – (ii) of Rafiq Masih (supra) will not apply in view of ratio laid down in **Punjab and Haryana High Court Vs. Jagdev Singh (2016) 14 SCC**, clause – (i) will certainly apply as the applicant was admittedly a Group-C employee at the time of his retirement. Thus, the impugned recovery cannot be sustained. Hence, the Original Application is allowed. The respondents are directed to refund the amount recovered within two months from today failing which the unpaid amount shall carry interest @ 6% per annum from today till refund. No order as to costs.

Member (J)

Dated :- 29/11/2024
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 : 29/11/2024
and pronounced on

Uploaded on : 02/12/2024