

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 1231/2023 (S.B.)**

Shri Babarao Laxmanrao Bobde,
Aged about 58 yrs., Occ. Retired,
R/o Kalmeshwar, Dist. Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai - 400 032.
- 2) The Superintendent of Police (Rural),
Nagpur.
- 3) The Deputy Superintendent of Police,
(Home), Nagpur District (Rural),
Nagpur.

Respondents

Shri G.G.Bade, Id. Advocate for the applicant.

Shri V.A.Kulkarni, Id. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 02nd Aug., 2024.

Judgment is pronounced on 03rd Sep., 2024.

Heard Shri G.G.Bade, Id. counsel for the applicant and Shri
V.A.Kulkarni, Id. P.O. for the Respondents.

2. On 20.10.2023 respondent no. 3 issued the impugned order (A-1) directing recovery of Rs. 9,38,249/- from retiral benefits of the applicant towards excess payment said to have been made to him. The applicant was holding a Group-C post of Head Constable at the time of retirement on superannuation on 30.10.2023. It is his contention that the impugned recovery is impermissible. Hence, this Original Application.

3. Stand of respondents 2 & 3 is that Pay Verification Unit had made a communication dated 01.09.2023 (A-R-3-I) pursuant to which the impugned recovery was directed. Besides this, the applicant had executed an undertaking on 20.04.2022 (A-R-3-II) that he would refund excess payment received, if any. This undertaking will permit/authorise the impugned recovery as held in judgment of **Hon'ble Supreme Court in Civil Appeal No.3500 of 2006 [High Court of Punjab and Haryana Vs. Jagdev Singh]**.

4. **Hon'ble Supreme Court in State of Punjab & Ors. Vs. Rafiq Masih & Ors. (2015) 2 SCC (L & S) 33** has 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."*

In State of Maharashtra & Ors. Vs. Mrs. Rekha Vijay

Dubey (with connected Writ Petitions) the Hon'ble Bombay High

Court has held (by judgment dated 24.09.2021) as follows:-

Jagdev Singh (supra) had the occasion to consider Rafiq Masih (supra). In paragraph 10, the situations as referred to in paragraph 18 of Rafiq Masih (supra) were quoted, whereafter, it was observed in paragraph 11 as follows :-

"11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first place was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

The exception carved out by Jagdev Singh (supra) is in respect of situation (ii) as in paragraph 18 of Rafiq Masih (supra). There are multiple reasons for which we are not inclined to accept Mr. Pathan's contentions.

The other reason for which we are not inclined to hold that Jagdev Singh (supra) has application to the facts of this case is because of situations (i) and (iii) forming part of paragraph 18 of Rafiq Masih (supra). Situation (i) clearly bars recovery from employees belonging to Class III/Group 'C' service. Further, situation (iii) bars recovery from employees when excess payment has been made for a period in excess of 5 (five) years before the order of recovery is issued.

We are of the considered opinion that the Tribunal was right in distinguishing Jagdev Singh (supra) by observing that paragraph 11 of the said decision must be confined to Class I/Group 'A' and Class II/Group 'B' officers.

5. The applicant was a Group-C employee. When the impugned order of recovery was issued, his retirement on superannuation was less than two weeks away. Thus, Clauses (i) and (ii) of Rafiq Masih (Supra) are attracted rendering the recovery impermissible. For these reasons, the O.A. is allowed in the following terms. The impugned order dated 20.10.2023 (A-1) is quashed and set aside. No order as to costs.

Member (J)

Dated :-03/09/2024

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 : 03/09/2024
and pronounced on

Uploaded on : 04/09/2024