

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 206/2018 (S.B.)**

- 1) Udhav S/o Laxman Bhoyar,
Aged 66 years, Occ. Retired,
R/o Chikhali Ejara,
Yavatmal, Tq. and Dist. Yavatmal.
- 2) Dhyaneshwar Bhauji Bhomle,
Aged 65 years, Occ. Retired,
R/o House No. 36,
Rajiv Nagar, Arni Road,
Wadgaon, Tq. and District Yavatmal.
- 3) Ramesh S/o Namdev Wankhade,
Aged 62 years, Occ. Retired,
R/o Ward No. 2, Arunavati Project Vasahat,
Arni, Tq. Arni, District Yavatmal.
- 4) Ramrao S/o Apparao Wagh,
Aged 60 years, Occ. Retired,
R/o Pokharni, Parbhani,
Tq. and District - Parbhani.
- 5) Gangadhar Pandurang Gulhane,
Aged 62 years, Occ. Retired,
R/o Near Ram Mandir Road,
Bhagyoday Society, Plot No.19,
Kanchan Provision, Wadgaon,
Tah. and District Yavatmal.
- 6) Devdas S/o Nagorao Hadgude,
Aged 62 years, Occ. Retired,
R/o Ward No.2,
In Front of Balaji Ginning,
Arunavati Vasahat, Arni,
Tq. Arni, District Yavatmal.
- 7) Sudhakar Rambhau Kshirsagar,

Aged 63 years, Occ. Retired,
R/o Ward No.2, In Front of Balaji Ginning,
Arunavati Vasahat, Arni,
Tq. Arni, District Yavatmal.

- 8) Pandit S/o Narayan Poharkar,
Aged 62 years, Occ. Retired,
R/o In Front of Balaji Ginning,
Arunavati Vasahat, Arni,
Tq. Arni, Yavatmal District.
- 9) Pradip S/o Shriram Chintawar,
Aged 60 years, Occ. Retired,
R/o Ward No.1, Vitthal Mandir,
Juni Vasti, Arni, Tq. Arni,
District - Yavatmal.
- 10) Sheikh Jalil S/o Sheikh Musa,
Aged 60 years, Occ. Retired,
R/o Ward No.6, Shiripura, Arni,
Tq. Arni, District - Yavatmal.
- 11) Narayan S/o Sambha Dhule,
Aged 64 years, Occ. Retired,
R/o At Madhukar Nagar,
Post P.N. College Pusad, Tq. Pusad,
District - Yavatmal.

Applicants.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Irrigation,
Mantralaya, Mumbai-32.
- 2) The Chief Executive Engineer,
Lower Painganga Project Department,
Yavatmal, District - Yavatmal.
- 3) The Indian Audit and Accounts Department,

Office of the Account General (Account & Entitlements) - II,
Pension Wing, Old Building,
Post Box No.114, G.P.O. Civil Lines,
Nagpur-440 001.

Respondents

Shri J.S.Wankhede, Id. Advocate for the applicants.

Shri S.A.Sainis, Id. P.O. for the respondents 1 & 3.

None for the R-2.

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

JUDGMENT

Judgment is reserved on 04th July, 2024.

Judgment is pronounced on 10th July, 2024.

Heard Shri J.S.Wankhede, Id. counsel for the applicants and
Shri S.A.Sainis, Id. P.O. for the Respondents 1 & 3. None for the R-2.

2. Requisite details of the applicants are as follows:-

Sr. Nos.	Post	Date of Retirement on Superannuation	Amount recovery of
1	Senior Clerk	30.11.2008	17,880/-
2	Junior Clerk	31.05.2011	29,123/-
3	Muster Clerk	30.11.2014	54,039/-
4	Oil Man	30.04.2017	13,650/-
5	Peon	31.12.2014	25,204/-
6	Labour	31.01.2014	30,377/-
7	Operator	28.02.2013	40,610/-
8	Chowkidar	30.06.2014	15,545/-
9	Mokardam	31.07.2016	35,879/-
10	Chowkidar	31.07.2016	35,321/-
11	Chowkidar	31.10.2011	23,718/-

3. The applicants are aggrieved by order dated 23.01.2018 (A-12) passed by respondent no. 2 whereby recovery of amount stated to have been paid in excess towards such allowance was directed. The impugned order stated:-

विषय :- अतिप्रदान झालेला नक्षलभत्ता वसुल करणे बाबत.

संदर्भ :- १. शासन परिपत्रक क्र. आस्था-१७०१/प्र.क्र.११४/भाग-३/ का.१५ दि०९/११/२००५

२. मंडळ कार्यालयाचे पत्र क्र.६०४२/आ-५/२०१७ दि.०५/१०/२०१७

उक्त संदर्भित शासन निर्णयानुसार नक्षलग्रस्त तसेच आदिवासी भागात मुख्यालयी असलेल्या अधिकारी/कर्मचारी यांना मुळ वेतनाच्या १५% (पांचवा वेतन आयोग) कमाल रु.१५००/- दरमहा या मर्यादेत नक्षलग्रस्त भत्ता अनुज्ञेय आहे.

तथापि, या विभागातील वेतन देयकाची तपासणी केली असता या विभागाच्या अधिनस्त आर्णी (नक्षलग्रस्त भाग) मुख्यालयी असलेल्या उपविभागांतर्गत सेवानिवृत्त अधिकारी / कर्मचारी यांना मूळ वेतन+ महागाई वेतनाच्या १५ टक्के नक्षलभत्ता देण्यात आल्याचे निदर्शनास आले.

त्यानुषंगाने आर्णी (नक्षलग्रस्त भाग) मुख्यालयी उपविभागांतर्गत सेवानिवृत्त अधिकारी / कर्मचारी यांना अतिप्रदान झालेला नक्षलभत्ता खालीलप्रमाणे वसुल करण्यांत येत आहे.

According to the applicants, the impugned recovery is impermissible under the law. Hence, this Original Application.

4. Stand of respondent no. 2 is as follows:-

It is submitted that the office of Account general had audited the office of Executive Engineer, Lower Painganga Upasa Sinchan Vibhag, Arni for the year 2009-2010. It was observed during the said audit that as per GR of 09-11-2005, as per 5th pay commission, 15% of basic pay was to be paid as naxal allowance to the employees. However, it was brought to the notice that 15% naxal allowance was paid on dearness allowance in addition to the basic pay and accordingly Accountant General raised an objection.

It is submitted that vide order dated 23-01-2018 of this office, 11 retired employees have been issued letter to refund the excess amount paid to them. It was stated that they had to be paid 15% Naxal allowance on basic pay however they have been paid 15% Naxal allowance on Dearness allowance in addition to Basic pay. Thus demand letters were issued to them.

It is a regular office practice that the excess amount paid to him is recovered from the employee even if he has retired. Thus there is no fault or illegality in issuing demand letters to the applicants to recover the excess amount paid to them.

5. The applicants have relied on **Hon'ble Apex Court in case of State of Punjab & Ors. Vs. Rafiq Masih & Ors., (2015) 4 SCC, 334** wherein 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."

The applicants are Class-III employees. The impugned recovery was directed after their retirement. Thus, Clauses (i) & (ii) of Rafiq Masih (supra) are attracted rendering the recovery impermissible. In the result, the impugned order to the extent it directs recovery from the applicants is quashed and set aside. In case recovery is effected, the recovered amount shall be refunded within two months from today failing which the 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 :- 10/07/2024
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 : 10/07/2024
and pronounced on

Uploaded on : 11/07/2024