

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 565/2018 (S.B.)

Anil Krushnarao Hastak,
Aged about 58 years,
Occu. : Retired,
R/o A-5 Nandanvan Nagar,
Near Brahman Sabha Mangal Karyalay,
Buldhana Road Malkapur,
Tq. Malkapur Dist. Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Irrigation Department,
Mumbai : 32.
- 2) The Executive Engineer,
Buldhana Irrigation Division,
Tq. and Dist. Buldhana.
- 3) The Assistant Engineer,
Grade-I, Vyaghra Nala Canal Sub-Division,
Malkapur, Dist. Buldhana.

Respondents

Shri A.S.Deshpande, Id. Advocate for the applicant.

Shri A.P.Potnis, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated :- 30.04.2024.

JUDGEMENT

Heard Shri A.S.Deshpande, Id. counsel for the applicant and
Shri A.P.Potnis, Id. P.O. for the Respondents.

2. The case of the applicant in short is as under:-

The applicant was initially appointed as Technical Assistant on 17.03.1983 in the office of Executive Engineer, Ichampalli Division, Chandrapur. Applicant has served in the department till his retirement. There was no adverse remark in the entire carrier. Looking to the service rendered by the applicant he was promoted as Civil Engineer Assistant w.e.f. 01.01.1989. Thereafter applicant was given benefit of time bound promotion as per order dated 08.06.1995. The applicant was surprised when he received the impugned order dated 23.04.2018 for recovery of excess amount of Rs. 4,10,685/-. The applicant was retired on 31.05.2018. Hence, the applicant challenged the impugned order by filing present Original Application.

3. Respondent no. 2 has filed reply. It is submitted that there was wrong fixation during the period from 1989 to 2018. At the time of pay fixation, applicant had given undertaking on 04.02.1999, therefore, the recovery of excess amount is made. The action by the respondent is preferably legal and correct. Hence, O.A. is liable to be dismissed.

4. During the course of submission, ld. counsel for the applicant has pointed out Judgement of **Hon'ble Apex Court in case of State of Punjab & Ors. Vs. Rafiq Masih & Ors., (2015) 4 SCC, 334**. He has pointed out judgment of **Hon'ble High Court Bombay, Bench at Aurangabad 5367 of 2016 in the case of Ravindra S/o Ramchandra**

Patil Vs. State of Maharashtra & 4 Ors. Ld. counsel for the applicant has also pointed out judgment of this **Tribunal in O.A. No. 835/2022 delivered on 04.10.2023.** The ld. counsel for the applicant has submitted that as per the guidelines given in the case of Rafiq Masih & Ors. (supra) recovery cannot be made from the retired employees or the employees who are due to retire within one year, of the order of recovery. The applicant is retired on 31.05.2018. The recovery order is dated 23.04.2018 i.e. one month before his retirement. Ld. counsel for the applicant has submitted that recovered amount be refunded along with interest. Ld. counsel for the applicant has submitted that because of illegal recovery, the respondents be directed to refund the amount along with interest.

5. Ld. P.O. Shri A.P.Potnis has relied on the judgment of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh reported in (2016) 14 SCC 267** and submits that once he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him, the excess payment was sought to be recovered in terms of the undertaking.

6. Now, Law is well settled in view of the judgment of Hon'ble Supreme Court in Rafiq Masih (supra). The judgment in the case of Jagdev Singh (supra) is in respect of Judicial Officer. The judgment of Hon'ble Supreme Court in Rafiq Masih (supra) and Jagdev Singh are

considered by the Hon'ble Bombay High Court in the case of Ravindra Patil (supra). Hon'ble High Court has held that even though undertaking was given that is not the ground for recovery. The principle laid down by the Apex Court in the matter of **State Of Punjab & Ors vs Rafiq Masih (White Washer) reported in 2015 (4) SCC 334** squarely applies to the instant matter. Para no. 12 of the said Judgment is reproduced below:-

"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."

As per the guideline no. 2 recovery from retired employees, or employees who are due to retire within one year cannot be made. Applicant is retired on 31.05.2018 and impugned order for recovery is

dated 23.04.2018, therefore, recovery is not permissible. Hence, the following order:-

- A. O.A. is allowed.
- B. The impugned order of recovery dated 23.04.2018 is hereby quashed and set aside.
- C. The respondents are directed to refund the recovered amount along with interest @6% from the date of recovery till the actual payment.
- D. No order as to costs.

(Shri Justice M.G.Giratkar)
Vice Chairman

Dated :- 30/04/2024.
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 Vice Chairman.

Judgment signed on : 30/04/2024.
and pronounced on

Uploaded on : 03/05/2024.