

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 726/2023 (S.B.)**

Bhaudas s/o Gokhal Sonekar,
Aged about 63 years,
Occupation - Retired,
R/o Tirora, Tah. Tirora,
District - Gondia.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Principal Secretary,
Forest Department, Mantralaya,
Mumbai - 400 032.
- 2) Deputy Conservator of Forest,
Gondia, Tah. & District - Gondia.
- 3) Range Forest Officer,
Forest Range Tirora, Tah. Tirora,
District - Gondia.
- 4) Pay Verification Unit,
Through Accounts Officer,
Collectorate, Nagpur.

Respondents

Shri I.N.Chaudhari, Id. Advocate for the applicant.

Shri A.M.Khadatkar, Id. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 09th July, 2024.

Judgment is pronounced on 16th July, 2024.

Heard Shri I.N.Chaudhari, Id. counsel for the applicant and Shri A.M.Khadatkar, Id. P.O. for the Respondents.

2. The applicant was holding the post of Forest Guard. He was posted in Naxal/Tribal Area. He retired on 30.06.2018. On 04.10.2019 respondent no. 2 passed the following order (A-2):-

श्री. बी. जी. सोनेकर, सेवानिवृत्त वनरक्षक यांनी महाराष्ट्र नागरी सेवा (सुधारीत वेतन) नियम-२०१९ मधील नियम क्रमांक-६ नुसार दिनांक १.१.२०१६ पासून सुधारीत वेतन संरचना स्विकारण्याचा विहीत नमुन्यातील विकल्प व वचनपत्र या कार्यालयास दिला आहे.

श्री. बी. जी. सोनेकर, सेवानिवृत्त वनरक्षक यांची महाराष्ट्र नागरी सेवा (सुधारीत वेतन) नियम-२०१९ मधील नियम ७(अ) नुसार दिनांक १.१.२०१६ रोजी सुधारीत वेतन संरचनेत सोबत जोडलेल्या जोडपत्र मधील विवरणपत्र मध्ये नियमीत वेतन निश्चिती करण्यात आली आहे. तदरहु कर्मचा-यांचे वेतन निश्चितीचे जोडपत्र तयार करून सोबत सादर करण्यात येत आहे.

शासन अधिसूचना वित्त विभाग, क्रमांक वेपुर-२०१९/प्र.क्र.१/सेवा-९, दिनांक ३०.१.२०१९ व वित्त विभाग, शासन परीपत्रक क्रमांक वेपूर-२०१९/प्र.क्र.८/सेवा ९ दिनांक २०.२.२०१९ नियम १४ चे तरतुदीनुसार थकबाकीची कार्यवाही करावी तसेच दिनांक १.१.२०१६ ते ३०.०६.२०१८ (दोन्ही दिवस धरून) पर्यंतच्या कालावधीतील थकबाकी रक्कम ५ वर्षात ५ समान हप्त्यात, वसुलीची रक्कम असल्यास, ती समायोजित करून सन २०१९ मध्ये करावयाचा पहीला हप्ता माहे जुन २०१९ मध्ये रोखीने अदा करावे. तसेच उर्वरित हप्त्ये प्रतिवर्षी माहे जुन (देय जुलै) मध्ये रोखीने अदा करावे.

सुंदर वेतन निश्चिती ही वेतन पडताळणी पथकाकडून होणा-या वेतन निश्चिती तपासणीच्या अधिन राहील व अश्या पथकाकडून होणा-या तपासणीनुसार जर

वेतन निश्चितीमध्ये बदल झाल्यास व त्यामुळे कराव्या लागणा-या वेतन पुर्नःनिश्चितीमुळे अतिप्रदान झाल्याचे निर्देशनास आल्यास अतिप्रदान रक्कम एकरक्कमी वसुली केली जाईल, यांची नोंद घ्यावी.

सहपत्र- वेतन निश्चितीचे विवरणपत्र व जोडपत्र

As per this calculation an amount of Rs. 5,68,380/- was paid in excess to the applicant towards D.A. as per recommendations of 7th Pay Commission. This recovery was effected in the year 2022 to which the applicant objected by making a representation dated 26.09.2022 (A-3) but to no avail. According to the applicant, the impugned recovery is bad in law. Hence, this Original Application.

3. It is the contention of the respondents that during Pay Verification excess payment was detected, the applicant was entitled to get One Step Promotion Scale only so long as he was working in Naxal/Tribal Area as per para 3 (7) of G.R. dated 06.08.2002 issued by G.A.D., Government of Maharashtra, the applicant was, in addition, paid benefits of Assured Progress Scheme from 09.01.2016 which was contrary to para 3 (7) of G.R. dated 06.08.2002, letting the applicant retain the amount which is admittedly paid in excess would amount to allowing unjust enrichment and hence the respondents would be

justified in proceeding as per G.R. dated 17.08.2023 (A-R-4-III) which *inter alia* states :-

४. दि.२२.११.२०२१ रोजीच्या वचनपत्र घेण्याबाबतच्या शासन परिपत्रकापूर्वी झालेल्या अतिप्रदानाच्या वसुली क्षमापित करण्याबाबतची प्रकरणे निदर्शनास आल्यानंतर संबंधित विभागांनी प्रकरणनिहाय तपासणी करून वित्त विभागाच्या सहमतीसाठी सादर करावीत.

५. महाराष्ट्र नागरी सेवा (सेवेच्या सर्वसाधारण शर्ती) नियम, १९८१ मधील नियम क्रमांक ४१ नुसार विभागांनी उचित कार्यवाही करणे आवश्यक आहे.

3. On 12.06.2024 time was sought by Id. P.O. to ascertain whether the applicant had given any undertaking that he would be liable to refund amount of excess payment. Two undertakings given by the applicant are placed on record. These are dated 18.05.2009. The latter undertaking reads:-

वचनपत्र

असे वचन देतो की, चुकीच्या वेतननिश्चितीमुळे किंवा पुढे वेतननिश्चितीमध्ये विसंगती आढळून आल्यामुळे मला त्याचे निर्देशनास आल्यास ते भविष्यात मला प्रदान करण्यात येणा-या रकमेतून समायोजित करून किंवा इतर शासनास परत करीन.

महाराष्ट्र शासन सामान्य प्रशासन विभाग शासन निर्णय क्रमांक टीआरएफ/२०००/प्र.क्र.३/१२ मंत्रालय, मुंबई २००२ नुसार नक्षलग्रस्त भागाकरीता अनुज्ञेय एकस्तर पदोन्नतीच्या अनुषंगाने उपरोक्त वाचा शासन परीच्छेद क्रमांक ७ (अ) (१) नुसार (या कार्यालयाचे आस्थापनेवरील मी दिनांक ०१-०१-२००६ पुर्वीचा यामुळे) दिनांक

०१-०१-२००६ पुर्वी एकस्तर पदोन्नती अंतर्गत शुरु असलेल्या वेतनावर दिनांक ०१ जानेवारी असलेले मुळ वेतन (विद्यमान वेतन श्रेणीतील) यास १.८६ ने गुणून सुधारीत वेतन संरचनेमध्ये वेतन निश्चिती प्रत्यक्षात मात्र उपरोक्त वाचा संदर्भित परीपत्रकात याबाबतचा उल्लेख नाही. अशा वेतन निश्चितीमुळे मला याचे पूढे निर्देशनास आल्यास अतिप्रदान रकमेसाठी वसुलीस मी पात्र राहीन.

हे वचनपत्र लिहून देत आहे.

It was submitted by Shri I.N.Chaudhari, ld. counsel for the applicant that in the facts and circumstances of the case undertaking, if any, will not entitle the department to effect recovery. In support of this submission reliance was placed on **Tarachand S/o Urkudaji Gajbhiye Vs. State of Maharashtra & Ors. 2021 (2) Mh.L.J. 319** wherein the Hon'ble High Court has 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).

Further reliance was placed by the applicant on **Manohar**

Bappaji Gaikwad Vs. State of Maharashtra & Ors. 2023 (2) Mh.L.J.

106 wherein the Bombay High Court has held:-

It is canvassed that the petitioner has given an undertaking/ agreeing for refunding of the said amount, if it is noticed that, on 2-5-2009, there was an incorrect fixation of pay or any excess payment was made in the light of the discrepancy notice subsequently. The undertaking issued by the petitioner reads thus :

"I hereby undertake that, any excess payment that, may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of this discrepancies noticed subsequently, will be refunded by me to the Government either by adjustment against future payments due to me or otherwise."

8. Reliance is placed on the judgment delivered by the Hon'ble Supreme Court in the matter of High Court of Punjab and Haryana and others vs. Jagdev Singh, 2016 MhLJ Online (S.C.) 62 = (2016) 14 SCC 267.

9. We find that the GR dated 24-8-2017 was introduced for the first time by the State Government and which was also made applicable to the employees of the District judiciary. All those who were entitled for an

advance increment or additional increment for excellent work, were held to be ineligible by virtue of the said GR. This Court has consistently taken the view and which is by now settled that the GR dated 24-8-2017, would be applicable prospectively. In Vinod Ramrajo (supra), this Court has recently held in respect of the petitioners, who are working in the District Courts at Osmanabad and Beed, that the withdrawal of the additional increments can be sustained, prospectively from 24-8-2017.

10. The Law laid down by the Hon'ble Supreme Court in High Court of Punjab and Haryana and others vs. Jagdev Singh (supra) permits recovery from an employee who is not on the verge of retirement, who is not a Class-III or Class IV employee, who has not played a fraud and who has given an undertaking permitting employer to recover the amount.

4. It is not disputed that the applicant was holding a Class-III post, he retired on 30.06.2018, recovery was directed in the year 2019 and effected in the year 2022. Legal position discussed above does not permit recovery under such circumstances. **The O.A. is, therefore, allowed in the following terms.** The respondents are directed to refund the recovered amount to the applicant within two months from today failing which the unpaid amount shall carry interest @ 6% per annum from today till payment. No order as to costs.

Member (J)

Dated :- 16/07/2024
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 : 16/07/2024
and pronounced on

Uploaded on : 17/07/2024