

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 789/2020 (S.B.)**

Shri Janardhan S/o Raibhan Badhiye,
Aged about 65 years, Occ. Retired,
Plot No. 56, Mahesh Nagar,
Katol Road, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Home Department,
Mantralaya, Mumbai- 400 032.
- 2) The Director General of Police,
Mumbai, Police Head Quarters,
Shahid Bhagat Singh Marg,
Regal Cinema, Coloba,
Mumbai.
- 3) The Superintendent of Police,
Chandrapur, Tah. & Dist. Chandrapur.
- 4) Accountant General (A & E)-II,
Civil Lines, Nagpur.
- 5) Treasury Officer, Nagpur
Civil Lines, Nagpur.

Respondents

Shri D.R.Rupnarayan, 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 02nd Aug., 2024.

Judgment is pronounced on 05th Sept., 2024.

Heard Shri D.R.Rupnarayan, ld. counsel for the applicant and Shri S.A.Sainis, ld. P.O. for the Respondents.

2. The applicant was holding the post of Police Sub Inspector and working in Naxal Area at the time of his retirement on superannuation on 30.06.2012. Till his retirement he used to get One Step Promotion Scale as per G.R. dated 06.08.2002 issued by G.A.D., Government of Maharashtra. While fixing his pension One Step Promotion Scale was wrongly taken into account and basic pension was fixed at Rs. 9,000/-. By order dated 26.05.2020 (A-5) it was appropriately scaled down to Rs. 8,705/- w.e.f. 01.07.2012. In the intervening period excess payment of Rs. 81,323/- was made to the applicant. By the impugned communication dated 28.07.2020 (A-6) recovery of said amount was initiated. According to the applicant, such recovery is impermissible. Hence, this Original Application.

3. Stand of the respondents is that excess payment was admittedly made to the applicant on account of erroneous fixation of pension and it could be recovered in view of G.Rs. dated 17.12.2013 and

18.10.2014, and Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982.

4. The applicant is relying on **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."

In the instant case recovery was initiated after retirement of the applicant and it pertains to period in excess of five years. Thus, Clauses (ii) and (iii) of Rafiq Masih (Supra) are attracted rendering the recovery impermissible. In the result, the O.A. is allowed in the following

terms. The order of recovery dated 28.07.2020 (A-6) is quashed and set aside. The recovered amount shall be refunded to the applicant within three 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 :- 05/09/2024
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 : 05/09/2024
and pronounced on

Uploaded on : 06/09/2024