

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.993/2022 (S.B.)**

Shankar S/o Govindrao Awari,
a/a 75 years, Occ. Pensioner,
R/o Moharil Gate, Moharali,
Tah. & Dist. Chandrapur.
Pin-442 401.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai- 400 032.
- 2) The Deputy Director (Buffer),
Tadoba-Andheri Tiger Project,
Dist. Chandrapur.
- 3) The District Treasury Officer,
District Treasury Office, Chandrapur.
- 4) The Accountant General (A & E)-II,
Pension Branch Office,
Nagpur, Dist. Nagpur.

Respondents

Shri V.R.Borkar, Id. Advocate for the applicant.

Smt. S.R.Khobragade, Id. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 06th August, 2024.
Judgment is pronounced on 09th August, 2024.

Heard Shri V.R.Borkar, ld. counsel for the applicant and Smt. S.R.Khobragade, ld. P.O. for the Respondents.

2. The applicant was holding a Class-III post of Forester at the time of his retirement on superannuation on 30.06.2006. On the basis of order dated 02.12.2019 (A-2) passed by the Accountant General, respondent no. 3 directed recovery of Rs. 7,74,787/- from the applicant by the impugned order dated 28.05.2020 (A-1). The impugned order stated that due to wrong fixation of pension excess payment was made, pension was being re-fixed and recovery of payment made in excess was to be made. According to the applicant, the impugned recovery is impermissible. Hence, this Original Application.

3. Respondents 3 & 4 tried to support the recovery by relying on G.Rs. dated 17.12.2013 and 18.10.2014. According to them, while fixing pension of the applicant One Step Promotion Scale was erroneously taken into account, and when the error was noticed pension amount was properly scaled down w.e.f. 01.07.2006. This necessitated recovery of excess payment.

4. At the time of his retirement the applicant was posted in Naxal/Tribal Area. Record shows that by letter dated 19.01.2007 (A-3)

respondent no. 1 had informed office of Accountant General, Nagpur as follows:-

विषय :- नक्षलग्रस्त भागात काम करणा-या अधिका-यांना विशेष सवलतीचा लाभ मिळणेबाबत.

संदर्भ :- आपले अ.शा.पत्र क्र. PM/G-I/Naxal Increment/Clarification/,27 दिनांक 28/11/2006.

महोदय,

उपरोक्त विषयावरील आपल्या दि. 28/11/2006 च्या पत्राच्या संदर्भात असे कळविण्यात येते की, महाराष्ट्र नागरी सेवा (निवृत्तिवेतन) नियम 1982 च्या नियम 9 (38) व नियम 60 (1) नुसार निवृत्तीवेतनार्थ वेतन म्हणजे शासकीय कर्मचा-यांने त्याच्या शेवटच्या दहा महिन्यांच्या सेवेत प्रत्यक्ष अर्जित केलेले सरासरी वेतन असे आहे. त्यामुळे आदिवासी व नक्षलग्रस्त क्षेत्रात काम करण्यासाठी नियुक्त करण्यात आलेल्या कर्मचा-यांना सेवानिवृत्तीपूर्वी शेवटच्या दहा महिन्यात त्यांनी प्रत्यक्ष अर्जित केलेल्या वेतनाच्या आधारे निवृत्तीवेतन मंजूर करण्यात यावे.

5. Guidance given by letter dated 19.01.2007 was incorrect and in fact pension ought to have been fixed by taking into account salary drawn by the applicant for last 10 months excluding benefits of One Step Promotion Scale.

6. The question that is to be determined is whether impugned recovery is permissible. In **State of Punjab & Ors. Vs. Rafiq Masih & Ors., (2015) 4 SCC, 334** 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 the applicant was a Class-III employee. Recovery was initiated after his retirement. Period of recovery exceeds five years. Thus, Clauses (i) to (iii) of Rafiq Masih (Supra) are attracted rendering the recovery impermissible. However, no exception can be

taken to re-fixation of pension. The impugned order dated 28.05.2020 is quashed and set aside to the extent of recovery only. Amount recovered shall be refunded to the applicant within three months from today failing which it shall carry interest @6% per annum from today till payment. The O.A. is allowed in these terms with no order as to costs.

Member (J)

Dated :- 09/08/2024
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 : 09/08/2024
and pronounced on

Uploaded on : 12/08/2024