

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.109/2021(S.B.)**

Datatray Narayan Nirmal,
Age 60, retired Section Engineer,
R/o Chatrapati Ward No.2, Radha-Krishana Mandir,
Tukum, Chandrapur, 442 401.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Water Resource Department,
Mantralaya, Mumbai -32.
- 2) The Superintending Engineer,
Chandrapur Irrigation project Circle,
Chandrapur.
- 3) The Executive Engineer,
Irrigation project, Investigation Division, Chandrapur.
(Executive Engineer, Patbandhare Project Investigation
Department, Near Police Station, Babupeth, Chandrapur.
442402).

Respondents

Shri B.Kulkarni, Ld. Counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondent no.1.
Shri A.S.Deshpande holding for Smt.U.A.Patil, Ld. Counsel for the respondents 2
and 3.

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

Dated: - 24th September, 2024.

JUDGMENT

Judgment is reserved on 28th August, 2024.

Judgment is pronounced on 24th September, 2024.

Heard Shri B.Kulkarni, learned counsel for the applicant, Shri A.M.Khadatkar, learned P.O. for the respondent no.1 and Shri A.S.Deshpande holding for Shri Smt.U.A.Patil, Id. Counsel for the respondents 2 and 3.

2. The applicant retired as Sectional Engineer on Superannuation on 31.12.2018 from the establishment of respondent no.3. By the impugned communication dated 20.01.2021 (Annexure A-1) respondent no.3 informed the applicant *inter alia* as follows-

संदर्भित पत्राचे अनुषंगाने कळविण्यात येते की आपणास वेतनापोटी दि.०१/०४/१९८९ ते ३१/१०/२०१८ या कालावधीत अतिप्रदान झालेल्या रु.५,१७,०४५/- या रक्कमेची वसूली "मा. अधीक्षक अभियंता, पाटबंधारे प्रकल्प अन्वेषण मंडळ, नागपूर" यांचे आदेश क्र.१५४ पृष्ठांकन क्र.१२३७/आस्था-४/२०२० दि.०१/१०/२०२० नूसार मंजूर झालेल्या रजा रोखीकरणाच्या रक्कमेतून नमूद आदेशानुसार करण्यात आली आहे.

3. This communication was preceded by the other communication dated 11.11.2019. According to the applicant, the recovery effected pursuant to the impugned communications is bad in law. Hence, this O.A..

4. Stand of the respondents is as follows. By Judgment dated 17.11.2014 passed by this Bench in O.A.No.583/2007 the respondents were directed to grant promotion to the applicant as Sectional Engineer w.e.f. 01.04.1989. This promotion was given to the applicant w.e.f. 01.04.1994. While re-fixing pay of the applicant as per Judgment dated 17.11.2014 option (at P.35) and undertaking (at P.36) were obtained from him on 15.06.2015. The applicant had given following undertaking –

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 discrepancies noticed subsequently, will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.

Thereafter, by order dated 17.09.2018 (Annexure R-3) pay of the applicant was re-fixed as per Judgment dated 17.11.2014. This order *inter alia* states –

संदर्भित आदेश क्र.१ अन्वये या विभागांतर्गत कार्यरत असलेले श्री. दत्तात्रय नारायण निर्मल, शाखा अभियंता यांना कनिष्ठ अभियंता या पदावर नियमित पाच वर्ष शासकीय सेवा पूर्ण झाल्यामुळे शासन तरतूदीनुसार दि.०१/०४/१९९४ पासून शाखा अभियंता या पदावर दर्जोन्नती देण्यात आली होती. परंतु संबंधितांचे शासकीय सेवेतील पाच वर्ष दि.०४/०८/१९८८ रोजी पूर्ण होत असल्याने सदर बाबतीत संबंधितांनी न्यायालयात दाद मागितली, तसेच दि.१४/११/२०१४ रोजीच्या न्यायालयाचे आदेशान्वये संदर्भित आदेश क्र.३

अन्वये दर्जोन्नतीचा सूधारीत आदेश निर्गमित करून संबंधीतांची दर्जोन्नतीची दिनांक ०१/०४/१९९४ ऐवजी ०१/०४/१९८९ पासून मंजूर केली आहे. त्या अनुषंगाने श्री. दत्तात्रय नारायण निर्मल, शाखा अभियंता यांची दि.०१/०४/१९८९ पासूनची वेतन निश्चिती खालील प्रमाणे करण्यात येत आहे.

Pay fixation dated 17.09.2018 was erroneous because of which excess payment was made to the applicant for the period from 01.04.1989 to 31.10.2018. Before effecting recovery notice dated 05.10.1989 (Annexure R-1) was issued to the applicant. Thus, the applicant was placed on notice. The applicant was a Gazetted Officer. For these reasons ratio laid down by the Hon'ble Supreme Court in **Punjab and Haryana High Court Vs. Jagdev Singh (2016) 14 SCC** will be applicable to his case rendering the impugned recovery perfectly permissible.

5. Facts which record of the case satisfactorily establishes are these. As per Judgment dated 17.11.2014 in O.A.No.583/2007 date of promotion of the applicant as Sectional Engineer was pre-poned to 01.04.1989 from 01.04.1994. Before making revised pay fixation as per Judgment dated 17.11.2014 option and undertaking dated 15.06.2015 were obtained from the applicant. Thereafter, pay fixation was made as per order dated 17.09.2018. This pay fixation was found to be erroneous. It was found that on account of said pay fixation excess

payment of Rs.05,17,045/- was made to the applicant for the period from 01.04.1989 to 31.10.2018. To recover this amount notice dated 05.10.2019 was given to the applicant. Thereafter, this amount was recovered from the amount of leave encashment and the factum of recovery was informed to the applicant by the impugned communication dated 20.01.2021.

6. To assail the recovery the applicant has relied on the Judgment dated 12.01.2022 passed by the Hon'ble Bombay High Court in Writ Petition No.1192 of 2021 (**Prasad Vinayak Sohani Vs. The Treasury Officer, Thane and Another**). In this case, by relying on the following observations in para 18 in **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others (2015) 4 SCC 334**, it was held that Clauses (i) and (iv) were attracted in the facts of the case whereas Clause (iii) was not attracted –

The law regarding recovery of monetary benefits paid in excess of entitlement from the retiral benefits now stands concluded with the decision in Rafiq Masih (supra). We consider it appropriate to quote paragraph 18 of such decision hereinbelow:

"18. 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 the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

9. *In our opinion, the decision in Rafiq Masih (supra) rendered by a Bench of 2 (two) Hon'ble Judges has carved out exceptions where recovery would be impermissible. This, however, sounds somewhat of a discordant note with what was laid down by another Bench of 2 (two) Hon'ble Judges in the decision reported in (2012) 8 SCC 417 (Chandi Prasad Uniyal Vs. State of Uttarakhand), since affirmed by a bench of 3 (three) Hon'ble Judges in the decision reported in (2014) 8 SCC 883 [State of Punjab & Others Vs. Rafiq Masih (White Washer)], while hearing a reference as whether Chandi Prasad Uniyal (supra) conflicts with the views expressed in the decisions reported in (1994) 2 SCC 521 (Shyam Babu Verma Vs. Union of India) and 1995 Supp (1) SCC 18 (Sahib Ram Vs. State of Haryana). However, Rafiq Masih (supra) being the last decision on the point, we feel bound by what is expressed in paragraph 18 extracted supra.*

10. *It is not in dispute that the petitioner retired from the service of this Court while holding a Class III post. Clause (i) of paragraph 18 of the decision in Rafiq Masih (supra) does hold that recoveries from retiral benefits of Class III employees would be impermissible. Mr. Kulkarni is right in his submission that clause (i) of paragraph 18 is immediately attracted, on facts and in the circumstances of the present case. Mr. Kulkarni is, however, not right in referring to clause*

(iii) of paragraph 18 barring recovery of excess payment which has been made for a period in excess of five years, before the order of recovery is issued. This is because there has been no one-time excess payment in favour of the petitioner prior to five years of the issuance of the order of recovery but excess payment in his favour had continued, month by month, till the order of recovery was issued on May 28, 2019. The petitioner, being in receipt of excess payment till that date, clause (iii) would not apply. Nonetheless, in addition to clause (i), clause (v) of paragraph 18 of the decision in Rafiq Masih (supra) holding that, 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, seems to be attracted here.

The applicant in this case does not belong either to Class-III or Class-IV. Therefore, Clause (i) of Rafiq Masih (*Supra*) would not be applicable. No case is pleaded by the applicant that the impugned recovery was so harsh as to outweigh equitable balance of the employer's right to recover. Therefore, Clause (v) would not be attracted. It is not the case of the applicant that excess payment was made owing to the contingency covered by Clause (iv). In this case, though, excess payment was made covering the period from 01.04.1989 to 31.10.2018, Clause (iii) will not be attracted because it was not a case of one time excess payment as held in Prasad Sohoni (*Supra*).

7. Now, it remains to be seen whether in this case Clause (ii) would be attracted. Admittedly, the applicant retired on superannuation

on 31.12.2018, notice of recovery was issued on 05.10.2019 and recovery was effected soon after 01.10.2020. As mentioned earlier, as per Judgment dated 07.11.2014 pay of the applicant was to be re-fixed. Before this re-fixation was made the applicant gave an undertaking on 15.06.2015 (at P. 36) that he would refund excess payment made, if any, on account of wrong pay fixation. Thereafter, pay was fixed by order dated 17.09.2018. This fixation was found to be erroneous leading to excess payment. In these facts, following observations in Jagdeo Singh would be applicable and Clause (ii) in Rafiq Masih (*Supra*) will not be attracted.

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

Thus, no exception can be taken to the impugned recovery.

The O.A. is accordingly dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 24/09/2024.
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 24/09/2024.
and pronounced on
Uploaded on : 24/09/2024.