

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.20/2020(S.B.)**

Shaukat Ali Shamshuddin Sorathiya,
aged about 61 years, Occu: Retired Range Forest Officer,
Mobile Squad No. 1, Gondia,
R/o Ravishankar Ward, Civil Lines,
Near Madhur Courier, Gondia 441 601.

Applicant.

Versus

- 1) State of Maharashtra,
through the Secretary,
Forest Department,
Mantralaya, Mumbai - 32.
- 2) Dy. Conservator of Forest,
Gondia Forest Division, Gondia,
Jaisthamba Chowk, Near Panchayat Samiti.
- 3) Accountant General (A & E) – II,
Maharashtra, Nagpur - 440001.

Respondents

Shri P.V.Thakre, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

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

Dated: - 19th July, 2024.

JUDGMENT

Judgment is reserved on 18th July, 2024.

Judgment is pronounced on 19th July, 2024.

Heard Shri P.V.Thakre, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the respondents.

2. The applicant retired as R.F.O. on superannuation on 30.06.2017. By separate orders dated 28.12.2018 (Annexures A-2 and A-1, respectively) his pay was re-fixed and recovery of Rs.99,089/- was directed towards excess payment stated to have been made on account of wrong pay fixation. This amount was recovered. Hence, this O.A..

3. Stand of respondent no.2 is that excess payment was admittedly made to the applicant due to wrong pay fixation of his annual increment, pay verification Unit had objected to it and hence recovery of excess payment was directed and effected as well as re-fixation of pay was carried out.

4. In view of admitted facts of the case and legal position laid down as follows by the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014**, the impugned recovery cannot be sustained.

"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 Clause (ii) quoted above is attracted.

5. For the reasons discussed hereinabove, the O.A. is allowed in the following terms-

The respondents are directed to refund recovered amount to the applicant within three months from today failing which the

unpaid amount shall carry interest @6% p.a. from today till the date of payment. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 19/07/2024
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 : 19 /07/2024.
and pronounced on
Uploaded on : 19/07/2024.