

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.308/2021(S.B.)**

Kashinath s/o Gopala Bhaisare,
a/a 70 yrs., Occ.- Pensioner Pandav Ward,
Buddha Leni, Bhadravati, Tah.- Bhadravati,
Dist.- Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai- 32.
- 2) The State of Maharashtra,
through the Secretary,
Finance Department,
Manatralaya Mumbai-32.
- 3) The he Deputy Director (Buffer)
Tadoba-Andheri Tiger Project,
District- Chandrapur.
- 4) The District Treasury Officer,
District Treasury Office, Chandrapur.
- 5) The Accountant General (A & E)-II,
Pension Branch Office, Nagpur, Dist. – Nagpur.

Respondents

Shri V.R.Borkar, Ld. Counsel for the applicant.
Shri A.P.Potnis, Ld. P.O. for the respondents.

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

Dated: - 05th September, 2024.

JUDGMENT

Judgment is reserved on 22nd August, 2024.

Judgment is pronounced on 05th September, 2024.

Heard Shri V.R.Borkar, learned counsel for the applicant and
Shri A.P.Potnis, learned P.O. for the respondents.

2. The applicant retired on superannuation on 31.07.2007. He was holding a Group-C post of Forester. By letter dated 09.05.2019 (Annexure A-2) respondent no.5 directed respondents 3 and 4 to recover from DCRG amount of the applicant an amount of Rs.9,79,235/- towards excess payment stated to have been made while fixing pension by taking into account one step promotion scale, pursuant to letter of respondent no.1 dated 19.01.2007 (Annexure A-3), and as per G.R. dated 06.08.2002 issued by G.A.D., Government of Maharashtra. By letter dated 04.06.2020 (Annexure A-1) respondent no.4 directed recovery of Rs.9,79,235/- from the applicant. According to the applicant, the impugned recovery is not permissible under the law and

the amount recovered pursuant thereto is liable to be refunded. Hence, this O.A..

3. According to respondent no.4, the impugned recovery is permissible in view of G.Rs. dated 17.12.2013 and 18.10.2014 which make the position clear that while fixing pension benefits of one step promotion scale cannot be considered.

4. In view of the following ratio laid down in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014**, the impugned recovery cannot be sustained. Para 12 of the Judgment is reproduced below-

"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."

The applicant was holding a Group-C post. The impugned recovery was directed after his retirement. Thus, Clauses (i) and (ii) of Rafiq Masih (supra) are attracted rendering the impugned recovery impermissible. For these reasons the O.A. is allowed. The impugned recovery is held to be impermissible. Amount recovered, if any, pursuant to the impugned order shall be refunded to the applicant within three months from today failing which the unpaid amount shall carry interest @ 6% p.a. from today till payment. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 05/09/2024.
rsm.

to 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 : 05/09/2024.

and pronounced on

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