

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No.353/2024 (S.B.)**

1. Manohar s/o Pundalik Khune,
Aged 64 Years, R/o Rajendra Ward,
Desaiganj (Wadsa), Tahsil Desaiganj,
District Gadchiroli - 441207.
2. Gopichand s/o Gomaji Bhave,
Aged 65 Years, R/o Mu. Post Kondhala,
Desaiganj (Wadsa), Tahsil Desaiganj,
District Gadchiroli - 441207.
3. Shobha wd/o Pralhad Badole,
Legal Heir of Pralhad Lakshman Badole,
Aged 56 Years, R/o Mu. Post Near Sai Mandir,
Hanuman Ward, Desaiganj (Wadsa),
Dist. Gadchiroli - 441207.

APPLICANTS.**// V E R S U S //**

- 1] State of Maharashtra,
Through Secretary,
Water Resources Department
Mantralaya, Fort Mumbai-400032.
- 2] Additional Chief Secretary,
Ministry Water Resources Department,
Mantralaya, Fort Mumbai - 400032.
- 3] Supdt. Engineer,
Bhandara Sinchan Mandal,
Bhandara (Girola), Gondiya- 441924.
- 4] Executive Engineer,
Bagh Etiadoh Irrigation Division, Gondiya - 441601.

- 5] Sub-Divisional Engineer,
Etiadoh Irrigation Management,
Wadsa - 441207.

... **RESPONDENTS.**

**Shri R.N. Gaikwad, Advocate for the Applicants.
Smt S. R. Khobragade, learned P.O. for the Resp. Nos.1 to 3.
Smt. U.A., K.A. Patil, Abhishekh Deshpande, Advs. for
Respondent Nos. 4 & 5.**

**Coram :- Hon'ble Shri Justice M. G. Giratkar,
Vice Chairman.**

Dated :- 06/12/2024.

J U D G M E N T

Heard Shri R.N. Gaikwad, learned counsel for the Applicants, Smt S. Khobragade, learned P.O. for the Respondent Nos.1 to 3 and Smt. U.A. Patil, learned counsel for the Respondent Nos. 4 and 5.

2. The case of the Applicants in short is as under :-

The Applicant No.1 was appointed on CRTE as a Labour. He was regularized on 29.09.2003 as a Wireless Operator Class-III in Group D. The Applicant No.1 retired from the same post on 31/05/2017. The Applicant No. 2 was appointed on CRTE as a Labour. He was regularized on 29/09/2003 on the post of Wireless Operator, Grade III in

Group D. The Applicant No.2 retired from the same post on 30/06/2016.

3. The Applicant No.3 is the Legal heir (wife) of Pralhad Lakshman Badole, who was appointed on 01/05/1981 on CRTE as a Labour. He was regularized on 29/09/2003 as a Wireless Operator, Grade-III in Group D and retired on 30/06/2016. He died on 22.07.2017.

4. After the retirement of applicant Nos.1 and 2 and husband of applicant no.3, Respondent No.5 issued recovery order to Respondent No.4 and thereby directed to adjust the excess amount due to the applicants / husband of applicant. Applicants have submitted representation on 15/01/2024 to Respondent Nos.3 to 5 regarding the refund of recoveries of excess payment etc. The amount was deducted from their gratuity after retirement, but no action was taken and therefore the applicants have approached to this Tribunal for the following reliefs:-

“9(a) to quash and set aside the recovery order dated 07.03.2022 issued by Respondent No.5 to the Applicant No.1 as Annexure A-2 and direct the respondents to refund the amount of Rs. 1,95,872/- with 18% interest per annum from the date of realization at full and final to the applicant No.1 and thereby be pleased to allow the original application.

b) to quash and set aside the recovery order dated 07.03.2022 issued by Respondent No.5 to the Applicant No.2 as Annex-A-3 and direct the respondents to refund the amount of Rs. 1,26,168/- with 18% interest per annum from the date of realization at full and final to the applicant No.2 and thereby be pleased to allow the original application.

c) to quash and set aside the recovery order dated 07.03.2022 issued by Respondent No.5 to the Applicant No. 3 as Annex-A-4 and direct the respondents to refund the amount of Rs. 1,77,401/- with 18% interest per annum from the date of realization at full and final to the applicant No.3 and thereby be pleased to allow the original application.

10] The respondents be directed to refund 50% of the amount to Applicants which has been recovered from the retirement benefits i.e. gratuity of the Applicants, till pendency of this Original Application.”

5. The O.A. is strongly opposed by the Respondent Nos.3, 4 & 5. It is submitted that, applicants / husband of applicant had given undertaking to pay the excess amount and therefore the amount was deducted.

6. During the course of submission, learned counsel for the applicants has pointed the Judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Ors VS. Rafiq Masih (White Washer) reported in AIR 2015 SC, 696.**

The material portion 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."*

7. Learned counsel for respondent nos.4 and 5 Smt. Patil has submitted that in view of the Judgment of the Hon'ble Supreme Court in the case of **High Court of Punjab and Haryana & Ors. VS. Jagdev Singh (2016) 4 SCC, 267,**

the amount is legally recovered because the applicants /husband of applicant had given undertaking.

8. Learned counsel for applicant Smt. R.N. Gaikwad has pointed out Judgment of this Tribunal in O.A. No.108/2023. Para 9 of the Judgment is reproduced below:-

“ 9. The learned counsel for respondent no.5 Smt. U.A. Patil has pointed out the Judgment of the Hon’ble Supreme Court in the case of the High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh (2016) 4 SCC,267. The case of High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh is considered by the then Chief Justice Dipankar Datta in the case of the State of Maharashtra Vs. Mrs. Rekha Vijay Dubey in Writ Petition No.7154/2019 with connected petitions. The para-8 of the said Judgment is reproduced below –

“(8) First, the undertaking given by the respondent in Jagdev Singh (supra), while opting for the revised pay-scale, was in pursuance of the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001. Since the respondent had submitted an undertaking under the said Rules that he would refund to the Government any amount paid to him in excess either by adjustment against future payment due or otherwise, he was held to be bound by such undertaking. Additionally, the respondent had not retired from service on superannuation but he was compulsorily retired from service. Also, the respondent being a judicial officer was not holding a Class III/Group 'C' post on the date he was compulsorily retired. It is in such circumstances that the Supreme Court held that the respondent was bound by the undertaking given by him and that the Government was justified in its action of seeking to recover excess payment that was made. That

is not the case here. The facts here are quite dissimilar and, therefore, having regard to the settled proposition of law that a judgment is an authority for what it decides and not what can logically be deduced therefrom, we hold the decision in Jagdev Singh (supra) to be distinguishable on facts.”

9. The Hon'ble Bombay High Court in the case of the **State of Maharashtra VS. Mrs. Rekha Vijay Dubey** in Writ Petition No.7154/2019 has held that **Jagdev Singh** was a Judicial Officer, he was compulsorily retired. He was not holding Class-III Post. Therefore, the Judgment in the case of **Jagdev Singh** is not applicable. All the applicants / husband of applicant were working on Class-III Post. Hence, the recovery cannot be made as per Guideline No.(i) of the Judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Ors VS. Rafiq Masih (White Washer) (cited supra)**. Hence, the following Order:

ORDER

- (i) The O.A. is allowed.
- (ii) The recovery order issued by Respondent No.5 dated 07/03/2022 against the applicants / husband of applicant is hereby quashed and set aside.

- (iii) The amount if recovered from the applicants / husband of applicant no.3 shall be refunded within a period of three months.
- (iv) If the amount is not recovered within the stipulated period of three months from the date of receipt of this Order, then amount shall carry interest @6% from the date of recovery till the date of refund.
- (v) No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman.

Dated :-06/12/2024.
dnk.

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

Name of Steno : Deepak Kadam.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 06/12/2024.