MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.431/2024 (S.B.)

Vishwas S/o Sheshrao Gaikwad,
Aged about 63 years, Occu.: Retired,
R/o. Ward No.16, Uttamrao Deshmukh Nagar,
Malkapur Road, Nandura, District Buldhana.

... **APPLICANT**

// V E R S U S //

1] State of Maharashtra,
Through its Principal Secretary,
Water Resources Department,
Mantralaya, Mumbai-32.

2] Superintending Engineer,
Buldhana Irrigation Project Circle,
Opposite Ganpati Mandir, Tata Ground, Buldana.

3] Executive Engineer,
Buldhana Irrigation Division, Suvarna Nagar,
Near Tata Ground, Buldana-443 001

... **RESPONDENTS**

Shri R.M. Fating, Ld. counsel for the Applicant.

Shri S.A. Sainis, Ld. P.O. for the Respondent No.1.

Shri T.M. Zaheer, Ld. counsel for Respondent Nos.2 & 3

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

Dated :- 09/01/2025.

J U D G M E N T

Heard Shri R.M. Fating, learned counsel for the Applicant, Shri S.A. Sainis, learned P.O. for Respondent No.1 and Shri T.M. Zaheer, Learned Advocate for Respondent Nos.2 & 3.

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

The Applicant initially came to be appointed on the post of Technical Assistant on Regular Temporary Establishment on 22/07/1985. Applicant was working on Regular Establishment. Applicant being qualified and was working on the regular establishment, he has been absorbed on the post of Civil Engineering Assistant w.e.f. 12/12/1989. Applicant passed professional examination for the post of Junior Engineer in the year1998. The Government has issued Circular that First Time Bound Promotion shall be extended to the Technical Assistant upon completion of 12 years of service from the date of their initial appointment irrespective of their establishment as per Circular dated 18/06/1998. Applicant has received benefit of First Time Bound Promotion w.e.f. 01/08/1997. Thereafter, Respondents have extended benefit of Second Time Bound Promotion/ACPS w.e.f. 23/08/2009. Thereafter, the Respondents

have extended benefit of Third Time Bound Promotion/ACPS w.e.f. 01/01/2019. Thereafter, Applicant came to be retired on attaining the age of superannuation on 30/06/2020. The Respondent No.3 has issued impugned recovery order dated 20/04/2022, thereby deducted Rs.5,01,161/- from the amount of Leave Encashment, without giving any show cause notice or opportunity. Therefore, applicant approached to this Tribunal for the following reliefs:-

> *"12i) Hold and declare that an amount of Rs.5,01,161/- recovered by impugned order dated 20.04.2022 issued by Respondent No.3 is illegal and bad in law in view of law laid down by the Hon'ble Apex Court and specific directions in Government Resolution dated 18.10.2022 issued by the Respondent No.1:*
>
> *ii) Quash and set aside the impugned order dated 20.04.2022 (ANNEXURE A-9) issued by the Respondent No.3. Executive Engineer, Buldhana Irrigation Division, Buldhana in the interest of justice.*
>
> *iii) Direct the Respondents to refund the amount of Rs.5,01,161/- to the Applicant along with interest thereon @ 18% till the date of actual payment."*

3. Some of the similarly situated employee filed Petition before the Hon'ble Supreme Court and as per the Judgment of

Hon'ble Supreme Court in Civil Appeal No.1985/2022 in the case of ***The State of Maharashtra & Ano. VS Madhukar Antu Patil & Ano.*** The Hon'ble Supreme Court has directed the Respondent not to recover any excess amount after the refixation of pay scale after grant of First Time Bound Promotion. Paras 5 and 6 of the Judgment is reproduced below:-

> *"5. However, at the same time, as the grant of first TBP considering his initial period of appointment of 1982 was not due to any misrepresentation by the contesting respondent and on the contrary, the same was granted on the approval of the Government and the Finance Department and since the downward revision of the pay scale was after the retirement of the respondent, we are of the opinion that there shall not be any recovery on re-fixation of the pay scale. However, the respondent shall be entitled to the pension on the basis of the re-fixation of the pay scale on grant of first TBP from the year 1989, ie.. from the date of his absorption as Civil Engineering Assistant.*
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> *6. In view of the above and for the reasons stated above, the present appeal succeeds in part. The impugned judgment and order passed by the High Court as well as that of the Tribunal quashing and setting aside orders dated 6.10.2015 and 21.11.2015 down-grading the pay scale and pension of the contesting respondent are hereby quashed and set aside. It is observed and held that the contesting respondent shall be entitled to the first TBP on completion of twelve years from the year 1989, i.e., from the date on which he was absorbed on the post of Civil Engineering Assistant and his pay scale and pension are to be revised accordingly. However, it is observed and directed that on re-fixation of his pay scale and pension,*

as observed hereinabove, there shall not be any recovery of the amount already paid to the contesting respondent, while granting the first TBP considering his initial appointment from the year 1982."

4. The O.A. is strongly opposed by the respondents. It is submitted that excess payment was made to the applicant and therefore recovery was made.

5. Learned counsel for applicant has pointed out the Judgment of Hon'ble Supreme Court in the case of ***State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014*** in Civil Appeal No. 11527/2014 (Arising out of S.L.P. (C) No.11684/2012. Learned Advocate has pointed out G.R. dated 18/10/2022.

6. As per the submission of learned counsel for applicant, the applicant was working as a Class-III employee. The applicant was already retired on 30/06/2020 and impugned order was passed on 20/04/2022 i.e. after the retirement. He has also pointed out Guideline Nos.(i) and (ii) of the Judgment in the case of ***Rafiq Masih (cited supra)*** and submitted that as per Guideline Nos.(i) and (ii), recovery is not permissible. As per his submission the

G.R. dated 18/10/2022 is also clear. As per this G.R. the excess amount paid after refixation of the pay cannot be recovered. The material portion of the G.R. dated 18/10/2022 is reproduced below:-

> *"शासन निर्णय -*
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> *राज्य शासकीय कर्मचाऱ्याऱ्यांना विहित नियमित सेवेनंतर लागू करावयाची कालबध्द पदोन्नती / सेवांतर्गत आश्वासित प्रगती योजना स्थापत्य अभियांत्रिकी सहाय्यक संवर्गास लागू करताना मा. सर्वोच्च न्यायालयाच्या उपरोक्त न्याय निर्णयानुसार पुढील प्रमाणे कार्यवाही करावी :-*
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> *(१) मा. सर्वोच्च न्यायालयाच्या निर्णयाची अंमलबजावणी करण्याच्या दृष्टीने जलसंपदा विभागातील स्थापत्य अभियांत्रिकी सहायक संवर्गातील कर्मचारी, या पदावरील समावेशनाच्या 'दिनांकापासून १२ वर्षाचा कालावधी पूर्ण केल्यावर पहिल्या कालबध्द पदोन्नती योजनेचा लाभ घेण्यास पात्र राहतील. मा. सर्वोच्च न्यायालयाच्या सदर न्यायनिर्णयाच्या अंमलबजावणीसाठी आणि मा. न्यायाधिकरण, औरंगाबाद खंडपीठ येथे दाखल मूळ अर्ज क्र.६१७/२०१४ मधील निर्देश लक्षात घेऊन, संदर्भाधीन शासन पत्रे. दि.१८.०३.१९९८, दि.१८.०६.१९९८ व दि.१९.०५.२०१४ याद्वारे अधिक्रमित करण्यात येत आहेत.*
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> *(२) मा सर्वोच्च न्यायालयाच्या सदर न्यायनिर्णयानुसार सुधारित वेतन निश्चिती आणि सेवानिवृती वेतन निश्चिती करावी. अशाप्रकारे सुधारित वेतन व निवृती वेतन निश्चिती*

केल्यानंतर त्यांचेकडून यापूर्वी अदा केलेल्या रकमेपोटी कोणत्याही प्रकारची अतिप्रदानाची वसुली करण्यात येऊ नये.

(३) स्थापत्य अभियांत्रिकी सहायकांना कालबध्द पदोन्नती/ सेवांतर्गत आश्वासित प्रगती योजनेचा लाभ देताना यापुढे मा. सर्वोच्च न्यायालयाच्या सदर न्याय निर्णयानुसार काटेकोरपणे तपासणी करावी, तसेच अतिप्रदान होणार नाही याची दक्षता घ्यावी. तसेच कालबध्द पदोन्नती / सेवांतर्गत आश्वासित प्रगती योजनेबाबत वित्त विभागाने वेळोवेळी निर्गमित केलेले शासन निर्णय देखील लागू राहतील."

7. The Judgment of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors vs. Rafiq Masih (cited supra)*** is very clear. The Hon'ble Supreme Court in the case of ***State of Punjab & Ors vs. Rafiq Masih (cited supra)*** has given following guidelines :-

"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."

8. As per Guideline Nos.(i) & (ii), recovery is not permissible from Class-III and Class-IV employees. Recovery is not permissible from retired employee or who are about to retire within one year from the date of recovery order. The applicant was already retired on 30/06/2020 and the impugned recovery order was issued on 20/04/2022 i.e. after the retirement of

applicant. Applicant was working as a Class-III employee. Therefore, as per Guideline Nos.(i) & (ii) of the Judgment in the case of ***Rafiq Masih (cited supra)***, recovery is not permissible. Hence, the following order:-

O R D E R

(i) O.A. is allowed.

(ii) The impugned recovery order dated 20/04/2022 is hereby quashed and set aside.

(iii) The recovered amount of Rs.5,01,161/- shall be refunded to the applicant within a period of three months from the date of receipt of this order.

(iv) If the amount is not refunded within a stipulated period of three months, then amount shall carry interest @ 6% p.a. from the date of recovery till the actual refund.

(v) No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman.

Dated :-09/01/2025.

PRM.

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

Name of Steno	:	Piyush R. Mahajan.
Court Name	:	Court of Hon’ble Vice Chairman.
Judgment signed on	:	09/01/2025.