

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO.461/2024 (S.B.)**

Ajay Vinayakrao Ingole,  
Aged about 50 years, Occ: Service,  
R/o Tahsil office Nanandgaon Khandeshwar,  
Dist. Amravati.

... **APPLICANT**

**// V E R S U S //**

- 1] State of Maharashtra,  
Through Ministry of Rural Development,  
Mantralaya, Mumbai.
- 2] The Divisional Commissioner, Amravati.
- 3] The Collector, Amravati.
- 4] The Tahsildar, Tahsil Office,  
Nandgaon Khandeshwar,  
District: Amravati.

... **RESPONDENTS**

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**Miss P.S. Kaware, Advocate for the Applicant.**

**Shri A.M. Khadatkhar, learned P.O. for the Respondents.**

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

**Dated :- 06/01/2025.**

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**J U D G M E N T**

Heard Miss P.S. Kaware, learned counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

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

Applicant was initially appointed as a Revenue Assistant in the Year 2008 and promoted as per service law from time to time. On 14/06/2021, the respondents have conducted the inspection. As per the inspection, it was found that applicant has not cleared the S.S.D. and R.Q.E. Examinations within a stipulated period. Therefore, the respondents have issued the impugned order dated 21/08/2023 stating that the increment which was granted to him is liable to be recovered and the order of recovery is issued of Rs.6,31,296/-. Therefore, applicant has approached to this Tribunal for the following reliefs:-

*“7.1) quash and set aside the inspection report and directions issued by the learned Commissioner on 14/6/2022 and the order passed by the learned Tahsildar on 21/08/2023 and order of recovery issued by the learned Collector on 21/12/2023;*

*9)1) stay the effect, operation and implementation of the inspection report and directions issued by the learned Commissioner on 14/6/2022 and the order passed by the learned Tahsildar on 21/18/2023 and order of recovery issued by the learned Collector on 21/12/2023 during the pendency of the present application.”*

**3.** The O.A. is strongly opposed by the Respondents. It is submitted that the applicant has not passed S.S.D and R.Q.E. examinations within a stipulated period and therefore applicant was not eligible to get increment. The respondents have wrongly granted increment, therefore, when it was noticed to the respondent, the impugned recovery order was issued. Hence, the O.A. is liable to be dismissed.

**4.** During the course of submission, learned counsel for applicant has submitted that applicant was exempted from passing departmental examination after completion of 45 years of age w.e.f. 11/08/2023. Therefore, the recovery order is not legal and correct.

5. Learned counsel for applicant has submitted that applicant is working on Class-III post. Therefore, recovery is not permissible in view of 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). Hence, prayed to allow the O.A.

6. Learned P.O. Shri A.M. Khadatkhar submitted that the applicant has not made representation / appeal before the appropriate authority, hence, O.A. is liable to be dismissed.

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. In view of Guideline No.(i), recovery is not permissible from Class-III and Class-IV employees. Applicant is Class-III employee and therefore impugned recovery order is liable to be quashed and set aside. Hence the following order:-

**O R D E R**

- (i) O.A. is allowed.
- (ii) The impugned order dated 21/08/2023 is hereby quashed and set aside.
- (iii) Amount, if any, recovered by the respondents, 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 :-06/01/2025.**  
**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 : 06/01/2025.