MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.521/2020 (S.B.)

Hari s/o Nago Wakde
Aged about 67 yrs., Occ.- Retired
R/o. Rengatur, Post. Dongargaon,
Tah.-Nagbhid, Dist.- Chandrapur.

... **APPLICANT**

// V E R S U S //

1] The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai- 32.

2] The State of Maharashtra,
Through its Secretary,
Finance Department,
Mantralaya, Mumbai- 32.

3] The Superintendent of Police,
Chandrapur, Dist.-Chandrapur.

4] The Additional Treasury Officer,
District Treasury Office, Chandrapur.

5] The Account General–II (A & E),
Pension Branch Office,
Nagpur, Dist.- Nagpur

... **RESPONDENTS**

Shri V. R. Borkar, learned Advocate for the Applicant.

Shri A. P. Potnis, learned P.O. for the Respondents.

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

Dated :- 19/11/2024.

J U D G M E N T

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

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

The applicant was initially appointed on the post of 'Constable' on 01/05/1975. Thereafter, he was promoted on the post of 'Assistant Sub-Inspector (A.S.I.)' i.e Group – 'C' Post in the Year 1999. The Applicant is retired on 31/12/2011 after attaining the age of superannuation. The Respondent Nos.3, 4 & 5 issued recovery orders dated 04/10/2019, 30/10/2019 & 04/06/2020 for the recovery of Rs.3,00,892/-. Hence, the applicant has approached to this Tribunal for the following relief:-

> *"i) That, by issue of suitable writ, order or direction, the order of recovery of amount of Rs. 3,00,892/- from pension by orders dt. 4.10.2019, 30.10.2019 & 4.6.2020 produced at Annexure- A4, A5, A1 respectively issued by the Respondent nos. 3 to 5*

may kindly be quashed and set aside in the interest of justice.

ii) That, by issue of suitable writ, order or direction the respondents may kindly be directed to refund the recovered amount with interest as per law"

3. The O.A. is opposed by the Respondents on the ground that the applicants was wrongly paid pension by calculating the amount of promotional pay as per Government Resolution dated 06/08/2002. The promotional pay was to be paid till the actual working of the applicant in the Naxalite area. After retirement, the employee working in Naxalite area cannot be granted promotional pay. Hence, the recovery orders issued by the Respondent Nos.3, 4 & 5 are perfectly legal and correct. Therefore, the O.A. is liable to be dismissed.

4. During the course of submission the learned counsel Shri V. R. Borkar has pointed out the judgment of Hon'ble Supreme Court in the case of ***State of Punjab & Ors VS. Rafiq Masih (White Washer) reported in AIR 2015 SC,696*** and submitted that in view of the said judgment, the recovery orders issued by the Respondents are liable to be quashed and set aside.

5. Learned P.O. Shri A.P. Potnis has submitted that as per G.R. dated 06/08/2002, the pension was wrongly calculated by taking into account the promotional pay. Hence, the O.A. is liable to be dismissed.

6. There is no dispute that the applicant came to be retired in the Year 2011. The applicant was holding Class – III post. The recovery orders are in respect of the amount for more than 5 years from the date of recovery order. The recovery orders are issued on 04/10/2019, 30/10/2019 and 04/06/2020. Therefore, the Hon'ble Supreme Court in the case of ***State of Punjab & Ors VS. Rafiq Masih (White Washer) (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:-*
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> ***(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. In view of the Guideline Nos. (i), (ii) and (iii) of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors VS. Rafiq Masih (White Washer) (cited supra),*** the recovery orders issued by the Respondent Nos.3, 4 & 5 are not legal and correct. Hence, the following order:

O R D E R

i. The O.A. is allowed.

ii. The impugned recovery orders of Rs.3,00,892/- dated 04/10/2019, 30/10/2019 and 04/06/2020 issued by respondent nos.3, 4 and 5 are hereby quashed and set aside.

iii. The amount if any recovered by the respondent authorities, 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 :-19/11/2024

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	:	19/11/2024