

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.839/2021(S.B.)**

Moreshwar s/o Bapurao Atram,
Aged about 73 years,
Occ. Retired Plantation Officer,
R/o At & Post- Zadshi,
Tah. Seloo, District- Wardha.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary,
Forest Department,
Mantralaya, Mumbai-32.
- 2) Deputy Director of Social Forestry Division,
Bhandara, Distt. Bhandara.
- 3) Divisional Forest Officer,
Social Forestry Division,
Bhandara, Distt. Bhandara.
- 4) Accountant General (A & E)-II,
Civil Lines, Nagpur-440001.
- 5) Treasury Officer,
Wardha, District- Wardha.

Respondents

Shri P.V.Thakre, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

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

Dated: - 30th August, 2024.

JUDGMENT

Judgment is reserved on 19th August, 2024.

Judgment is pronounced on 30th August, 2024.

Heard Shri P.V.Thakre, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the respondents.

2. The relevant facts are as follows. The applicant retired on superannuation on 31.07.2007. His pension was fixed at Rs.9,589/- and gratuity of Rs.3,25,050/- was paid to him. By the impugned orders dated 04.11.2020, 20.01.2021 and 24.01.2021 Annexures A-3, A-4 and A-5, respectively pension was scaled down to Rs.8,750/-, it was determined that excess payment of Rs.36,300/- was made towards gratuity and recovery of Rs.03,04,832/- towards excess payment was directed. According to the respondents excess payment was made on account of wrong fixation of pension based on salary inclusive of one step promotion scale. Hence, this O.A..

3. It is not in dispute that till his retirement the applicant was getting benefits of one step promotion scale, pursuant to G.R. dated

06.08.2002 issued by G.A.D. of Government of Maharashtra, as he was posted in Naxal area. However, while fixing pension this benefit should not have been taken into account. Because of such mistake excess payment was made. The question, however, is whether amount paid in excess to the applicant can be allowed to be recovered.

4. Respondents 2 and 3 tried to support the impugned recovery by relying on G.Rs. dated 17.12.2013 (Annexure R-1), 15.02.2014 (Annexure R-2) and 18.10.2014 (Annexure R-3) issued by Finance Department, Government of Maharashtra. The issue is no longer *res-integra*. The Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014**, has held-

"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."

In the instant case Clauses (i) and (ii) of Rafiq Masih (Supra) are attracted rendering the impugned recovery impermissible. In the result, the O.A. is allowed in the following terms.

The impugned recovery is held to be impermissible. The amount recovered shall be refunded to the applicant within three months from today failing which the unpaid amount shall carry interest @ of 6% p.a. from today till payment. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 30/08/2024.
rsm.

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 : 30/08/2024.
and pronounced on
Uploaded on : 30/08/2024.