

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.872/2020 (S.B.)

Shankar s/o Kawduji Mandhare,
Aged about 67 yrs., Occ.- Retired,
R/o. Swalambi Nagar, Naginabagh Ward No.2,
Chandrapur, 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 Accountant General-II (A & E),
Pension Branch Office,
Nagpur, Dist.- Nagpur

... **RESPONDENTS**

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

Shri S.A.Sainis, learned P.O. for the Respondents.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated :- 21/11/2024.

J U D G M E N T

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

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

The applicant was initially appointed as a Police Constable on 16.08.1975. Thereafter, he was promoted on the post of Assistant Sub-Inspector (A.S.I.) i.e Group – 'C' Post in the Year 2003. Applicant came to be retired from service after attaining the age of superannuation on 31.01.2012. The applicant was working in the Naxalite Area. The Respondent Nos.3, 4 and 5 have issued recovery orders dated 14.10.2019, 01.11.2019 and 06.07.2020 for the recovery of amount of Rs.3,60,405/-. Therefore, the applicant has approached to this Tribunal for the following reliefs:-

- i) *That, by issue of suitable writ, order or direction, the order of recovery of amount of Rs. 3,60,405/- from pension by orders dt. 14.10.2019, 1.11.2019 & 6.7.2020 produced at Annexure A4, A5 & A1 respectively issued by the Respondent no. 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.*
- iii) *That, any other relief which this Hon'ble Tribunal deems fit under the circumstances of this case be also awarded to the applicant in the interest of justice.*

8. **INTERIM RELIEF SOUGHT-**

- i) *That, by ad-interim relief further recovery of amount from pension by order dt.06.07.2020 produced at Annexure-A1 may kindly be stayed till the decision of this original application.*

3. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was granted promotional pay as per G.R. dated 06.08.2002. The said amount cannot be taken into consideration while fixation of pension. Therefore, excess amount is to be recovered from the applicant. Hence, O.A. is liable to be dismissed.

4. There is no dispute that the applicant is retired on 31.01.2012. The applicant was working in Group – C post. The amount is more than 5 years from the date of recovery order. Hence, the amount cannot be recovered. The learned counsel for the 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.** The material guidelines in the Judgment are 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."

5. Therefore, in view of the guidelines (i) to (iii) in the above cited Judgment recovery is not permissible. Hence, the following order-

ORDER

(i) The O.A. is allowed.

- (ii) The impugned recovery orders dated 14.10.2019, 01.11.2019 and 06.07.2020 for the recovery of amount of Rs.3,60,405/- are 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. If the said amount is not refunded within a stipulated time of three months, then amount shall carry interest @6% p.a. till the actual refund.
- (iv) No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated :- 21/11/2024
RSM

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

Name of Steno : Raksha S. Mankawde.

Court Name : Court of Hon'ble Vice Chairman

Judgment signed on : 21/11/2024