

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.1322/2023 (S.B.)

Yogiraj s/o Vishnuji Ingole,
Aged about: 63 years, Occupation: Retired,
R/o Konark Colony, Kathora Road,
Amravati Tq. & Dist. Amravati.

... **APPLICANT**

// V E R S U S //

- 1] The State of Maharashtra,
Through its Secretary,
Water Resource Department,
Mantralaya, Mumbai 400 032.
- [2] The Superintending Engineer,
Vigilance Cell, Amravati Region,
Water Resource Department,
Amravati Tq. & Dist. Amravati.
- [3] The Senior Account Officer,
Office of the Accountant General [A & E],
Nagpur- 440 001.

... **RESPONDENTS**

Shri V.A. Kothale, Advocate for the Applicant.

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

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

Dated :- 16/12/2024.

J U D G M E N T

Heard Shri V.A. Kothale, 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 working as a Sub Divisional Officer in Water Resources Department, Amravati under the control of Respondent No.2. The respondent No.2 issued the impugned order / communication dated 30/01/2019 for recovery of amount of Rs.1,99,470/-. The said order was challenged in O.A. No.151/2020. This Tribunal in O.A. No.151/2020 has passed the following order:-

“1) The O.A. is allowed.

2) The respondents are directed to refund the amount of Rs.1,99,470/-to the applicant within a period of three months.

3) The respondents are at liberty to recover this amount from the applicant after following the procedure under Rule 134-A of the M.C.S. (Pension Rules) 1982.

4) No order as to costs.”

3. After the decision in O.A. No.151/2020, the respondent No.2 has issued notice dated 16/05/2023. The applicant has

replied to the said notice on 22/06/2023. Thereafter, on 12/07/2023 the respondent No.2 issued order of recovery of Rs.1,99,470/-.

4. In O.A. No.151/2020, this Tribunal has directed respondent No.2 to refund the amount of Rs.1,99,470/-. The respondents were at liberty to recover the said amount after following the procedure under Rule 134-A of Maharashtra Civil Services (Pension Rules), 1982. After issuing notice, respondent No.2 issued the order of recovery of Rs.1,99,470/-. Hence, applicant has filed the present O.A.

5. O.A. is strongly opposed by the respondents. It is submitted that, applicant has given the undertaking to recover the excess amount of Rs.1,99,470/-. Hence, Original Application is liable to be dismissed.

6. During the course of submission, learned counsel for the applicant Shri V.A. Kothale has submitted that the applicant is retired in the year 2018 and first order of recovery is of 30/01/2019 in respect of the amount of increment which was granted in the year 2001. Therefore, the said amount cannot be

recovered in view of the guidelines given by the Hon'ble Supreme Court in the case of *State of Punjab & Ors VS. Rafiq Masih (White Washer) reported in AIR 2015 SC,696*. He has pointed out Guideline Nos.(i) and (iii) and submitted that excess amount paid to the employee cannot be recovered after the retirement and in respect of the amount which is more than 5 years from the date of recovery order. Hence, prayed to allow the Original Application.

7. Learned P.O. Shri A.P. Potnis has pointed out the Judgment of Co-ordinate Bench in O.A. No.66/2022 and submitted that Co-ordinate Bench has dismissed the Original Application on the ground that undertaking was given by the employee for recovery of excess payment. Hence, the present Original Application is also liable to be dismissed.

8. Now the Judgment of the Hon'ble Supreme Court in the case of *State of Punjab & Ors VS. Rafiq Masih (White Washer) (cited supra)* is very clear. The Hon'ble Supreme Court has given the 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."*

9. As per Guideline No.(ii) excess amount paid to the employee cannot be recovered after the retirement. The applicant

was retired in the year 2018 and the first recovery order was in the year 2019. That was challenged in O.A. No.151/2020. The said order was quashed and set aside by this Tribunal. Again, as per Section 134-A of Maharashtra Civil Services (Pension Rules), 1982 notice was given to the applicant. The applicant has replied the said notice. Thereafter, the Respondent No.2 passed the impugned order of recovery.

10. The cited Judgment in O.A. No.66/2022 is on different footing. The undertaking was given by the said applicant on 28/01/2021, one month before issuance of pension order dated 28/02/2021. In the present Original Application, declaration given by the applicant which is filed along with the reply appears to be doubtful, because, there is no date on the undertaking given by the applicant and when it was obtained by the respondent is not clear. Therefore, it is not clear as to whether the said declaration was given by the applicant before his retirement or immediately after the retirement before the pension order. Therefore, the cited decision in O.A. No.66/2022 is not applicable to the case in hand.

11. The Judgment of the Hon'ble Supreme Court in the case of the *High Court of Punjab and Haryana & Ors. Vs.*

Jagdev Singh (2016) 4 SCC, 267 is not applicable to the case in hand. The case of ***High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh*** is considered by the then Chief Justice Dipankar Datta in the case of the ***State of Maharashtra Vs. Mrs. Rekha Vijay Dubey*** in Writ Petition No.7154/2019 with connected petitions. The para nos.8 and 9 of the said Judgment are reproduced below –

*“(8) First, the undertaking given by the respondent in **Jagdev Singh** (supra), while opting for the revised pay-scale, was in pursuance of the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001. Since the respondent had submitted an undertaking under the said Rules that he would refund to the Government any amount paid to him in excess either by adjustment against future payment due or otherwise, he was held to be bound by such undertaking. Additionally, the respondent had not retired from service on superannuation but he was compulsorily retired from service. Also, the respondent being a judicial officer was not holding a Class III/Group 'C' post on the date he was compulsorily retired. It is in such circumstances that the Supreme Court held that the respondent was bound by the undertaking given by him and that the Government was justified in its action of seeking to recover excess payment that was made. That is not the case here. The facts here are quite dissimilar and, therefore, having regard to the settled proposition of law that a judgment is an authority for what it decides and not what can logically be deduced therefrom, we hold the decision in **Jagdev Singh** (supra) to be distinguishable on facts.*

9. *The other reason for which we are not inclined to hold that Jagdev Singh (supra) has application to the facts of this case is because of situations (i) and (iii) forming part of paragraph 18 of Rafiq Masih (supra). Situation (i) clearly bars recovery from employees belonging to Class III/Group 'C' service. Further, situation (iii) bars recovery from employees when excess payment has been made for a period in excess of 5 (five) years before the order of recovery is issued. We are not inclined to accept the contention of Mr. Pathan that although recovery from employees belonging to Class III/Group 'C' cannot be made in terms of situation (i) (supra) while in service, such recovery could be made from retired Class III/Group 'C' employees who have either retired or are due for retirement within one year of the order of recovery. If we were to accept Mr. Pathan's contention, it would lead to a situation that although there could be a declaration given by a Class III/Group 'C' employee while in service that excess payment could be recovered from him from future salary to be paid to him, which cannot be recovered in terms of situation (i), but in terms of situation (ii), as interpreted in Jagdev Singh (supra), recovery could be effected from his retirement benefits after the relationship of employer-employee ceases to subsist. Rafiq Masih (supra), very importantly, carves out situation (v) (supra) too, proceeding on the premise that recovery from retirement benefits, by asking the retired employee to refund excess amount, if any, received by him, if found to be iniquitous and arbitrary and thereby causing hardship, such a step ought to be avoided. This being the reasoning, it would be far-fetched that what the employer (State) cannot resort to against a Class III/Group 'C' employee while he is in service, such employer*

would be empowered to do so after retirement of the Class III/Group 'C' employee. If accepted, the same would amount to a distorted interpretation of the situations in Rafiq Masih (supra), which has to be eschewed. We are of the considered opinion that the Tribunal was right in distinguishing Jagdev Singh (supra) by observing that paragraph 11 of the said decision must be confined to Class I/Group 'A' and Class II/Group 'B' officers. Mr. Pathan has not been able to show that the original applicants gave the declaration/undertaking in pursuance of a statutory rule. That not having been shown, the contention raised by him on the basis of Jagdev Singh (supra) has to be rejected. We, however, leave the question open as to whether Jagdev Singh (supra) would apply to cases of Class III/Group 'C' employees who by giving declaration, mandated by a statutory rule, undertake to refund any sum received in excess of their entitlement."

12. The Hon'ble Bombay High Court has held that *Jagdev Singh* was the Registrar of Chandigarh High Court. He was compulsorily retired and therefore case of *Jagdev Singh* is not applicable to other cases. In the present case, the undertaking / declaration given by the applicant is not clear. There is no date on the declaration when it was given by the applicant is not stated by the respondents. Moreover, the Guideline Nos.(ii) and (iii) of the Judgment of Hon'ble Supreme Court in the case of ***State of Punjab & Ors VS. Rafiq Masih (White Washer)*** (cited supra) are

very clear. As per clause (ii) of the guideline excess amount paid to the employee cannot be recovered after the retirement. The applicant retired in the year 2018. First the recovery order was issued in the year 2019. That order was quashed and set aside by this Tribunal in O.A. No.151/2020. As per Guideline No.(iii) the excess amount of more than 5 year from the date of recovery is not permissible. As per the submission of learned counsel for the applicant Shri V.A. Kothale the recovery amount is in respect of 2001 and therefore it is not permissible as per guideline no.(iii). Hence, the following order:-

O R D E R

1. The O.A. is allowed.
2. The impugned order dated 21/08/2023 is hereby quashed and set aside.
3. The amount is already refunded to the applicant as per order dated 07/12/2022 in O.A. No.151/2020.
4. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman.

Dated :-16/12/2024.
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 : 16/12/2024.