MAHARASHTRA ADMINISTRATIVE TRIBUNAL, NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO. 821/2021 (S.B.)

Jagan s/o Kawduji Gajbhe
a/a 66 yrs., Occ.- Pensioner
r/o Sumthana, Near Govt. Hospital, Bhadravati,
Dist.- Chandrapur **…Applicant**

Versus

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, Advocate for the Applicant

Smt. S.R. Khobragade, P.O. for the respondents.

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

Dated:- **15/10/2024.**

JUDGEMENT

Heard Shri V.R. Borkar, learned counsel for the applicants in all O.As. and Shri A.P. Potnis, learned P.O. (in O.A.619/2021), Shri S.A. Sainis, learned P.O. (in O.A.620/2021), Smt. S.R. Khobragade, learned P.O. (in O.A.821/2021), Shri S.A. Deo, learned CPO (in O.A.837/2021) and Shri M.I. Khan, learned P.O. (in O.A.923/2021) for the respondents.

2. In all these O.As., the applicants have challenged the impugned recovery orders. The applicants were working as Assistant Sub Inspector. They were working in the naxalite area in Chandrapur District. Therefore, the respondents have paid the promotional pay as per the G.R. dated 06/08/2002. As per the said G.R., promotional pay was to be paid till the actual working in the naxalite area. The respondents have wrongly calculated the pension by taking into account the promotional pay as per the G.R. dated 06/08/2002. Therefore,

the respondents have issued recovery orders. To clarify the position in all the O.As. The following Chart is given below –

O.A. Nos.	**Date of Appointment**	**Date of Retirement and post**	**Dates of Recovery orders**	**Recovery Amount**
619/21	19/8/1974	31/1/2012 (ASI, Group C)	5/11/2020 1/7/2021	Rs. 2,20,690/-
620/21	10/7/1983	30/6/2013 (ASI, Group C)	22/9/2020 18/5/2021	Rs. 2,67,205/-
821/21	20/7/1981	30/6/2013 (ASI)	22/9/2020 7/10/2020 13/7/2021	Rs. 2,74,611/-
837/21	10/7/1983	31/10/2011	14/10/2020 13/8/2021	Rs. 2,90,046/-
923/21	15/3/1982	31/5/2010	20/10/2020 2/11/2020 1/6/2021	Rs. 3,11.593/-

3. The applicants have submitted that they were retired in the year 2010,2011,2012 & 2013 respectively, but the respondents have issued recovery order in the year 2020-2021. Therefore, recovery is not permissible in view of the

Judgment of the Hon'ble Supreme Court in the case of ***State Of Punjab & Ors vs. Rafiq Masih (White Washer) reported in AIR 2015 SC 696***.

4. The respondents have filed reply. It is submitted that the applicants were given wrongly pension by taking into account the promotional pay paid to the applicants as per the G.R. dated 06/08/2002. The said G.R. is very clear. As per the said G.R., promotional pay was / is to be paid to the employees working in the naxalite area, till they actually worked in that area. After retirement, the applicants / employees who were working in the naxalite area are not entitled to get the promotional pay. Therefore, the calculation of pension by taking into account of promotional pay as per G.R. dated 06/08/2002 was wrong. Therefore, the respondents have issued impugned orders. At last the respondents have submitted that the O.As. are liable to be dismissed.

5. During the course of submission the learned counsel for applicants has pointed out the Judgment of Hon'ble Supreme Court in the case of **State Of Punjab & Ors**

vs. Rafiq Masih (White Washer) *(cited supra).* He has pointed out the guidelines given by the Hon'ble Supreme Court. As per the submission of learned counsel for applicants, all the applicants were working as Group-C employees. Therefore, recovery from Group-C / D employee is not permissible. Recovery from retired employees is not permissible. Recovery in respect of the amount which was to be recovered for more than 5 years from the date of recovery order is not permissible. Therefore, prayed to quash and set aside the impugned orders. The learned counsel for applicants has submitted that some amount is recovered by the respondents. Therefore, prayed to direct the respondents to refund the said amount along with interest.

6. The ld. P.O. has strongly objected all these O.As. As per his submission, recovery is legal and correct. As per the G.R. 06/08/2002 applicants were not entitled to get promotional pay after retirement. The promotional pay was to be paid till the actual working in the naxalite area. The pension was wrongly paid to the applicants by taking into

consideration of promotional pay as per the G.R. dated 06/08/2002. Hence, the O.As. are liable to be dismissed.

7. There is no dispute that all applicants were working as Group-C employee. They were retired in the year 2010,2011,2012 and 2013. The respondents have issued the impugned recovery order in the year 2021. As per the guideline nos. (i) and (ii) recovery from the Group-C and D employees and from retired employee, are not permissible.

8. 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 herein above, 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."

9. In view of the Judgment of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** *(cited supra)*, the impugned orders are liable to be quashed and set aside. Therefore, following order is passed –

ORDER

(i) The O.A. Nos. 619/2021, 620/2021, 821/2021, 837/2021 & 923/2021 are hereby allowed.

(ii) The impugned recovery orders in **O.A. No. 619/2021 dtd. 5/11/2020 & 1/7/2021 of Rs. 2,20,690/-**, in **O.A. No. 620/2021 dtd. 22/9/2020 & 18/5/2021 of Rs. 2,67,205/-**; in **O.A. No. 821/2021 dtd. 22/9/2020, 7/10/2020 & 13/7/2021 of Rs. 2,74,611/-**; in **O.A. No. 837/2021 dtd. 14/10/2020 & 13/8/2021 of Rs. 2,90,046/-**; in **O.A. No. 923/2021 dtd. 20/10/2020, 2/11/2020 & 1/6/2021 of Rs. 3,11,593/-** are hereby quashed and set aside.

(iii) The amount if recovered by the respondents shall be refunded to the applicants within a period of three months from the date of receipt of this order. If the amount is not refunded within a period of three months, then amount shall carry interest @6% p.a.

(iv) No order as to costs.

Dated:15/10/2024 **(Justice M.G. Giratkar)**

***kds.** **Vice-Chairman.**

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

Name of Steno : Krushna Dilip Singadkar

Court Name : Court of Hon’ble Vice Chairman.

Judgment signed on : 15/10/2024.