

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 428 of 2021 (S.B.)**

Ramshiromani s/o Ramkailas Dwivedi,  
a/a 67 yrs., Occ.- Pensioner,  
r/o Jai Bajrang Society, Plot no. 54, Seminary Hill,  
Near Elizabeth School, Nagpur, Dist. Nagpur.

**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 Principal,  
Regional Police Training School, Nagpur, Dist.- Nagpur.
- 4) The Additional Treasury Officer, District Treasury Office, Nagpur.
- 5) The Accountant General-II (A & E), Pension Branch Office,  
Nagpur, Dist. Nagpur.

**Respondents.**

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**Shri V.R. Borkar, Advocate for the applicant.**  
**Shri M.I. Khan, learned P.O. for respondents.**

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**WITH****ORIGINAL APPLICATION No. 429 of 2021 (S.B.)**

Suresh s/o Madhukarrao Gangulwar,  
a/a 66yrs., Occ. - Pensioner,  
r/o Plot No. 12, Shriram Nagar, New Subedar Layout,  
Amansagar Apartment, Flat No. 101. Nagpur, Dist.- Nagpur.

**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 Principal,  
Regional Police Training School, Nagpur, Dist.- Nagpur.
- 4) The Additional Treasury Officer, District Treasury Office, Nagpur.
- 5) The Accountant General-II (A & E), Pension Branch Office,  
Nagpur, Dist. Nagpur.

**Respondents.**

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**Shri V.R. Borkar, Advocate for the applicant.**  
**Shri A.P. Potnis, learned P.O. for respondents.**

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

**Dated :- 26/07/2024.**

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**COMMON JUDGMENT**

Heard Shri V.R. Borkar, learned counsel for applicants,  
Shri M.I. Khan, learned P.O. (in O.A.428/2021) and Shri A.P. Potnis,  
learned P.O. (in O.A.429/2021) for the respondents.

2. In O.A.No.428/2021, the applicant was initially appointed on the post of Constable. Thereafter, he was promoted / appointed to the post of Police Sub Inspector. At the time of retirement, the applicant was working on the post of Police Inspector at Regional Police Training School, Nagpur and he is retired on 30/11/2012. The respondents have issued order / letter dated 20/01/2021 in respect of recovery of excess payment of Rs.1,72,758/- against the applicant.

3. In O.A.No.429/2021, the applicant was initially appointed on the post of Constable. Thereafter, he was promoted / appointed to the post of Police Sub Inspector. At the time of retirement, the applicant was working on the post of Deputy Superintendent of Police at Regional Police Training Centre, Nagpur and he is retired on 30/06/2013. The respondents have issued order / letter dated 16/04/2021 in respect of recovery of excess payment of Rs.48,102/- against the applicant. Hence, both the applicants approached to this Tribunal for the following reliefs –

In O.A.No.428/2021 -

*“(7) (i) That, by issue of suitable writ, order or direction, the order of recovery of amount of Rs. 1,72,758/- from pension by orders dt. 11.12.2020 & 20.1.2021 produced at Annexure- A4 & A1 respectively issued by the Respondent nos. 4 & 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.*

*(8) (i) That, by ad-interim relief further recovery of amount from pension by order dt. 20.1.2021 produced at Annexure-A1 may kindly be stayed till the decision of this original application.”*

In O.A.No.429/2021 -

*“i) That, by issue of suitable writ, order or direction, the order of recovery of amount of Rs. 48102/- from pension by orders dt. 11.12.2020 & 16.4.2021 produced at Annexure- A4 & A1*

*respectively issued by the Respondent nos. 4 & 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.*

*(8) (i) That, by ad-interim relief further recovery of amount from pension by order dt. 16.4.2021 produced at Annexure-A1 may kindly be stayed till the decision of this original application.”*

4. The O.As. are strongly opposed by the respondents. It is submitted that special allowance was wrongly taken into consideration while calculating the pension and therefore the excess amount was paid to the applicants. Hence, the respondents have issued recovery orders.

5. During the course of submission, learned counsel for applicants has pointed out the Judgment of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014** in Civil Appeal No. 11527 of 2014 (Arising out of SLP(C) No.11684 of 2012) and submitted that in view of guideline nos. (ii) and (iii) the respondents cannot recover the amount from the applicants.

6. 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:-*

***(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. As per guideline no.(ii) recovery cannot be made from retired employee. As per guideline no.(iii) recovery cannot be made in respect of excess payment of amount which was five years before the date of recovery.

8. Both the applicants retired in the year 2012 and 2013 respectively. The respondents have issued the recovery orders in the year 2021, therefore, it is more than five years from the date of recovery order. Both the applicants are retired employees, therefore, as per guideline no.(ii) excess amount paid to the applicants cannot be recovered. Hence, the following order –

**ORDER**

(i) The O.As. are allowed.

(ii) The impugned recovery orders / letters dated 11/12/2020 and 20/01/2021 (in O.A.No.428/2021) and impugned recovery orders / letters dated 11/12/2020 and 16/04/2021 (in O.A.No.429/2021) are hereby quashed and set aside.

(iii) The amount if recovered, be refunded to the applicants within a period of three months from the date of receipt of this order.

(iv) No order as to costs.

**Dated** :- 26/07/2024.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 26/07/2024.