

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 1168/2022 (S.B.)

1. Namdeo Krishnarao Basande,
aged about 68 years, occupation: retired,
Field Worker, resident of Warud,
District: Amravati.
2. Shankarrao Bapurao Gawande,
aged about 66 years, occupation: retired,
Field Worker resident of Shivaji Nagar,
Warud, District: Amravati.

Applicants.

Versus

1. The State of Maharashtra,
through its Principal Secretary,
Department of Public Health,
Madam Cama Road, G.T. Hospital Premises,
Mumbai 400 001.
2. The Assistant Director of Health Services,
(Malaria & Filaria) Akola, Arogya Bhavan,
District Akola.
3. The Joint Director of Health Services,
(Malaria & Filaria) Arogya Bhavam,
Yerwada, Pune -06.

4. The District Malaria Officer,
Shrikrishna Peth,
District Women Hospital Area, Amravati.

Respondents.

Shri B.Kulkarni, Ld. Counsel for the applicants.
Smt.A.Warjekar, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 10th July, 2024.

JUDGMENT

Heard Shri B.Kulkarni, learned counsel for the applicants and
Smt.A.Warjekar, learned P.O. for the respondents.

2. Case of the applicants in short is as under-

The applicants were working as Class-IV employee with the respondent no.4. Applicant No.1 retired on 30.09.2012 and applicant no.2 retired on 30.07.2014. Respondent no.4 issued recovery order of Rs.03,16,269/- dated 28.10.2022 (A-1) and respondent no.4 issued order dated 28.10.2022 (A-2) for recovery of Rs.03,87,396/- against applicant no.2 in respect of excess payment of Assured Carrier Progressive Scheme (ACPS). Therefore, applicants have challenged the order of recovery before this Tribunal for the following reliefs-

A] Quash and set aside the impugned order dated 28.10.2022 at Annexure:A-1 and A-2, in the interest of justice ordering to

recover the amount of Rs.3,16,269/- from applicant no.1 and Rs.3,87,396/- from the applicant no.2;

B] Grant any other relief as may be deemed fit in the interest of justice.

10] INTERIM RELIEF IF ANY PRAYED FOR:

It is submitted that pursuant to the aforesaid impugned orders, the respondents may proceed to recover the said amount from the amount of gratuity to be payable to the applicants. If the amount is so recovered from the applicants, same would be prejudicial to the applicants, hence applicant prays:

A] Stay the effect, operation, implementation and execution of the order dated 28.10.2022 at Annexure:A-1 and A-2, in the interest of justice ordering to recover the amount of Rs.3,16,269/- from applicant no.1 and Rs.3,87,396/- from the applicant no.2, ad-interim ex-party relief pending disposal of the present application;

3. The O.A. is opposed by the respondents. It is submitted that excess payment is paid to the applicants and therefore recovery orders were issued. Hence, the O.A. is liable to be dismissed.

4. It is further submitted that bills were submitted to the Treasury Officer and the Treasury Officer raised objection in respect of excess payment to the applicants therefore, recovery orders were issued on 28.10.2022. Hence, the O.A. is liable to be dismissed.

5. During the course of submission, the learned counsel for the applicants has pointed out 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.** He has submitted that in view of guidelines

given by the Hon'ble Supreme Court excess amount paid to the retired employees cannot be recovered.

6. The Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** 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."

7. As per the guideline no.(i), recovery from Class-III and Class-IV employees is not permissible.

8. As per guidelines no.(ii), recovery from retired employees or employee who are due to retire within one year of the order of recovery cannot be made.

9. In view of the guideline nos. (i) and (ii) given in the Judgment of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** the recovery orders issued by respondent no.4 dated 28.10.2022 (A-1 & A-2) are liable to be quashed and set aside.

10. This Tribunal had granted stay to the recovery orders dated 28.10.2022, as per order dated 30.11.2022. Hence, the following order-

ORDER

1. The O.A. is allowed.
2. The impugned orders of recovery dated 28.10.2022 (A-1 & A-2) in respect of applicant Nos. 1 and 2 are hereby quashed and set aside.
3. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated - 10/07/2024.
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 Vice Chairman.
Judgment signed on : 10/07/2024.
