

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 1175/2022(S.B.)**

Smt. Shabdafula wd/o Bhalchandra Katkar,
a/a 54 yrs., Occ.- Household,
r/o Plot No. 20, Behind Kundan Plaza,
CTPS Road, Vrundawan Nagar, 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, Ld. Counsel for the applicant.

Shri M.I.Khan, Ld. P.O. for the respondents.

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

Dated: - 21st November, 2024.

JUDGMENT

Heard Shri V.R.Borkar, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

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

The husband of applicant namely Bhalchandra Katkar was initially appointed as a Police Constable in the year 1982. Thereafter, he was promoted on the post of Assistant Police Inspector in the year 2010. The husband of applicant namely Bhalchandra Katkar retired on 30.06.2011. Thereafter, he was getting pension. The husband of applicant died on 26.01.2012. Thereafter, the applicant is getting family pension. The respondents have issued recovery orders dated 16.11.2021 and 29.08.2022 for the recovery of Rs.02,52,581/-. Hence, 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 allegedly paid excess amount of Rs. 2,52,581/- from family pension by orders dt. 16.11.2021 & 29.8.2022 produced at Annexure- A5 & 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.*

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 family pension by order dt. 29.8.2022 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 3 and 4.

It is submitted that the applicant was wrongly given benefit of promotional pay as per G.R. dated 06.08.2002 even after the retirement of the deceased Bhalchandra Katkar. Therefore, recovery order was issued. Hence, O.A. is liable to be dismissed.

4. During the course of submission, 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** and submitted that the recovery cannot be made from retired employee. Hence, prayed to allow the O.A..

5. The learned P.O. has submitted that G.R. dated 06.08.2002 is very clear. As per the condition in the G.R., the promotional pay is to be paid to the employees who are working in the naxalite area, till their actual working in that area. The applicant was getting promotional pay, but after the retirement amount was wrongly taken into consideration for fixation of pension and therefore recovery order was issued.

6. There is no dispute that the husband of applicant was retired in the year 2011. He died on 26.01.2012. The applicant is getting family pension. The recovery orders are issued in the year 2021-2022. Admittedly, the recovery orders are issued after the retirement of deceased employee. Therefore, the recovery is not moreover it is in respect of amount of more than 5 years from the date of recovery orders. Deceased Bhalchandra Katkar was a Class-III employee. Therefore, in view of guideline nos. (i), (ii) and (iii) of 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."

7. There is no dispute that the recovery orders are issued after the retirement of the deceased employee. The recovery is in respect of more than 5 years from the date of order. The deceased Bhalchandra Katkar was a Class-III employee. Therefore, in view of the guidelines (i) to (iii) in the above cited Judgment recovery is not permissible. Hence, the following order-

ORDER

1. The O.A. is allowed.
2. The recovery orders issued by respondents 4 and 5 dated 16.11.2021 and 29.08.2022 for the recovery of an amount of Rs.02,52,581/- are hereby quashed and set aside.
3. 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.

3. 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 Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 21/11/2024.
Uploaded on : 21/11/2024.
