

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 159/2024 (S.B.)**

Wasudeo s/o Tulsiram Shahare,  
a/a 72 years, Occ. Pensioner,  
r/o Near Ashok Mehta's House,  
Arjuni Morgaon, Tah. Arjuni – Morgaon,  
Dist. Gondia.

**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,  
Gondia, Dist. Gondia.
4. The Additional Treasury Officer,  
District Treasury Office, Gondia,  
Dist. Gondia.
5. The Accountant General – II (A & E),  
Pension Branch Office, Nagpur,  
Dist. Nagpur.

**Respondents**

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Shri V.R.Borkar, Ld. Counsel for the applicant.  
Shri A.P.Potnis, Ld. P.O. for the respondents.

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

**Dated: - 21<sup>st</sup> October, 2024.**

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### **JUDGMENT**

Heard Shri V.R.Borkar, 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 initially appointed as a Constable in the year 1982. Thereafter, he was promoted on the post of Assistant Sub-Inspector i.e. Group-C. The applicant is retired from the post of Assistant Sub-Inspector on 31.08.2010 from Police Station Ram Nagar, Gondia. After the retirement, the respondents have issued recovery order dated 01.03.2023 and 20.02.2024 by which the recovery of Rs.1,31,688/- is to be recovered.

3. Reply is filed by the respondents. It is submitted that the excess amount was paid to the applicant by counting the promotional pay as per G.R. dated 06.08.2002. That amount was wrongly taken into consideration while fixing the pension. Therefore, recovery order is issued. Hence, the O.A. is liable to be dismissed.

4. There is no dispute that applicant was working in the Naxalite area. The applicant was paid promotional pay as per G.R. dated 06.08.2002. That promotional pay was to be paid till the actual working of the employee in the Naxalite area, but it is wrongly taken into consideration while fixing the pension.

5. The applicant is retired in the year 2010 and the recovery order is dated 20.02.2024.

6. The learned counsel for the applicant 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.** As per Judgment of the Hon'ble Supreme Court, recovery cannot be made from Class-III employee, recovery cannot be made from the retired employee. The material guidelines of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** is 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."*

As per the guideline no.(i), recovery cannot be made from the Class-III and Class-IV employee and as per guideline no.(ii), recovery cannot be made from the retired employee.

7. The applicant was a Class –III employee. The applicant came to be retired on 31.08.2010 and recovery orders are dated 01.03.2023 and 20.02.2024. Therefore, recovery is not legal and proper. Hence, the following order-

### **ORDER**

1. The O.A. is allowed.
2. The impugned recovery order dated 01.03.2023 and 20.02.2024 are hereby quashed and

set aside. The amount if recovered shall to be refunded to the applicant within a period of three months from the date of receipt of this order, failing which the amount carry interest @ 6% p.a..

3. No order as to costs.

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

**Dated – 21/10/2024**  
**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 : 21/10/2024.  
Uploaded on : 28/10/2023.