

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 62/2024(S.B.)**

Dr. Ashok S/O Vitthalrao Matey,
Age-63 years, Occ.- Medical Officer,
(retired on superannuation from
Ayurvedic Dispensary Mana under P.H.C. Kurum),
Tq., Dist. Akola, at present residing at Samta Nagar,
Murtijapur, District- Akola.

Applicant.

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Public Health Department,
10th floor, G.T. Hospital Bldg,
New Mantralaya, Mumbai-1.
2. The Commissioner of Health service & Director (N.H.M.),
3rd floor, Arogya Bhavan, St. Georges Hospital Campus, Near
C.S.T. Mumbai-1.
3. Deputy Director Of Health Services,
Akola Circle, Akola.
4. The Chief Executive officer,
Zilla Parishad, Akola.
5. The District Health officer,
Zilla Parishad, Akola.
6. The Accountant General(A & E),
Civil Lines, Nagpur.

Respondents.

Shri J.S.Deshmukh, Ld. Counsel for the applicant.
Smt.S.R.Khobragade, Ld. P.O. for the respondents 1 to 3 and 6.
Ms.S.Wagh holding for Shri B.N.Jaipurkar, ld. Counsel for the
respondents 4 and 5.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 27th November, 2024.

JUDGMENT

Heard Shri J.S.Deshmukh, learned counsel for the applicant, Smt.S.R.Khobragade, learned P.O. for the respondents 1 to 3 and 6 and Ms.S.Wagh holding for Shri B.N.Jaipurkar, ld. Counsel for the respondents 4 and 5.

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

The applicant had completed B.A.M.S. Graduation. Initially applicant was appointed on the post of Medical Officer, District Technical Cadre Group-C in the pay scale of 2000-60-2300-EB-75-3200-100-3500/-, under Zilla Parishad, Akola. Similarly situated Medical Officers entered service under various Zilla Parishads in District Technical Services Group-C. The respondent no.1 was pleased to issue a Government Resolution dated 28.05.2001 thereby conferring gazetted status to the applicant in Group-B. The applicant was absorbed in the State Government subject to the direction issued under G.R. dated 06.11.2000. The applicant become the State Government employee. The respondent / Government of

Maharashtra issued G.R. dated 03.01.2024. The applicant along with others were given benefit of the said G.R.. The name of applicant is at Sr.No. 358 of G.R. dated 17.10.2014.

3. As per the G.R. dated 17.10.2014, the applicant along with others were absorbed in a State Government service w.e.f. 28.05.2001. The name of applicant is at Sr.No.358 of the said G.R..

4. The respondents have granted the benefit of pay, pay fixation etc. from time to time. Thereafter, the respondents 4 and 5 issued recovery order of Rs.03,83,368/-. As per the G.R. dated 03.01.2024, the amount cannot be recovered by the respondents. Hence, the applicant has approached to this Tribunal for the following reliefs-

- a) *This Original Application may kindly be allowed.*
- b) *The action of recovery of Rs.3,83,368/- (Rupees Three Lakh Eighty three Thousand three Hundred & sixty eight only) from applicant on account of alleged excess payment paid to him may kindly be quashed and set-aside.*
- c) *The respondents be directed to refund Rs.3,83,368/- (Rupees Three Lakh Eighty three Thousand three Hundred & sixty eight only) which is illegally recovered from applicants towards alleged excess payment forthwith.*
- d) *Any other relief for which applicants are entitled may kindly be granted in the interest of justice.*

5. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was wrongly paid excess amount due to

wrong fixation of pay. Therefore, the amount of Rs.03,83,368/- is to be recovered from the applicant. It is submitted that the respondent nos.4 and 5 have already recovered the amount of Rs.03,83,368 from the applicant at the time of retirement. It is submitted that the action taken by the respondents 4 and 5 is proper. Hence, the O.A. is liable to be rejected.

6. During the course of submission, the learned counsel for the applicant has pointed out the G.R. dated 17.10.2014 and G.R. dated 03.01.2024. As per the submission of learned counsel for the applicant, the applicant was absorbed in a State Government service w.e.f. 28.05.2001. The name of applicant is at Sr.No.358. He has pointed out the G.R. dated 03.01.2024. As per this G.R., the excess amount, if any, paid to the applicant and other Doctors before 18.07.2013, that amount shall not be recovered. The learned counsel for the applicant has pointed out Judgment of this Tribunal in O.A.No.911/2023 decided on 22.08.2024.

7. The learned P.O. has strongly objected to grant relief to the applicant. Ms.S.Wagh holding for Shri B.N.Jaipurkar learned counsel for the respondents 4 and 5 also objected to allow the O.A.. This Tribunal has decided the O.A.No.911/2023 on 22.08.2024 of the similarly situated Doctor namely Sunil Vitthalrao Mankar. This Tribunal has recorded its findings that in view of the G.R. dated

03.01.2024, the amount which was paid before 2013 cannot be recovered. As per the recovery order, the amount of Rs.03,83,368/- is to be recovered in respect of wrong pay fixation. The material portion of the G.R. dated 03.01.2024 is reproduced below-

जिल्हा परिषदेच्या आस्थापनेवरील जिल्हा तांत्रिक संवर्ग वर्ग ३ मधून सार्वजनिक आरोग्य विभागामध्ये समावेशन झालेल्या वैद्यकीय अधिकाऱ्यांना गट अ मध्ये नियुक्ती देणे / थेट समावेशन करणे आणि गट अ ची वेतनश्रेणी देण्याबाबत.

२. सेवानिवृत्त झालेल्या वैद्यकीय अधिकारी यांना दि.१८.०७.२०१३ पासून गट-अ मध्ये नियुक्ती देणे/थेट समावेशन करणे शक्य नाही. त्यामुळे त्यांच्या बाबतीत वरीलप्रमाणे वेतननिश्चिती करावी व त्यांना त्याप्रमाणे निवृत्तीचे लाभ अदा करण्यात यावे.

३. सदर निर्णय हा केवळ दिनांक २८.५.२००१ च्या शासन निर्णयान्वये राजपत्रीत दर्जा देण्यात आलेल्या व शासन निर्णय दिनांक १७.१०.२०१४ अन्वये जिल्हा तांत्रिक सेवा वर्ग ३ मधून सार्वजनिक आरोग्य विभागामध्ये समावेशन झालेल्या वैद्यकीय अधिकारी यांनाच लागू होईल. अन्य: कोणत्याही वैद्यकीय अधिकारी गट-ब यांना हा निर्णय लागू असणार नाही.

४. वरीलप्रमाणे कार्यरत व सेवानिवृत्त वैद्यकीय अधिकारी यांना वेतन व अनुषंगिक लाभ अदा करावे व त्यांना दि.१८.७.२०१३ पूर्वी वेतनाचे काही अप्रिदान झाले असल्यास त्याची वसूली करण्यात येऊ नये.

8. In view of the G.R. dated 03.01.2024, the excess amount paid to the applicant cannot be recovered. 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 the guideline no.2

of the said Judgment, recovery cannot be made from the retired employee. The applicant is retired in the year 2016 and the recovery order is issued on 03.09.2018. Therefore, the recovery is not permissible after the retirement.

9. In view of the G.R. dated 03.01.2024 and the Judgment of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)**, the impugned order is liable to be quashed and set aside. Hence, the following order-

ORDER

1. The O.A. is allowed.
2. The impugned recovery order dated 03.09.2018 for the recovery of amount of Rs.03,83,368/- is hereby quashed and set aside.
3. The respondents 4 and 5 are directed to refund the amount of Rs.03,83,368/- within a period of three months from the date of receipt of this order.
4. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated - 27/11/2024.
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 : 27/11/2024.
