

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 736/2020(S.B.)**

Sudhanshu s/o Bhushan Sharma,
Age: 70 years, Occu.: Retired,
Govt. Servant, R/o Sarkar Nagar,
Deendayal Colony, Chauhan Layout,
Near Ganesh Manadir, Chandrapur- 442401.

Applicant.

Versus

1. The Secretary,
Department of Finance,
State of Maharashtra,
Mantralaya, Mumbai-32.
2. The Accountant General (A & E) II,
c/o Office of the Accountant General,
Civil Lines, Nagpur-01.
3. The Treasury Officer,
Dist Treasury Office, Chandrapur.

Respondents.

Shri S.M.Khan, Ld. Counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

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

Dated: - 05th July, 2024.

JUDGMENT

Heard Shri S.M.Khan, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the Respondents.

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

The applicant has joined in the department of respondent no.3 on 18.04.2070. He came to be retired as Class-II (Gazetted Officer) on 31.03.2008. Respondent has issued order of recovery dated 18.10.2019. The applicant has challenged the said order by filing present O.A. for the following reliefs-

(i) quash & set aside the Order No.- 15/60255510 dated 18/10/2019 pertain to Recovery from the retiral benefits and pension of the applicant and paying Revised Pension (Annexure A-1).

(ii) implement original /initial Pension and Retiral benefits Order No.13/15/60099914 dated 16/04/2013 to the applicant (Annexure A-13).

(iii) pay arrears and interest of Pension and Retiral benefits till disbursement to the applicant.

3. The O.A. is strongly opposed by the respondents 2 and 3. They have submitted that pay fixation was wrongly made and therefore the recovery order was issued. Hence, the O.A. is liable to be dismissed.

4. It is submitted that the respondents have re-fixed the pay and therefore, the O.A. is liable to be dismissed.

5. There is no dispute that the applicant retired on 31.03.2008. The recovery order was issued by respondent no.3 on 18.10.2019 i.e. after 11 years. The learned counsel for the applicant relied on the Judgment of the Hon'ble Supreme Court in the case of the **State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014.** The Hon'ble Supreme Court has given following guidelines in para 12 of the Judgment-

"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."

6. As per the guideline no.2 excess amount cannot be recovered from the retired employee or employee who is likely to retire within one year from the date of order of recovery. The applicant was retired 11 years before the recovery order i.e. 31.03.2008. The recovery order is dated 18.10.2019. Therefore, the recovery order issued by respondent no.3 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 18.10.2019 is hereby quashed and set aside.
3. The respondents are at liberty to re-fix the pay as per Rules, but shall not deduct the amount as per recovery order.
4. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 05/07/2024.
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 : 05/07/2024.
