

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1062 OF 2019

(Subject – Recovery / Refund of Recovered Amount)

DISTRICT : AHMEDNAGAR

Bhau S/o. Mahadu Khade,)
Age : 55 years, Occ. : Paharekari,)
R/o. Government Milk Scheme,)
Plot No. 10/B-2, MIDC, Ahmednagar.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Secretary,)
Dairy Development, Animal Husbandry,)
Fisheries Department, Government of)
Maharashtra, Mantralaya,)
Mumbai - 32.)
2. **The Regional Dairy Development Officer,)**
Nashik Division, Trimbak Road, Nashik.)
3. **The Accounts Officer,**)
Pay Verification Unit, Office of the Joint)
Director of Accounts & Treasuries, Nashik.)
4. **The General Manger,**)
Government Milk Scheme,)
R/o. Government Milk Scheme,)
Plot No. 10/B-2, MIDC, Ahmednagar-414111.)
5. **The Accounts Officer,**)
Government Milk Scheme,)
Plot No. 10/B-2, MIDC, Ahmednagar-414111.)

... **RESPONDENTS**

APPEARANCE : Smt. Priya R. Bharaswadkar, Advocate holding
for Shri R.N. Bharaswadkar, Advocate for the
Applicant.

: Shri M.P. Gude, Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **06.01.2022.**

ORDER

1. This Original Application is filed by the applicant challenging the impugned order of recovery styled as Office Note dated 18.09.2014 (Annexure A-10) issued by the respondent No. 5 i.e. the Accounts Officer, Government Milk Scheme, Ahmednagar.

2. The facts in brief giving rise to this Original application, can be summarized as follows :-

(a) The applicant was appointed on the post of Paharekari at Narayangavan, District Ahmednagar on the pay scale of Rs. 750-940. He joined the said service on 08.01.1990. Since then he has completed 28 years of unblemished service with the respondents. For many times he was entrusted with the responsibility of the work on the

post of Assistant Security Officer by the respondent No. 4 i.e. the General Manager, Government Milk Scheme, Ahmednagar.

(b) The applicant was granted permanency status on the post of Paharekari since 03.12.1992 vide order dated 08.10.1999 (Annexure A-1). Thereafter, vide order dated 16.10.2002 (Annexure A-2), he was granted pay scale for higher post of Rs. 2610-60-2939-65-3300-70-4000 since 01.08.2002, as the applicant had no chance of promotion. The said order dated 16.10.2002 (Annexure A-2) was issued by the respondent No. 2 i.e. the Regional Diary Development Officer, Nashik Division, Nashik. Thereafter, the said respondent No. 2 issued order dated 26.10.2005 (Annexure A-3) granting higher pay scale of Rs. 4500-7000 w.e.f. 08.01.2002 as contemplated under the Assured Career Progression Scheme. Accordingly, the respondent No. 4 i.e. the General Manager, Government Milk Scheme, Ahmednagar issued pay fixation pro-forma dated 10.11.2005 (Annexure A-4) with accompaniment - 1 (Annexure A-5).

(c) Surprisingly thereafter, the respondent No. 4 i.e. the General Manager, Government Milk Scheme, Ahmednagar issued show cause notice dated 15.07.2014 (Annexure A-6) to the applicant stating that the pay of the applicant in the pay scales of Rs. 4500-125-7000 was wrongly fixed and he was eligible only for the pay scale of Rs. 2610-4000. Thereafter, the applicant was called upon to show cause as to why excess amount paid to him vide Assured Career Precession Scheme should not be recovered. The applicant submitted his explanation dated 28.07.2014 (Annexure A-7) to the said show cause notice dated 15.07.2014 (Annexure A-6). Thereby it is stated that he was not paid any excess amount and the amount received to him in accordance with law.

(d) Thereafter, the respondent No. 4 i.e. the General Manager, Government Milk Scheme, Ahmednagar issued order dated 14.08.2014 (Annexure A-8) thereby ordering one time recovery from the applicant for excess payment. To that the applicant made representation dated 21.08.2014 (Annexure A-9) seeking to stay the recovery till December 2014. However, thereafter, the respondent No. 5 i.e. the Accounts Officer, Government Milk Scheme,

Ahmednagar issued recovery order styled as Office Note dated 18.09.2014 (Annexure A-10) with statement (Annexure A-11), thereby ordering recovery of excess amount of Rs. 7,63,523/- in 100 equal installments from September, 2014. The said recovery is ordered of excess payment made during the period of 08.01.2002 to 31.08.2014.

(e) It is contended that the recovery of alleged excess amount made by the respondents is illegal, as the period for which the recovery is made after long gap of about 9 years. In view of the case law of the Hon'ble Apex Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.)** reported at **AIR 2015 SC 596**, such recovery against the Class-IV employee is impermissible. The applicant is working on the post of Paharekari i.e. Class-IV post. The alleged excess amount was paid to the applicant due to wrong pay fixation made by the respondents themselves and not on any misrepresentation or fraud practiced by the applicant. The impugned order of recovery is causing hardship to the applicant. Hence, this Original Application.

3. (i) The affidavit in reply on behalf of respondent Nos. 1, 2, 4 & 5 is filed by one Shri Vasudeo S/o Madhao Narkhede working as Dy. Dairy Manager, Government Milk Scheme, Ahmednagar, thereby he has not disputed the facts of the case about sanction and paying higher pay scale of the post of Assistant Security Officer of Rs. 4500-7000 and issuance of the order of recovery. According to the respondents, the higher pay scale was granted and paid to the applicant of the post of Assistant Security Officer wrongly by way of time bond promotion / Assured Career Progression Scheme. The said mistake was detected only when the pay fixation of the applicant was referred to the Pay Verification Unit i.e. the respondent No. 3. The respondents submitted explanation to the Pay Verification Unit about grant of higher pay scale, but the same was not accepted. Further according to the respondents, the post of Paharekari is not the feeding cadre for the promotional post of Assistant Security Officer, as the post of Paharekari is of Class- IV post. In view of the same, the impugned recovery order issued by the respondent No. 5 is legal and proper. Further it is contended that in the order dated 26.10.2005

(Annexure A-3 of O.A.) granting higher pay scale to the applicant in clause (g) there is rider as follows:-

“ग) चुकीच्या सेवा तपशिलाद्वारे वरची वेतनश्रेणी अपात्र कर्मचा-यास दिली गेल्याचे निदर्शनास आल्यास संबंधीत कर्मचा-यांपुरते सदहू आदेश रद्द केले जातील.”

Moreover, while accepting the time bound promotion, the applicant has given undertaking to the authorities stating that, if the pay fixation not is as per the Government policy, in that event he will refund the same from the salary. In view of the same, the respondents have prayed for dismissal of the present Original Application.

(ii) Separate affidavit in reply is filed on behalf of respondent No. 3 i.e. the Pay Verification Unit by one Shri Ramchandra S/o Manohar Hastekar working as Accounts Officer, Pay Verification Unit, Nashik, District Nashik. It is specifically contended that since the post of Paharekari falls under category of Class-IV being an isolated post, it is not open for promotional channel. As a sequel to the guidelines given in the G.R. dated 20.07.2001 concerning Assured Career Progression Scheme, the post which are isolated having no promotion channel, the prescribed pay scale is 2610-4000 and not of 4500-125-7000, which is wrongly

approved by the respondent No. 2. Therefore, the Pay Verification Unit raised the objection in accordance with law and well within the parameters of the G.R. dated 20.07.2001. Hence, recovery is justifiable.

4. I have heard the arguments advanced by Smt. Priya R. Bharaswadkar, learned Advocate holding for Shri R.N. Bharaswadkar, learned Advocate for the applicant at length on one hand and Shri M.P. Gude, learned Presenting Officer for the respondents on other hand.

5. Learned Advocate for the applicant strenuously urged before me that the applicant being on the post of Paharekari is necessarily the Government servant of category of Class-D/ Class-IV. In terms of ratio laid down in the White Washer's case, the recovery of the excess amount paid to the Government servant on account of wrong pay fixation is impermissible in respect of Class-III and Class-IV Government servants. Moreover, the recovery is for the period beyond five years. Thirdly it is iniquitous to recover the said amount.

6. So far as the undertaking given by the applicant is concerned, learned Advocate for the applicant submitted that the undertaking which is in pro-forma is innocuously signed by the

applicant without realizing its repercussions. In view of the same, the same cannot be relied upon in view of the ratio laid in the various citations relied upon on behalf of the respondents justifying the recovery. In order to bring home submissions, the learned Advocate for the applicant relied upon the following case laws :-

- (i) Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.) reported at AIR 2015 SC 596 by the Hon'ble Apex Court.
- (ii) W.P. No. 13450/2019 with W.P. No. 13473/2019 in the matter of Aabasaheb Dhondiram Kakde Vs. The State of Maharashtra and Ors. decided on 29.09.2021 by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad.
- (iii) W.P. No. 2395/2017 in the matter of Vijay Shankar Trivedi Vs. State of M.P. and Ors. decided on 17.01.2018 by the Hon'ble High Court of Madhya Pradesh (Jabalpur Bench).
- (iv) D.B. Civil Special Appeal (W) No. 349/2004 in the matter of Mohammed Yusuf Vs. Maharana Pratap

Agriculture and Technology University, Udaipur and Anr. decided on 24.11.2016 by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur Bench.

7. In the abovesaid citations at Sr. Nos. 3 and 4, though there was undertaking given by the Class-III or Class-IV employee, recovery was held to be illegal observing that the undertaking was not given thoughtfully and conscionably and it was given in routine course.

8. As against this, the learned Presenting Officer for the respondents strenuously urged before me that admittedly the undertaking, Exhibit R-1 (page No. 96 of paper book) was given by the applicant on 10.11.2005 at the time when higher pay scale of the post of Assistant Security Officer was granted to the applicant and nothing else is brought on record to show that the same was unconscionable writing given by the applicant without realizing repercussions thereon. In view of the same, the learned Presenting Officer placed reliance of the decision of the Hon'ble High Court of Bombay Bench at Aurangabad in **W.P. No. 7885/2016** in the case of **Walmik S/o Sitaram Sirsath Vs. State of Maharashtra and Ors.**, decided on 13.02.2018. In the said citation case, according to him identical undertaking was

given by the petitioner therein and in such situation, the Hon'ble High Court was pleased to hold that the impugned recovery was in accordance with law and the said W.P. was dismissed. He also placed reliance on the decision of the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur in **W.P. No. 2629/2017** in the matter of **Mandeep Singh Kohli & Ors. Vs. Union of India and Ors.**, decided on 05.02.2020, wherein the similar view was taken. He also placed reliance on **918 W.P. No. 3480/2020** in the matter of **Akram Khan Burhan Khan Vs. The Zilla Parishad, Jalgaon and another,** decided on 15.09.2021 by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad, wherein similar ratio is laid down.

9. After having considered the rival facts of the present case and the rival submissions as discussed above, it is evident that the applicant is working on the post of Paharekari, which is isolated post and no promotional channel is available to him. However, admittedly the applicant has been granted higher pay scale of Rs. 4500-7000, which is of the post of Assistant Security Officer, which is not the next promotional post of Paharekari held by the applicant. It is true that the respondents granted the said higher pay scale to the applicant on their own and there was no misrepresentation or no fraud was practiced by the applicant in

getting the said higher pay scale and consequential benefits thereof. The said higher pay scale was granted admittedly to the applicant by the order dated 26.10.2005 (part of Annexure A-3 collectively). The respondents have placed on record undertaking dated 10.11.2005 (Exhibit R-1 of affidavit in reply at page No. 96 of paper book). The said undertaking is in Marathi and English, which is as follows :-

“(शासन अधिसूचना, वित्त विभाग क्रमांक वेपुर-१२९८/प्र.क्र. १३/९८/सेवा-१०,
दिनांक १० डिसेंबर १९९८ चे जोडपत्र)

जोडपत्र दोन

वचनपत्र

UNDERTAKING

मी, असे वचन देतो की, चुकीच्या वेतननिश्चितीमुळे किंवा पुढे वेतननिश्चितीमध्ये विसंगती आढळून आल्यामुळे मला अतिप्रदान झाल्याचे निदर्शनास आल्यास ते भविष्यात मला प्रदान करण्यांत येणा-या रक्कमेतुन समायोजित करून किंवा इतर प्रकारे मी शासनास परत करीन.

I, hereby undertaking that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.

दिनांक /date :- १०.११.२००५

सही /signature

sd/-

ठिकाण / Place :- अहमदनगर

नाव/Name :- भाउ महादू खाडे

पदनाम/Designation:- पहारेकरी”

10. As per the said order dated 26.10.2005 (Annexure A-3) issued by the respondent No. 2 i.e. the Regional Diary

Development Officer, Nashik Division, Nashik, the pay scale of the applicant was revised in terms of documents produced at Annexure A-4 collectively. The applicant got the said benefit of higher pay scale w.e.f. 08.01.2002, as the entry of the applicant in the service as Paharekari was from 08.01.1990. The said benefit was granted to the applicant upon completion of 12 years' service on the post of Paharekari.

11. From the above facts, it is evident that at or around revised pay fixation and payment thereof at higher pay scale, undertaking was given by the applicant as reproduced above. Except bare words of the applicant, nothing is produced on record by the applicant to show that the said undertaking was given without realizing it's repercussions and without understanding the meaning thereof. The said undertaking is in Marathi, as well as, in English. In view of the same, it is difficult to draw any adverse inference against the respondents that the respondents took the said undertaking from the applicant keeping him in dark. In such circumstances, in my considered opinion, the ratio laid down in **W.P. No. 7885/2016** in the case of **Walmik S/o Sitaram Sirsath Vs. State of Maharashtra and Ors.**, decided on 13.02.2018 will be aptly applicable, as in the said citation case the identical undertaking was referred to

and it was held that the recovery is justifiable. In the said citation case the petitioner was Assistant Teacher in the category of Class-III employee. In the said citation case, both the citations of the Hon'ble Apex Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.)** reported at **AIR 2015 SC 596**, as well as, in the case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh** reported in **(2016) 14 SCC 267** were referred to. In view of the ratio laid down in the said citation, it cannot be said that the recovery against the Class-III and Class-IV employee is blanketly made impermissible. The other citations relied upon on behalf of respondents also would be applicable, as the similar ratio is laid down in those citations.

12. In the citations relied upon by the learned Advocate for the applicant, the undertaking is referred and interpreted in **W.P. No. 2395/2017** in the matter of **Vijay Shankar Trivedi Vs. State of M.P. and Ors.** decided on 17.01.2018 by the Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) and **D.B. Civil Special Appeal (W) No. 349/2004** in the matter of **Mohammed Yusuf Vs. Maharana Pratap Agriculture and Technology University, Udaipur and Anr.** decided on 24.11.2016 by the

Hon'ble High Court of Judicature for Rajasthan at Jodhpur Bench are referred. However, the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **W.P. No. 13450/2019 with W.P. No. 13473/2019** in the matter of **Aabasaheb Dhondiram Kakde Vs. The State of Maharashtra and Ors.**, decided on 29.09.2021 has been pleased to deal with identical undertaking and interpreted it otherwise and the same view will be binding.

13. In view of the same, I am of the considered opinion that the case of the applicant challenging the recovery and excess payment towards higher pay scale is devoid of merits. Only because it will be iniquitous to recover from Class-III or Class-IV employee, recovery cannot be said to be illegal. In view of the same, relief of setting aside the recovery order, as well as, refund of recovered amount cannot be granted. I therefore, proceed to pass following order :-

ORDER

The Original Application No. 1062/2019 stands dismissed with no order as to costs.

PLACE : AURANGABAD.
DATE : 06.01.2022

(V.D. DONGRE)
MEMBER (J)