

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

ORIGINAL APPLICATION NO. 1087 OF 2019

DISTRICT : AURANGABAD

Ravindra s/o Bhaskar Chobe,)
Age : 59 years, Occu. : Retired electrician from))
Office of service Manager, Regional work-shop,))
Health Transport, Aurangabad, presently))
Residing House No. E-33/4, Mayur Nagar,))
Hudco, N-11, Aurangabad.))

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Secretary,)
Public Health Department, 10th Floor,)
G.T. Hospital Building, New Mantralaya,))
Mumbai-1.)
2. **The Deputy Director of Health Services,))**
(Transport), Pune, Dr. Naidu Hospital)
Compound, Kenedy Road, Pune-1.)
3. **The Service Manager,**)
Regional Workshop, Health Services (Transport))
Aurangabad, Chavni, Nizam Banglow No. 4,))
Cantonment, Aurangabad – 431002.)
4. **The District Civil Surgeon,**)
District Civil Hospital, Hingoli.)

... **RESPONDENTS**

APPEARANCE : Shri J.S. Deshmukh, Counsel for Applicant.

: Shri N.U. Yadav, Presenting Officer for
respondent authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 12.01.2024

ORAL - ORDER

1. Heard Shri J.S. Deshmukh, learned counsel appearing for the applicant and Shri N.U. Yadav, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application is disposed of with the consent of parties at the admission stage.

3. By filing the present Original Application, the applicant is challenging the communications dated 05.01.2019 and 06.01.2019 issued by the respondent No. 3, by which recovery of alleged excess amount of Rs. 2,07,748/- is sought / recovered from the applicant due to erroneous pay fixation on the basis of incorrect annual increment w.e.f. 01.07.015 for the period from 01.07.2015 to 31.12.2018 and also prayed to direct the respondents to refund the amount of Rs. 2,07,748/- to the applicant recovered from him towards alleged excess payment.

4. Facts in brief as stated by the applicant giving rise to the Original Application are as follows :-

- (i) The applicant was retired on superannuation on 31.08.2019 from the post of Electrician from the office of Service Manager, Regional Work-shop, Health Services

(Transport), Aurangabad. He was initially appointed as Unskilled Artisan w.e.f. 25.07.1985 in Group-D category under the respondents and thereafter posted as semi-skilled Artisan in same category. He was promoted as Electrician, Group-C category vide order dated 01.05.2006 in the pay scale of Rs. 3200-85-4900. Copy of the said promotion order dated 31.05.2006 is marked as Annexure A-3. Thereafter the applicant was transferred to District Workshop Health (Transport) under respondent No. 4 vide order dated 30.05.2015 and again transferred and posted on the post of Electrician under the respondent No. 3 in the month of June, 2018.

(ii) It is further case of the applicant that the respondent No. 3 has noticed that the respondent No. 4 has granted incorrect annual increment w.e.f. 01.07.2015, which resulted into erroneous pay fixation w.e.f. 01.07.2015 and excess payment of Rs. 2,07,748/- has been paid to the applicant during the period from 01.07.2015 to 31.12.2018. Thus the respondent No. 3 vide order dated 05.01.2019 revised the pay fixation of the applicant in the pay scale of Rs. 5200-20200/-+Grade Pay Rs. 2400/- by granting admissible annual increment w.e.f. 01.07.2015 to

01.07.2018 and directed recovery from monthly salary of the applicant. By order dated 06.01.2019, the recovery of excess payment of Rs. 2,07,748/- is directed from the applicant in 20 equal installments of Rs. 10,000/- per month and one installment of Rs. 7,748/- since February, 2019.

(iii) It is further case of the applicant that implementation of impugned communication dated 06.01.2019 in 20 equal installments of Rs. 10,000/- per month and one installment of Rs. 7,748/- was not possible during the service tenure of the applicant, as he was due for retirement within 07 months from the date of the impugned communication of recovery.

(iv) According to the applicant, the said amount of Rs. 2,07,748/- was recovered from the applicant in the following manner :-

(a) First installment of Rs. 7,748/- recovered from monthly salary of January-2019 payable in February-2019.

(b) Thereafter, in five equal monthly installments of Rs. 10,000/-, Rs. 50,000/- recovered from his monthly salary.

(c) Thus, total $7,748+50,000=57,748/-$ recovered from monthly salary of the applicant towards recovery and an amount of Rs. 1,50,000/- was remained.

(d) Amount of Rs. 1,60,110/- was sanctioned to the applicant towards difference of 7th Pay for the period w.e.f. 01.01.2016 to 31.12.2018. The balance amount of Rs. 1,50,000/- was recovered from the arrears of 7th Pay difference sanctioned to the applicant in the month of June-2019. Thus, entire amount of Rs. 2,07,748/- is recovered from the applicant before his retirement on 31.08.2019. Hence, the present Original Application.

5. Learned counsel for the applicant submits that the applicant is class-III employee and on the basis of erroneous pay fixation by granting wrong annual increment by the respondents themselves, the excess payment has been made to the applicant, for which the applicant is not responsible. The applicant should not be penalized for his no fault. No undertaking in respect of recovery of excess amount was sought from the applicant at any point of time.

6. Learned counsel for the applicant submits that the applicant is already retired from service and alleged recovery of excess payment was adjusted from his monthly salary and 7th Pay arrears at the verge of his retirement caused great hardship

to the applicant. Thus, the action of recovery from the applicant is violation of clause (i) and (ii) in para No. 18 of the judgment of the Hon'ble Apex Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334**. Learned counsel submits that the applicant is retired from the service and alleged recovery of excess payment was adjusted from his monthly salary and 7th Pay arrears at the verge of his retirement caused great hardship to him. Learned counsel submits that the present Original Application deserves to be allowed by setting aside the impugned communications dated 05.01.2019 and 06.01.2019 issued by the respondent No. 3 and respondents be directed to refund the amount recovered towards the excess payment.

7. Learned counsel for the applicant in order to substantiate his contentions placed reliance on the judgment of the Hon'ble Apex Court in a case **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc., (2015) 4 Supreme Court Cases 334** and the judgment delivered by the Hon'ble High Court, Bench at Aurangabad in W.P. No. 4616/2016 (Smt. Jayshree Trimbak Takalkar & The Chief Executive Officer & Anr.) & other connected W.Ps.

8. The respondent Nos. 1 to 4 have filed their affidavit in reply. On the basis of affidavit in reply, learned Presenting Officer (in short P.O.) submits that respondent No. 3 has noticed about grant of incorrect annual increment in favour of the applicant and the excess payment of Rs. 2,07,748/- to the applicant during the period from 01.07.2015 to 31.12.2018. The mistake of pay fixation was committed by the respondent No. 4 in the year 2015, when the applicant was working under the respondent No. 4 and the said mistake was carried forward till it has been noticed by respondent No. 3. In view of the same, by order dated 05.01.2019 respondent No. 3 thus directed to recover the said amount from the applicant in 20 installments of 10,000/- and one installment of Rs. 7,748/- respectively. Learned P.O. submits that the said amount has been recovered from the applicant though in terms of the earlier order dated 06.01.2019 the amount could not have been recovered in 20 installments of 10,000/- each and one installment of Rs. 7748/-, but thereafter in view of the G.R. dated 20.02.2029, the amount which was standing due against the applicant i.e. Rs. 1,50,000/- has been recovered from the arrears of 7th Pay Commissioner, which was payable to the applicant and therefore, the recovery from the applicant strictly made in accordance with the

government policy. Learned P.O. submits that the ratio laid down in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.**, (cited supra) and also by the Hon'ble High Court in W.P. No. 4616/2016 are not applicable to the facts and circumstances of the present case. Learned P.O. submits that the recovery from the applicant is perfectly legal and proper in the eyes of law. There is no substance in the present O.A. and the same is liable to be dismissed.

9. It is not disputed that the applicant is class-III employee and the fixation of pay was wrongly done. It further appears that the said wrong pay fixation on the basis of wrong increment was not due to the fault of the applicant. The applicant retired from the service on superannuation on 31.08.2019. In terms of the observations and the ratio laid in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc.** (cited supra), the clause Nos. (i) & (ii) are applicable to the facts of the present case. The respondents have recovered the amount from the applicant, who is belonging to Class-III category and the said amount came to be recovered when the applicant was due to retire within 07 months of the order of recovery was issued. It further appears that period of recovery amount by way of 20 installments of 10,000/- each and one

installment of Rs. 7748/- was found less, as the applicant was to be retired on superannuation on 31.08.2019 and therefore, lump sum amount of Rs. 1,50,000/- came to be recovered from the arrears of 7th Pay Commissioner from the applicant. Furthermore as per Rs.10,000/- equal monthly installments amounting to Rs. 50000/- and installment of Rs. 7748/- i.e. Rs. 57748/- recovered from the monthly salary of the applicant. So far as balance amount of Rs. 1,50,000/- is concerned, the same was recovered at once from the arrears of 7th Pay difference sanctioned to the applicant in the month of June, 2019, when the applicant was due to retire on superannuation on 31.08.2019. It has certainly caused hardship to the applicant.

10. In a case **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc., (2015) 4 Supreme Court Cases 334**, the Hon'ble Apex Court in para No. 18 has laid down the following ratio :-

“18. 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 herein above, we may, as a ready reference, summarize 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 the 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 employees, 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."*

11. The Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 4616/2016 (Smt. Jayshree Trimbak Takalkar Vs. The Chief Executive Officer, Zilla Parishad, Aurangabad & Anr.)** and other connected W.Ps. has also taken the similar view.

12. In view of above discussions, the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

- (i) The Original Application is hereby allowed.
- (ii) The impugned communications dated 05.01.2019 and 06.01.2019 issued by the respondent No. 3, by which recovery of alleged excess amount of Rs. 2,07,748/-

(Rupees Two Lac Seven Thousand Seven Hundred and Forty Eight only) are hereby quashed and set aside.

- (iii) The respondents are directed to refund the amount of Rs. 2,07,748/-(Rupees Two Lac Seven Thousand Seven Hundred and Forty Eight only) to the applicant within a period of three months from the date of this order.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application accordingly disposed of.

PLACE : Aurangabad.
DATE : 12.01.2024

(Justice V.K. Jadhav)
Member (J)

KPB S.B. O.A. No. 1087 of 2019 VKJ Recovery/ refund of recovered amount