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

ORIGINAL APPLICATION NO. 118 OF 2023

DISTRICT : BEED

Shakuntala w/o Navnath Biradar,)
Age : 53 years, Occu. : Household,)
R/o. Behind Yogeshwar College, Subhadra Nagar,)
Ambajogai, Tq. Ambajogai & District : Beed.)
.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai-400032.)

2. The District Collector,)
Beed District, Beed,)

3. The Tahsildar,)
Tahsil Officer, Ambajogai, Dist. Beed.)

4. The Treasury Officer,)
Beed. Dist. Beed.)
... RESPONDENTS

APPEARANCE : Shri V.P. Savant, Counsel for Applicant.

: Shri B.S. Deokar, Presenting Officer for respondent authorities.

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

DATE : 30.01.2024

O R A L - O R D E R

1. Heard Shri V.P. Savant, learned counsel appearing for the applicant and Shri B.S. Deokar, learned Presenting Officer appearing for respondent authorities.

2. By filing the present Original Application, the applicant is challenging order / letter dated 27.12.2022, thereby respondents have recovered an amount of Rs. 2,21,442/- from Leave Encashment (retiral benefits) of deceased husband of the applicant and further directed applicant to deposit an amount of Rs. 5236/- (Total recovery amount of Rs. 2,26,678/- including Rs. 807/- land revenue fees). The applicant is also seeking certain directions to the respondents to refund the said recovered amount along with interest.

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

(i) The applicant is widow of deceased Navnath Kashinathrao Biradar, who was in service with the Collector Officer in Beed district and died while in service and family pension is sanctioned to the applicant and the applicant is getting family pension. However some amount is recovered from the retirement benefits of husband of the applicant. The husband of the applicant was appointed as Muster Assistant on daily wage basis on EGS work on 12.04.1984 and later on, in view of the policy decision of the Government, the husband of the applicant came to be

appointed as Talathi by respondent No. 2 on 18.12.2007 and posted at Kaij Tahsil.

(ii) It is the case of the applicant that in the meantime the respondent No. 3 has done pay fixation of husband of the applicant in the year 2008. While in service, the husband of the applicant died on 03.12.2019. Thereafter, the respondent authorities have sanctioned family pension to the applicant. After sanctioning family pension to the applicant, it is informed to the applicant that due to wrong fixation of pay scale, husband of the applicant has been paid higher pay scale and therefore, excess payment has been paid to the applicant. In view of the same, by letter/order dated 27.12.2022, the respondent No. 3 has recovered an amount of Rs. 2,21,442/- from Leave Encashment of deceased husband of the applicant and further directed the applicant to deposit an amount of Rs. 5236/-. Thereafter, the applicant approached to the respondent authorities and requested not to recover the said amount. However, the respondent authorities have not paid any heed to her application. Hence, the present Original Application.

4. Learned counsel for the applicant submits that the impugned order / letter dated 27.12.2022 is illegal, arbitrary and not tenable in the eyes of law and the same is against the ratio laid down by 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 for the applicant submits that husband of the applicant was serving on Class-III post at the time of his death and therefore, considering the various Notifications issued by the respondent No. 1 in this regard, the recovery of excess payment from the deceased husband of applicant is impermissible. Learned counsel submits that the husband of the applicant is not responsible for the said higher pay scale, as the same has been done by the department by wrong fixation of pay. The husband of the applicant is not responsible for the same. Learned counsel submits that the respondent authorities have obtained consent letter from the applicant after death of her husband and the applicant has not tendered the same voluntarily. Learned counsel submits that the present Original Application deserves to be allowed by setting aside the impugned letter / order dated 27.12.2022 issued by respondent No. 3 and further to direct the respondents to refund

the said recovered amount along with interest to the applicant immediately.

5. In order to substantiate his contentions, learned counsel for the applicant placed reliance on the guidelines framed by 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*** . Further the Government has also issued letter dated 10.08.2020 to all Chief Executive Officers, Zilla Parishad in the State of Maharashtra, not to recover the amount from Class-III and Class-IV retired employees or on the verge of retirement on account of some excess payment in terms of G.R. dated 19.12.2015.

6. The respondent Nos. 2 to 4 have filed their affidavit in reply. On the basis of affidavit in reply filed on behalf of respondent Nos. 2 to 4, learned Presenting Officer submits that during the service, the husband of the applicant died on 03.12.2019 and thereafter respondent authorities have sanctioned family pension to the applicant. However, the Accountant General, Nagpur vide its communication dated 07.09.2022 directed the Treasury Officer to recover the excess payment of Rs. 2,25,871/- from the applicant. The copy of said

communication has been forwarded to the applicant and respondent No. 3 office. Learned Presenting Officer submits that the applicant has given undertaking to the respondent authorities in respect of over payment / excess payment.

7. Learned Presenting Officer submits that as per the judgment of the Hon'ble Apex Court in the case of **Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors**, the excess payment made due to wrong/irregular pay fixation can always be recovered. In view of the same, the respondent authorities have rightly recovered the amount from the applicant, which is legal and proper. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

8. Learned Presenting Officer placed reliance in a case of **Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors**, dated 17.08.2022.

9. The applicant was died on 03.12.2019 and at the time of his death, he was a Group-C employee. The husband of the applicant is not responsible for the wrong fixation of pay nor has misled the facts in any manner in this regard.

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."*

In view of the aforesaid guidelines framed by the Hon'ble Apex Court, the case of deceased husband of the applicant is squarely covered by clause Nos. (i), (ii) & (iii) as mentioned above.

11. It appears that the amount has been recovered from the pensionary benefits of deceased husband of the applicant, though it is impermissible. It is submitted on behalf of respondents that the applicant has given an undertaking to refund the amount to the Government, if paid in excess and as such, the applicant is now estopped from claiming any relief. However, the said undertaking is obtained by the respondents from the applicant after death her husband. It is therefore, difficult to accept that the applicant has given the said undertaking voluntarily. On the other hand, in terms of G.R. dated 19.12.2015 and the letter dated 10.08.2020 issued in this regard by the State Government to all the Chief Executive Officers, recovery from Class-III and Class-IV employees after their retirement is impermissible. Even though after death of Government servant, the department has obtained so called consent of the applicant and recovered the said amount ignoring the law laid down by the Hon'ble Apex Court, so also Circulars & G.Rs. issued in this regard by the State Government.

12. In view of above, the impugned order/letter dated 27.12.2022 issued by respondent No. 3, thereby recovered an amount of Rs. 2,21,442/- from Leave Encashment (retiral benefits) of deceased husband of the applicant is illegal and the

same is required to be quashed and set aside. The respondent No. 3 has recovered the said amount illegally from the pensionary benefits of deceased husband of the applicant. In view of the same, the applicant is entitled for refund of the said amount recovered from the pensionary benefits of deceased husband of the applicant along with interest @ 9% p.a. from the date of actual recovery till the date of refund. Hence, the following order :-

O R D E R

(i) The Original Application No. 118/2023 is hereby allowed.

(ii) The impugned order/letter dated 27.12.2022 issued by respondent No. 3, thereby recovered an amount of Rs. 2,21,442/- from retiral benefits of deceased husband of the applicant is hereby quashed and set aside.

(iii) The respondents are directed to refund the amount of Rs. 2,21,442/- to the applicant within a period of three months from the date of this order with interest @ 9% p.a. from the date of actual recovery till the date of refund. The respondent No. 3 is also directed not to insist the applicant to deposit an amount of Rs. 5236/-.

(iv) In the circumstances, there shall be no order as to costs.

(v) The Original Application accordingly disposed of.

PLACE : Aurangabad. **(Justice V.K. Jadhav)**
DATE : 30.01.2024 **Member (J)**