

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

**ORIGINAL APPLICATION NO. 240 OF 2019**

DIST. : PARBHANI

Pandit s/o Manaji Pawar, )  
Age. 59 years, )  
Occu.: Retired/Pensioner, )  
R/o At post – Matoshri Niwas, )  
Pingali Road, Khanapur Nagar, )  
In front of Primary Health Center,)  
Parbhani, Tq. Parbhani, )  
Dist. Parbhani. ) .. **APPLICANT**

**V E R S U S**

1. The State of Maharashtra, )  
Through the Secretary, )  
Directorate General of )  
Information & Public Relations,)  
Madam Kama Marg, )  
Hutatma Rajguru Chowk, )  
Mantralaya, Mumbai –32. )
2. The Director (Information) )  
Divisional Information and )  
Public Relations Office, )  
Marathwada Division, )  
Aurangabad, )  
Arihant Building, )  
Khadkeshwar, Aurangabad, )  
Tq. & Dist. Aurangabad. )
3. The District Information Officer, )  
District Information Office, )  
Office of the District Collector,)  
Parbhani, Tq. Parbhani, )  
Dist. Parbhani. ) .. **RESPONDENTS**

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APPEARANCE :- Shri Bipinchandra K. Patil, learned  
Advocate for the applicant.  
: Shri N.U. Yadav, learned Presenting Officer  
for the respondents.

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**CORAM** : **Hon'ble Shri B.P. Patil, Acting Chairman**  
**RESERVED ON** : **7<sup>th</sup> January, 2020**  
**PRONOUNCED ON** : **10<sup>th</sup> January, 2020**  
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### **ORDER**

1. The applicant has challenged the order dated 17.4.2018 issued by the res. no. 3 the District Information Officer, Parbhani, thereby directing recovery of an amount of Rs. 4,44,731/- from him on account of excess payment made to him due to wrong fixation of pay and also prayed to direct the respondents to refund the amount of Rs. 4,44,731/- recovered from his salary & pensionary benefits i.e. gratuity & leave encashment, by filing the present Original Application.

2. Applicant was appointed as a Peon on the establishment of the Director, Information and Public Relations, Aurangabad w.e.f. 24.6.1985 by the order dtd. 18.6.1985. On 13.8.1986 he was promoted on the post of Driver by the order dtd. 1.8.1986. Thereafter he has been transferred at various places. He retired on attaining the age of superannuation when he was serving at Parbhani.

3. It is contention of the applicant he received the benefit under time bound promotion scheme after completion of 12 years

continuous service in the year 1998. Thereafter he has received the benefit of second time bound promotion scheme after completion of 24 years continuous service. His pay has been fixed as Rs. 13,050/- + Grade Pay of Rs. 2,550/- w.e.f. 13.8.2010 by the order dtd. 9.3.2011. Thereafter recommendations of 6<sup>th</sup> Pay Commission has been made applicable and accordingly the pay of the applicant has been fixed. On 17.4.2018 the respondent no. 3 has issued the impugned order re-fixing his pay and directing recovery of an amount of Rs. 4,44,731/- from him on account of excess payment made to him due to wrong pay fixation. Accordingly he ordered to recover the said amount from the salary of the applicant from his monthly salary of March, 2018 to July, 2018. Accordingly amount of Rs. 75,000/- has been recovered from his monthly salary for the month of March, 2018 to July, 2018. After his retirement the remaining amount of Rs. 3,96,731/- has been recovered from his pensionary benefits i.e. gratuity and leave encashment. The said recovery has been made in violations of the guidelines given by the Hon'ble Supreme 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** and in case of **Syed Abdul Quadir Vs. State of Bihar** reported at **2009 (3) SCC 475**. It is his contention that he was serving as a Group-

C employee at the time of his retirement. The recovery towards excess payment made to him was not permissible when he was on the verge of retirement, but the respondents had illegally issued the impugned order. Therefore the applicant has approached this Tribunal by filing the present O.A. and prayed to quash the impugned order and direct the respondents to refund the excess amount recovered from his monthly salary and his pensionary benefits.

4. Respondent nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have admitted the fact that the applicant was initially appointed as a Peon on the establishment of the Director, Information and public Relations, Aurangabad w.e.f. 24.6.1985 by the order dtd. 18.6.1985. He was promoted to the post of Driver on the establishment of the District Information Office, Beed by the order dtd. 1.8.1986 and accordingly he joined the promotional post on 13.8.1986. It is their contention that the applicant had completed 12 years' continuous service on 13.8.1998. Hence the benefit of higher pay scale has been granted to him as per the provisions of the G.R. dtd. 6.11.1994. Accordingly the office order has been issued by the District Information Officer, Parbhani thereby his pay has been fixed. Thereafter the applicant has completed 24 years'

continuous service on the post of Driver on 13.8.2010 and therefore the benefit of Assured Career Progression Scheme (for short the A.C.P. scheme) has been granted to him by the Director (Information), Aurangabad w.e.f. 13.8.2010 by the order dtd. 9.3.2011. It is their contention that the applicant was due for retirement from the Government service on attaining the age of superannuation on 31.7.2018 and therefore his service book was forwarded to the Pay Verification Unit, Aurangabad for verification of his pay for processing the pension papers. The Pay Verification Unit, Aurangabad made a remark that the pay verification unit has already certified the pay as on 1.1.2006. It has further directed the respondents to verify the next increment of the applicant and send the pension case of the applicant to the Accountant General. As per the directions of the Pay Verification Unit, Aurangabad the District Information Officer, Parbhani has verified the service book of the applicant. At that time it was noticed by him that the pay of the applicant was incorrectly fixed while granting the benefit under A.C.P. scheme vide order dtd. 9.3.2011. Therefore, he has rectified the said mistake by re-fixing the pay of the applicant by the order dtd. 18.3.2018. At that time it was noticed by the respondents that excess payment was made to the applicant due to wrong pay fixation. It has been noticed by the respondents that total amount of Rs. 4,44,731/- has been

paid to the applicant in excess to his entitlement. Therefore the District Information Officer, Parbhani issued the order dtd. 17.4.2018 and directed recovery of excess amount paid to the applicant from his monthly salary and also directed to recover the remaining amount from his gratuity and leave encashment amount as per the provisions of rule 134 of M.C.S. (Pension) Rules, 1982 and also directed the applicant to deposit the excess amount in cash. It is their contention that the applicant was well aware of the fact that the excess payment had been made to him and he is bound to refund the same to the Government. Applicant has not raised any objection in spite of the order issued by the respondents on 17.4.2018. It is their contention that the applicant has given undertaking to refund the excess amount, if any, paid to him while receiving the benefit under A.C.P. scheme and therefore he is liable to pay the said amount. It is their contention that the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur has also considered the said issue in **writ petition No. 4919/2018 (State of Maharashtra & Ors. Vs. Sureshchandra s/o Dharmchand Jain & Ors.)** decided on 23.7.2019. It is their contention that the excess amount paid to the applicant has been recovered in view of the undertaking given by him and there is no illegality in it. It is their contention that the impugned order has been issued in accordance with the rules.

Therefore they justified the order and recovery made from the applicant and prayed to reject the O.A.

5. I have heard the arguments advanced by Shri Bipinchandra K. Patil, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

6. Admittedly the applicant was initially appointed as a Peon in the office of the Director of Information, Aurangabad w.e.f. 24.6.1985 by the order dtd. 18.6.1985. Admittedly by the order dtd. 1.8.1986 he was promoted on the post of Driver in the office of the District Information Officer, Beed and accordingly he joined the promotional post on 13.8.1986. After completion of 12 years' continuous service on the post of Driver the benefit of time bound promotion scheme i.e. higher pay scale has been granted to the applicant w.e.f. 13.8.1998 by the order dtd. 25.6.1999. On completion of 24 years' continuous service on the post of Driver the benefit of A.C.P. scheme has been granted to the applicant in view of the G.R. dtd. 5.7.2010 w.e.f. 13.8.2010 by the order dtd. 9.3.2011. Admittedly the applicant retired on 31.7.2018 on attaining the age of superannuation. At that time the respondent no. 3 verified the service book of the applicant and that time it was noticed by the respondent no. 3 that the pay of the applicant

has been wrongly fixed by the order dtd. 9.3.2011 and excess payment has been made to him w.e.f. 13.8.2010. Therefore the respondent no. 3 issued the order dtd. 17.4.2018 re-fixing the pay of the applicant and directed to recover the excess amount of Rs. 4,44,731/- paid to the applicant. Admittedly, an amount of Rs. 4,44,731/- has been recovered from the monthly salary and pensionary benefits of the applicant. Admittedly, an amount of Rs. 75,000/- has been recovered from the monthly salary of the applicant for the month from March, 2018 to July, 2018 and after his retirement the remaining amount of Rs. 3,96,731/- has been recovered from his pensionary benefits i.e. gratuity and leave encashment amount. Admittedly the applicant retired from the post of Driver, which falls under Group-C category.

7. Learned Advocate for the applicant has submitted that the wrong pay fixation has been made by the respondent no. 3 while granting the benefit to the applicant under A.C.P. scheme and accordingly salary has been paid to the applicant since 13.8.2010. There was no misrepresentation or fraud on the part of the applicant while fixing his pay scale. Therefore, the applicant cannot be blamed for excess payment made to him due to wrong pay fixation made by the respondents. He has not played any fraud for getting the excess pay. Therefore he cannot be blamed



therefor. The excess payment has been recovered from the salary of the applicant and balance amount has been recovered from his pensionary benefits. Such type of recovery is illegal and it is against the guidelines given by the Hon'ble Supreme Court in case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (supra), wherein it has been observed as under :-

*“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 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.”*

8. It is his contention that the respondents have illegally recovered the said amount and therefore the applicant is entitled to get refund of the said amount. In support of his submissions he has relied on the following decisions :-

- (i) Judgment of Hon'ble Supreme court in case of **Syed Abdul Quadir Vs. State of Bihar** reported at **2009 (3) SCC 475**
- (ii) Judgment of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in case of Smt. Jayshree Trimbak Takalkar Vs. the Chief Executive Officer, Zilla Parishad, Aurangabad & Ors. in writ petition no. 4616/2016 and in case of Smt. Shobha Ramesh Patil Vs. the Chief Executive Officer, Zilla Parishad, Aurangabad in writ petition no. 4624/2016 decided by common judgment delivered on 22.12.2017.
- (ii) Judgment of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in case of Manjula Ashok Suralkar Vs. the State of Maharashtra & Ors. in writ petition no. 14701/2017 decided on 4.9.2018.

9. Learned Advocate for the applicant has submitted that this Tribunal has also considered the said issue in the cases of similarly situated persons and also granted relief to the applicants in those O.As. He has submitted that this Tribunal has given the said relief to the similarly situated persons in following cases :-

(i) Naserkhan Rahimkhan Pathan Vs. the State of Maharashtra and others in O.A. no. 413/2019 decided on 13.11.2019.

(ii) Tanaji Dagdoba Lokhande Vs. the State of Maharashtra and others in O.A. no. 233/2019 decided on 2.8.2019.

(iii) Smt. Ganga Ramrao Waghmare Vs. the State of Maharashtra and others in O.A. no. 548/2018 decided on 31.7.2019.

(iv) Kamlakar s/o Baburao Kulkarni Vs. the State of Maharashtra and others in O.A. no. 535/2018 decided on.2019.

(v) Baliram s/o Devaba Waghmare Vs. the State of Maharashtra and others in O.A. no. 886/2018 decided on 26.8.2019.

(vi) Sudhakar s/o Anantrao Goswami Vs. the State of Maharashtra and others in O.A. no. 271/2018 decided on 30.7.2019.

(vii) Shri Jagdish Bhaskarrao Dabhade Vs. the State of Maharashtra and others in O.A. no. 292/2019 decided on 30.11.2019.

He has submitted that the case of the applicant is covered by the above said decisions. Therefore, he prayed to grant same relief to the applicant by allowing the present O.A. He has also

prayed to issue directions to the respondents to refund the amount recovered from the applicant.

10. Learned Presenting Officer has submitted that the benefit under A.C.P. scheme has been given to the applicant on completion of 24 years' continuous service w.e.f. 13.8.2010 by the order dtd. 9.3.2011. At that time the pay of the applicant has been wrongly fixed, therefore the excess payment was made to him. At the time of processing the case of the applicant for pension the said mistake was noticed by the respondents and therefore the respondent no. 3 re-fixed the pay of the applicant and directed recovery of Rs. 4,44,731/- from the salary and pensionary benefits of the applicant. He has submitted that the said order has been issued in view of the provisions of rule 134 of M.C.S. (Pension) Rules, 1982. While disbursing the amount to the applicant at the time of pay fixation in the year 2011 the applicant had given an undertaking on 25.2.2011 and undertook to refund the excess amount, if any, paid to him due to wrong pay fixation. He has submitted that in view of the said undertaking the applicant is bound to repay the amount. Therefore, the excess amount paid to the applicant due to wrong pay fixation has been recovered from his salary and pensionary benefits. In support of his submissions he has placed reliance on the judgment of the

Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in case of **State of Maharashtra & Ors. Vs. Sureshchandra s/o Dharamchand Jain & Ors. in writ petition no. 4919/2018** decided on 23.7.2019. He has submitted that the recovery has been made as per the rules and therefore he justified the impugned order and prayed to reject the O.A.

11. On perusal of the documents, it is crystal clear that the applicant completed 24 years' continuous service as a Driver and therefore the benefit under A.C.P. scheme has been given to him w.e.f. 13.8.2010 by the order dtd. 9.3.2011. Accordingly his pay has been fixed. At that time his pay has been wrongly fixed. He received the excess payment w.e.f. 13.8.2010. At the time of retirement of the applicant his service record was verified and at that time the respondent no. 3 had noticed the said mistake. Therefore, he has issued the order dtd. 28.3.2018 re-fixing the pay of the applicant and thereafter issued the impugned order dtd. 17.4.2018 directing the recovery of Rs. 4,44,731/- from the salary and pensionary benefits of the applicant. On the basis of the said order amount of Rs. 75,000/- has been recovered from his monthly salary of the applicant for the month of March, 2018 to July, 2018 and remaining amount of Rs. 3,96,731/- has been recovered from the pensionary benefits i.e. gratuity and leave

encashment of the applicant. On perusal of the order dtd. 9.3.2011 it reveals that the Departmental Promotion Committee decided to extend the benefit under A.C.P. scheme to the applicant in its meeting dtd. 8.2.2011. On the basis of the said decision the applicant has given an undertaking to the respondents on 25.2.2011 and undertook to refund the excess payment, if any, made to him due to wrong fixation of pay. The said undertaking has been produced by the respondents on record, which is as follows :-

“वचनपत्र

मी असे वचन देतो की, चुकीच्या वेतन निश्चिती मुळे किंवा पुढे वेतन निश्चिती मध्ये विसंगती आढळून आल्यामुळे मला अतिप्रदान झाल्याचे निदर्शनास आल्यास ते भविष्यात मला प्रदान करण्यात येणा-या रकमेतून समायोजित करून किंवा इतर प्रकारे मी शासनास परत करीन.

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

12. In view of the said undertaking the applicant is bound to pay the excess amount paid to him due to wrong fixation of pay. Therefore, the respondent no. 3 has rightly passed the order directing recovery of excess amount paid to the applicant from the salary and pensionary benefits of the applicant and accordingly the said amount has been recovered from the applicant.

13. The Hon'ble High Court of Judicature at Bombay, Bench at Nagpur has considered the issue involved in this matter in case of **State of Maharashtra & Ors. Vs. Sureshchandra s/o Dharamchand Jain & Ors. (writ petition no. 4919/2018)** decided on 23.7.2019 (supra). Hon'ble High Court considered the principles laid down by the Hon'ble Supreme Court in case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** reported at **AIR 2015 SC 596** (supra). It has also considered the judgments of the Hon'ble Supreme Court in case of **High Court of Punjab and Haryana and Others Vs. Jagdev Singh** reported in **2016 AIR (SCW) 3523**, wherein it is observed as follows :-

*“The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”*

14. After considering both the judgments Hon'ble High Court has observed as follows :-

*“4. The argument submitted in defence is fallacious. An undertaking has the effect of solemnity in law and if*

*argument is to be accepted which has been submitted on behalf of the respondents, the majesty of law would be lowered and there would be a travesty of justice. Besides, the undertaking is about wrong pay fixation and consequent excess payment. The undertaking is not about grant of higher pay on the basis of right pay fixation. Had it been an undertaking as regards the later dimension of the case, one could have perhaps said that the undertaking was only a formality. When the undertaking takes into account the contingency of the wrongful pay fixation, the undertaking has to be said to have been given intentionally and with a view to be acted upon, in case the contingency did really arrive.”*

In the said decision the Hon’ble High Court has held that the recovery made is legal.

15. The principles laid down in above case are appropriately applicable in the present case. The applicant has consciously and intentionally given an undertaking and undertook to repay the excess payment made to him due to wrong pay fixation. Therefore, he is bound by the undertaking given by him. Present case is squarely covered by the said decision and therefore in my view there is no illegality in the impugned order.

16. I have gone through the various decisions cited by the learned Advocate for the applicant. I have no dispute regarding the settled principles laid down therein. The decisions referred by



the learned Advocate for the applicant are not attracted in the present case considering the facts in the present case. In the above cited decisions relied on by the learned Advocate for the applicant those applicants had not given any undertaking and therefore it was directed to refund the amount of excess payment made to them. In the present case the applicant has given an undertaking and therefore he is bound by the said undertaking. Hence the recovery made from him cannot be said to be illegal. Therefore the said decisions are not much useful to the applicant in the present case.

17. In view of above discussion, in my view, there is no illegality in the impugned order and recovery of excess payment made to the applicant from his salary and pensionary benefits. Therefore, in my view, no interference is called for in the impugned order. There is no merit in the O.A. Consequently it deserves to be dismissed.

18. In view of the discussion in foregoing paragraphs, the present O.A. stands dismissed. There shall be no order as to costs.

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**Place : Aurangabad**  
**Date : 10<sup>th</sup> January, 2020**