

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

**ORIGINAL APPLICATION NO. 252 OF 2020
(Subject – Recovery and Pensionary Benefits)**

DISTRICT : AURANGABAD

Harikishan S/o Dagaduji Jadhav,)
Age : 60 years, Occu. : Nil (Pensioner))
R/o. At Post Pathri, Tq. Phulambri,)
Dist. Aurangabad.) **APPLICANT**

V E R S U S

1. **The Assistant Chief Administrator,**)
Labh Kshetra Vikas Bhavan,)
(Irrigation Department), Aurangabad.)
2. **Superintending Engineer and Administrator,**)
Command Area Development Authority,)
Labh Kshetra Vikas Bhavan,)
Garkheda Road, Aurangabad.)
3. **The Executive Engineer,**)
Aurangabad Irrigation Division,)
Near Sinchan Bhavan, Jalna Road,)
Aurangabad.)
4. **The Accountant General, (A& E),**)
M.S. Nagpur, W. High Court Road,)
CBI Colony, Civil Line, Nagpur -01) ... **RESPONDENTS**

APPEARANCE : Ms. Preeti Wankhade, Advocate for the
Applicant.

: Shri I.S. Thorat, Presenting Officer for
Respondent No. 4.

: Shri Shamsunder B. Patil, Advocate for
respondent Nos. 1 to 3

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

DATE : **06.06.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned action of recovery issued by the respondent No. 3 i.e. the Executive Engineer, Aurangabad against the applicant vide order dated 25.11.2019 (Annexure A-7) thereby effecting the recovery of an amount of Rs. 1,06,915/- from the amount of gratuity of the applicant being excess payment. The applicant is also seeking to forthwith release the regular pension and pensionary benefits including the balance gratuity amount.

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

(a) The applicant entered in the services of respondent No. 3 in Irrigation Department as Peon on 11.02.1981. He was promoted as Junior Clerk on 16.07.1986. However, by the order dated 12.08.1991, he was reverted to the post of Peon. After the said reversion order, the applicant however

continued to work as Junior Clerk. He was relieved from the post of Junior Clerk only on 08.02.1984. Thereafter, he worked again as Peon. He stood retired from the post of Peon, which is Class-IV post on superannuation on 31.05.2019.

(b) It is a fact that the State Government issued Government Circulars dated 31.01.2018 and 09.09.2019 (Annexure A-1 collectively) respectively thereby directing the authorities to grant pension and pensionary benefits to the retiring employee as soon as possible. The Government Circular dated 09.09.2019 issued by the Finance Department specifically laid down the directions to the authorities to begin procedure of forwarding the pension papers of retiring employee two years before his date of retirement. In this backdrop, so far as the applicant's retirement is concerned for a period of almost three months he was neither paid provisional pension nor any of his pensionary benefits. He, therefore, made representations dated 03.09.2019 and 10.10.2019 (Annexure A-2 collectively) to the respondent No. 3 seeking to grant pension and pensionary benefits. Taking cognizance of the said representations, the respondent No. 1 i.e. the

Assistant Chief Administrator No. 1, Labh Kshetra Vikas, Irritation Department, Aurangabad issued communication dated 18.10.2019 (Annexure A-3) to the respondent No. 2 i.e. the Superintending Engineer and Administrator, CADA, Aurangabad directing to grant the pension and pensionary benefits to the applicant with interest, but in vain. The applicant therefore, made representation dated 01.11.2019 (Annexure A-4) to the Hon'ble Governor, Maharashtra State requesting for permission to sell his kidney for his livelihood. By taking cognizance of the same, the respondent No. 1 again issued communication dated 19.11.2019 (Annexure A-5) to act upon immediately. It is further submitted that thereafter, the respondent No. 3 on 25.11.2019 (Annexure A-6 collectively) itself issued two orders, firstly sanctioning the provisional pension to the applicant for the period of 01.06.2019 to 30.11.2019 (but he was paid provisional pension up to October 2019 only) and secondly releasing gratuity amount of Rs. 5,15,295/-.

(c) It is further submitted that on 25.11.2019 (Annexure A-7) itself the respondent No. 3 issued the impugned order of re-fixation of pay and recovery on the pretext that the objection was raised by the Accounts Officer, Pay

Verification Unit way back on 24.02.1994; thereby recovery of excess amount of Rs. 1,06,915/- was ordered from the total DCRG amount of Rs. 7,43,779/- and the balance amount was paid to the applicant through cheque bearing No. 915639 drawn at State Bank of India.

(d) In the circumstances as above, it is clear that the recovery is ordered on account of fixing the pay of the applicant wrongly and not at the behest of the applicant due to misrepresentation or fraud. The applicant during the period has worked as Peon being Class-IV employee and meanwhile, from 16.07.1986 to 08.02.1994 he worked as Junior Clerk. The said recovery is impermissible in view of the law laid by 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**. The applicant has also not been paid regular pension and other pensionary benefits, which are due to him. Hence, this Original Application.

3. (a) The affidavit in reply on behalf of respondent Nos. 1 to 3 is filed by one Shri Bhaskar Vassantrao Waghmare,

working as Sub-Divisional Officer, Aurangabad Irrigation Sub-Division No. 1, Aurangabad, thereby he denied all the adverse contentions raised in the Original Application. He, however, admitted the contentions raised in the O.A. in para No. 6(i) and (ii), whereby it is specifically contended that the applicant was promoted as Junior Clerk on 16.07.1986, but was reverted to the post of Peon on 08.02.1994 in view of the reversion order dated 12.08.1991 and worked as such till his retirement on 31.05.2019 and admittedly retired as Class-IV employee. It is further submitted that after retirement of the applicant on superannuation on 31.05.2019 and after receipt of the service book from the Pay Verification Unit, the respondents on 25.11.2019 sanctioned 90% gratuity of Rs. 5,15,295/- and by another order on that day, provisional monthly pension at the rate of Rs. 15,615/- has been sanctioned. The applicant was also paid G.I.S. contribution of Rs. 50,108/- on 28.11.2019. He was also paid leave encashment of Rs. 3,88,640/-. The applicant was paid GPF final amount of Rs. 9,15,549/- on 23.03.2021. Those payments are reflected in Annexure R-1 collectively.

(b) So far as the recovery of the excess amount of Rs. 1,06,915/- is concerned, it is submitted that the applicant has taken benefit of excess payment for about 25 years without any interest. The said amount is legally recoverable. By the application dated 01.11.2019, in fact the applicant has given threats to the department which amounts to gross misconduct. In these circumstances, the O.A. is liable to be dismissed.

4. Separate affidavit in reply of respondent No. 4 i.e. the Accountant General, (A&E)-II, Maharashtra, Nagpur. Thereby it is submitted that the respondent No. 4 comes into the picture after pension papers are duly submitted by the concerned department. In this case, the respondent has processed the pension case of the applicant and issued the Pension Pay Order /Gratuity Payment Order and Communication Payment Order vide order dated 14.07.2020. Copies of said documents are produced at page Nos. 47 to 50 of the paper book. The amount of Rs. 1,06,915/- is shown as recovery towards over payment of pay and allowances as informed by the respondent No. 3. In view of the same, name of this respondent No. 4 is required to be deleted, as the needful is already done in the matter by this respondent in accordance with law.

5. I have heard the arguments at length advanced by Ms. Preeti Wankhade, learned Advocate for the applicant on one hand, Shri I.S. Thorat, learned Presenting Officer for respondent No. 4 and Shri Shamsunder B. Patil, learned Advocate for respondent Nos. 1 to 3 on the other hand.

6. Perusal of the record would show that by the order 06.02.2021 in the farad sheet, the impugned order of recovery dated 25.11.2019 is stayed and the respondent No. 3 is directed to ensure payment of regular pension to the applicant and report compliance thereof. However in that regard, compliance report till date is not filed by the respondent No. 3.

7. Basically the applicant has challenged the impugned order of recovery dated 25.11.2019 (Annexure A-7) contending that the applicant belongs to Group-D category being retired from the post of Peon and in view of the law laid by the Hon'ble Apex Court in reported judgment of Rafiq Masih's, the said recovery is impermissible, when the recovery is towards excess amount due to alleged wrong pay fixation and not due to any misrepresentation or fraud being committed by the employee. The applicant placed reliance on the said judgment 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**. Para No. 12 of the said judgment is as follows :-

“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. In the background of the above-cited case law, if the facts of the present case are examined, it is seen that the excess amount is spread over way back from 1986. The excess payment was made on account of wrong pay fixation. The period of recovery is beyond the period in excess of five years before the order of recovery is issued. In view of the abovesaid ratio laid down by the Hon'ble by Apex Court in reported judgment of Rafiq Masih's and more particularly in view of Clause Nos. (i), (ii) and (iii) of the said judgment, the recovery of excess amount ordered against the applicant is not permissible in the eyes of law. The respondent Nos. 1 to 3 in their affidavit in reply specifically stated as to what pensionary benefits are paid to the applicant. From the said contentions, it appears that the regular pension and arrears thereof is not paid to the applicant. In view of the same, the applicant shall be entitled to get the payment of

amount be recovered of excess amount, which is withheld and regular pension and arrears thereof and other benefits, if any due.

9. Record shows that by the order dated 06.08.2021 in farad sheet the cost of Rs. 5000/- was imposed upon the officer then holding the post of respondent No. 3 for not complying the earlier Tribunal's order dated 13.07.2021 and not placing on record the status report in respect of compliance of the earlier order of payment of regular pension and pensionary benefits to the applicant as ordered by this Tribunal by the order dated 16.02.2019. Record shows that the said amount of cost is not paid by the respondent No. 3 till today. Hence, the appropriate order regarding recovery of the said amount of costs is required to be passed.

10. In view of above facts and circumstances, I therefore, proceed to pass following order :-

ORDER

The Original Application No. 252/2020 is allowed in following terms :-

- (A) The impugned order of recovery dated 25.11.2019 (Annexure A-7) issued by the respondent No. 1 to the

extent of recovery of an amount of Rs. 1,06,915/- is hereby quashed and set aside.

- (B) The respondents are directed to pay the said withheld amount of Rs. 1,06,915/-, as well as, regular pension and arrears thereof and other pensionary benefits, if any due with admissible interest in accordance with Rule 129(A) and 129 (B) of the Maharashtra Civil Services (Pension) Rules, 1982 within a period of four months from the date of this order.
- (C) The amount of costs of Rs. 5000/- (Rs. Five Thousand only) imposed upon the Government officer the then holding the post of respondent No. 3 by the order dated 06.08.2021 be recovered from him in accordance with law from his own pocket and the amount of costs shall be deposited in the Registry of this Tribunal.
- (D) There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 06.06.2022.

(V.D. DONGRE)
MEMBER (J)