

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

**ORIGINAL APPLICATION NO. 263 OF 2022  
(Subject – Recovery)**

**DISTRICT : JALGAON**

**Bhaskar S/o Damu Hire,** )  
Age : 60 years, Occu. : Rtd. Heavy Duty Operator,)  
R/o : Samarth Palace, Behind Saptshrungi )  
Mandir, Jamner Road, Bhusawal, )  
District : Jalgaon-425201. )

.... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Secretary, Water Resources Department,)  
Mantralaya, Mumbai- 400032. )
2. **The Superintending Engineer,** )  
Mechanical Circle, Nasik in from of )  
Ved Mandir. )
3. **The Executive Engineer,** )  
Mechanical Divisional Unit, Mahabal )  
Road, Opp : Telephone Office, Jalgaon, )  
District : Jalgaon-425002. )

... **RESPONDENTS**

**APPEARANCE** : Shri A.D. Sugdare, Counsel for Applicant.

: Shri A.P. Basarkar, Presenting Officer for  
respondents.

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

**DATE** : **29.02.2024.**

**ORAL - ORDER**

1. Heard Shri A.D. Sugdare, learned counsel appearing for the applicant and Shri A.P. Basarkar, learned Presenting Officer appearing for respondent authorities.
2. The present Original Application is disposed of with the consent of both the sides at the admission stage itself.
3. By filing the present Original Application, the applicant is seeking quashing and setting aside the order dated 15.07.2020 to recover an amount of Rs. 1,42,129/- from the applicant and also seeking directions to the respondents to refund the said amount recovered from the applicant.
4. Learned counsel for the applicant submits that the applicant was appointed as Assistant in Mechanical Division, Jalgaon since 21.02.1984 on daily wages. Thereafter he was absorbed in CRT on the post of Assistant on 01.07.1986. The applicant thereafter completed 12 years continuous service and he was granted time bound promotion by order dated 16.12.1997 issued by the Executive Engineer, Mechanical Division, Nashik. Learned counsel submits that as per the policy of the Government, the applicant was given appointment on the post of

Heavy Duty Operator by letter dated 24.09.2008 and since he has completed 24 years continuous service become eligible for second benefit of Modified Assured Career Progressive Scheme, he was granted benefit as on 21.02.2010 by order dated 14.03.2024.

5. Learned counsel for the applicant submits that the applicant was retired while working on the post of Heavy Duty Operator on attaining the age of superannuation on 31.03.2020.

6. Learned counsel for the applicant submits that the applicant has received office order dated 15.07.2020 issued by the Dy. Executive Engineer, Mechanical Division Unit, Jalgaon stating therein that after verification, it is found that the excess amount is paid to the applicant during the period from 01.07.2008 to 31.03.2020 towards the salary and allowances amounting to Rs. 1,42,129/-. Though the applicant has submitted representation, however, the respondents have recovered the said amount from his gratuity amount. Hence, the present Original Application.

7. Learned counsel for the applicant further submits that the applicant was retired as a Class-III employee and the said amount has been recovered from his retiral benefits.

Learned counsel submits that the said excess amount said to have been paid to the applicant during the period from 01.07.2008 to 31.03.2020, which exceeds the period of five years. Learned counsel submits that the ratio laid down by the Hon'ble Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No. 11527/2014 (Arising out of SLP (C) No. 11684/2012), dated 18.12.2014**, is squarely applicable to the facts and circumstances of the present case.

8. Learned counsel for the applicant submits that though the applicant has given an undertaking, however, the same was taken one year prior to his retirement and not at the time when the pay fixation (wrong pay fixation) done. Learned counsel submits that in view of the observations made by the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 14296/2023 (Gautam Sakharam Mairale Vs. State of Maharashtra and Ors.)** and other connected matters, such an undertaking will not have the same sanctity as that of an undertaking executed when the payment of revised pay scale has commenced. Learned counsel submits that the present Original Application deserves to be allowed.

9. Learned Presenting Officer on the basis of the affidavit in reply filed on behalf of respondent Nos. 1 to 3 submits that the

pay fixation of the applicant was made subject to the condition of verification of pay fixed by the Pay Verification Unit, which is the competent authority to verify and certify the same. The respondent No. 3 has accordingly made revised the pay fixation of the applicant and it is found that the excess amount was paid to the applicant during the period from 01.07.2008 to 31.03.2020 amounting to Rs. 1,42,129/- and thus the same has been recovered from retiral benefits of the applicant. The said recovery was effected as per the Pay Verification Unit's objection and as per the undertaking given by the applicant on 08.02.2019 in terms of the Government Circular issued by the Finance Department dated 30.01.2019. Learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed.

10. In view of the ratio laid down by the Hon'ble Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc., (2015) 4 Supreme Court Cases 334**, the recovery from class-III and class-IV employees after their retirement is impermissible on certain conditions. The Hon'ble Apex Court in para No. 18 has made the following observations :-

*“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."*

The case of the applicant is fully covered under the clause Nos. (i), (ii) and (iii) of the above judgment of the Hon'ble Apex Court.

11. It appears that the said amount has been recovered from the gratuity amount of the applicant, which appears to be paid to the applicant in excess and admittedly, the said amount has been paid to the applicant during the period from 01.07.2008 to 31.03.2020 towards the salary and allowances.

The applicant is neither at fault, nor he has misled the authorities in any manner for his pay fixation in the year 2008. Thus, the ratio laid down by the Hon'ble Apex Court, more particularly condition Nos. (i) to (iii) are squarely applicable to the facts and circumstances of the present case. In view of the same, the recovery as against the applicant is impermissible.

12. It further appears that the respondent authorities have taken undertaking from the applicant on 08.02.2019 i.e. just one year prior to his retirement. The Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 14296/2023 (Gautam Sakharam Mairale Vs. State of Maharashtra and Ors.)** and along with connected matters, in the identical facts and circumstances in respect of the similarly situated employees in para Nos. 5 and 6 has made the following observations :-

*“5. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it is in these circumstances that an undertaking has been extracted. The learned Advocate representing the Zilla Parishad as well as the learned A.G.Ps., submit that, once an undertaking is executed, the case of the Petitioners would be covered by the law laid down by the Hon'ble Supreme Court in the case of **High Court of Punjab and Haryana and others vs. Jagdev Singh, 2016 AIR (SCW) 3523**. Reliance is placed on the judgment delivered by this Court on 1.9.2021, in **Writ Petition No. 13262 of 2018 filed by***

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6. We have referred to the law laid down by the Hon'ble Supreme Court in **High Court of Punjab and Haryana and others vs. Jagdev Singh (supra)**. The record reveals that no undertaking was taken from these Petitioners when the pay scales were revised. An undertaking from some of them was taken at the stroke of their retirement. An undertaking has to be taken from the candidate when the revised pay scale is made applicable to him and the payment of such pay scale commences. At the stroke of superannuation of the said employee, asking him to tender an undertaking, practically amounts to an afterthought on the part of the employer and a mode of compelling the candidate to execute an undertaking since they are apprehensive that their retiral benefits would not be released until such undertaking is executed. Such an undertaking will not have the same sanctity as that of an undertaking executed when the payment of revised pay scale had commenced. We, therefore, respectfully conclude that the view taken in **High Court of Punjab and Haryana and others vs. Jagdev Singh (supra)** would not be applicable to the case of these Petitioners, more so since the recovery is initiated after their superannuation.”

13. The pay fixation (wrong pay fixation as per the claim of the applicant) was done in the year 2008 and at that time admittedly no undertaking has been given by the applicant. It was taken some one year prior to his retirement. In view of the observations made by the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad, such an undertaking



will not have the same sanctity as that of an undertaking executed when the payment of revised pay scale had commenced.

14. In view of the discussions in foregoing paragraphs, the present Original Application deserves to be allowed. Hence, the following order :-

**ORDER**

(i) The Original Application is hereby allowed in terms of prayer clause (9) B & C, which is as under :-

*“B. By order or direction by this Hon'ble Tribunal the impugned order No. 43/2020, dated 15-07-2020 to recover an amount of Rs. 1,42,129/- (Rs. One Lakh Forty Two Thousand One Hundred Twenty Nine) only from the applicant be quashed and set aside.*

*C. By order or directions to the respondents amount of Rs. 1,42,129/- (Rs. One Lakh Forty Two Thousand One Hundred Twenty Nine) recovered from the applicant be refunded to the applicant.”*

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

(iii) The Original Application accordingly disposed of.

**PLACE : Aurangabad.**

**DATE : 29.02.2024**

**(Justice V.K. Jadhav)**

**Member (J)**