

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 33 OF 2018
(Subject – Refund of Recovered Amount)**

DISTRICT : NANDED

Shri Shaikh Ibrahim Shaikh Nanhu,)
Age : 61 years, Occu. : Pensioner,)
R/o : Aslam Ground Near Handpump)
Khadkpura, Nanded, Dist. Nanded.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Secretary,)
Public Works Department,)
Mantralaya, Mumbai.)
- 2) **The Superintending Engineer,**)
Public Works Department,)
Sneha Nagar, Nanded,)
Dist. Nanded.)
- 3) **The Executive Engineer,**)
Public Works Department,)
Nanded, Dist. Nanded.)
- 4) **The Sub-Divisional Engineer,**)
Public Works Department,)
Sub-Division South, Nanded,)
Dist. Nanded.)
- 5) **The Accountant General-II (A&E),**)
Pension Wing Old Building,)
In front of Ravi Bhavan, Nagpur.) .. **RESPONDENTS**

APPEARANCE : Shri A. B. Rajkar, Advocate for the Applicant.

: Shri V.R. Bhumkar, Presenting Officer for
Respondents.

CORAM : B.P. PATIL, MEMBER (J).

DATE : 02.01.2019.

ORAL - ORDER

1. Heard Shri A.B. Rajkar, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. The applicant has challenged the communication dated 23.04.2015 issued by the respondent No. 5 directing the recovery of an amount of Rs. 1,18,015/- from the applicant on account of excess payment made to him due to wrong pay fixation and also prayed to direct the respondents to refund the amount of Rs. 1,18,015/- recovered from him on the basis of said letter. He has also prayed to direct the respondents to decide his representations dated 18.04.2016 and 09.05.2017 by filing the present Original Application.

3. The applicant was serving as a Fitter (Jodari), class IV with the respondents. He retired on 30.06.2015 on attaining the age of superannuation. Before his retirement, the relevant papers and service book had been sent to the Pay Verification Unit for verification of the record. At that time, the Pay Verification Unit had raised some objections. Therefore, the respondent No. 4 by the order dated 16.02.2015 re-fixed the pay of the applicant. As the applicant was due for retirement, the respondent No. 4 sent

his pension proposal to the respondent No. 3. On scrutiny of pension proposal sent by the respondents, the respondent No. 5 issued communication dated 23.04.2015 to the respondent No. 3 and informed to recover an amount of Rs. 1,18,015/- from the applicant from his retiral benefits, on the ground that the amount was paid to him due to wrong pay fixation. It is contention of the applicant that he had not played any role in fixation of pay and the mistake has been committed by the respondents, while fixing his pay and therefore, he was not liable to pay the said amount. But the respondents had illegally recovered the said amount from his retiral benefits. It is contention of the applicant that in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others** reported in **2015 (4) SCC, 334**, the recovery is not permissible. It is his further contention that the said recovery has been made from his retiral benefits, which is illegal and therefore, he prayed to quash and set aside the impugned order dated 23.04.2015 directing recovery of an amount of Rs. 1,18,015/- from his pensionary benefits and prayed to direct the respondents to refund the said amount by allowing the present Original Application. It is his further contention that he made representations with the respondents on 18.04.2016 and 09.05.2017 requesting to refund

the amount of Rs. 1,18,015/- recovered from him illegally, but his representations have not been decided by the respondents till today and therefore, he prayed to direct the respondent Nos. 3 and 5 to decide his representations.

4. The respondent Nos. 1 to 4 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant retired on 30.06.2015 and the respondents prepared his pension proposal and sent it to the respondent No. 5. But in the scrutiny, the respondent No. 5 noticed that an amount of Rs. 1,18,015/- has been paid in excess to the applicant, though he was not entitled to get the same because of wrong interpretation of pay fixation method and therefore, the said amount has been recovered from pensionary benefits of the applicant. It is their contention that the recovery has been made as per the directions given by the respondent No. 5 and there is no illegality in the impugned order. Therefore, they prayed to dismiss the present Original Application.

5. The respondent No. 5 resisted the contention of the applicant by filing his affidavit in reply. It is his contention that the Comptroller and Auditor General of India discharges duties through field offices, i.e. Accountants General Offices in

accordance with the provisions of Article 149 of the Constitution of India read with the Comptroller and Auditor General (Duties, Power, and Conditions of Service) Act, 1971. Accordingly, the role of this Respondent in respect of pension case is limited to scrutiny of proposals received from Head of offices of Govt. of Maharashtra/Pension Sanctioning Authorities in respect of persons who retired from various State Government offices situated in Vidarbha and Marathwada regions, with reference to the rules in M.C.S. (Pension) Rules 1982 and other Government Resolutions issued from time to time and authorizes pensionary benefits, if found admissible. This Respondent office does not act on its own violation, but authorizes pensionary benefits only on receipt of proper pension papers duly attested the Head of Office /Pension Sanctioning Authority of the State Government. This respondent shall not be in a position to authorize pensionary benefits if, either the proposal is not received from the Head of the Office/Pension Sanctioning Authority in the prescribed format with requisite documents or if it is found not confirming to any of the provisions of the M.C.S. (Pension) Rules, 1982.

6. It is further contention of the respondent No. 5 that the proposal for finalization of pensionary benefits was forwarded by the pension sanctioning authority i.e. the Executive Engineer,

Public Works Division, Nanded vide its letter dated 31.03.2015, which was received to his office on 06.04.2015. Thereafter, the pension case was processed and the pensionary benefits were authorized vide letter dated 23.04.2015. The pension sanctioning authority i.e. Executive Engineer, Public Works Division, Nanded has mentioned in form No. 7 that there was overpayment of pay and allowances to the tune of Rs. 1,18,015/- to the applicant and the same should be recovered from the gratuity amount. On this information, clause has been inserted in the gratuity payment authority. It is his contention that as per the provisions of Rule 132 of the Maharashtra Civil Services (Pension) Rules, 1982, if it is found that due to whatsoever reason an excess amount has been paid to a Government servant during the period of service, then the excess paid amount shall be recovered from the pensionary benefits and accordingly, the said amount has been recovered. He has denied that the respondents have given direction to the respondent No. 3 without any authority. It is contended by him that the recovery has been directed as per the rules and there is no illegality in the impugned order. Therefore, he prayed to reject the present Original Application.

7. Admittedly, The applicant is serving as a Fitter (Jodari), which is class IV post with the respondents. He retired

on 30.06.2015 on attaining the age of superannuation. Admittedly, before retirement of the applicant, his service record was sent to the Pay Verification Unit for verification of the record. At that time, the respondent No. 4 raised some objections regarding wrong pay fixation of the applicant. On the basis of that, the respondent No. 5 re-fixed the pay of the applicant on 16.02.2015 and directed to recover the excess amount of pay paid to the applicant. On the basis of that the respondent No. 3 processed the pension papers and sent it to the respondent No. 5 and requested to recover an amount of Rs. 1,18,015/- from the gratuity amount of the applicant. On the basis of said communication, the respondent No. 5 issued the impugned order and directed to recover an amount of Rs. 1,18,015/- from the pensionary benefits of the applicant. Admittedly, the said amount has been recovered from the gratuity amount of the applicant.

8. Learned Advocate for the applicant has submitted that the applicant is serving as Fitter (Jodari), which is a Class-IV post. He has submitted that wrong pay has been fixed by the respondent No. 4 treating the said post as isolated post and accordingly, the payment has been made to him since the year 1994. He has submitted that the pay has been fixed by the

respondents on their own accord and the applicant had never misrepresented them. No role has been played by the applicant while fixing his pay and therefore, he cannot be held responsible for the same. He has submitted that the said mistake has been noticed when the service record of the applicant was sent to the pay verification unit and on the basis of objection raised by the pay verification unit, the order dated 16.02.2015 re-fixing his pay has been issued and on the basis of proposal sent by the respondent No. 3, the respondent No. 5 issued the impugned order dated 23.04.2015 recovering the amount of Rs. 1,18,015/- from the pensionary benefits of the applicant. He has submitted that the amount has been recovered from the pensionary benefits of the applicant and the order of recovery has been issued when the applicant was on the verge of retirement. He has submitted that the said recovery is not permissible in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others** reported in **2015 (4) SCC, 334**, but the respondents illegally recovered the said amount. He has submitted that in spite of several representations made by the applicant, the respondents have not decided the same and had not refunded the amount and therefore, he approached this Tribunal and prayed to quash and set aside the impugned order directing recovery and also prayed

to direct the respondents to refund the amount of Rs. 1,18,015/- recovered from the applicant from his pensionary benefits by allowing the present Original Application.

9. Learned Advocate for the applicant has relied on the judgment delivered by the Hon'ble Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others** reported in **2015 (4) SCC, 334,** wherein has been observed 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."

10. Learned Advocate for the applicant has further relied on the order passed by this Tribunal in **O.A. No. 92/2015** in case of **Anandrao Pandharinath Farkade Vs. The State of Maharashtra and Ors.** on 12.10.2015, as well as, the judgment delivered by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **W.P. No. 3596 of 2009** in case of **Samadhan Daulat Patil Vs. The State of Maharashtra and Ors.**, wherein similar principle has been laid down. He has submitted that the facts in this case and facts in those cases are identical and therefore, the principles laid down in those cases

are attracted in this case. Therefore, he prayed to allow the present Original Application.

11. Learned Presenting Officer has submitted that wrong pay scale has been given to the applicant initially when he has appointed as a Fitter (Jodari) because of wrong interpretation of pay fixation method and therefore, excess amount has been paid to the applicant. He has submitted that in fact, the post of Fitter (Jodari) was not isolated post and it was promotional post, but it was not interpreted correctly by the respondents and wrong pay scale has been granted to him since beginning i.e. from the year 1994. On the basis of wrong fixation made by the respondents, excess amount has been paid to the applicant towards pay and allowances. He has submitted that the said mistake has been noticed to the respondents when the record has been sent to the Pay Verification Unit for verification before retirement of the applicant. Thereafter, the said mistake has been corrected by the respondent No. 4 by revising the pay of the applicant by the order dated 16.02.2015. He has submitted that thereafter the amount of Rs. 1,18,015/- has been recovered as per the directions given by the respondent No. 5. He has submitted that the applicant received excess amount to which he was not entitled to receive the same and therefore, the recovery has been

ordered and accordingly, the amount has been recovered. He has submitted that there is no illegality in the impugned order and therefore, he prayed to reject the Original Application.

12. On perusal of the record, it reveals that the pay of the applicant has been fixed initially in the year 1994, when he had joined the service as Fitter (Jodari) treating the post as isolated post and accordingly his pay was fixed in the pay scale of Rs. 1200-1800. Thereafter, he received pay accordingly till his retirement. When the pension papers of the applicant have been forwarded to the Pay Verification Unit, it was noticed that the wrong pay scale has been given to the applicant and therefore, he raised the objections. On the basis of objection raised by the Pay Verification Unit, the respondent No. 4 issued the order dated 16.02.2015 and re-fixed the pay of the applicant in the pay scale of Rs. 975-1540. On the basis of said pay scale, the recovery of an amount of Rs. 1,18,015/- has been directed. The respondent No. 3 then requested respondent No. 5 to recover the said amount from pensionary benefits of the applicant, when the pension papers of the applicant were forwarded to the respondent No. 5. Accordingly, respondent No. 5 directed to recover the said amount from the pensionary benefits, while issuing the authorization letter. On the basis of said directions,

the amount of Rs. 1,18,015/- had been recovered from the applicant from his gratuity amount.

13. The applicant was serving as a Fitter (Jodari) and he retired from the said post. The post of Fitter (Jodari) is a Class IV post (Group-D). The impugned order has been issued after re-fixing pay of the applicant when he was on the verge of retirement. The excess amount has been recovered from the pensionary benefits of the applicant. In view of these facts, the said recovery is impermissible in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others** reported in **2015 (4) SCC, 334,**

14. The excess amount has been paid to the applicant because of the mistake committed by the respondents and the applicant had not played any role in fixation of his pay. Therefore, he cannot be blamed for it. On that count also, the said recovery cannot be made, as it is illegal. Therefore, the impugned orders dated 16.02.2015 and 23.04.2015 issued by the respondent No. 4 and 5 respectively directing recovery of excess amount paid to the applicant is not sustainable in eye of law. Hence, it require to be quashed and set aside. Due to re-fixation of pay, recovery of an amount of Rs. 1,18,015/- has

been ordered and recovered from the pensionary benefits of the applicant. The said recovery has been made illegally. Therefore, the applicant is entitled to get refund of it. Therefore, the Original Application deserves to be allowed.

15. I have gone through the decisions referred by the learned Advocate for the applicant. This Tribunal in cases of similarly situated persons directed the respondents to refund the amount. Facts in those cases and the facts in present case are also similar and identical. Therefore, the decision of this Tribunal in O.A. No. 92/2015 is squarely applicable in the instant case. Likewise, the decision in case of **Samadhan Daulat Patil Vs. The State of Maharashtra and Ors.** in **W.P. No. 3596 of 2009** is also applicable in the instant case.

16. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The impugned orders dated 16.02.2015 and 23.04.2015 issued by the respondent No. 4 and respondent No. 5 respectively directing recovery of excess amount from the pensionary benefits of the applicant are hereby quashed and set aside. The respondents are directed to refund the amount of Rs. 1,18,015/- to the applicant within a period of three months from the date of this

order, failing which the respondents are liable to pay the interest @ 9% p.a. on the said amount from the date of this order till its repayment.

There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 02.01.2019.

(B.P. PATIL)

MEMBER (J)

KPB S.B. O.A. No. 33 of 2018 BPP 2019 Refund of Recovered amount