

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.413 OF 2019

(Subject :- Recovery)

DISTRICT : AURANGABAD

Naserkhan Rahimkhan Pathan,)
Age: 58 years, Occ: Retired,)
R/o. Ansar Colony, Power House Road,)
Galli no.3, Near Akbar Majjid,)
Padegaon, Aurangabad.)...**Applicant**

V E R S U S

1. **The State of Maharashtra,**)
Through: The Secretary,)
Home Department,)
Mantralaya, Mumbai- 32.)
2. **The Director General of Police,**)
Shahid Bhagatsing Marg,)
Mumbai.)
3. **The Superintendent of Police,**)
Aurangabad.)
4. **The Pay Verification Unit,**)
Treasury Office, Aurangabad.)...**Respondents.**

Shri K.B. Jadhav, learned Advocate for the Applicant.

**Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer
for the Respondents.**

CORAM : **B.P. Patil, ACTING CHAIRMAN**

DATE : **13.11.2019.**

ORAL ORDER

1. The Applicant has challenged the impugned order dated 23.01.2018 issued by the Respondent No.3 to the extent of directing recovery of excess payment from him and prayed to direct the Respondent No.3 to refund the amount of Rs.65,207/- recovered from him by filing the present Original Application.

2. The Applicant was initially appointed as Constable on 17.12.1982 in the office of the Respondents. He was promoted as Police Naik on 29.12.1992 and thereafter he was promoted as Head Constable on 26.01.1996. Thereafter he was promoted as Assistant Sub-Inspector on 25.8.2008 on ad-hoc basis. Thereafter, he was reverted on the post of Police Head Constable on 31.12.2008. Again he was promoted as Assistant Sub-Inspector on 30.1.2010. Thereafter, he was posted in BDDS branch by the Respondent No.3. The Applicant retired on 31.1.2019 from the office of the Respondent No.3 on attaining the age of superannuation. It is his contention that at the time of retirement he was working on the post of A.S.I. which falls under the group 'C'

category. It is his contention that at the time of retirement, his service record has been sent to Pay Verification Unit, Aurangabad for verification. The Pay Verification Unit, Aurangabad raised objection regarding his pay fixation. Therefore, the Respondent No.3 re-fixed the pay of the Applicant by order dated 23.1.2018 w.e.f. 1.1.1986 to 1.7.2017 and directed to recover the excess payment made to the Applicant due to wrong pay fixation for the period from February, 1996 to January, 2018. The excess amount of Rs.65,207/- has been shown to be paid excess to the Applicant during the period from February, 1996 to January, 2018 and directed recovery from his monthly salary. Accordingly, the amount has been recovered from his monthly salary from February, 2018 towards till his retirement. It is his contention that the wrong pay fixation has been made by the Respondent on his own occurred. The Applicant never misrepresented or practiced fraud on the Respondent in getting the excess amount. Therefore, he cannot be blamed for it. It is his contention that the recovery of excess payment in excess of five years is illegal and not permissible in view of the guidelines given by the **Hon'ble Apex Court in case of the State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc, in Civil Appeal No.11527/2014 decided on 18.12.2014.**

3. It is his contention that the recovery has been made from his monthly salary when he was on the verge of retirement and therefore, it is illegal. It is his further contention that recovery has been ordered without giving an opportunity of hearing to him. The Respondents have not followed the principle of natural justice and therefore, he has prayed to quash the impugned order dated 23.1.2018 to the extent of directing recovery of excess payment from him by allowing the Original Application and prayed to direct the Respondent No.3 to refund the amount of Rs.65,207/- recovered from his salary.

4. The Respondent Nos.1 to 3 have filed their affidavit-in-reply and resisted the contention of the Applicant. They have not disputed the fact that the Applicant joined service as Police Constable on 17.12.1982. Thereafter he was promoted as Police Naik on 29.12.1992 and thereafter he was promoted as Head Constable on 26.1.1996. Thereafter, the Applicant was promoted as A.S.I. w.e.f. 30.1.2010. They have not disputed the fact that the Applicant retired as A.S.I. on attaining the age of superannuation on 31.1.2019 which is group 'C' post. They have admitted the fact that the excess payment was made to the Applicant due to wrong fixation made by the Respondent No.3. It is their contention that the said mistake has been noticed by

the Respondent No.3 when the Pay Verification Unit, Aurangabad raised objection in that regard when the service record of the Applicant has been sent to it for verification. It is their contention that as per the objection raised by the Pay Verification Unit, Aurangabad, the Respondent No.3 re-fixed the pay of the Applicant and directed recovery of excess amount of Rs.65,207/- paid to the Applicant during the period from February, 1996 to January, 2018. It is their contention that there is no illegality in the impugned recovery order. The excess amount has been recovered from the Applicant in view of the provision of Rules. It is their contention that case of the Applicant is squarely covered by the decision given by **Hon'ble High Court of Judicature bench at Nagpur in case of State of Maharashtra Vs. Sureshchandra S/o. Dharmachand Jain and Ors. in Writ Petition No.4919 of 2018.** It is their contention that the Applicant has given undertaking that he is liable to pay excess amount paid to him if there is mistake. On the basis of undertaking, the excess amount has been recovered and there is no illegality in the said recovery order and therefore, they have prayed to reject the Original Application.

5. The Respondent No.4 has failed to file affidavit-in-reply.

6. I have heard Shri K.B. Jadhav, learned Advocate for the Applicant and Smt. Sanjivani K.Deshmukh-Gahte, learned Presenting Officer for the Respondents. I have perused the documents on record filed by both the parties.

7. Admittedly, the Applicant was initially appointed as Constable on 17.12.1982. He was promoted as Police Naik on 29.12.1992 and thereafter, promoted as Police Head Constable on 26.1.1996. He was promoted as A.S.I. on 30.1.2010. He retired from service on 31.3.2019 as A.S.I. which is group 'C' post on attaining the age of superannuation. Admittedly, at the time of retirement, the service record of the Applicant has been sent to Pay Verification Unit, Aurangabad for verification. The Pay Verification Unit, Aurangabad raised objection regarding the pay-fixation of the Applicant. Admittedly, the Respondent No.3 has re-fixed the pay of the Applicant by order dated 23.1.2018 w.e.f. 1.1.1986 to 1.7.2017 and directed to recover the excess payment made to the Applicant due to wrong pay fixation for the period from February, 1996 to January, 2018. Accordingly, the amount of Rs.65,207/-has been recovered from the monthly salary of the Applicant w.e.f. the month of February, 2018.

8. Learned Advocate for the Applicant has submitted that at the time of retirement the Applicant was serving on Group 'C' post and he retired as A.S.I. i.e. group 'C' employee. The excess amount has been paid to the Applicant due to wrong pay fixation made by the Respondent No.3 and the Applicant never misrepresented or practiced fraud on the Respondent No.3 in fixing wrong pay scale. Therefore, the Applicant cannot be blamed for it. He has submitted that the impugned order directing recovery of amount of Rs.65,207/- has been issued by the Respondent No.3 when the Applicant was on the verge of retirement. The said amount has been recovered from his monthly salary when he was about to retire. He has submitted that the said recovery is impermissible in view of the guidelines given by the **Hon'ble Apex Court in case of the State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc, in Civil Appeal No.11527/2014 decided on 18.12.2014.** Wherein the Hon'ble Apex Court has 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, summarise 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 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 employee, 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.”

9. He has submitted that case of the Applicant is squarely recovered by Clause Nos. (i) to (iii) of the guidelines issued by the Hon'ble Apex Court in the above cited decision and therefore, the said recovery made by the Respondent No.3 from monthly salary of the Applicant is illegal. Therefore, he has prayed to quash the impugned order to the extent of directing recovery of amount of Rs.65,207/- by allowing the Original Application.

10. He has further submitted that this Tribunal has dealt with and decided the similar issue in case of similarly situated person in **O.A.No.157 of 2017 in case of Dadasaheb**

S/o Pandurang Satdive Vs. The State of Maharashtra & Ors. decided on 3.01.2018, in O.A.No.433 of 2017 in case of Shri Baswantsing D. Rajput Vs. The State of Maharashtra and Ors. decided on 7.11.2017. He has submitted that the case of the Applicant is squarely covered by the said decision and therefore, he has prayed to allow the Original Application and to quash the impugned order and to direct the Respondent No.3 to refund the amount recovered illegally from his monthly salary.

11. Learned P.O. for the Respondents has submitted that the excess payment was made to the Applicant due to wrong pay-fixation and the said mistake has been noticed by the Pay Verification Unit, Aurangabad when the service record of the Applicant has been sent to it for verification at the time of his retirement. She has submitted that on the basis of objection raised by the Pay Verification Unit, Aurangabad, the Respondent No.3 re-fixed the pay of the Applicant and directed recovery of amount of Rs.65,207/- from the monthly salary of the Applicant. She has submitted that the recovery has been directed as per the provision of Rules and there is no illegality in it.

12. She has submitted that the Applicant has been given undertaking to the Respondent No.3 on 26.2.2019 and 15.5.2009 and undertook to repay the excess amount paid due to wrong pay fixation. She has submitted that the recovery has been made in view of the said undertaking. She has submitted that if the recovery has been made in pursuance of the undertaking given by the employee, the same cannot be said to be illegal. In support of his submission, she has placed reliance on the judgment of **Hon'ble Bombay High Court Bench at Nagpur in case of State of Maharashtra Vs. Sureshchandra S/o. Dharmachand Jain and Ors. in Writ Petition No.4949 of 2019 decided on 23rd July, 2019.**

13. She has submitted that recovery has been made on the basis of undertaking given by the Applicant and there is no illegality in it. Therefore, she has justified the impugned order and prayed to reject the Original Application.

14. On perusal of record it reveals that the Applicant retired as A.S.I., group 'C' employee on attaining the age of superannuation w.e.f. 31.1.2019. The Respondent No.3 wrongly fixed his pay w.e.f. 1.1.186. There was no misrepresentation or fraud practiced on the part of the Applicant in getting the wrong

pay scale. Due to mistake committed by the Respondent No.3, the excess payment has been made to the Applicant. Therefore, the Applicant cannot be blamed for it. When the Applicant was on the verge of retirement, the service record of the Applicant has been forwarded to Pay Verification Unit, Aurangabad for verification and at that time, the Pay Verification Unit Aurangabad, noticed that the pay of the Applicant has been wrongly fixed and excess payment was made to him since February, 1996 to January, 2018 and therefore, it had raised objection in that regard. On the basis of objection raised by the Pay Verification Unit, the Respondent No.3 re-fixed the pay of the Applicant and directed recovery of amount of Rs.65,207/- from the monthly salary of the Applicant when the Applicant was on the verge of retirement. The recovery from the salary of the Applicant when he was on the verge of retirement is not permissible in view of the guidelines given by the **Hon'ble Apex Court in case of the State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc, in Civil Appeal No.11527/2014 decided on 18.12.2014** as cited above.

15. The case of the Applicant is squarely covered by Clause No.(i) to (iii) of the guidelines issued by the Hon'ble Apex Court in the above cited decision. Therefore, the impugned

order directing recovery of amount of Rs.65,207/- from the salary of the Applicant is illegal. Therefore, it requires to be quashed by allowing the Original Application.

16. I have gone through the decision referred by the Respondents. In that case, the undertaking has been given by the employee concerned when the pay has been fixed. Therefore, the Hon'ble High Court has held that the recovery can be made in view of the undertaking given by the employee. In the present case, the pay of the Applicant has been re-fixed w.e.f. 1.1.1989 onwards and excess payment has been made to him accordingly. At the time of pay fixation or paying pay, no undertaking has been obtained by the Respondent No.3. The Respondent No.3 obtained and undertaking from the Applicant on 15.5.2009 and 26.2.2019. Those undertaking have no concern with the wrong pay fixation made by the Respondents from the year 1986. Therefore, the said undertakings are not binding on the Applicant. On the basis of said undertaking, the Respondent cannot recover the excess amount paid to the Applicant. As observed above, the Respondent No.3 has illegally recovered the amount of Rs.65,207/- from the salary of the Applicant. Therefore, the impugned order directing recovery of amount of Rs.65,207/- from the salary of the Applicant requires

to be quashed and set aside by allowing the Original Application. As the Respondent No.3 has recovered the amount of Rs.65,2074/- illegally when the Applicant was on the verge of retirement, the said amount requires to be refunded to the Applicant.

17. In view of the discussion in the foregoing paragraphs, the Original Application is allowed. The impugned order dated 23.1.2018 issued by the Respondent No.3 directing recovery of excess amount of Rs.65,207/- from the Applicant is hereby quashed and set aside. The Respondent No.3 is directed to refund the amount of Rs.65,207/- recovered from the Applicant within three months from today, failing which, the amount shall carry interest @9% p.a. from the date of the order till its realization. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place:- Aurangabad

Date :- 13.11.2019

Sas. O.A.No.413 of 2019.Recovery. BPP