

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 493 OF 2019  
(Subject – Refund of Excess Amount)**

**DISTRICT : JALNA**

**Shri Gulab S/o. Goverdhan Rathod,** )  
Age : 58 years, Occu. : Retired, )  
R/o : Ramnagar Tanda, Tq. Ambad, )  
Dist. Jalna. )

.. **APPLICANT**

**V E R S U S**

**1) The State of Maharashtra,** )  
Through : The Secretary, )  
Home Department, Mantralaya, )  
Mumbai-32. )

**2) The Superintendent of Police,** )  
Jalna. )

**3) The Accountant General-II,** )  
Civil Lines, Nagpur, )

.. **RESPONDENTS**

-----  
**APPEARANCE** : Shri Kakasaheb B. Jadhav, learned Advocate  
for the applicant.

: Mrs. Priya R. Bharaswadkar, learned  
Presenting Officer for the respondents.

-----  
**CORAM** : **B.P. PATIL, ACTING CHAIRMAN.**

**DATE** : **02.03.2020.**  
-----

**O R A L - O R D E R**

1. By filing the present Original Application the applicant has challenged the order directing recovery of Rs. 1,22,772/- from his

salary and pensionary benefits on account of wrong pay fixation and prayed to quash the order and also prayed to direct the respondent Nos. 2 & 3 to refund the amount of Rs. 1,22,772/- recovered from his salary and pensionary benefits.

2. The applicant was initially appointed on 26.9.1983 as a Constable and posted in the office of S.R.P.F. Jalna. On 2.6.2006 he was transferred in the office of Superintendent of Police, Parbhani. Thereafter, he was transferred in the office of the respondent No. 2, the Superintendent of Police, Jalna in the year 2007. On 30.5.2014 he was promoted on the post of Assistant Police Sub-Inspector. He retired from the service w.e.f. 31.3.2018 from the office of the respondent No. 2 on attaining the age of superannuation. It is his contention that the post of ASI falls under Group 'C'/Class-III category.

3. It is contention of the applicant that at the time of his retirement respondent No. 3 noticed that his pay had been fixed wrongly and therefore, he corrected the pay of the applicant. The respondent No. 2 re-fixed the pay of the applicant by an order dated 7.3.2017 w.e.f. 1.9.2000 to 1.7.2016 and directed recovery of excess payment made to him due to wrong fixation of pay from his salary and pensionary benefits. It is his contention that in

view of the said order an amount of Rs. 1,22,772 has been recovered from his salary, as well as, from the pensionary benefits. It is his contention that an amount of Rs. 20,462 has been recovered from his monthly salary of March, 2018 and thereafter remaining amount of Rs. 1,02,310/- has been recovered from the amount of gratuity of the applicant after his retirement in the month of August, 2018. It is his contention that the impugned recovery order is illegal. The said recovery has been made by the respondent No. 2 in contravention of the guidelines given by the Hon'ble Apex Court, as well as, by the Hon'ble High Court. It is his contention that the Director General of Police, Mumbai issued circular dated 5.9.2018 and directed not to recover the amounts of excess payments from the employee as per the directions given by the Hon'ble Apex Court in case of **STATE OF PUNJAB VS. RAFIQ MASIH**. He has contended that the respondents had not followed the said guidelines and illegally recovered the amount of Rs. 1,22,772/- from his salary and pensionary benefits. Therefore, he approached this Tribunal and prayed to quash and set aside the impugned order of recovery issued by the respondent No. 2 directing recovery from the salary and pensionary benefits of the applicant. He has also prayed to direct the respondents Nos. 2 &

3 to refund the amount of Rs. 1,22,772/-, recovered from his salary and gratuity amount.

4. Respondent No. 2 resisted the contentions of the applicant by filing his affidavit in reply. It has not disputed the facts regarding appointment, promotions of the applicant and his retirement w.e.f. 31.10.2018 on attaining the age of superannuation. He has not disputed the fact that before retirement of the applicant the pay of the applicant has been re-fixed by the respondent No. 2 and the order regarding recovery of the excess payment made to the applicant due to wrong pay fixation. He has not disputed the fact that the amount of Rs. 1,22,772/- has been recovered from the applicant from his salary and pensionary benefits. It is his contention that the recovery has been directed as per the Rule 173 of Mumbai Police Manual II nd. It is his contention that there is no illegality in the impugned order. Therefore, he justified the impugned order dated 7.3.2017. It is his contention that the Director General of Police, M.S., Mumbai issued the directions by Circular dated 5.9.2018. It is his contention that recovery of the excess amount of the applicant has been made prior to issuance of the circular. Therefore, the applicant is not entitled to get the benefit of the said circular. It is his contention that recovery has been made as

per the rules and, therefore, he justified the impugned order and prayed to reject the Original Application.

5. Respondent No. 3 filed his affidavit in reply and resisted the contentions of the applicant. He has contended that Comptroller & Auditor General of India discharges his duties through field officers, i.e. Accountants General Officers 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 cases is limited to scrutiny of proposals received from Heads 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 subsequently authorization of pensionary benefits, if found admissible. The Respondent Office does not act on its own volition, but authorizes pensionary benefits only on receipt of proper pension papers duly attested by the Head of Office/Pension Sanctioning Authority of the State Government. This respondent is not 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 conforming to any of the provisions of the M.C.S. (Pension) Rules, 1982 and other Government Resolutions issued from time to time.

It is his further contention that pension proposal of the applicant has been forwarded by the respondent No. 2 i.e. the Pension Sanctioning Authority vide letter dated 21.5.2018. In the said proposal in column No. 48 the amount of Rs. 1,02,310 + Rs. 6000 have been shown to be recovered from the gratuity amount of the applicant. The applicant has given undertaking to the effect that he is satisfied himself about the particulars. It is his contention that the said amount has been shown to be recovered from the pensionary benefits of the applicant. Therefore, the pensionary benefits have been authorized by his office by the order dated 27.6.2018. It is his contention that condition of recovery of Rs. 1,02,310 towards the overpayment of pay and allowances and Rs. 6000/- has been shown as other recovery as per the Pension Sanctioning Authority's proposal with undertaking furnished by the applicant in the said proposal in the column No. 48 giving consent of recovery. It is his contention that the said recovery has been made in view of rule

132 of the Maharashtra Civil Services (Pension) Rules, 1982 and there is no illegality in it. It is his contention that the action of stipulating the condition for recovery amount in Pension Payment Order dated 27.6.2018 is in accordance with the information received from the respondent No. 2 and recovery shown is in pursuant with the provisions of Rule 132 of M.C.S. (Pension) Rules, 1982 and there is no illegality and, therefore, he prayed to dismiss the present Original Application.

6. I have heard the arguments advanced by Shri Kakasaheb B. Jadhav, learned Advocate for the applicant and Mrs. Priya R. Bharaswadkar, learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed by the respondent Nos. 2 & 3. I have also perused the documents placed on record by both the sides.

7. Admittedly, the applicant was initially appointed as a Constable on 26.9.1983 and posted in the office of S.R.P.F. Jalna. Thereafter he was transferred in the office of Superintendent of Police, Parbhani on 2.6.2006. Thereafter, he was transferred in the office of the respondent No. 2 i.e. the Superintendent of Police, Jalna in the year 2007. On 30.5.2014 he was promoted on the post of Assistant Police Sub-Inspector.

The applicant came to be retired from the service w.e.f. 31.3.2018 from the office of the respondent No. 2 on attaining the age of superannuation. Admittedly, before retirement of the applicant, the respondent No. 3 noticed mistake occurred while fixing pay of the applicant w.e.f. 1.9.2000 to 1.7.2016. Therefore, he re-fixed the pay of the applicant by an order dated 7.3.2017 and corrected the mistake. Due to the wrong pay fixation the applicant received the excess amount during the period from 1.9.2000 to 1.7.2016. Respondent No. 2 directed to recover the said amount from the applicant. Accordingly, an amount of Rs. 20,462/- has been recovered from his salary for the month of March, 2018 and remaining amount of Rs. 1,02,310/- had been recovered from the amount of gratuity of the applicant after his retirement in the month of August, 2018. Admittedly, the applicant has not challenged re-fixation of his pay made by the respondent No. 2 by order dated 7.3.2017. The grievance of the applicant is in respect of recovery from his salary and pensionary benefits when he was on the verge of retirement.

8. Learned Advocate for the applicant has submitted that the applicant retired as ASI on attaining the age of superannuation w.e.f. 31.3.2018. He has submitted that the post of ASI falls under Group 'C' category. He has argued that the pay of the



applicant has been fixed wrongly by the concerned authority and he never practiced fraud on the concerned authority. He has submitted that the applicant was not responsible for the wrong pay fixation made by the respondents. He had not played any role in getting the said excess pay. Respondent No. 2 has re-fixed the pay of the applicant by order dated 7.3.2017 during the period from 1.9.2000 to 1.7.2016. He has submitted that when the applicant was on the verge of retirement the respondent No. 2 re-fixed his pay and directed to recover the amount of overpayment made to him from his salary and accordingly, the amount of Rs. 20,462 has been recovered from his salary for the month of March, 2018 and balance amount of Rs. 1,02,310/- has been recovered from the amount of gratuity of the applicant after his retirement. He has submitted that such type of recovery from the applicant when he was on the verge of retirement is impermissible in view of the guidelines given by the Hon'ble Apex Court in the case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No. 11527 of 2014 (Arising out of SLP (C) No. 11684 of 2012)** decided on 18.12.2014 **[2015 (4) SCC 334]**. He has submitted that respondent No. 3 has illegally recovered the amount in violation of the guidelines given by the Hon'ble Apex Court in the case of

**State of Punjab and Others etc. Vs. Rafiq Masih (White Washer)** (*supra*) and, therefore, the applicant is entitled to get the refund of the said amount.

9. Learned Advocate for the applicant has submitted that this Tribunal has also dealt with and decided the similar issue involved in case of similarly situated persons in the following cases :-

- 1) O.A. No. 157/2017 (Shri Dadasaheb Pandurang Satdive Vs. State of Maharashtra and others) decided on 03.01.2018;
- 2) O.A. No. 433/2017 (Shri Baswantsing D. Rajput Vs. State of Maharashtra and others) decided on 07.11.2017;
- 3) O.A. No. 79/2017 (Shri Babusha Genbhau Tambe Vs. State of Maharashtra and others) decided by the Principal Seat of this Tribunal on 23.03.2018;
- 4) O.A. No. 697/2017 (Smt. Syeda Ashraf Nadima Vs. State of Maharashtra and others) decided on 24.07.2018; and
- 5) O.A. No. 698/2016 (Shriram Madhav Patil Vs. State of Maharashtra and others) decided on 12.06.2018.

He has submitted that the case of the applicant is squarely covered by the above cited decisions and principles laid down by the Hon'ble Supreme Court in the case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer)** (*supra*). Therefore,

he prayed to grant relief claimed by the applicant by allowing the present Original Application.

10. Learned Presenting Officer has submitted that the excess payment of Rs. 1,22, 772/- has been made to the applicant due to the wrong pay fixation. He has submitted that the applicant was not entitled to get the higher pay scale but due to wrong pay fixation he received the same. The said mistake has been noticed by the respondent No. 3 when the service record of the applicant has been verified at the time of his retirement. Therefore, the respondent No. 3 revised the pay of the applicant. He has submitted that the said recovery has been made in view of the Rule 173 of Mumbai Police Manual II nd, as well as, Rule 132 of M.C.S. (Pension) Rules, 1982 and there is no illegality in the impugned order. He has submitted that the applicant has given undertaking while processing the pension case and therefore, the excess amount has been recovered from him. There is no illegality in the impugned order of recovery issued by the respondent No. 3. Therefore, he prayed to dismiss the Original Application.

11. On perusal of the record, it reveals that the applicant retired from the service on attaining the age of superannuation

w.e.f. 31.10.2018. The record shows that the respondent No.2, as well as, earlier employer of the applicant committed mistake in fixing the pay of the applicant and because of the wrong pay fixation made by the respondents excess payment was made to the applicant. There was no misrepresentation or fraud practiced by the applicant while getting the said pay. Therefore, the applicant cannot be blamed for it. The said mistake was noticed by respondent No. 3 prior retirement of the applicant and, he rectified the mistake and directed to recover the said amount of Rs. 1,22,772/- from the salary and pensionary benefits of the applicant. Accordingly, the recovery of Rs. 20,462/- was made from the monthly salary of the applicant for the month of March, 2018 and balance amount of Rs. 1,02,310/- was recovered from the amount of gratuity of the applicant after his retirement in the month of August, 2018. Such type of recovery from the applicant from his pensionary benefits that too after his retirement is impermissible in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc. (supra)**, wherein it 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."*

12. I have no dispute regarding the settled legal principles laid down in the above cited decision. The case of the applicant is covered under the clauses (i) and (ii) of the above guidelines given by the Hon'ble Apex Court. In spite of the aforesaid principles laid down by the Hon'ble Apex Court the respondents had recovered the said amount from the salary and pensionary benefits of the applicant before and after his retirement. Therefore, the recovery made by the respondent No. 2 is illegal as respondent No. 2 recovered the said amount from the pensionary

benefits of the applicant after his retirement illegally. In view of the above, the applicant is entitled to get refund of the said amount.

13. The case of the applicant is also covered by the decision given by the Tribunal in several cases in cases of similarly situated persons as referred herein above. Hence, the applicant is entitled to get the refund of the said amount recovered from him illegally by the respondents. Therefore, the present Original Application deserves to be allowed.

14. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The respondent No. 2 is directed to refund the amount of Rs. 1,22,772/-/- to the applicant within three months from the date of the order, failing which the amount shall carry interest @ 9% p.a. from the date of this order till its realization.

There shall be no order as to costs.

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

**PLACE : AURANGABAD.**  
**DATE : 02.03.2020.**