

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 494 OF 2018

DIST. : LATUR

1. Gangadhar Laxman Kamble,)
Age. 62 years, Occu. : Retired,)
R/o Gopal Nagar,)
Annabhau Shathe Chowk)
Udgir, Dist. Latur.)
2. Pundlik Ganesh Joshi,)
Age. 63 years, Occu. : Retired,)
R/o Kulkarni Niwas,)
Rajeshree School Near,)
Shelar Road, Udgir, Dist. Latur.)
3. Shivaji Dyanba Kamble,)
Age. 65 years, Occu. : Retired,)
R/o Thole Nagar,)
Samaj Mandir Behind)
Udgir, Dist. Latur.)
4. Balkisan Gangaram Papulwar,)
Age. 59 years, Occu. : Retired,)
R/o Hanegaon, Tq. Deglur,)
Dist. Nanded.)

.. **APPLICANTS**

V E R S U S

1. The State of Maharashtra,)
Through : Secretary,)
Irrigation Department, Mantralaya,))
Mumbai - 32.)
2. The Accountant General,)
Nagpur.)
3. The Chief Engineer,)
Irrigation Department,)
Aurangabad.)
4. The Superintending Engineer,)

CADA Office, Beed.)
 5. The Executive Engineer,)
 Irrigation Division No. 1,)
 Latur.) .. **RESPONDENTS**

 APPEARANCE :- Smt. Suchita A. Dhongde - Upadhyay,
 learned Advocate for the applicants.
 : Smt. Sanjivani Deshmukh Ghate, learned
 Presenting Officer for the respondents.

CORAM : Hon'ble Shri B.P. Patil, Acting Chairman

RESERVED ON : 4th November, 2019

PRONOUNCED ON : 8th November, 2019

ORDER

1. By filing the present Original Application the applicants have challenged the orders dated 29.9.2016, 11.3.2014, 24.9.2013 and 18.2.2015 issued by the respondent no. 5 the Executive Engineer, Irrigation Division No. 1, Latur, thereby directing recovery of amount and also prayed to direct the respondents to refund the amount recovered from them with interest.

2. Applicant no. 1 Shri Gangadhar Laxman Kambale, applicant No. 2 Pundlik Ganesh Joshi and applicant No. 4 Shri Balkisan Gangaram Papulwar were serving as Clerk, while the applicant no. 3 Shri Shivaji Dyanba Kambale was working on the post of Peon with the respondents. Applicant nos. 1, 2 & 4 retired as Group-C

employees, while the applicant no. 3 retired as Group-D employee on attaining their age of superannuation. Applicant no. 1 Shri Gangadhar Laxman Kambale retired on 31.5.2014, Applicant No. 2 Pundlik Ganesh Joshi retired on 28.2.2014, applicant no. 3 Shri Shivaji Dyanba Kamble retired on 31.8.2013 and the applicant No. 4 Shri Balkisan Gangaram Papulwar retired on 18.2.2015 on attaining the age of superannuation. When the applicants were on the verge of retirement the respondents issued the orders dtd. 29.9.2016, 11.3.2014, 24.9.2013 and 18.2.2015 respectively directing recovery of an amount of Rs. 40,384/-, Rs. 1,19,190/-, Rs. 18,100 and Rs. 29,690/- from the respective applicants and the respondents recovered the said amount from the pensionary benefits of the respective applicants on the ground that excess payment was made to them due to wrong pay fixation.

3. It is contention of the applicants that the said recovery is made from the applicants illegally and in contravention of the guidelines given by the Hon'ble Supreme 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**. It is their contention that they made representations to the respondents and claimed refund of amount recovered from their pensionary benefits, but

the respondents had not given heed to their request. It is their contention that this Tribunal has also dealt with and decided the cases of the similarly situated persons and directed the respondents to refund the amount recovered from the pensionary benefits of similarly situated persons. Their case is covered by the guidelines given by the Hon'ble Supreme Court in case of (**State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.**) (supra) and therefore they approached this Tribunal by filing the present O.A. and prayed to quash the impugned orders and also direct the respondents to refund the amount.

4. Respondent nos. 1 and 3 to 5 have filed their affidavit in reply and resisted the contentions of the applicants. They have not disputed the fact that the applicant nos. 1, 2 & 4 were serving as group – C employees while the applicant no. 3 was servicing as group-D employee and they retired on attaining the age of superannuation. They have not disputed the fact that the impugned orders has been issued by them and recovery has been ordered from the pensionary benefits of the applicants on account of excess payment made to them due to wrong pay fixation. They have also admitted the fact that the amount is recovered from the pensionary benefits of the applicants. The said recovery is made in view of the provisions of rule 132 of the Maharashtra Civil

Services (Pension) Rules, 1982, which provide that the Government dues as ascertained and assessed by the Head of the Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the retirement gratuity becoming payable. It is their contention that there is no illegality in the recovery of the said amount. The applicants were not entitled to get the pay scale granted to them. Therefore, overpayment was made to the applicants. The amount of overpayment has been recovered from the applicants and there is no illegality in the impugned orders. Therefore they supported the impugned orders and prayed to reject the present Original Application.

5. Respondent no. 2 has filed separate affidavit in reply. It is his contention that :-

"2. I say and humbly submit that the Comptroller & Auditor General of India discharges his 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's (Duties, Power and Condition of Service) Act, 1971. Accordingly, the role of this respondent office in respect of pension cases is limited to scrutiny of proposals received from Heads of the Offices / Pension Sanctioning Authorities of Government of Maharashtra in respect of officials retired from various State Government offices situated in Vidarbha and Marathwada regions with reference to the provisions of 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 dose not act on its own

but authorizes pensionary benefits only on receipt of pension proposals in complete shape from by the Head of Office / Pension Sanctioning Authority of the State Government.

6. It is his contention that the pension proposal of the applicant no. 1 Shri Gangadhar Laxman Kambale was forwarded by the res. no. 5 the Executive Engineer, Latur Irrigation Division, Latur on 23.4.2014 and it was received in his office on 9.5.2014. The authorities of Pension, Retirement Gratuity and Commuted Value of Pension were issued by his office on 9.6.2014. It is his contention that as per the noting in the service book, his office had intimated to the res. no. 4 Pension Sanctioning Authority to ensure recovery of Rs. 40,384/- towards overpayment of pay and allowances pointed by the Pay Verification Unit, if not recovered.

It is his contention that his office received the pension proposal of applicant no. 2 Shri Pundlik Ganesh Joshi forwarded by the res. no. 5 the Executive Engineer, Latur Irrigation Division, Latur on 16.11.2013 and his office received the same on 28.11.2013. The authorities of Pension, Retirement Gratuity and Commuted Value of Pension were issued by his office on 16.12.2013. The Pension Sanctioning Authorities were informed through Gratuity Authority to ensure the recovery of Rs. 1,19,190/- towards the overpayment made to the applicant no. 2 regarding pay and allowances.

It is his contention that the pension proposal of the applicant no. 3 Shri Shivaji Dyanba Kamble was forwarded by the res. no. 5 the Executive Engineer, Latur Irrigation Division, Latur on 20.7.2013 and the same was received in his office on 7.8.2013. The authorities of Pension, Retirement Gratuity and Commuted Value of Pension were issued by his office on 23.8.2013. As per the noting in the service book his office had intimated the Pension Sanctioning Authority to ensure the recovery of Rs. 18,183/- towards overpayment of pay and allowances as pointed by the Pay Verification Unit, if not recovered.

It is his contention that the pension proposal of the applicant No. 4 Shri Balkisan Gangaram Papulwar was forwarded by the res. no. 5 the Executive Engineer, Latur Irrigation Division, Latur on 23.1.2015 and it was received to his office on 9.2.2015. The authorities of Pension, Retirement Gratuity and Commuted Value of Pension were issued by his office on 18.2.2015. His office had stipulated the condition of recovery of Rs. 30,029/- towards overpayment of pay and allowances as per noting in the Form no. 7 column No. 2(b) showing details of recoveries and No Dues Certificate furnished by the Pension Sanctioning Authority.

7. It is his contention that in all the cases the recovery was made in view of the provisions of rule 132 of the Maharashtra Civil Services (Pension) Rules, 1982. It is his contention that the rule 132 sub para 2 of the Maharashtra Civil Services (Pension) Rules, 1982 states that the Government dues as ascertained and assessed by the Head of the Office, which remain outstanding till the date of retirement of the Government servant shall be adjusted from the amount of the retirement gratuity becoming payable.

8. It is his contention that his office does not act on its own but authorizes pensionary benefits on the basis of the pension proposals received from the Head of the Office / Pension Sanctioning Authority of State Government. In case of all the applicants, recovery is made at the departmental level from their monthly pay and allowances and deposited through challans. It is his contention that the action taken by the respondents is in conformity of the M.C.S. (Pension) Rules, 1982. Therefore he justified the impugned orders and prayed to dismiss the O.A.

9. I have heard the arguments advanced by Smt. Suchita A. Dhongde - Upadhyay, learned Advocate for the applicants and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for

the respondents. I have also gone through the documents placed on record.

10. Admittedly the applicants were serving with the res. no. 5. The applicant no. 1, 2 & 4 were serving as Clerk i.e. in Group C category, while the applicant no. 3 was serving as a Peon i.e. in Group D category. Admittedly the applicant no. 1 Gangadhar Laxman Kambale retired as Clerk on 31.5.2014, the applicant no. 2 Shri Pundlik Ganesh Joshi retired as Clerk on 28.2.2014, applicant no. 3 Shri Shivaji Dyanba Kamble retired as Peon on 31.8.2013, whereas the applicant no. 4 Shri Balkisan Gangaram Papulwar retired as a Clerk on 18.2.2015 on attaining the age of superannuation. Admittedly at the time of their retirement their service record has been sent to the Pay Verification Unit and at that time objection has been raised by Pay Verification Unit regarding their pay fixation. On the basis of the objection raised by the Pay Verification Unit the res. no. 5 issued the impugned orders dtd. 29.9.2016, 11.3.2014, 24.9.2013 and 18.2.2015 and directed recovery of Rs. 40,384/-, Rs. 1,19,190/-, Rs. 18,100/- and 29,690/- from the respective applicants. Accordingly the said amounts had been recovered from the pensionary benefits of the applicants after their retirement.

11. Learned Advocate for the applicants has submitted that the applicants were serving as Group C and Group D employees. The amount has been recovered from their pensionary benefits after their retirement on account of excess payment made to them. She has argued that the pay fixation has been wrongly done by the res. no. 5 and the applicants never misrepresented the res. no. 5 in getting the excess pay. She has argued that the applicants never practiced fraud on the res. no. 5 in getting the excess pay. It was made due to mistake committed by the res. no. 5 and therefore the applicants cannot be blamed therefor. She has submitted that the recovery of excess amount of pay from the employees who were on the verge of retirement and that too from their pensionary benefits is impermissible in view of the law laid down by the Hon'ble Supreme Court in different cases. She has argued that such type of recovery is impermissible in view of the guidelines given by the Hon'ble Supreme Court in case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.** (supra). The case of the applicants is squarely covered by the clauses (i), (ii) & (iii) of guidelines given by the Hon'ble Supreme Court in the above said judgment. Therefore she prayed to quash the impugned orders directing recovery from the applicants and also prayed to refund the amount recovered from them with

interest. She has placed reliance on the decision of Hon'ble High Court of Judicature at Bombay in **writ petition No. 3785/2009 (Mrs. Padma Manwani Vs. the State of Maharashtra & Ors.)** decided on 16.4.2015.

12. Learned Advocate for the applicants has further submitted that this Tribunal has also decided similar issue in case of similarly situated persons and granted relief in favour of that applicants. She has placed reliance on the judgment of this Tribunal in **O.A. no. 698/2016 (Shriram Madhav Patil Vs. the State of Maharashtra & Ors.) decided on 12.6.2018** and in **O.A. no. 500/2017 (Shri Vijaysing Phulsing Rathod Vs. the State of Maharashtra & Ors.) decided on 8.1.2019**. She has submitted that the cases of the present applicants are squarely covered by the said decisions. Therefore she prayed to allow the present O.A. and to quash the impugned orders and direct the respondents to refund the amount illegally recovered from their pensionary benefits.

13. Learned Presenting Officer submitted that the applicants have received excess payment because of wrong pay fixation made by the res. no. 5 though they were not entitled to receive the said pay and therefore the excess payment made to the applicants was

recovered from them. She has submitted that the said mistake has been noticed by the respondents when the service books of the applicants were sent to the Pay Verification Unit for verification. The Pay Verification Unit raised the objection regarding excess payment made to the applicants and therefore the res. no. 5 re-fixed the pay of the applicants and directed recovery of excess payment made to them by the impugned orders. She has argued that the provisions of rule 132 of Maharashtra Civil Services (Pension) Rules, 1982 provide that the Government dues as ascertained and assessed by the Head of the Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the retirement gratuity payable. The said provision enables the res. no. 5 to recover the said amount from the pensionary benefits of the applicants and accordingly the res. no. 5 issued the impugned orders. The action of the res. no. 5 is in accordance with the rule 132 of the Maharashtra Civil Services (Pension) Rules, 1982 and there is no illegality. Therefore he supported the impugned orders as well as recovery made by the res. no. 5 from the pensionary benefits of the applicants.

14. On perusal of record it reveals that the applicant nos. 1, 2 & 4 were serving as Clerk in Group C category, while the applicant

no. 3 was serving as Peon in Group D category. They retired in between years 2013 to 2015 on attaining the age of superannuation. At the time of their retirement their service book had been sent to the Pay Verification Unit for verification and at that time the Pay Verification Unit noticed the mistake on the part of the res. no. 5 in fixing their pay and therefore it raised objection. The res. no. 5, on the basis of objections raised by the Pay Verification Unit, passed the impugned orders and re-fixed the pay of the applicants and directed recovery of excess amount paid to the applicants due to wrong pay fixation. On the basis of the impugned orders the excess amount paid to the applicants has been recovered from their pensionary benefits that too after their retirement. Applicants never misrepresented the res. no. 5 in getting the excess pay. Not only this, they have not practiced fraud on the res. no. 5 in that regard. The mistake was committed by the res. no. 5 and for that the applicants cannot be blamed. Such type of recovery is impermissible in view of the guidelines given by the Hon'ble Supreme 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** (supra), wherein it has been laid down 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.”

14. The case of the applicants is squarely covered by the clauses (i) to (iii) of the guidelines given by the Hon’ble Supreme Court in the above decision and therefore the said recovery is impermissible. The res. no. 5 has made recovery of excess amount from the pensionary benefits of the applicants in violation of the guidelines given by the Hon’ble Supreme Court. Therefore the said recovery is illegal.

15. I have gone through the various decisions of this Tribunal referred by the learned Advocate for the applicants. The issue which is involved in the present case has already been dealt with and decided by this Tribunal in cases of similarly situated persons in the above referred decisions referred by the learned Advocate for the applicants. The case of the applicants is squarely covered by the above referred decisions of this Tribunal. The respondents have made recovery of excess payment made to the applicants illegally from their pensionary benefits. Therefore the applicants are entitled to get refund of the said amount. The impugned orders dtd. 29.9.2016, 11.3.2014, 24.9.2013 and 18.2.2015 respectively issued by the res. no. 5 directing recovery of an amount of Rs. 40,384/-, Rs. 1,19,190/-, Rs. 18,100 and Rs. 29,690/- from the pensionary benefits of the respective applicants are illegal. Consequently the recovery made from the applicants is also illegal. Hence the impugned orders require to be quashed by allowing O.A.

16. In view of discussion in foregoing paragraphs the Original Application is allowed. The impugned orders dtd. 29.9.2016, 11.3.2014, 24.9.2013 and 18.2.2015 issued by the res. no. 5 directing recovery from the pensionary benefits of the respective applicants are hereby quashed and set aside. The respondents

are directed to refund an amount of Rs. 40,384/- to the applicant no. 1 Shri Gangadhar Laxman Kambale, Rs. 1,19,190/- to the applicant No. 2 Pundlik Ganesh Joshi, Rs. 18,100 to the applicant no. 3 Shri Shivaji Dyanba Kambale and Rs. 29,690/- to the applicant No. 4 Shri Balkisan Gangaram Papulwar, within a period of three months from the date of this order, failing which the said amount shall carry interest @ 9% per annum 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 : _____