

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

**ORIGINAL APPLICATION NO. 505 OF 2023**

**DISTRICT : DHULE**

**Rajendra s/o Uttam Patil,** )  
Age : 58 years, Occu. : Retired as )  
Assistant Sub Inspector, )  
R/o. Plot No. 55, Mahavir Colony, Sakri Road,) )  
Dhule, Dist. Dhule. )  
.... **APPLICANT**

**V E R S U S**

**The Commandant,** )  
S.R.P. Force, Group-V, Dhule 421001. )  
... **RESPONDENT**

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**APPEARANCE** : Shri Ashish Rajkar, Counsel for Applicant.

: Shri A.P. Basarkar, Presenting Officer for  
respondent authorities.

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

**DATE** : **28.02.2024**  
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**O R A L - O R D E R**

1. Heard Shri Ashish Rajkar, learned counsel appearing for the applicant and Shri A.P. Basarkar, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application heard finally with the consent of both the parties at the admission stage.

3. By filing the present Original Application, the applicant is challenging the recovery of Rs. 1,62,698/- towards

excess payment of pay and allowances from retirement benefits of the applicant. The applicant is also seeking direction to the respondent to release the retirement benefits of the applicant to the extent of amount of gratuity, which is yet not paid to the applicant.

4. Learned counsel for the applicant submits that the applicant was appointed on the post of Police Constable on 07.05.1985 and on 20.02.2002 he was promoted on the post of Police Naik and thereafter promoted on the post of Head constable on 29.06.2006. The applicant thereafter came to be promoted on the post of Assistant Sub-Inspector on 07.05.2015. The applicant is retired from the office of respondent on attaining the age of superannuation on 30.04.2023 from the post of Assistant Sub-Inspector. Learned counsel submits that the applicant is retired as Class-III employee. Learned counsel submits that the respondent issued the pay fixation order dated 30.08.2022 before retirement of the applicant and pay was revised w.e.f. 01.01.2006 to 01.07.2022 and further directed to recover the excess amount from the applicant.

5. Learned counsel for the applicant submits that the respondent has prepared the due and drawn statement of excess

payments made to the applicant from July, 2006 to December, 2022 and amount of Rs. 1,62,698/- is shown to be paid to the applicant in excess towards the pay and allowances.

6. Learned counsel for the applicant submits that on 17.03.2023, the pension case of the applicant was sanctioned by the Accountant General-I, Mumbai and sanctioned the retiral benefits including the pension, but the amount of gratuity of Rs. 8,67,900/- is withheld and till today the said amount is not paid to the applicant. Learned counsel submits that though the said amount of Rs. 1,62,698/- has been recovered from the gratuity amount of the applicant, remaining amount of Rs. 7,05,202/- is not paid to the applicant.

7. Learned counsel for the applicant submits that the case of the applicant is fully covered by the judgment of 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. 11527/2014 (arising out of SLP (C) No. 11684 of 2012)**, dated 18.12.2014. The condition Nos. (i) to (iii) as specified in the said judgment are squarely applicable to the facts and circumstances of the present case. The applicant is class-III employee and after his retirement, the said recovery has been done from his retiral

benefits. The period of said benefits is more than five years i.e. from 01.01.2006 to 01.07.2022.

8. Learned counsel for the applicant submits that for the alleged wrong pay fixation the applicant is not at fault, nor he mislead the respondent authorities in any manner. The same is not disputed by the other side.

9. Learned counsel for the applicant submits that so far as undertaking allegedly issued by the applicant is concerned, the same was obtained from the applicant some three months before his retirement and not on earlier occasion. Learned counsel submits that in view of the order passed by the 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 and the amount so recovered shall be refunded to the applicant with interest.

10. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent submits that as per objection

taken by the Pay Verification Unit, Nashik, the revised pay fixation was carried out under the office orders dated 30.08.2022 and 19.12.2022 respectively and the applicant was directed to pay the amount of Rs. 1,62,698/-, as it was towards the excess payment made, when the pay fixation was erroneously carried out. Learned Presenting Officer submits that since the applicant denied to refund the excess payment made to him vide his application dated 10.02.2023, the respondent authorities left with no other remedy to recover the amount in terms of Rule 134 of the Maharashtra Civil Services (Pension) Rules, 1982.

11. Learned Presenting Officer submits that the applicant has furnished undertakings on 12.10.2019 and 10.12.2022 respectively to the effect that any excess payment, which may be found to have been paid, will be refunded to the Government either by adjustment against future payment due or otherwise. Learned P.O. submits that the view taken by the Hon'ble Apex Court in the case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh** is squarely applicable to the case of the applicant and as such, the present Original Application is liable to be dismissed with costs.

12. Learned Presenting Officer submits that by communication dated 21.12.2023 to the District Treasury

Officer, Dhule, it is requested to pay the remaining amount of gratuity to the applicant to the tune of Rs. 7,05,202/- after retaining the amount of Rs. 1,62,698/- paid to the applicant in excess.

13. Learned counsel for the applicant at this stage submits that till today even the said difference amount of gratuity is also not paid to the applicant, though he retired on 30.04.2023.

14. 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.

15. In the instant case, the applicant is retired as Class-III employee and the said recovery has been proposed on account of excess payment made to the applicant due to wrong pay fixation from the year 2006 to 2022. It is also an accepted position that the said recovery has been proposed from the gratuity amount, which is yet not paid to the applicant. Thus, the case of the applicant is fully covered by the aforesaid conditions laid down by the Hon'ble Apex Court in the above case and the ratio laid down by the Hon'ble Apex Court is squarely applicable to the facts and circumstances of the present case. So far as the

issue of undertaking is concerned, admittedly those undertakings have been submitted three months prior to the retirement of the applicant and not at the time when the payment of revised pay scale had commenced, which in the present case was in the year 2006.

16. The 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 in the identical facts of the case 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 Ananda Vikram Baviskar Vs. State of Maharashtra and others**.*

*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.”*

17. The aforesaid view expressed by the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad is squarely applicable to the case of the applicant, as the undertaking has been submitted by the applicant three months prior to his retirement and thus, it will not have the same sanctity as that an undertaking executed at the time when the payment of revised pay scale had commenced. Thus I respectfully concluded that the view taken by the Hon'ble Apex Court in the case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh** would not be applicable to the case of the applicant.

18. It is pertinent to note here that even though the certain amount i.e. Rs. 1,62,698/- is proposed to be recovered from the gratuity amount of the applicant, which is to the tune of Rs. 8,67,900/-, the difference amount of Rs. 7,05,202/- is also not paid to the applicant till today. So far as proposed recovery of Rs. 1,62,698/- is concerned, in view of the authoritative pronouncement of the Hon'ble Apex Court and in terms of the ratio laid therein in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc.** (cited supra), the said recovery of Rs. 1,62,698/- from the retirement benefits of the applicant is incorrect, improper, illegal and impermissible. The applicant is entitled for refund of the said amount along with interest @ 9% p.a. from the date of recovery till realization of the entire amount. So far as the difference amount of gratuity is concerned, the same shall be paid to the applicant as expeditiously as possible and preferably within a period of two weeks from the date of this order. Hence, the following order :-

**ORDER**

- (i) The Original Application is hereby partly allowed.
- (ii) The impugned letter dated 08.03.2023 issued by respondent thereby directing the applicant to deposit the excess payment of Rs. 1,62,698/- is hereby quashed and set aside.

- (iii) The respondent is hereby directed to refund the amount of Rs. 1,62,698/- to the applicant as expeditiously as possible and preferably within a period of three months from the date of this order with interest @ 9% p.a. from the date of actual recovery till the date of refund.
- (iv) The respondent is further directed to pay the difference amount of gratuity of Rs. 7,05,202/- to the applicant as expeditiously as possible and preferably within a period of two weeks from the date of this order.
- (v) In the circumstances, there shall be no order as to costs.
- (vi) The Original Application accordingly disposed of.

**PLACE : Aurangabad.**  
**DATE : 28.02.2024**

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