

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 532 OF 2017
(Subject – Recovery/Arrears of Promotional Scale)**

DISTRICT : NANDED

Shri Tukaram s/o Sheshrao Gaikwad,)

Age : 60 years, Occu. : Retired,)

R/o : ND 2E, 1/8, Kranti Chowk,)

CIDCO, New Nanded, Dist. Nanded.)

.. **APPLICANT**

V E R S U S

1) **The State of Maharashtra,**)
Through its Secretary,)
Department of Animal Husbandry)
& Dairy Development,)
Mantralaya, Mumbai-32.)

2) **Regional Dairy Development**)
Officer,)
Aurangabad Region, Aurangabad.)

3) **General Manger,**)
Govt. Milk Scheme, Nanded,)
Dist. Nanded.)

4) **The Accountant General (A & E),)**
II Maharashtra, Nagpur,)
Dist. Nagpur.)

.. **RESPONDENTS**

APPEARANCE : Shri V.G. Pingle, Advocate for the Applicant.

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

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

RESERVED ON : **11.11.2019.**

PRONOUNCED ON : **15.11.2019.**

ORDER

1. The applicant has challenged the order dated 04.11.2016 issued by the respondent No. 4 directing recovery of an amount of Rs. 60,172/- from him on account of excess payment made to him due to wrong pay fixation and he has also prayed to direct the respondents to refund the amount of Rs. 60,172/- recovered from him by filing the present Original Application.

2. The applicant was appointed on daily wages in the Government Milk Scheme in the year 1978. By the order dated 24.09.1979, he was regularized as Majdoor in Class-IV cadre in Government Milk Scheme, Nanded. The applicant was possessing driving license of heavy vehicle. The department in need of Driver and therefore, the applicant was assigned the work of Driver w.e.f. 26.05.1980. Accordingly, the applicant performed his duties as Driver till 13.01.2009. On 10.10.1985, the applicant was appointed as Cleaner on the vacant post. On 04.07.2008, the applicant was promoted as Driver on Ad-hoc basis for the period of six months. The applicant was regularized as Driver on 13.01.2013. He retired as Driver on attaining the age of superannuation w.e.f. 31.10.2016.

3. It is contention of the applicant that in view of the policy of the Government after completion of 12 years' of service, the applicant was given promotional scale in the year 2006 in view of the provisions of Assured Career Progression Scheme by the order dated 15.02.2006.

4. It is contention of the applicant that at the time of his retirement, service record has been forwarded to the Pay Verification Unit on 26.03.2016 and 17.05.2016. The Pay Verification Unit raised objection in respect of grant of promotional scale of Driver to the applicant w.e.f. 01.11.1997 stating that the applicant was entitled to get pay scale for the post of Cleaner of Rs. 2640-4000 instead the pay scale of the post of Driver i.e. Rs. 3050-4090 was given to him and additional grade pay of Rs. 300/- was paid to him, though he was not eligible and entitled to it. By the communication dated 15.06.2016, the respondent No. 3 directed to cancel the additional pay of Rs. 300/- granted to the applicant under Assured Career Progression Scheme in the year 1997 and requested to re-fix the pay of the applicant. Accordingly, pay of the applicant has been re-fixed and the order directing recovery of Rs. 60,172/- has been ordered by the impugned order dated 04.11.2016. It is contention of the applicant that the applicant

was appointed as Cleaner, but he was discharging duties as Driver and therefore, he was entitled to get the pay scale of Driver on the principle of 'Equal Pay for Equal Work', but the respondents had not considered the said principle and passed the impugned order, which is illegal. It is his contention that his case is covered by the judgment delivered by the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in **W.P. No. 3557/2013** in case of **Vishnu Pandurang Rampure and Ors. Vs. The State of Maharashtra and Ors.** decided on 22.09.2015. Therefore, he approached this Tribunal and prayed to quash and set aside the impugned order dated 04.11.2016 directing recovery of an amount of Rs. 60,172/- and also prayed to direct the respondents to refund the amount of Rs. 60,172/- recovered from him illegally by filing the present Original Application.

5. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant has sought two reliefs out of which the relief for 'Equal Pay for Equal Pay' is time barred and therefore, they have prayed to dismiss the present O.A. It is their contention that the Government Milk Scheme Nanded had sanctioned five posts of Driver. It is their contention that the

work of Driver was allotted to the applicant at his request on ad-hoc basis though he was not appointed on the post of Driver. It is their contention that as per the scheme and policy, the Government has decided to give promotional scale to the employees after completion of 12 years of service on the post held by them and accordingly, the applicant was given higher pay scale of Rs. 775-1150 vide order dated 09.02.1996 on the basis of the G.R. dated 8.6.1995. Thereafter, the applicant has made representation with the respondents for getting pay scale of Driver in the pay scale of Rs. 950-1500 under time bound promotional scale scheme. Accordingly, on 15.02.2006, the respondent No. 2 cancelled the earlier order dated 09.02.1996 and accordingly, revised the pay of Rs. 3050-4590 on condition that the employee has to furnish undertaking with the department that he will refund the excess amount paid to him. It is their contention that as per the said condition, the applicant had given undertaking on 09.06.2006 on bond paper of Rs. 20/-. It is their contention that the pay verification unit raised objection regarding pay fixation made by the respondents in the pay scale of Rs. 3050-4590 and therefore, the impugned order has been issued re-fixing the pay of the applicant and directed recovery of Rs. 60,172/-. It is their contention that by the G.R.

dated 10.01.1991, the Government directed to recover the excess amount paid due to wrong pay fixation from the concerned employee. It is their contention that in view of Rule 132 of the Maharashtra Civil Services (Pension) Rules, 1982, head of the office has to ascertain and assess Government dues payable to the Government servant due for retirement and if any such dues are found to be payable, those are adjusted against retirement gratuity, if includes overpayment of pay and allowances and accordingly, the recovery has been ordered.

6. It is contentions of the respondents that the applicant was regularized as Majdoor in the pay scale of Rs. 200-280 at Government Milk Scheme, Nanded. Thereafter, he had acquired qualification of Driver in the year 1980. He was given work of Driver at his request on ad-hoc basis. It is their contention that the applicant has furnished undertaking to repay the excess amount paid to him due to wrong pay fixation and therefore, the impugned order has been passed and the amount has been recovered. It is their contention that the case of the applicant is covered by the decision rendered by this Tribunal in **O.A. No. 545/2012** in case of **Namdeo Sahadu Dhadge Vs. The State of Maharashtra and Ors.** decided on 09.01.2015, as well as, the judgment of the Hon'ble Apex Court in **Civil Appeal No. 3500 of**

2006 in case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh** decided on 29.07.2016. Therefore, they have prayed to reject the present Original Application.

7. I have heard Shri V.G. Pingle, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

8. Admittedly, the applicant was appointed on daily wages under Government Milk Scheme in the year 1978. On 24.09.1979, he was regularized as Majdoor in Class-IV cadre in the Government Milk Scheme, Nanded. On his request, the work of Driver was assigned to him and thereafter, he was working as Driver w.e.f. 26.05.1980. There is no dispute about the fact that the applicant was appointed as Cleaner on 24.09.1979 and assigned work of Driver. He was promoted as Driver on ad-hoc basis by the order dated 04.07.2008 and thereafter, he was regularized on the same post on 13.01.2013. Admittedly, the applicant was retired as Driver, Group-D post on 31.10.2016 on attaining the age of superannuation. The applicant was given promotional scale of Driver under ACPS w.e.f. 01.11.1997 by the order dated 15.06.2016. At the time of his retirement his service

record has been sent to the Pay Verification Unit and that time, the Pay Verification Unit raised objection regarding promotional scale given to the applicant by the order dated 01.11.1997. Therefore, pay of the applicant has been revised by the respondent No. 3 by the communication dated 15.06.2016 and recovery of an amount of Rs. 60,172/- has been ordered and accordingly, the said amount has been recovered from the applicant by the impugned order dated 04.11.2016.

9. Learned Advocate for the applicant has submitted that the applicant was serving as a Driver at the time of his retirement and the post of Driver is a Group-D post. He has submitted that the excess payment was made to the applicant due to grant of promotional scale under ACPS and the applicant cannot be blamed for it, as the said pay scale was wrongly granted by the respondent No. 3 on their own accord. He has submitted that the impugned order directing recovery has been passed, when the applicant was on the verge of retirement and the amount has been recovered from the pensionary benefits of the applicant. The said action on the part of the respondent No. 3 is illegal in view of the guidelines given by the Hon'ble Apex Court in case of **the State of Punjab and Ors. etc. Vs. Rafiq Masih**

(White Washer) etc., wherein it is observed in paragraph No. 12

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 submitted that the Hon'ble High Court of Judicature at Bombay, Nagpur Bench has also decided the similar issue in case of **Lata Gajanan Wankhede Vs. State of Maharashtra and Ors.** in **W.P. 2648 of 2016** decided on 01.07.2016 and reported in **2017(2) ALL MR 177.** He has submitted that the case of the applicant is squarely covered by the said judgment and therefore, he has prayed to allow the present Original Application and to quash and set aside the impugned order dated 04.11.2016 issued by the respondent No. 3 directing recovery of an amount of Rs. 60,172/- from the pensionary benefits of the applicant and prayed to direct the respondents to refund the said amount.

11. Learned Presenting Officer has submitted that the applicant was promoted as Driver on Ad-hoc basis on 04.07.2008 and he was regularized on the post of Driver on 13.01.2013. He has submitted that the applicant was retired on 31.10.2016 on attaining the age of superannuation. He has submitted that the

applicant had not completed 12 years' service on that post, but he was granted pay scale of Driver under Assured Career Progression Scheme by the order dated 15.02.2006. He has submitted that the applicant has made representation with the respondent No. 3 claiming the said promotional scale and on the basis of said representation, order dated 15.02.2006 came to be passed. He has submitted that the said mistake has been noticed by the Pay Verification Unit, when the service record of the applicant has been forwarded to it by the respondent No. 3 for verification. On the basis of objection raised by the Pay Verification Unit, the respondent No. 3 issued the impugned order dated 04.11.2016 and revised the pay of the applicant withdrawing the benefit of time bound promotional scale given to the applicant. He has submitted that the excess pay was paid to the applicant in view of the order dated 15.02.2006 for the period commencing from the year 1997. He has submitted that at the time of granting promotional scale and disbursing the amount, the applicant had given undertaking before the respondent No. 3 on 09.06.2006 and undertook to refund the excess amount, if any paid to him on account of wrong pay fixation. He has submitted that in view of the Circular dated 10.01.1991, the excess amount has to be recovered, if the excess payment was

made due to wrong pay fixation and the said undertaking is binding on the applicant. He has submitted that on the basis of the undertaking given by applicant, the amount of Rs. 60,172/- paid to the applicant in excess of his entitlement has been recovered from the pensionary benefits of the applicant and there is no illegality in it. He has submitted that this Tribunal has decided the similar issue in case of similarly situated person in case of **Namdeo Sahadu Dhadge Vs. The State of Maharashtra and Ors.** in **O.A. No. 545/2012**, decided on 09.01.2015. He has submitted that the case of the applicant is squarely covered by the said decision and therefore, the applicant is not entitled to get refund of the said amount, as there is no illegality in the impugned order of recovery issued by the respondent No. 3.

12. Learned Presenting Officer has further submitted that the said issue has been dealt with by the Hon'ble Apex Court in **Civil Appeal No. 3500 of 2006** in case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh** decided on 29.07.2016, wherein the decision of the Hon'ble Apex Court in case of **the State of Punjab and Ors. etc. Vs. Rafiq Masih (White Washer) etc.** has been considered and it has been observed as follows:-

“8. The order of the High Court has been challenged in these proceedings. From the record of the proceedings, it is evident that when the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit which has been filed by the Respondent in these proceedings, this position has been specifically admitted. Subsequently, when the rules were revised and notified on 7 May 2003 it was found that a payment in excess had been made to the Respondent. On 18 February 2004, the excess payment was sought to be recovered in terms of the undertaking.

9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.”

He has further relied on the judgment of the Hon'ble High Court of Judicature at Bombay, Nagpur Bench in case of **State of Maharashtra and Ors. Vs. Sureshchandra Dharamchand Jain and Ors.** in **W.P. No. 4919 of 2018** decided on 23.07.2019 and observed as follows:-

“4. The argument submitted in defence is fallacious. An undertaking has the effect of solemnity in law and if argument is to be accepted which has been submitted on behalf of the respondents, the majesty of law would be lowered and there would be a travesty of justice. Besides, the undertaking is about wrong pay fixation and consequent excess payment. The undertaking is not about grant of higher pay on the basis of right pay fixation. Had it been an undertaking as regards the later dimension of the case, one could have perhaps said that the undertaking was only a formality. When the undertaking takes into account the contingency of the wrongful pay fixation, the undertaking has to be said to have been given intentionally and with a view to be acted upon, in case the contingency did really arrive.

5. So, what we have before us is an undertaking given consciously and intentionally by the respondents and the respondents would have to be held bound by this undertaking. That means in the present case, no equity whatsoever has been created in favour of the respondents while making the excess payment and as

such there is no question of any hardship visiting the respondents.

6. The reason weighing with the Hon'ble Apex Court imposing prohibition against recovery of excess payment in *Rafiq Masih (supra)* was of hardship resulting from creation of awkward situation because of the mistake committed by the employer and there being no fault whatsoever on the part of the employee. In order to balance the equities created in such a situation, the Hon'ble Apex Court in *Rafiq Masih*, gave the direction that so far as Class-III and IV employees were concerned, and who were found to be not having very sound economic footing, would have to be exempted from the consequence of recovery of the excess payment, if considerable period of time has passed by in between. But, as stated earlier, even in case of such an employee, there would be no hardship for something which has been accepted by him consciously with an understanding that it could be taken away at any point of time, if mistake is detected. Clarifying the law on the subject, the Hon'ble Apex Court, in its recent judgment rendered in the case of **High Court of Punjab and Haryana and others vs. Jagdev Singh** reported in **2016 AIR (SCW) 3523**, in paragraph 11 it observed thus :

“the principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made

in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

He has submitted that in view of the principles laid down in the said decisions, the action on the part of the respondent No. 3 re-fixing the pay of the applicant and directed recovery of excess amount paid to him is justifiable and legal and therefore, he has justified the impugned order and prayed to dismiss the present Original Application.

13. On perusal of the record, it reveals that on 15.02.2006, the respondent No. 3 granted promotional scale to the applicant under ACPS on his representation, though he was not entitled. The said mistake committed by the respondent No. 3 has been noticed by the Pay Verification Unit, when the service record of the applicant has been forwarded to it for verification at the time of his retirement. The Pay Verification Unit has raised objection in that regard and therefore, the respondent No. 3 has passed the impugned order dated 04.11.2016 withdrawing the promotional scale granted to the applicant by the order dated 15.02.2006 and re-fixed the pay of the applicant. The excess payment due to wrong fixation of pay in the promotional pay scale was made to the applicant in the tune of Rs. 60,172/- and

therefore, the respondent No. 3 directed recovery of an amount of Rs. 60,172/- has been ordered from the applicant by the impugned order dated 04.11.2016. The said amount has been recovered from the pensionary benefits of the applicant.

14. It is also material to note here that while making pay fixation and making payment of arrears amount to the applicant on the basis of the order dated 15.02.2006, the respondent No. 3 had obtained undertaking from the applicant. The applicant had given undertaking on bond paper of Rs. 20/- and undertook to repay the excess payment if any made to him due to wrong fixation of pay. The said undertaking given by the applicant is filed by the respondents along with their affidavit in reply, which is at paper book page Nos. 53 and 54. By the said undertaking, the applicant undertook to refund the amount paid to him, which was paid to him due to wrong pay fixation, though he was not entitled for it. The said undertaking is signed by the applicant and therefore, the recovery of an amount of Rs. 60,172/- has been ordered by the respondent No. 3 from the pensionary benefits of the applicant and therefore, the said action cannot be said to be illegal, as the applicant is bound by the said undertaking given to him. The said issue has been dealt with and decided by the Hon'ble Apex Court in **Civil Appeal No.**

3500 of 2006 in case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh** decided on 29.07.2016, wherein it has been held that “the officer to whom the payment was made in the first instance was clearly placed on notice that payment found to have been in excess would be required to be refunded. The officers furnish an undertaking while opting for the revised pay scale. He is bound by the undertaking”. The said issue has also been dealt with by the Hon’ble High Court of Judicature at Bombay, Bench at Nagpur in case of **State of Maharashtra and Ors. Vs. Sureshchandra Dharamchand Jain and Ors.** in **W.P. No. 4919 of 2018** decided 23.07.2019. The Hon’ble High Court has considered the decision of the Hon’ble Apex Court in case of **the State of Punjab and Ors. etc. Vs. Rafiq Masih (White Washer) etc.,** as well as, the judgment of the Hon’ble Apex Court in **Civil Appeal No. 3500 of 2006** in case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh** decided on 29.07.2016 and held that the recovery of excess payment made to the Government employee can be recovered on undertaking and there is no illegality in it. The said principles are squarely applicable in the instant case. The case of the applicant is squarely covered by the decisions rendered by the Hon’ble Apex Court in case of **High Court of Punjab and Haryana and Ors.**

Vs. Jagdev Singh reported in **2016 AIR (SCW) 3523**, as well as, the decision of the Hon'ble High Court of Judicature at Bombay, Nagpur Bench in case of **State of Maharashtra and Ors. Vs. Sureshchandra Dharamchand Jain and Ors.** in **W.P. No. 4919 of 2018** decided on 23.07.2019.

15. The decisions referred by the learned Advocate for the applicant are not much useful in the instant case, as the applicant has given undertaking to the respondent No. 3 to refund the amount, if the excess amount was made to him due to wrong fixation of pay and therefore, I do not find force in the submissions advanced by the learned Advocate for the applicant in that regard.

16. As discussed above, the respondent No. 3 has recovered the excess amount of Rs. 60,172/- from the pensionary benefits of the applicant on the basis of undertaking given by him. The said amount has been paid to the applicant in excess to his entitlement and therefore, it has been recovered from his pensionary benefits. There is no illegality in the impugned order dated 04.11.2016 and therefore, no interference in it is called for. Consequently, no question of issuing direction to the respondents to refund the amount of Rs. 60,172/- to the

applicant arises. There is no merit in the present O.A. Consequently, the O.A. deserves to be dismissed.

17. In view of the discussions in the foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD.

DATE : 15.11.2019.

(B.P. PATIL)

ACTING CHAIRMAN

KPB S.B. O.A. No. 532 of 2017 BPP 2019 Recovery