

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

**ORIGINAL APPLICATION NO. 610 OF 2021**

**DISTRICT : PARBHANI**

**Madhukar s/o Kishanrao Jadhav** )  
Age : 61 years, Occu. : Retired, )  
Assistant Plantation Officer, )  
R/o. Manas Niwas, Near Mahadeo Mandir, )  
Lokmanya Nagar, Parbhani, Dist. Parbhani. )

.... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Department of Revenue and Forest, )  
Mantralaya, Mumbai-32. )
2. **The Chief Conservator of Forest (Territory),** )  
Aurangabad Region, Aurangabad. )
3. **The Deputy Director Social Forestry,** )  
Division Hingoli, Dist. Hingoli. )
4. **The Accountant General,** )  
(A & E) Maharashtra-II, Nagpur. )
5. **The Treasury Officer,** )  
Hingoli, Dist. Hingoli. )

... **RESPONDENTS**

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**APPEARANCE** : Shri V.G. Pingle, Counsel for Applicant.

: Shri I.S. Thorat, Presenting Officer for  
respondent authorities.

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

**DATE** : **22.02.2024**  
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**ORAL - ORDER**

1. Heard Shri V.G. Pingle, learned counsel appearing for the applicant and Shri I.S. Thorat, 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 order of recovery of Rs. 84,071/- dated 14.07.2017 issued by respondent No. 3 and order dated 29.06.2017 issued by Accountant General, Nagpur to the extent of recovery of amount from pensionary benefits of the applicant on the ground that the applicant was wrongly given the salary under the benefit of ACPS before 31.12.2007.

4. Brief facts as stated by the applicant giving rise to the Original Application are as follows :-

(i) The applicant was appointed on 28.03.1983 as Forest Guard in the Forest Department. As per the Government Scheme, after working 12 years on the post, the applicant was given first promotional scale w.e.f. 01.10.1994 and subsequently after 12 years, second promotional scale was

given to him on 31.12.2007 vide order dated 09/30.04.2012.

(ii) It is further case of the applicant that he was retired on superannuation on 28.02.2017. By letter dated 23.02.2017, it was directed by respondent No. 3 to the Plantation Officer, Social Forestry, Basmat to forward the report of retirement of the applicant. The respondent No. 3 has issued order dated 15.05.2017 without assigning any reason that too after retirement of the applicant to recover an amount of Rs. 84,071/-, which is paid to the applicant in excess due to wrong fixation of pay before 31.12.2007. Further the Accountant General, Nagpur issued Pension Payment Order dated 28.06.2017 and thereby directed respondent No. 3 to recover the excess payment of Rs. 84,071/- from the DCRG amount payable to the applicant. Hence, the present Original Application.

5. Learned counsel for the applicant submits that so far as the said pay fixation done in the year 2007 is concerned, the applicant was not at fault, nor he has mislead the respondent authorities in any manner. Learned counsel submits that in terms of the ratio laid down 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. 11527/2014 (arising out of SLP (C) No. 11684 of 2012)**, dated 18.12.2014, the applicant's case is fully covered. The applicant is retired Class-III employee and after his retirement, the said amount has been recovered under the pretext that the wrong pay fixation was done and the applicant got benefited from the year 2007 onwards because of the said wrong fixation. The applicant came to be retired on 28.02.2017.

6. Learned counsel for the applicant submits that though the respondent authorities have come with a case that the applicant has submitted the undertaking for refund of amount, if any paid in excess, however neither at the time of fixation of pay, nor thereafter the said undertaking was obtained by the department from the applicant and only three months after retirement of the applicant, the said undertaking allegedly given by the applicant. Learned counsel submits that copy of the said undertaking is not placed on record and it is mere say of the department to the extent of filing of the undertaking. Learned counsel submits that three months after retirement the said amount of Rs. 84,071/- has been recovered from DCRG amount and if at that time any undertaking is obtained from the

applicant, then it carries no importance. Learned counsel submits that the present Original Application deserves to be allowed in terms of the prayer clauses of the Original Application.

7. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 and 4 submits that in this regard the respondent Nos. 1 to 3 have given the specific instructions, those are reproduced in para No. 6 of the affidavit in reply. It is stated in para No. 6 of the affidavit in reply as under :-

*“06. I say that, as regards to Para no. VI (a, b, c and d) are in respect of the appointment of the applicant as well as the promotional skill granted by the present deponent office in view of the government guidelines and G.R. issued by the concern department. I further say that the office of respondent no. 3 vide order dated 09/04/2012 (30/04/2012) has been please to grant on 31/12/2007 for the benefit of 24 years regular service. In view of that the applicant was granted the grade pay of the post forester and view of the pay fixation was done as per the option given by the applicant was earlier promoted vide 31/12/2007 therefore he was given revise pay on 01/07/2008 as per the option given by the applicant. It is also mention in the order dated 09/04/2012 passed by the Sub Divisional Forest Officer Hingoli in case of declining the promotion the first and second or both benefits were already sanction would be recovered from the benefits granted earlier it is also cleared the benefit of notional pay fixation would be granted from the date 01/04/2010 however the outstanding amount would not be paid to the applicant. The aforesaid order which was later on verified by the office of respondent no.3. The office of respondent no. 3 on 15/05/2017 and observed that the applicant was given the II time bound promotion was given to the applicant on 28/02/2012 to the tune of 9,300/- - 34,800/- grade pay 4,400/- and accordingly his pay fixation is done by the office however the respondent has wrongly quoted the amount of Rs. 10,380/- instead of which is the pay prior to year 31/12/2007. This fact as*

*well as the mistake has been noted by the office of respondent no. 3. Therefore the order of recovery is passed by revising the pay scale of the applicant from the year 2007.”*

Learned Presenting Officer submits that it appears from the said affidavit in reply that the respondent has wrongly quoted the amount of Rs. 10,380/- instead of Rs. 10,030/-. Learned P.O. submits that the recovery has been made from the benefits payable to the applicant in view of the P.P.O. orders dated 29.06.2017 and 14.07.2017.

8. Learned Presenting Officer submits that from the affidavit in reply filed on behalf of respondent No. 4 i.e. the Accountant General, Nagpur, it reveals that the applicant has given an undertaking for recovery of overpayment from Pension /DCRG on 22.05.2017. Learned P.O. has fairly accepted that at the time of payment of the amount of DCRG, the said undertaking seems to have been taken.

9. In view of the ration laid down by the Hon'ble Apex Court in a case **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.

10. The applicant belongs to Class-III category employee. The said recovery has been done after his retirement. It is also clear from the pleadings that the excess payment has been made on account of wrong fixation of pay in the year 2007 and thus,

the period is in excess of five years before the order of recovery is issued. It is also not disputed that neither the applicant is responsible for the said wrong pay fixation nor he has misled the respondent authorities at any point of time in this regard.

11. 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 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.”*

12. So far as issue of undertaking is concerned. I find no substance in the submissions made on behalf of respondent authorities. It appears that the respondent Nos. 1 to 3 have not stated about the undertaking submitted by the applicant. In fact, the applicant is supposed to give an undertaking to respondent Nos. 1 to 3, however, it has come in the affidavit in reply of respondent No. 4 i.e. Accountant General, Nagpur and even copy of the said undertaking is also not submitted along with the affidavit in reply. Under these circumstances, it is doubtful as to whether the applicant has submitted any undertaking. Assuming that such undertaking is submitted, however, as per the date mentioned in the affidavit in reply filed on behalf of respondent No. 4, the applicant has allegedly given

the said undertaking three months after his retirement at the time of DCRG payment to him. I do not think that the undertaking, if any carries any importance. In the result, the Original Application deserves to be allowed and the applicant is entitled for refund of the recovered amount with interest. Hence, the following order :-

**ORDER**

- (i) The Original Application is hereby allowed.
- (ii) The impugned order dated 29.06.2017 issued by respondent No. 4 to the extent of recovery of Rs. 84,071/- from the pensionary benefits of the applicant and order dated 14.07.2017 passed by respondent No. 3 referring the order dated 29.06.2017 are hereby quashed and set aside.
- (iii) The respondents are hereby directed to refund the amount of Rs. 84,071/- to the applicant 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) In the circumstances, there shall be no order as to costs.
- (v) The Original Application accordingly disposed of.

**PLACE : Aurangabad.**  
**DATE : 22.02.2024**

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