

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 626 OF 2021

DISTRICT:- BEED

Rajendra Baburao Telap,

Age-60 years, Occu. Retired as
(A.S.I) Assistant Police Sub-Inspector,
R/o. Near Old Saraswati Vidyalyaya,
Ganpati Nagar, Beed.

..

APPLICANT

V E R S U S

1) The State of Maharashtra,

Through : The Secretary,
Home Department,
Mantralaya, Mumbai-32.

2) The Director General of Police,

Old Vidhan Bhanvan,
Shahid Bhagatsing Marg,
Kulaba, Mumbai-39.

3) The Superintendent of Police,

Near Govt. Hospital, Barshi Road,
Beed.

4) The Accountant General-II,

Civil Lines, Nagpur.

.. **RESPONDENTS**

APPEARANCE : Shri Kakasaheb B. Jadhav, learned
counsel for the applicant.

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

CORAM : JUSTICE SHRI V.K. JADHAV, MEMBER (J)

DATE : 26.03.2024

ORAL ORDER

Heard Shri Kakasaheb B. Jadhav, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities.

2. By this Original Application, the applicant is challenging recovery letter dated 25.02.2021 issued by respondent No. 3, thereby directing to recover the excess amount of Rs. 72,957/- from the arrears of 7th pay commission and regular pension / retirement dues of the applicant.

3. Brief facts giving rise to the Original Application are as follows :-

(i) The applicant was initially appointed as a Constable on 18.05.1984 and he had joined the service in the office of Commandant, SRPF, Solapur on 01.06.1984. In due course of time, he was promoted on the post of Police Naik and Head Constable. Thereafter, the applicant was promoted on the post of Assistant Police Sub-Inspector by order dated 04.02.2016 and he joined on the said post on 01.03.2016. The said post of Assistant Police Sub-Inspector comes under Group-C / Class-III category. The applicant stood retired from service on the post of A.S.I. on attaining the age of superannuation on 31.12.2019 from the office of respondent No. 3. As per the objection taken by respondent No. 4, respondent No. 3 has re-fixed

the pay of the applicant by order dated 07/10/2020/24.12.2020 w.e.f. 01.07.2007 to 01.07.2018. The said copy of pay fixation order dated 22.09.2020 is marked as Annexure A-3.

(ii) The pension case of the applicant was submitted before the respondent No. 4 by respondent No. 3. The respondent No. 4 has sanctioned the pension case of the applicant by issuing the Pension Pay Order dated 27.12.2019, however, raised objection about the fixation of pay of the applicant informing that, case is finalized at Rs. 15700+2800, it may be verified whether increment+Revised Gpay of only change in Grade Pay is admissible on promotion as Hawaldar on 28.07.2007. O/P, if any may be recovered. The said copy of PPO dated 27.12.2019 is marked as Annexure 'A-2'.

(iii) The respondent No. 3 has paid all the retiral benefits to the applicant in view of the sanction of his pension case by the respondent No. 4. The applicant is getting the pension regularly. However, the respondent No. 3 has revised the pay of the applicant in terms of the objection taken by the respondent No. 4 and prepared the due and drawn statement and issued letter dated 25.02.2021, thereby directing to recover the excess payment of Rs. 72,957 from any of the retiral benefits of the applicant. The respondent No. 4 has sanctioned the revised pension case of the applicant by PPO dated 04.06.2021 as per the 7th Pay Commission and granted the benefits of 7th Pay Commission. It is the case of the applicant that now the amount of arrears of 7th Pay Commission are pending

with the respondents. Hence, the present Original Application.

(iv) According to the applicant, the undertaking is obtained from him by respondent No. 3, copies of which are placed on record at page Nos. 96 & 97. So far as page 96 is concerned, it does not bear any date and so far as page No. 97 is concerned, it bears signature and date as '10.11.2017.'

4. Learned counsel for the applicant submits that the applicant retired from service and after retirement, the respondent No. 3 has issued the impugned letter dated 25.02.2021, thereby directing recovery from the applicant, which was paid to the applicant in excess. Learned counsel submits that there is no fault on part of the applicant while fixing his pay scale and as such, the excess amount paid to the applicant due to wrong pay fixation cannot be recovered from him after retirement. The said excess amount was not obtained by the applicant by making misrepresentation or any fraud and therefore, the respondent No. 3 cannot recover the said amount from the applicant. 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 Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No. 11527/2014 (Arising out of SLP (C) No. 11684/2012), dated 18.12.2014**, the excess amount paid to the

applicant due to wrong pay scale and allowances cannot be recovered after retirement of the employee and the same is not permissible. Learned counsel submits that the applicant is retired from Class-III post and as such, his case squarely covered by the ratio laid down by the Hon'ble Apex Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc.** (cited supra). Learned counsel for the applicant submits that the identical O.As. came to be allowed by this Tribunal with the observations that no recovery is permissible from the employee if excess payment is made to him due to wrong fixation of pay.

5. Learned counsel for the applicant submits that excess payment was paid to the applicant for the period from 2007 to 2018 and recovery letter came to be issued on 25.02.2021, which is more than 5 years before the order of recovery is issued. Therefore, the recovery of the said period from the applicant is not permissible in terms of the ratio laid by the Hon'ble Apex Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc.** (cited supra).

6. Learned counsel for the applicant submits that the Director General of Police, Mumbai issued Circular on 05.09.2018 (Annexure A-10) and directed not to recover the

excess payment from the employees, who are retired in view of the directions given by the Hon'ble High Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc. (Cited supra)**. Learned counsel submits that so far as the undertaking given by the applicant is concerned, the same is not given at the time of pay fixation or before his pay fixation and the same has been submitted after retirement. Learned counsel submits that the said undertaking was obtained by the respondent No. 3 by exercising pressure on the applicant. Learned counsel submits that the impugned order of recovery is totally illegal and liable to be quashed and set aside. Learned counsel submits that the present Original Application deserves to be allowed and the impugned order/letter of recovery dated 25.02.2021 is liable to quashed and set aside.

7. Learned counsel for the applicant in order to substantiate his contention placed reliance on the judgment delivered by the Hon'ble Apex Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc.** (cited supra) and the judgment and order passed by the Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 3700/2023 & connected WPs (Smt. Shankutala Pramod Barhate Vs. State of Maharashtra & Ors.)**. Learned counsel also placed reliance on the judgments and

orders passed by this Tribunal at Aurangabad in the identical cases, which are as under :-

(i) O.A. No. 455/2020 (S.D. Wagh Vs. The State of Maharashtra & Ors.), dated 30.09.2021 (Aurangabad Bench).

(ii) O.A. No. 413/2019 (Naserkhan Rahimkhan Pathan Vs. The State of Maharashtra and Ors.), dated 13.11.2019 (Bench at Aurangabad).

8. Learned P.O. submits that due to said re-fixation of pay as directed by respondent No. 4 i.e. the Accountant General, Nagpur, there is recovery of Rs. 72,957/- towards the excess payment from the applicant. Learned P.O. submits that the recovery of excess payment came to be effected in terms of the Government Circular of Finance Department No. RPS 1209/CR-69/SER-9, dated 29.04.2009, under which the applicant has also submitted the undertaking. Therefore, recovery order issued by the respondent No. 3 is legal, proper and correct in accordance with the provisions of law. Learned P.O. submits that the applicant has submitted 02 undertakings, the copies of which are at page Nos. 96 & 97 dated NIL and 10.11.2017 respectively while in service to refund the excess payment, if any due to wrong fixation of pay. Learned Presenting Officer

submits that there is no substance in the O.A. and the same is liable to be dismissed.

9. Learned Presenting Officer submits that the applicant came to be retired on 31.12.2019 on attaining the age of superannuation as A.S.I. from the office of respondent No. 3 i.e. the Superintendent of Police, Beed. The pension case was finalized and P.P.O. authorized by the office of respondent No. 4 on 27.12.2019 with a request to verify the promotion granted to the applicant on the post of Hawaldar and recovery of overpayment if any may be recovered from the applicant.

10. Learned Presenting Officer submits that the Director of Accounts and Treasuries, Mumbai vide letter dated 05.03.2018 had issued instructions to all the Accounts Officer / Pay Verification Unit as regards to pay fixation on promotion from Police Naik to the post of Police Hawaldar stating therein that no pay fixation is to be done, but only grade pay is to be changed. However, in the instant case, the PSA / Department i.e. the respondent No. 3 has fixed the pay of the applicant on 07.10.2020/24.12.2020, resulting in overpayment of pay and allowances to the applicant. Learned P.O. submits that in terms of Rule 134 (A) of the Maharashtra Civil Services (Pension) Rules, 1982, if it is found that due to any reason, whatsoever,

an excess amount has been paid to a Government servant during the period of his service, including the service rendered upon re-employment after retirement, then the excess amount so paid, the amount so found payable or recoverable shall be recovered from the amount of pension sanctioned to him.

11. Learned Presenting Officer submits that action taken by respondent No. 4 in the instant case is in accordance with the provisions contained in the Maharashtra Civil Services (Pension) Rules, 1982 and orders issued by the Government of Maharashtra from time to time.

12. It is not disputed that the applicant is Class-III employee and fixation of pay was wrongly done. It is also not disputed that in terms of the said wrong pay fixation, which is not due to the fault of the applicant, salary was paid to the applicant from the year 2007 to 2018 i.e. near about 11 years and the recovery amount as per the impugned letter is about 72,957/-. The age of the applicant as on filing of the present Original Application is 60 years and when this matter was taken up for final hearing, he has crossed the age of 63 years. The applicant has been retired from Class-III post, which may not carry higher pension amount as compared to the other Class/ Category employees' in the service and as it appears from the contents of the Original

Application, the applicant has only pension and retiral benefits as source of his income.

13. In a case **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc.**, (cited supra), the Hon'ble Apex Court in para No. 12 has laid down the following ratio :-

“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. It is thus clear from the aforesaid observations that the recovery from the employee is impermissible in the situation as enumerated in para No. 12 of the above said judgment. The case of the applicant has been squarely covered under the clause 12(i), (ii), (iii) & (v) of the said judgment. It has been observed by the Hon'ble Apex Court in the aforesaid case of **State of Punjab and Others Vs. Rafiq Masih (White Washer)** (cited supra) that orders passed by the State as employer seeking recovery of monetary benefits wrongly extended to the employee, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover.

15. The Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 3700/2023 (Smt. Shankutala Pramod Barhate)** (cited supra) and other connected W.Ps. has also taken the similar view.

16. Learned Presenting Officer has strongly pressed ground that the applicant during his service tenure has given undertaking twice for refund of excess payment in case of excess payment at the time of fixation of pay. It is not disputed that the applicant is Class-III employee and as per his stand, the said undertaking was tendered by him under the pressure of the office of respondent No. 3. The applicant has given the said undertaking under fear that he would not get the retiral benefits, if the undertaking is not submitted as informed to him by the office of respondent No. 3. Further the applicant was appointed as Police Constable and thereafter promoted on the posts of Police Naik and Police Hawaldar and finally retired as Assistant Sub-Inspector. In view of above, it is not expected from the employee of his cadre to question the superiors for tendering the undertaking, if so directed. Further such an employee may not understand the consequences of his undertaking. Consequently, the applicant is certainly facing hardship to repay the said huge amount of Rs. 72,957/- from his meager retiral benefits and pension amount.

17. In view of above, the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

- (i) Original Application is hereby allowed.
- (ii) The impugned pay fixation order dated 7.10.2020/24.12.2020 to the extent of directing recovery from the applicant and recovery letter dated 25.02.2021 issued by respondent No. 3, thereby directing to recover the excess amount of Rs. 72,957/- from the applicant's regular pension or other payable retiral benefits are hereby quashed and set aside.
- (iii) The respondent Nos. 3 and 4 are directed not to recover the excess payment of Rs. 72,957/- from the applicant's arrears of 7th Pay Commission/ regular pension / any other retiral benefits.
- (iv) Accordingly, the Original Application stands disposed of, however, without any order as to costs.

MEMBER (J)