

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

**ORIGINAL APPLICATION NO. 630 OF 2021
(Subject – Recovery)**

DISTRICT : BEED

Babasaheb Haribhau Dahifale,)
Age : 59 years, Occu. : Retired as (A.S.I.))
Assistant Police Sub-Inspector,)
R/o : Ankush Nagar, Beed, Tq. & Dist. 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 Bhavan, Shahid Bhagatsing)
Marg, Kulaba, Mumbai-39.)
3. **The Superintendent of Police,**)
Near Govt. Hospital, Barshi Road, Beed.)
4. **The Accountant General-II,**)
Civil Line, Nagpur.)

... **RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, Counsel for Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
Presenting Officer for respondent authorities.

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

RESERVED ON : 19.12.2023

PRONOUNCED ON : 04.01.2024

ORDER

1. Heard Shri K.B. Jadhav, learned counsel appearing for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer appearing for respondent authorities.

2. By this Original Application, the applicant is challenging recovery letter dated 12.07.2021 issued by respondent No. 3, thereby directing to recover the excess amount of Rs. 1,52,053/- from the regular pension or any of the amounts / 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 30.07.1984 and he had joined the service in the office of Commandant, SRPF, Jalna. 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 09.09.2015. 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 31.05.2020 from the office of respondent No. 3. The respondent No. 3 has re-fixed the pay of the applicant by order dated 22.09.2020 w.e.f. 01.01.2006 till 01.07.2019. The said copy of pay fixation order dated 22.09.2020 is marked as Annexure A-1.

(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 07.01.2021, however, raised objection about the fixation of pay of the applicant informing that, the promotion from Naik to Havaldar there will be only change in G.P. and verify the pay fixation from 28.02.2006. O/P may be recovered and intimated. The said copy of PPO dated 07.01.2021 is marked as Annexure A-2.

(iii) Thereafter the Treasury Officer, Beed has issued a letter dated 09.02.2021 to the respondent No. 3 informing therein that there are 04 queries in the case of the applicant and one of the query was about the recovery of the excess payment as per the objection raised by the respondent No. 4 A.G. Nagpur.

(iv) It is the case of the applicant that thereafter respondent No. 3 has called the applicant for compliance of the said queries raised by the Treasury Office, Beed and further directed him to submit the undertaking about the repayment of the excess payments, if any, which was paid to him due to wrong pay fixation. It is the further case of the applicant that the respondent No. 3 and concerned Clerk have pressurized him for submission of said undertaking by saying that if the undertaking is not given, then his retiral benefits will not be paid. There was no alternative for the applicant to give an undertaking to the office of respondent No. 3 and accordingly he has given the same on 08.03.2021 (Annexure A-5).

(v) After obtaining the undertaking from the applicant, 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 orders dated 29.04.2021 and 29.06.2021 thereby re-fixing the pay of the applicant and

directing to recover the excess payment from the applicant, however, those orders were not served on the applicant. Further respondent No. 3 has served letter dated 12.07.2021 to the applicant on 07.10.2021 for deduction of amount of Rs. 1,52,053/- from the payment of pension of the applicant towards the excess payment. It is the case of the applicant that now the amount of arrears of 7th Pay Commission are pending with the respondents and thus 2nd installment of said arrears more than 43,000/- is sanctioned, but the same is kept in the account of respondent No. 3 and not paid to the applicant. Hence, the present Original Application.

4. Learned counsel for the applicant submits that the applicant retired from service and after retirement, the respondent No. 3 has issued the impugned order dated 12.07.2021, 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 the applicant 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 for excess amount due to wrong pay fixation.

5. Learned counsels for the applicant submits that excess payment was paid to the applicant for the period from 2006 to 2019 and recovery order came to be issued on 12.07.2021, 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 of recovery dated 12.07.2021 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. 4616/2016 (Smt. Jayshree Trimbak Takalkar Vs. The Chief Executive Officer, Zilla Parishad, Aurangabad & Anr.) and other connected matters.**

Learned counsel also placed reliance on the judgments and orders passed by this Tribunal at Mumbai, Nagpur and Aurangabad in the identical cases, which are as under :-

- (i) O.A. Nos. 574 & 575 both of 2018 (Shri Santosh P. Baviskar & Anr. Vs. The State of Maharashtra and Ors.), dated 22.01.2019 (Mumbai).
- (ii) O.A. No. 820/2016 (Shri Dilip M. Diwane Vs. The Account Officer & Ors.), dated 13.06.2017 (Mumbai).
- (iii) O.A. No. 79/2017 (Babusha Genbhau Tambe Vs. The Special Inspector General of Police & Ors.), dated 23.03.2018 (Mumbai)
- (iv) O.A. No. 455/2020 (Sahebrao D. Wagh Vs. The State of Maharashtra and Ors.), dated 30.09.2021 (Bench at Aurangabad).
- (v) O.A. No. 413/2019 (Naserkhan Rahimkhan Pathan Vs. The State of Maharashtra and Ors.), dated 13.11.2019 (Bench at Aurangabad).

8. Learned Presenting Officer submits that the Treasury Officer, Beed had issued a letter dated 09.02.2021 to the respondent No. 3 raising about 04 queries including one query about the recovery of excess payment. In view of the same, the respondent No. 3 has re-fixed the pay by the orders dated

29.04.2021 and 29.06.2021 respectively with due and drawn statement to the applicant. 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. 1,52,053/- 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 on 13.11.2017 and 14.02.2019 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 31.05.2020 on attaining the age of superannuation as Head Constable from the office of respondent No. 3 i.e. the Superintendent of Police, Beed. The proposal for release of pensionary benefits was forwarded by the pension sanctioning authority vide letter issued by respondent No. 3

dated 06.11.2020. The pension case was finalized and P.P.O. authorized by the respondent No. 4 office on 07.01.2021 with a request to verify the promotion granted from the post of Police Naik to Police Hawaldar as on 28.02.2006 and recovery of overpayment if any noticed. Learned P.O. submits that the said communication has been issued by the Pension Sanctioning Authority after authorization of pensionary benefits.

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 28.02.2006, 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 the 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 2006 to 2019 i.e. near about 13 years and the recovery amount as per the impugned letter is about 1,52,053/-. The age of the applicant as on filing of the present Original Application is 59 years and when this matter was taken up for final hearing, he has crossed the age of 61 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., (2015) 4 Supreme Court Cases 334**, the Hon'ble Apex Court in para No. 18 has laid down the following ratio :-

“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.”

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. 18 of the above said judgment. The

case of the applicant has been squarely covered under the clause 18(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. In a case of **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors., AIR 2012 Supreme Court 2951**, though the Hon'ble Apex Court has held that the recovery can be ordered; but the Apex Court has also accepted that such recovery is barring few exceptions.

16. The Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 4616/2016 (Smt. Jayshree Trimbak Takalkar Vs. The Chief Executive Officer, Zilla Parishad, Aurangabad & Anr.)** and other connected W.Ps. has also taken the similar view.

17. 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 pay fixation of the applicant was done by the order 28.02.2006 and the recovery of excess payment for the period from 2006 to 2019 has been sought by re-fixation of pay orders dated 29.04.2021 and 29.06.2021 respectively i.e. after retirement of the applicant. 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. 1,52,053/- from his meager retiral benefits and pension amount. It is highly unjustified that the department has withheld his arrears of 7th Pay Commission in lieu of the said recovery of excess payment

despite the interim order of stay passed by this Tribunal in the present Original Application.

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

O R D E R

- (i) Original Application is hereby allowed.
- (ii) The impugned recovery letter dated 12.07.2021, which was received by the applicant on 07.10.2021 issued by respondent No. 3, thereby directing to recover the excess amount of Rs. 1,52,053/- from the applicant's regular pension or other payable retiral benefits is hereby quashed and set aside.
- (iii) The respondent Nos. 3 and 4 are directed not to recover the excess payment of Rs. 1,52,053/- from the applicant's arrears of 7th Pay Commission/ regular pension / any other retiral benefits.
- (iii) In the circumstance, no order as to costs.
- (iv) The Original Application accordingly disposed of.

PLACE : Aurangabad.

DATE : 04.01.2024

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