

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 635 OF 2017
(Subject – Refund of Recovered Amount)**

DISTRICT : AURANGABAD

Shri Sakharam S/o Babasaheb Rakh,)
Age : 58 years, Occu. : Retired,)
R/o Flat No. 9, Vindyagiri Apartment,)
Sahyadri Hills, Garkheda Aurangabad,)
Dist. Aurangabad.)

.. APPLICANT

V E R S U S

1) **The State of Maharashtra,)**
Through its Secretary,)
Water Resources Department,)
Mantralaya, Mumbai-32.)

2) **The Chief Engineer,)**
Irrigation Department,)
Aurangabad, Dist. Aurangabad.)

3) **The Superintending Engineer,)**
Vigilance Squad, Aurangabad.)
Dist. Aurangabad.)

4) **The Superintending Engineer,)**
Irrigation Circle, Aurangabad,)
Dist. Aurangabad.)

5) **Pay Verification Unit,)**
Aurangabad, Dist. Aurangabad.)

.. RESPONDENTS

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

: Smt. Sanjivani K. Deshmukh-Ghate, Presenting
Officer for the Respondent Nos. 1 & 5.

: Shri S.B. Mene, Advocate for respondent Nos.
2 to 4

CORAM : B.P. PATIL, MEMBER (J).

DATE : 26.10.2018.

ORDER

1. By filing the present Original Application, the applicant has challenged the order dated 25.01.2017 passed by the respondent No. 2 re-fixing his pay and directing the recovery of Rs. 38,900/- and prayed to quash and set aside the said order and also prayed to direct the respondents to refund the amount of Rs. 38,900/- recovered from him with interest.

2. The applicant was initially appointed as Chowkidar in Class-IV cadre on 29.06.1990. On 01.07.2011, he was promoted on the post of Junior Clerk. He retired on attaining the age of superannuation on 30.04.2017. During his service tenure, the Executive Engineer, Minor Irrigation Division No. 1, Aurangabad granted annual increments to him from time to time. But thereafter, in the year 2017, the respondent No. 2 re-fixed his pay on the ground that increments granted to the applicant were not as per the Rules and directed recovery of amount of Rs. 38,900/- by issuing the impugned order dated 25.01.2017. It is contention of the applicant that before re-fixation of pay of the applicant and directing the recovery of an amount of Rs. 38,900/-, which was paid to the applicant on account of wrong fixation of pay, the respondent No. 2 had not issued any notice to him. It is his further contention that no opportunity of hearing was given to him and therefore, the impugned order is in contraventions of the

provisions of Rule 134 of the Maharashtra Civil Services (Pension) Rules, 1982 and Rule 18 of the Maharashtra Civil Services (Pay) Rules, 1981. It is his contention that the respondents directed him to deposit the said amount, when he was on the verge of retirement and also warned that in case he fails to deposit the said amount, his pension papers will not be processed and therefore, the applicant has deposited the amount of Rs. 38,900/- with the respondents. It is his contention that he was retired as a Junior Clerk, which is Class-III post and the amount has been recovered, when he was on the verge of retirement. The said recovery is not permissible in view of the principle laid down by the Hon'ble Apex Court in case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.** in **Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** decided on 18.12.2014. Therefore, the applicant has challenged the impugned order of re-fixing his pay and directing recovery of Rs. 38,900/- and prayed to directed the respondents to quash and set aside the said order and to direct the respondents to refund the amount of Rs. 38,900/- recovered from him with interest.

3. The respondent No. 1 has resisted the contention of the applicant by filing his affidavit in reply. It is contended by the respondent No. 1 that the applicant has crossed the pay band

as prescribed in the G.R. dated 01.09.2015, but his pay has been wrongly fixed in contraventions of the said G.R. and therefore, excess amount was paid to the applicant. The applicant was aware about the fact that he was not entitled to get excess payment, but he received the said amount. It is his contention that the applicant received excess salary during the period from 01.7.2011 to 25.01.2017. His pay has been wrongly fixed since 01.07.2011 and thereafter he was promoted as Junior Clerk on 19.12.2011. After promotion also his pay has been wrongly fixed and he had received the excess amount as salary thereafter also. The respondents noticed the said irregularity and therefore, pay of the applicant has been re-fixed and recovery has been ordered. The applicant has himself deposited the amount of Rs. 38,900/- on 27.01.2017, as he has realized that he received excess amount. It is contention of the respondent No. 1 that there is no illegality in issuing the impugned order and therefore, he prayed to reject the present Original Application.

4. The respondent No. 5 has resisted the contention of the applicant by filing his affidavit in reply. It is contended by the respondent No. 5 that it is a Pay Verification Authority and it verifies the pay of the Government employees only on the formation of pay commission i.e. on 01.01.1996 and 01.01.2006. The applicant's pay on 01.01.2006 in the pay scale of Rs. 4440-

7440 was fixed at Rs. 6140 + Grade Pay of Rs. 1600/- by the department and it was verified by the respondents as per the pay fixation rules. The amount of Rs. 38,900/- had been recovered from the applicant by his office as shown in the recovery statement for the period from 01.07.2011 to 31.12.2016. The respondent No. 5 had never verified the pay of the applicant after 01.07.2011 and not suggested the recovery from the applicant. The applicant's pay was fixed wrongly earlier and therefore, the excess payment of salary was made to him. Therefore, the concerned department passed the impugned order and recovered the amount from the applicant. It is contended by the respondent No. 5 that as per the G.R. dated 01.09.2015 pay has been fixed by the respondents and there is no illegality in the impugned order of recovery. Therefore, it has prayed to reject the present Original Application.

5. I have Shri V.G. Pingle, learned Advocate for the applicant, Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondent Nos. 1 and 5 and Shri S.B. Mene, learned Advocate for respondent Nos. 2 to 4. I have perused the documents placed on record by both the parties.

6. Admittedly, the applicant was appointed as Chowkidar in Class-IV cadre on 29.06.1990. He was promoted as Junior

Clerk on 01.07.2011. On attaining the age of superannuation, he was retired on 30.04.2017. Admittedly, the pay of the applicant has been wrongly fixed w.e.f. 01.07.2011, when he was serving as a Junior Clerk. The pay granted to him was in contraventions of provisions of G.R. dated 01.09.2015. When the respondents realized the said fact, they corrected the mistake by re-fixing the pay of the applicant and noticed that the applicant received the excess amount of Rs. 38,900/- and therefore, impugned order has been passed by the respondents. Admittedly, the applicant had deposited the said amount with the respondents thereafter. Admittedly, the applicant retired on 30.04.2017 on attaining the age of superannuation.

7. Learned Advocate for the applicant has submitted that the pay has been wrongly fixed by the respondents and the applicant has no role in it. The applicant never misrepresented the respondents, while fixing the pay. The respondents on their own accord fixed the pay wrongly and therefore, excess payment was paid to the applicant. He has submitted that no fraud has been practiced by the applicant while getting the excess amount. He has submitted that the said mistake has been corrected by the respondents in the year 2017 by the impugned order and recovery of an amount of Rs. 38,900/- has been directed. The applicant has deposited the said amount. He has submitted that no notice

has been issued by the respondents to the applicant before re-fixation of pay and before issuing order directing recovery of an amount of Rs. 38,900/- from the applicant. He has submitted that the impugned order is illegal and arbitrary and against the principles of natural justice. The applicant was compelled to deposit the amount, as he was warned that in case he failed to deposit the amount, his pension papers will not be processed. He has submitted that the applicant was serving in Group-C cadre at the time of his retirement. The recovery has been made when he was on the verge of retirement. He has submitted that the recovery is not admissible in view of the principle laid down in case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.** in **Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** decided on 18.12.2014, wherein it is observed 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."

He has submitted that in view of the principles laid down in the about cited decision, the recovery of excess amount made from the applicant due to wrong pay fixation is illegal and therefore, he prayed to direct the respondents to refund the

amount of Rs. 38,900/- by allowing the present Original Application.

8. Learned Presenting Officer has submitted that the applicant was aware about the fact that his pay has been wrongly fixed in contraventions of the provisions of the G.R. dated 01.09.2015. She has submitted that the said fact has been noticed by the respondents and therefore, they re-fixed the pay of the applicant in view of the provisions of G.R. dated 01.09.2015 and ordered recovery of an amount of Rs. 38,900/- from the applicant. She has submitted that there is no illegality in the impugned order and therefore, recovery made from the applicant is legal one. She has submitted that the applicant had voluntarily deposited the said amount with the respondents and therefore, he is not entitled to get refund of it. On these grounds, she has prayed to dismiss the present Original Application.

9. On perusal of the record, it reveals that initially on 29.06.1999 the applicant was appointed as a Chowkidar in Group-D cadre. On 01.07.2011, he was promoted as Junior Clerk and at the time of fixation of pay on his promotion, his pay has been wrongly fixed w.e.f. 01.07.2011. The applicant has received salary in view of wrong pay fixation made w.e.f. 01.07.2011. When the respondents realized the said mistake,

they passed the impugned order dated 25.01.2017 and re-fixed the pay of the applicant in view of the G.R. dated 01.09.2015 and directed the recovery of an amount of Rs. 38,900/- towards excess payment made to the applicant on account of wrong fixation of pay. The applicant deposited the said amount with the respondents on 27.01.2017. The record shows that the mistake has been committed by the respondents while fixing the pay of the applicant on his promotion w.e.f. 01.07.2011. The applicant has not played any role in getting pay fixation, to which he was not entitled. The respondents on their accord fixed the pay of the applicant. The applicant had not played any fraud while getting his pay fixed w.e.f. 01.07.2011 and receiving excess payment. The said amount has been recovered by the respondents from the applicant on 27.01.2017, when he was on the verge of retirement. Admittedly, the applicant retired on 30.04.2017. The amount recovered from the applicant is for the period commencing from 01.07.2011 onward. The applicant was serving in Group-C cadre at the time of his retirement and therefore, in view of the guidelines given by the Hon'ble Apex Court in case of **Rafiq Masih** (cited supra), the said recovery is impermissible. The principles laid down in the above cited decision are most appropriately applicable in the instant case. The present case is squarely covered by the principles laid down in the above cited

decision. The respondents recovered the amount of Rs. 38,900/- from the applicant illegally and therefore, it is just and proper to direct the respondents to refund the amount of Rs. 38,900/-, which has been recovered from the applicant, when he was on the verge of retirement by allowing the present Original Application.

10. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The respondents are directed to refund the amount of Rs. 38,900/- recovered from the applicant on account of excess payment made to him due to wrong fixation of pay within a period of three months from the date of this order. Failing which, the respondents are liable to pay the interest @ 12% p.a. on the said amount from the date of this order. There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 26.10.2018.

(B.P. PATIL)

MEMBER (J)

KPB/S.B. O.A. No. 635 of 2017 BPP 2018 Refund of Recovered amount