

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

**ORIGINAL APPLICATION NO. 642 OF 2022**

**DISTRICT :BEED**

**Gopal s/o Mahadeo Waghmare,** )  
Age : 63 years, Occu. : Pensioner, )  
R/o. Mauli Nagar, Pangri Road, Beed, )  
District : Beed. )

.... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Education Department, )  
Mantralaya, Mumbai. )
2. **The Deputy Director of Education,** )  
Aurangabad Division, Aurangabad )
3. **The Education Officer (Planning),** )  
Zilla Parishad, Beed, District Beed. )
4. **The Accounts Officer,** )  
Pay Verification Unit, Aurangabad. )

... **RESPONDENTS**

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**APPEARANCE** : Shri A.D. Gadekar, Counsel for Applicant.

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

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

**DATE** : **12.03.2024**  
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**O R A L - O R D E R**

1. Heard Shri A.D. Gadekar, learned counsel appearing for the applicant and Shri A.P. Basarkar, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application is disposed of with the consent of both the parties at the admission stage itself.

3. By filing the present Original Application, the applicant is seeking directions to the respondent Nos. 2 and 3 to refund the recovered amount of Rs. 2,20,344/- deducted as excess payment from retirement gratuity of the applicant by the respondent No. 3 to the applicant in view of the judgment and order delivered in case of State of Punjab Vs. Rafiq Masih in Civil Appeal No. 11527/2014.

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

(i) The applicant was serving on the post of Assistant Project Officer in the office of respondent No. 3 and he has been retired on attaining the age of superannuation w.e.f. 30.06.2021. Initially the applicant was appointed on the post of Supervisor in the pay scale of Rs. 335-680 by order dated 29.01.1980 and as per the order dated 12.10.2006 issued by the Dy. Director of Education, Aurangabad Division, Aurangabad, he was absorbed on the post of Assistant Project Officer. He was posted in the office of Adult Education Officer, Beed and his pay was fixed in the

pay scale of Rs. 1400-2600. The applicant had served at different places till his retirement. The applicant was awarded senior Grade of Rs. 6500-10500 in the 5<sup>th</sup> Pay Commission and after completion of 12 years' service on the post of Assistant Project Officer, time bound promotional pay scale was granted to the applicant i.e. 2000-3500 and after completion of 24 years' service, the second time bound promotion pay scale of Rs. 9300-34800, Grade Pay 5400 was awarded to the applicant.

(ii) It is further case of the applicant that after his retirement surprisingly in terms of the objections of the respondent No. 4, the respondent No. 3 has re-fixed the pay scale and pay fixation in the pay scale of Rs. 5000-8000 cancelling the pay scale of Rs. 5500-9000 granted earlier to the applicant on completion of 12 years' service.

(iii) According to the applicant, he came to be retired on 30.06.2012 and excess payment amounting to Rs. 2,20,344/- was deducted from the retirement gratuity of the applicant on 22.08.2013. Hence, the present Original Application.

5. Learned counsel for the applicant submits that after retirement of the applicant his service book was submitted for verification for the purpose of grant of pension and pensionary benefits to the office of respondent No. 4. However, the respondent No. 4 has raised certain objections in respect of grant of revised senior pay scale of Rs. 5000-8000. The respondent No. 4 also took objections in respect of pay fixation of the applicant in the revised senior grade.

6. Learned counsel for the applicant submits that the applicant came to be retired from Group-C post i.e. Class-III post and in terms of ratio laid down by the Hon'ble Apex Court in the judgment and order in **Civil Appeal No. 11527/2014 arising out of SLP (C) No. 11684/2012** in the case of **State of Punjab Vs. Rafiq Masih**, decided on 18.12.2014, the recovery as done is impermissible. Learned counsel submits that the case of the applicant is fully covered by the aforesaid ratio laid down by the Hon'ble Apex Court in the case of **State of Punjab Vs. Rafiq Masih** (cited supra).

7. Learned counsel for the applicant submits that the applicant is not anyway responsible for the mistake committed by the competent authority in respect of wrongful grant of pay

scales and wrongful grant of salary. The applicant has not misled the authority in any manner. The applicant was granted the said benefit from the year 1996 to 2009. Learned counsel submits that the relevant extract is at Annexure A-4 drawn by the respondent authorities.

8. Learned Presenting Officer (for short P.O.) on the basis of affidavit in reply filed on behalf of respondent Nos. 1 and 2 submits that while granting new pay scale to the employees, the employees have to give an undertaking in term of clause No. 15.6 of the Circular dated 29.04.2009 to the effect that if there would be any wrong fixation and if there would be any excess payment made to the employee due to wrong fixation, he / she would be liable to repay the same to the Government. Copy of the said Circular is marked as Annexure R-1. Learned P.O. has fairly admitted that there is no undertaking taken from the applicant in terms of the aforesaid Circular at any point of time till his retirement.

9. Learned Presenting Officer submits that due to wrong fixation, the Pay Verification Unit, Aurangabad has raised objection about the excess payment made to the tune of Rs. 2,20,344/- and as such, the same was recovered from the

applicant's retirement gratuity after his retirement on 30.06.2012. Learned P.O. submits that ratio laid down in **State of Punjab Vs. Rafiq Masih, 2015-SCW-501** passed in Civil Appeal No. 11527/2014 decided on 18.12.2014 is not at all applicable to the facts and circumstances of the present case. Learned P.O. submits that the action of making recovery as per the rules and as per the Government Notification and in view of the same, as per the judgment and order passed in Civil Appeal No. 3500/2006 passed by the Hon'ble Apex Court in a case of **High Court of Panjab and Haryana vs. Jagdev Singh**, decided on 29.07.2016, the recovery is permissible. Learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed with costs.

10. The applicant was retired on 30.06.2012 while working on Class-III post. The same also not denied by the respondent authorities. It also appears that the said amount towards the excess payment has been recovered from the applicant after his retirement from his retiral benefits. It is further clear from the existing extract submitted by the respondent authorities (Annexure A-4) that the said amount has been paid to the applicant during the period from 1996 to 2009 i.e. almost for 13 years.

11. 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 directed as follows :-

*“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.”*

In view of the aforesaid authoritative pronouncement by the Hon'ble Apex Court, the case of the applicant is squarely covered by clause Nos. (i), (ii) & (iii) as mentioned above.

12. It is further clear that the amount is recovered from the pensionary benefits of the applicant, though it is impermissible. Though it is submitted by learned Presenting Officer that the applicant was bound to give an undertaking in terms of Government Circular dated 29.04.2009, however, it is an admitted position that the respondents have not taken any undertaking from the applicant in terms of the said Circular to refund the amount to the Government, if paid in excess.

13. In a case of **High Court of Panjab and Haryana & ors. vs. Jagdev Singh**, decided on 29.07.2016 relied upon by the learned Presenting Officer, the ratio laid down therein may not be applicable to the facts and circumstances of the present case. In a case of **High Court of Panjab and Haryana & Ors. vs. Jagdev Singh** (cited supra), the respondent employee was appointed as a Civil Judge (Junior Division) and he was given an undertaking at the time when the pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. In the facts of the said case, it is observed by the Hon'ble Apex Court that the Respondent employee 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.



14. In view of the above discussion and in terms of the ratio laid down in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc.** (cited supra), the present Original Application deserves to be allowed. In view of the same, the applicant is entitled for refund of the said amount recovered from his pensionary benefits along with interest @ 9% p.a. from the date of actual recovery till the date of refund. Hence, the following order :-

**ORDER**

- (i) The Original Application No. 642/2022 is hereby allowed.
- (ii) The respondent Nos. 2 & 3 are hereby directed to refund the amount of Rs. 2,20,344/- 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.
- (iii) In the circumstances, there shall be no order as to costs.
- (iv) The Original Application accordingly disposed of.

**PLACE : Aurangabad.**  
**DATE : 12.03.2024**

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