

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

**ORIGINAL APPLICATION NO. 662 OF 2022**

**DISTRICT : NANDED**

**Rajayya s/o Parasayya Makulwar,** )  
Age : 60 years, Occu. : Nil (Pensioner), )  
R/o Near Vitthal Rukmini Mandir, )  
Pawan Nagar, Malegaon Road, Nanded. )

.... **APPLICANT**

**V E R S U S**

**1. The State of Maharashtra,** )  
Through its Principal Secretary, )  
Finance Department, M.S., )  
Mantralaya, Mumbai-32. )

**2. The Superintendent of Police,** )  
Nanded, Vazirabad, Nanded. )

**3. The Accounts Officer,** )  
Pay Verification Unit, Aurangabad, )  
Treasury Office, Near S.T. Colony, )  
Aurangabad. )

**4. The Accountant General (A&E)-II,** )  
Maharashtra State, Civil Line, )  
Nagpur-440001. )

... **RESPONDENTS**

**APPEARANCE** : Shri Avinash Deshmukh, Counsel for  
Applicant.

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

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

**DATE** : 18.01.2024

**ORAL - ORDER**

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

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

3. By filing the present Original Application, the applicant is seeking direction that the impugned actions of respondent No. 2 of recovering an amount of Rs. 3,37,000/- from the Gratuity amount and an amount of Rs. 3,95,626/- from the Leave Encashment amount of the applicant is bad, illegal and unsustainable in law. The applicant is also seeking direction to respondent No. 2 to refund the amounts of Rs. 3,37,000/- and Rs. 3,95,626/- together with interest @ 18% p.a. from the date of recovery till realization within stipulated time as may be deemed fit by this Hon'ble Tribunal.

4. Facts in brief as stated by the applicant giving rise to the Original Application are as follows :-

(i) The applicant belongs to the reserved category of NT-B and he is Ex-serviceman. On 17.11.2003, the applicant entered the service of the Government of Maharashtra in its Home / Police Department as a Constable in the Nanded District Police Force. After serving the Police Department for a period of 18 years, the applicant retired w.e.f. 28.02.2021 upon attaining the age of superannuation.

(ii) The applicant submits that upon his entry in service of the Police Department in 2003, initially the office of respondent No. 2 had fixed his pay without taking into consideration his Army Service and therefore, his basic pay was fixed at Rs. 3050/- in the pay scale of Rs. 3050-4590 as on 17.11.2003 with next yearly increment of Rs. 3125/- and 3200/- to be due on 01.11.2004 and 01.11.2005. Later on the office of respondent No. 2 re-fixed the applicant's basic pay at time of his entry in service i.e. as on 17.11.2003 at Rs. 4270/- in view of the provisions of G.R. dated 06.08.2001. Not only that, but his basic pay as on 01.11.2004 was fixed at Rs. 4,350/- by giving him the benefit of yearly increment of Rs. 80/- and it was said that he would be entitled to get his further yearly increment thereafter on 01.11.2005. Copy of an order to that effect

was issued by respondent No. 2 on 12.07.2005 (Annexure A-1). Bare reading of the first paragraph of it shows that, though previously the pay of the applicant and other six similarly placed ex-servicemen, who had entered service of the Police Department was already fixed, however it was re-fixed by taking into consideration the provisions of G.R. dated 06.08.2001 (Annexure A-2).

(iii) It is the case of the applicant that the so far as above referred action of re-fixation of his basic pay upon entry in service of the Police Department is concerned, it was done by respondent No. 1 on his own and that was on the basis of G.R. dated 06.08.2001 by keeping in mind the previous service rendered by the applicant in the Indian Army. The said action taken by respondent No. 2 on his own volition and it was not the case that the applicant had made any misrepresentation with regard thereto or that he had played any fraud in getting his basic pay re-fixation by respondent No. 2 vide order dated 12.07.2005.

(iv) It is the case of the applicant that the applicant worked under the Police Department for a period of 18 years, during which he has been extended all consequential

financial benefits (Revised pay, benefits of ACPS, which was extended w.e.f. 17.11.2015 vide order dated 31.01.2016 etc.). Entries in respect of all those benefits were duly recorded in his service book. The applicant submits that throughout his service under the Police Department he received all his pay and allowances on the basis of his above referred basic pay fixed by respondent No. 2 way back in 2005.

(v) Though on 28.02.2021 the applicant retired on superannuation, his pension and other pensionary benefits were not sanctioned by the respondents for the reasons best known to them. The applicant when tried to collect the information about the reason behind non-sanctioning of his pension and pensionary benefits, he learnt that certain recovery was to be effected from the amount of his pensionary benefits. The applicant was not served with any order regarding the so-called recovery to be effected from his pensionary benefits in spite of the fact that the order had already been passed by respondent No. 2 on 22.12.2020, itself on the basis of objection raised by respondent No. 3 to his pay fixation. However, the applicant

was kept in dark about it and hence, he could do nothing about it.

(vi) In these circumstances, the applicant had made representations to respondent No. 2 on 22.04.2021 and 7.5.2021 stating therein that no recovery be effected from him in view of judicial pronouncement / Govt. orders. The applicant along with his representations annexed the Circular dated 05.09.2018 issued by the office of Director General of Police (DGP), State of Maharashtra informing all Unit Heads in the Police Department not to effect recoveries from the retired police personnel (Annexure A-4 collectively). The applicant submitted one more exhaustive representation to respondent No. 2 on 11.10.2021 reiterating his same request (Annexure A-5). In the said representation dated 11.10.2021, the applicant urged to respondent No. 2 that not to recover an amount of Rs. 7,00,000/- from him. The amount of Rs. 3,37,000/- being recovered from the amount of his gratuity and an amount of Rs. 3,95,626/- being recovered from the amount of his Leave Encashment. The applicant has annexed an authority letter issued by the respondent No. 2 on 10.01.2022 for payment of Leave Encashment (Annexure A-

5(a)), which clearly shows that out of the total amount of Rs. 4,13,985/-, an amount of Rs. 3,95,626/- was to be recovered and only remaining amount of Rs. 18359/- was to be paid to him.

(vii) It is the case of the applicant that the action of respondents of recovering an amount of Rs. 3,37,000/- from his gratuity and amount of Rs. 3,95,626/- from his Leave Encashment was patently bad and untenable. Hence, the present Original Application.

5. Learned counsel for the applicant submits that the applicant has repeatedly requested respondent No. 2 not to effect any recovery from him in view of the judicial pronouncement and the Government orders. The respondent No. 2 on the other hand submitted his pension papers to respondent No. 4 on the basis of his lower pay fixation and the respondent No. 4 was pleased to sanction the applicant's pension case on 07.09.2021. The respondent No. 4 has sanctioned amounts of Rs. 3,37,750/-, 19,300/- and 7,75,490/- towards his Gratuity, Monthly Pension and Commuted Value of his pension respectively. However, the respondent No. 4 has specifically conveyed to respondent No. 2 that the decision regarding recovery of amount of Rs. 3,37,000/-

from the applicant be taken at his end in the light of the judgment of the Hon'ble High Court, Bench at Aurangabad in **W.P. No. 695/2016 (Prabhakar Ramdas More and Ors. Vs. State of Maharashtra and Others), reported in 2018 (4) MhLJ 383.**

6. Learned counsel for the applicant submits that there are identical cases wherein recovery has been made from the retired employees of the Police Department from their retiral benefits on the ground of alleged excess payment made to them due to wrong pay fixation and the Hon'ble High Court was pleased to direct the respondents to refund the amount recovered from the gratuity and retirement dues paid to the petitioners therein with interest @ 10% p.a. from the date of recovery till realization, as expeditiously as possible, preferably within six months from the date of judgment.

7. Learned counsel for the applicant submits that the Hon'ble Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc., 214 MhLJ Online (S.C.) 47=2015(4) SCC 334**, has laid down certain guidelines in such a cases for recovery of amount from the retired employees from retiral benefits. Learned counsel submits that the present Original Application deserves to be allowed and the impugned



actions of respondent No. 2 of recovery of an amount of Rs. 3,37,000/- from the Gratuity amount and an amount of Rs. 3,95,626/- from the Leave Encashment amount may kindly be declared bad, illegal and unsustainable in law and the said amounts be refunded to the applicant with interest @ 18% p.a. from the date of recovery till realization within stipulated period.

8. Respondent Nos. 2, 3 & 4 have filed affidavit reply separately. On the basis of affidavit in reply on behalf of respondent No. 2, learned Presenting Officer (for short 'P.O.') submits that the applicant came to be retired from service on 28.02.2021 and at that time his service book was sent to the respondent No. 3 for verification by the Accountant Officer for salary fixation purpose as per office letter dated 24.09.2020. Learned Presenting Officer submits that salary fixation of the applicant was incorrect. Further the applicant is ex-serviceman and he was directed to submit final salary certificate from Army in view of the G.R. dated 06.08.2001. Learned P.O. submits that the respondent No. 2 had recovered the said amount from the applicant as an excess payment due to wrong fixation of pay. Learned P.O. submits that though the last pay certificate was not received from the applicant, the respondent No. 3 re-fixed the pay as per G.R. dated 06.08.2021 and the fixation was done, as

the applicant was ex-serviceman. Learned P.O. submits that the recovery from 2016, which is paid in excess to the applicant, came to be recovered from him.

9. On the basis of affidavit in reply filed on behalf of respondent No. 3, learned Presenting Officer submits that the respondent No. 3 has taken objection on 24.09.2020 that pay fixation of the applicant is incorrect for the reason that the appointment of the applicant is from Ex-servicemen category and therefore, his pay fixation is required to be done as per G.R. dated 06.08.2001. However, the respondent No. 2 has not done the pay fixation of the applicant in terms of G.R. dated 06.08.2001 and therefore, the office of respondent No. 3 taken objection on 24.09.2020 regarding pay fixation of the applicant and in view of the same, the office of respondent No. 2 has issued the revised order of fixation of pay of the applicant on 22.12.2020 after due verification of service book of the applicant.

10. In view of the affidavit in reply filed on behalf of respondent No. 4, learned Presenting Officer submits that the applicant retired on 28.02.2021 on attaining the age of superannuation as Police Naik from respondent No. 2 and the pension proposal came to be forwarded by respondent No. 2 to

respondent No. 4, which received on 14.07.2021. In the No Dues Certificate sent to respondent No. 4, it is mentioned that an amount of Rs. 3,37,000/- towards overpayment of pay and allowances is to be recovered from the applicant. It is also mentioned in the No Dues Certificate that recovery of the said amount may result in contempt of Court as per the judgment delivered by the Hon'ble High Court of Bombay, Bench at Aurangabad on 05.09.2018 in W.P. No. 695/2016. Further the respondent No. 2 had not mentioned about the recovery of Rs. 3,37,000/- under Sr. No. 48 of Recovery of Government Dues of Section B and the same was kept blank. In view of the same, as per the proposal forwarded by the respondent No. 2 to respondent No. 4 had not incorporated recovery of Rs. 3,37,000/- and the respondent No. 2 was requested to take the decision with regard to the said recovery at his end in the light of the judgment delivered by the Hon'ble High Court of Bombay, Bench at Aurangabad. The respondent No. 4 has not ordered any recovery from the pensionary benefits of the applicant.

11. Learned Presenting Officer submits that the applicant is at fault and as such, the recovery has been done correctly in accordance with law. There is no substance in the present Original Application and the same is liable to be dismissed.

12. It is not disputed that the applicant is class-III employee. It further appears that in the said process of wrong pay fixation, the applicant had no role. The applicant retired from the service on superannuation on 28.02.2021. In terms of the observations and 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), the clause Nos. (i) & (ii) are applicable to the facts of the present case. The respondents have recovered the amount from the applicant, who is belonging to Class-III category. It further appears that the amount of Rs. 3,37,000/- came to be recovered from the Gratuity amount, which is impermissible and an amount of Rs. 3,95,626/- from the Leave Encashment amount of the applicant. Further it is not disputed that the said wrong pay fixation was done way back in the year 2005 and the aforesaid amounts came to be recovered from the pensionary benefits of the applicant. It further appears that the same has been done without passing any formal order.

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 guidelines :-

“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. In a case of **Prabhakar s/o Ramdas More and Others Vs. State of Maharashtra and Ors., 2018(4) Mh.L.J. 383**, the Division Bench of the Hon’ble High Court of Bombay, Bench at Aurangabad by referring earlier judgment in **W.P. No. 5367/2016 (Ravindra s/o Ramchandra Patil Vs. the State of Maharashtra and Ors.)**, dated 18.07.2017 has directed the authorities to refund the amount recovered from the gratuity and retirement dues paid to

the petitioners therein together with interest at the rate of 10% per annum from the date of recovery till realization, as expeditiously as possible, preferably within six months from the date of the order.

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

**ORDER**

- (i) The Original Application is hereby allowed.
- (ii) The respondent No. 2 is directed to refund the amounts of Rs. 3,37,000/- and Rs. 3,95,626/- recovered from the Gratuity and Leave Encashment respectively paid to the applicant, together with interest at the rate of 10% per annum from the date of recovery till realization, as expeditiously as possible, preferably within six months from the date of this order.
- (iii) In the circumstances, there shall be no order as to costs.
- (iv) The Original Application accordingly disposed of.

**PLACE : Aurangabad.**  
**DATE : 18.01.2024**

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