

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 697 OF 2017

(Subject – Refund of Excess Amount)

DISTRICT: AURANGABAD

Smt. Syeda Ashraf Nadima w/o)
Mr. Qazi Moinuddin,)
 Age: 61 years, Occu. : Pensioner,)
 R/o : B-22, Kohinoor Colony,)
 Near Ghati Hospital, Aurangabad,)
 Tq. & Dist. Aurangabad.)

.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
 Through its Principal Secretary,)
 School Education Department,)
 Mantralaya, Mumbai-32.)
- 2) **The Divisional Deputy Director**)
Of Education, Aurangabad Division,)
 Aurangabad.)
- 3) **The Director of State Institute of**)
English Language Learning,)
 Aurangabad, Tq. & Dist. Aurangabad.)
- 4) **The Accountant Officer,**)
 Pay Verification (Squad),)
 Aurangabad,)
 Tq & Dist. Aurangabad.)

.. RESPONDENTS

APPEARANCE : Shri P.B. Salunke, Advocate for the Applicant.

: Smt. Deepali S. Deshpande, Presenting Officer for
 the Respondents.

CORAM : **JUSTICE A.H. JOSHI, CHAIRMAN.**

Reserved on : **09.07.2018.**

Pronounced on : **24.07.2018.**

ORDER

1. Heard Shri P.B. Salunke, learned Advocate for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for respondents.

2. Applicant's plea as averred in paragraph No. 7(I) to 7(V) is quoted below:-

“07. FACTS IN BRIEF OF THE PRESENT CASE AS ARE AS UNDER:

(I) *The applicant was serving on the post of Principal Government D.Ed. College, Aurangabad and was retired from the said post on 30.04.2013.*

(II) *The applicant is possessing B.Sc. B.Ed. qualification and was appointed as Assistant Teacher under D.Ed. College Jalna by order dated 28.11.1981 in the scale of 395-800. Copy of initial order of appointment on the post of Assistant Teacher under Government D.Ed. College, Jalna dated 28.11.1981 is annexed herewith and marked as **EXHIBIT-A.***

(III) *That, the applicant was further appointed on the post of Assistant Educational Inspector (Secondary) under Z.P. Aurangabad by order dated 12.07.2004. Copy of order dated 12.07.2004 is annexed herewith and marked as **EXHIBIT-B.***

(IV) *That, the applicant was further promoted the post of Principal, Government D.Ed. College, Aurangabad temporarily by order dated 18.04.2006. That, further*

she was promoted under M.E.S. Group-B (Administrative Branch) on the said post by order dated 21.04.2006. Copies of order dated 18.04.2006 and 21.04.2006 are annexed herewith and marked as **EXHIBIT-C Colly.**

(V) That, the applicant was initially awarded senior grade of Rs. 1640-2900 under Chatoppadya after completion of 12 years service on the post Assistant Teacher from 01.12.1993. However, subsequently it is found that, the applicant comes under the cadre of Maharashtra Educational Services (Administrative Branch) Group C therefore, she is entitled for time bound pay scales as per G.R. dated 08.06.1995 from 01.10.1994. Therefore, the respondent No. 2 issued a letter on 15.05.2010 for the payment of excess payment on account of the said two pay fixations to the applicant. Copy of letter dated 15.05.2010 is annexed herewith and marked as **EXHIBIT-D.**”

(Quoted from page nos. 4 to 6)

3. The applicant has placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **State of Punjab & Ors. etc. Vs. Rafiq Masih (White Washer's case)**, Civil Appeal No. 11527/2014 dated 18.12.2014 and common order passed by this Tribunal in O.A. Nos. 23, 24, 25, 26, 73, 116, 128 & 156 all of 2016 in case of **A.N. More & Ors. Vs. The State of Maharashtra & Ors.** on 02.09.2016.

4. The present Original Application has been opposed by the State by filing affidavit in reply. Defence of the State is averred in paragraph no. 4, which runs as follows:-

“4. With reference to paragraph No. 7(I) to 7 (V), I say and submit that the applicant was appointed on the post of Assistant Master on 02.12.1981 in the pay Scale of (395-800). As per 4th pay commission the Pay Scale of the applicant was revised to (1400-2600) w.e.f. 01.01.1986. The applicant was working in services of the Maharashtra Education services Group-C and was not eligible to get the benefit of senior scale on completion of 12 years service on 01.12.1993. The applicant was entitled to get the benefit of the pay scale of Promotional Post in Time bound Promotion Scheme as per Government Resolution dated 08.06.1995 with effect from 01.10.1994. However, the office of the applicant wrongly granted her the benefit of Senior Scale of Rs. (1640-2900) with effect from 01.12.1993. This mistake was corrected by the Respondent No. 2 by its order dated 15.05.2010 (Exhibit-D) and the recovery of overpayment was ordered. However the overpayment was not recovered by the office of the applicant. When the service book of the applicant was submitted for verification to the office of the Answering Respondent this was again brought to the notice of the office of the applicant. The office of the applicant calculated the overpayment and recovered Rs. 66314/- from the applicant.”

(quoted from page No. 59)

5. The applicant has either shrewdly or honestly pleaded in paragraph No. 4 of the O.A. as follows:-

“4.....

That, there is no misrepresentation or fraud on the part of the applicant in getting the pay scales or pay fixation and receiving excess payment allowance and advances. That, the

respondent No. 2 and 3 are fully responsible for the excess payment recovered by deduction from the retirement gratuity of the applicant at the time of her retirement.”

(Quoted from page No. 2 of memo of O.A.)

6. While answering the contents of paragraph Nos. 1 to 6 of the O.A., the respondent No. 4 has averred as follows:-

“3. With reference to paragraph No. 1 to 6 needs no comments.”

(Quoted from page No. 58)

7. It transpires that the revision of pay scale of Rs. 1400-2600 was done by giving effect from 01.01.1986. The stand taken by the State is totally lacking eloquence. The recovery is now sought to be done relates to the disbursement which is as on this, pertains to entitlement for the period of 01.01.1986 onwards.

8. It is not shown that the recovery pertains to the period of disbursement within five years from the date of retirement. It is also not shown that the applicant was in any responsible for receiving money from the Government or otherwise her being cause for the said payment, which according to the Government, applicant was not entitled.

9. In the result, it transpires that the recovery which is caused is directly hit by the ratio laid down in the judgment of Rafiq Masih's case (supra). In paragraph No. 12 of the said judgment the said

recovery is permissible in view of clause Nos. (ii), (iii) & (v), which are quoted below for ready reference:-

“12.....

(i)

(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)

(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.”*

10. It is not shown by the State as to why the protection of Rafiq Masih's case relied upon by the applicant is erroneous.

11. In the result, the Original Application succeeds in terms of prayer clause 17(B), which runs as under:-

“17 (B) *The respondent No. 1 may kindly be directed to direct the respondent No. 2 and 3 to refund the recovered amount of 66,314/- (Rs. Sixty Six Thousand Three Hundred Fourteen Only) deducted as excess payment by the respondent No. 3 to the applicant in view of the ratio/judgment and order delivered in*

*case of **State of Punjab V/s Rafiq Masih**, in Civil Appeal No. 11527/2014 decided on 18.12.2014 as the case of the applicant is fully covered by this judgment in the interest of justice.”*

12. The amount of Rs. 66,314/- be paid to the applicant with interest @ 12 p.a. till actual date of payment.

13. Parties are directed to bear own costs.

PLACE : AURANGABAD.
DATE : 24.07.2018.

(A.H. JOSHI)
CHAIRMAN