

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 791 OF 2017
(Subject – Refund of Excess Amount)**

DISTRICT : AURANGABAD

Shri Bhikaji S/o Dhondiba Gadekar,)
Age : 60 years, Occu. : Pensioner,)
R/o : Shiv-Lila, Plot No. 28,)
Nutan Yashwant Housing Society,)
N-8, D-1, CIDCO, Aurangabad,)
Tq. & Dist. Aurangabad.)

.. **APPLICANT**

V E R S U S

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

.. **RESPONDENTS**

APPEARANCE : Shri P.B. Salunke, Advocate holding for Shri
V.G. Salgare, Advocate for the Applicant.

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

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

DATE : 14.03.2019.

ORAL - ORDER

1. The applicant has approached this Tribunal with a prayer to direct the respondents to refund the amount of Rs. 2,22,202/- recovered from his pensionary benefits by filing the present Original Application.

2. The applicant has possessed M.A., D.H.E., M. Phil and B.Ed. On the basis of said qualification, he was appointed on the post of Supervisor in the office of Adult Education Officer, District Jalna on 10.05.1985. Thereafter, he was regularized in the said post. He retired on the same post on attaining the age of superannuation on 31.07.2014 from the office of Education Officer (C.E.), Zilla Parishad, Aurangabad.

3. It is contention of the applicant that initially he was appointed in the pay scale of Rs. 335-680 as per the recommendation of 3rd Pay Commission. As per the recommendation of 4th Pay Commission, pay scale of Rs. 1200-2040 was granted to him w.e.f. 02.04.1998. As per the recommendation of 5th Pay Commission, the pay scale of Rs. 4500-7000, 5000-8000 and 5500-9000 was granted to him by the order dated 26.06.2008 issued by the respondent No. 2. His pay was fixed in the senior grade pay having pay scale of Rs.

5500-9000 by the order dated 30.07.2018. He never made any representation before the respondents for getting said pay scale. When he was due for retirement, his service record was submitted to the Respondent No. 4 i.e. Accounts Officer, Aurangabad for verification and at that time the respondent No. 4 has raised objection that the applicant was entitled for the pay scale of Rs. 5000-8000 instead of pay scale of Rs. 5500-9000. On the basis of said objection, the respondent No. 2 issued direction to the respondent No. 3 Education Officer that those Supervisors, who have completed 45 years of their age they are exempted from departmental examination and as per the objections the applicant and similarly situated employees are entitled for the senior grade pay scale of Rs. 5000-8000 and not for the pay scale of Rs. 5500-9000. Accordingly, the respondent No. 3 re-fixed the pay of the applicant by the order dated 25.02.2014. By the order dated 11.08.2014, the respondent No. 2 directed to grant pay scale of Rs. 5000-8000 instead of 5500-9000 to the applicant. The respondent No. 2 thereafter, issued the order dated 03.11.2014 to the applicant informing that excess payment of Rs. 2,22,202/- has been paid to him and therefore, he directed to recover the said amount from the retirement benefits i.e. from D.C.R.G. amount. Accordingly, the said amount has been

deducted from the gratuity amount of the applicant by the respondent No. 3. It is contention of the applicant that the respondent No. 3 has illegally recovered the amount and it is against the guidelines issued 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 and reported in **2015 (4) SCC 334**.

4. It is contention of the applicant that he is Group-C employee at the time of his retirement. The said recovery has been directed when he was on the verge of retirement and the said amount has been recovered from his pensionary benefits. Therefore, such type of recovery is impermissible in view of the guidelines given 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 and reported in **2015 (4) SCC 334**. The respondent No. 3 has illegally recovered the said amount. Therefore, the applicant has filed the present O.A. and prayed to direct the respondents to refund the amount of Rs. 2,22,202/- recovered from his pensionary benefits.

5. The respondent Nos. 1 and 2 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the facts regarding initial appointment of the applicant, pay scale granted to him, as well as, re-fixation of pay and recovery of an amount of Rs. 2,22,202/- from the pensionary benefits of the applicant. It is their contention that the pay scale of Rs. 5500-9000 was wrongly granted to the applicant, though he was not eligible and entitled and this mistake has been noticed by the Pay Verification Unit, Aurangabad, when the service record of the applicant has been sent to him for verification. The respondent No. 4 raised the objection that the applicant was not entitled to get pay scale of Rs. 5500-9000, which was granted to him and in fact, he was entitled to get pay scale of Rs. 5000-8000 as per the G.R.. Accordingly, the pay of the applicant has been revised. Because of the wrong pay fixation, an amount of Rs. 2,22,202/- has been paid to the applicant and therefore, it had been recovered from his pensionary benefits. It is their contention that the said recovery is legal. It is their contention that the principles laid 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 and reported in **2015 (4) SCC 334** are not attracted in this case and therefore, they have prayed to reject the present Original Application.

6. The respondent No. 4 has filed their affidavit in reply and resisted the contentions of the applicant. He has admitted the fact that the applicant was appointed on the post of Supervisor in the pay scale of Rs. 335-680 in view of the recommendation of 3rd Pay Commission on 03.04.1986. His pay was revised as per the recommendation of 4th Pay Commission in the pay scale of Rs. 1200-2040. Thereafter, it was revised in view of recommendation of 5th Pay Commission in the pay scale of Rs. 4000-6000 w.e.f. 01.01.1996. It is his contention that the post of Assistant Project Officer is promotional post for the employees, who are working on the post of Supervisor. The pay scale of Assistant Project Officer was Rs. 1400-2300 as per the 4th Pay Commission and the said pay scale was revised to Rs. 5000-8000 in the 5th Pay Commission. The pay scale of Assistant Project Officer was again revised from the pay scale of Rs. 5000-8000 to Rs. 6000-10000 in the 5th Pay Commission w.e.f. 01.03.2000 vide G.R. dated 05.11.2008.

7. It is contention of the respondent No. 4 that on completion of 12 years on the post of Supervisor, the applicant was granted benefit of time bound promotion scheme and he was granted pay scale of promotional post of Assistant Project Officer and his pay scale was raised from Rs. 4000-6000 to Rs. 5000-8000 w.e.f. 02.04.1998 by the order dated 30.03.2005. However, on 30.07.2008, the wrong pay scale of Rs. 5500-9000 was granted to the applicant by his office, though he was not entitled for the same w.e.f. 02.04.1998 on the basis of letter dated 13.03.2005 issued by the respondent No. 2. In fact, the applicant was entitled to get pay scale of Rs. 5000/- in the pay scale of Rs. 5000-8000, but it was fixed at Rs. 5500/- in the pay scale of Rs. 5500-9000. Due to wrong fixation of pay in the pay scale of Rs. 5500-9000, the applicant had received excess payment and the overpayment of Rs. 2,13,302/- was made to the applicant for the period from 03.04.1998 to 31.07.2014.

8. It is contention of the respondent No. 4 that at the time of retirement of the applicant, the service book of the applicant has been submitted for verification to the pay verification unit and at that time the pay verification unit noted the mistake in the fixation of pay and therefore, it has been brought to the notice of the office of the applicant by raising

objection. On the basis of objection raised by the pay verification unit, the office of the applicant corrected the said mistake and re-fixed the pay of the applicant and thereafter, respondent No. 3 has issued the order dated 16.08.2014 and directed recovery of excess payment made to the applicant. It is his contention that he was responsible for verification of the service book of the applicant in the light of the Pay Verification Rules and he is not responsible for overpayment or recovery of excess amount paid to the applicant. It is contended by him that the recovery has been done in accordance with the Rules and there is no illegality in it. Therefore, he has prayed to reject the present Original Application.

9. I have heard Shri P.B. Salunke, learned Advocate holding for Shri V.G. Salgare, learned Advocate for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

10. Admittedly, the applicant was initially appointed in the pay scale of Rs. 335-680 as per the recommendation of 3rd Pay Commission on 03.04.1986. His pay has been revised as per the recommendation of 4th Pay Commission in the pay scale of

Rs. 1200-2040 w.e.f. 02.04.1998. Again pay scale of the applicant has been revised as per the recommendation of 5th Pay Commission w.e.f. 1.11.1999 and pay scale of 5500-9000 was granted to the applicant by the order dated 26.06.2008 issued by the respondent No. 2. There is no dispute about the fact that in the Adult Education Department, the post of Assistant Project Officer is promotional post for the employees, who are working on the post of Supervisor. The pay scale of Assistant Project Officer was Rs. 5000-8000 as per the 5th Pay Commission. There is no dispute about the fact that on completion of 12 years' service on the post of Supervisor, the applicant was granted benefit of time bound promotion scheme and he was granted pay scale of promotional post i.e. Assistant Project Officer in the pay scale of Rs. 5000-8000 w.e.f. 02.04.1998. There is no dispute about the fact that the applicant was granted wrong pay scale of Rs. 5500-9000 by the respondents by the order dated 30.06.2008, though he was not entitled to get the same. There is no dispute about the fact that because of wrong fixation of pay, the applicant has received excess payment in the tune of Rs. 2,22,202/-. Admittedly, the applicant has not challenged the order of re-fixation of his pay.

11. The only grievance of the applicant is regarding the recovery of amount of excess payment made to him from his pensionary benefits.

12. Learned Advocate for the applicant has submitted that wrong pay scale has been granted to the applicant by the respondents on their own accord. The applicant had not played any role in getting the said pay scale. He has submitted that the applicant has never practiced fraud on the respondents or misrepresented them in getting the pay scale of Rs. 5500-9000, to which he was not entitled. He has submitted that the excess payment has been made to the applicant because of wrong fixation of pay during the period commencing from 03.04.1998 to 31.07.2014. He has submitted that the said recovery has been ordered, when the applicant was on the verge of retirement and recovery has been made from the pensionary benefits of the applicant. He has submitted that such type of recovery from the employees like the applicant, who is belonging to Group-C (Class-III) category is not permissible in view of the guidelines given 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 and reported in **2015 (4) SCC**

334. He has submitted that the said recovery has been made from the pensionary benefits of the applicant and such recovery is illegal and therefore, he has prayed to direct the respondents to refund the amount of Rs. 2,22,202/- recovered from the pensionary benefits of the applicant illegally.

13. Learned Advocate for the applicant has submitted that in view of the decision of the Hon'ble Apex Court in case of **Ayed Abdul Qadir and Ors. V. State of Bihar & Ors. in Civil Appeal Nos. 3351-3354 of 2003** reported in **2009 (1) SCW 1871** decided on 16.12.2008 the recovery is impermissible.

14. Learned Advocate for the applicant has further submitted that this Tribunal has decided the cases of similarly situated employees, wherein similar issue was involved and granted relief in favour of those applicants. He has submitted that the issue involved in this case is also covered by the judgment decided by this Tribunal in case of **Shri Tejrao P. Wagh and Ors. Vs. State of Maharashtra** in **O.A. No. 789/2017 with O.A. No. 790/2017 with O.A. No. 792/2017** decided on 06.02.2019.

15. Learned Presenting Officer has submitted that the applicant was serving as a Supervisor. On completion of his 12

years' service in the cadre of Supervisor, he was granted benefits of time bound promotion scheme and the pay scale of promotional post of Assistant Project Officer has been granted to him w.e.f. 02.04.1998. She has submitted that the pay scale of promotion post of Assistant Project Officer was Rs. 5000-8000 in view of the recommendation of 5th Pay Commission, but the respondents had wrongly granted him pay scale of Rs. 5500-9000 w.e.f. 02.04.1998 by the order dated 13.03.2005 because of wrong fixation of pay, the excess payment was made to the applicant during the period from 03.04.1998 to 31.07.2014. She has submitted that the said mistake has been noticed by the respondents, when the service record of the applicant has been sent to the Pay Verification Unit at the time of his retirement for verification and on the basis of objection raised by the respondent No. 4, the respondents Nos. 1 to 3 had corrected the said mistake and re-fixed the pay of the applicant. She has submitted that because of wrong fixation of pay, excess amount of Rs. 2,22,202/- has been paid to the applicant. The said amount has been paid to the applicant, though he was not entitled and therefore, the recovery has been ordered and accordingly, the said amount had been recovered from the pensionary benefits of the applicant. She has submitted that

there is no illegality in the impugned order and therefore, she has supported the action taken by the respondents in that regard.

16. On perusal of the record, it reveals that the promotional post for the employees, who are working on the post of Supervisor is Assistant Project Officer. On completion of 12 years' continuous service by the applicant, he was granted benefit under time bound promotion scheme w.e.f. 02.04.1998. On granting said benefit, the applicant was entitled to get pay scale of promotional post i.e. Assistant Project Officer w.e.f. 02.04.1998 as per the recommendation of 5th Pay Commission. The pay scale of Assistant Project Officer was Rs. 5000-8000. Accordingly, the pay scale was granted to the applicant initially, but the office of the applicant revised the pay scale and granted pay of Rs. 5500-9000 to the applicant by the order dated 13.03.2005 w.e.f. 02.04.2008, though he was not entitled. There was no misrepresentation or fraud played by the applicant while getting the said pay scale. The office of the applicant on its own accord passed the order granting pay scale of Rs. 5500-9000 to the applicant. The applicant had not played any role in getting the said pay scale. Because of the mistake committed by the office of the applicant, the excess payment was made to the applicant right from 02.04.1998 till his date of retirement i.e.

31.07.2014. When the service record of the applicant has been sent to the respondent No. 4 for verification, the said mistake has been noticed to the respondent No. 4 and therefore, the respondent No. 4 has raised objection. On the basis of the objection of respondent No. 4, the respondent Nos. 1 to 3 had corrected the said mistake and re-fixed the pay of the applicant in the pay scale of Rs. 5000-8000 w.e.f. 02.04.1998 and directed recovery of excess payment of Rs. 2,22,202/- from his pensionary benefits.

17. The applicant has not challenged the re-fixation of his pay. The applicant has only grievance regarding the recovery made by the respondents towards payment of excess amount made to him from his pensionary benefits. The record shows that the applicant was serving on the post of Supervisor since his initial date of appointment. The post of Assistant Project Officer is Group-C post and therefore, principles laid down in case of **Syed Abdul Qadir and Ors. V. State of Bihar & Ors. in Civil Appeal Nos. 3351-3354 of 2003** reported in **2009 (1) SCW 1871** decided on 16.12.2008 are most appropriately applicable in the instant case. The said recovery is not permissible and it will cause hardship to the applicant. In the above said decision, the Hon'ble Apex Court has observed as follows:-

27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See **Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.**

28. Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather,

the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.”

18. The Hon’ble Apex Court in another 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 and reported in **2015 (4) SCC 334** has 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."

19. The case of the applicant is squarely covered by the principles laid down by the Hon'ble Apex Court in the above cited decisions. In view of the principles laid down in the above cited decisions, the recovery of excess amount from pensionary benefits of the applicant is illegal and therefore, it is just and proper to refund the amount recovered from the pensionary benefits of the applicant.

20. The case of the applicant is also covered by the decision rendered by this Tribunal in case of **Shri Tejrao P. Wagh Vs. State of Maharashtra and Ors.** in **O.A. No. 789/2017 with O.A. No. 790/2017 with O.A. No. 792/2017** decided on 06.02.2019. Considering the identical facts in this case and the facts in the above cited decisions, the applicant is also entitled to get refund of amount recovered from his pensionary benefits.

21. In view of the above facts and circumstances of the case, it is just and proper to direct the respondents to refund the amount of Rs. 2,22,202/- to the applicant, as the said recovery is impermissible in view of the principles laid down by the Hon'ble Apex Court in the above cited decisions. Therefore, in view of this, the O.A. deserves to be allowed.

22. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The respondent Nos. 1 to 3 are directed to refund the amount of Rs. 2,22,202/- to the applicant within three months from the date of this order, failing which the respondents are liable to pay the interest @ 9% p.a. on the said amount from the date of this order till its realization.

There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 14.03.2019.

(B.P. PATIL)
MEMBER (J)

KPB S.B. O.A. No. 791 of 2017 BPP 2019 Refund of Excess Amount