

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 8 OF 2020**

**DISTRICT:- NANDED**

Arvind S/o Manoharrao Kulkarni  
Age: 69 years Occu: Pensioner  
R/o Nalge Galli Kandhar,  
Tq. Kandhar, Dist. Nanded.

.. **APPLICANT**

**V E R S U S**

1. The Accountant General (A and E)-II  
Maharashtra Nagpur  
Having office at pension branch office  
Civil Lines, Nagpur.
2. The Dean,  
Dr. Shankarrao Chavan  
Government Medical College and  
Hospital, Vishnupuri, Nanded.
3. Accounts Officer,  
Pay Assessment Unit,  
Collector Office Campus,  
Aurangabad-431 001.
4. Treasury Officer  
Treasury Office, Nanded 431 731.

.. **RESPONDENTS**

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APPEARANCE : Shri Girish Kulkarni (Mardikar), learned  
counsel for the applicant.

: Shri S.K. Shirse, learned Presenting  
Officer for the respondent authorities.

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**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN**

**DATE : 27.03.2023**

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**ORAL ORDER**

Heard Shri G.N. Kulkarni (Mardikar), learned counsel for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondent authorities.

2. The applicant was in the employment of respondent No. 2 as a Sweeper. He retired on 30.6.2008 on attaining the age of superannuation. After his superannuation his proposal for pension was routed through his office and the pension was finalized and the applicant started getting pension accordingly. On 22.12.2011 respondent No. 2 had also issued No Dues Certificate in favour of the applicant. It is the grievance of the applicant that in the year 2019 vide the communication from the office of Accountant General, Nagpur dated 30.1.2019 it was informed that overpayment of pay and allowances of Rs. 92,441/- was made to the applicant and the said amount was directed to be adjusted from the pensionary benefits payable to the applicant. Aggrieved by the said order the applicant has preferred the present Original Application.

3. Shri G.N. Kulkarni, learned counsel appearing for the applicant submitted that before directing recovery the applicant has not been given any notice or opportunity of hearing.

Learned counsel submitted that the alleged overpayment of pay and allowances is alleged to be made during the period between 1996 and 2008. Learned counsel submitted that in view of the law laid down by the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., AIR 2015 SC 596** such recovery is wholly impermissible. Learned counsel submitted that the applicant was Class-IV employee. He retired way back in the year 2008. In the circumstances, according to the learned counsel, if recovery of such huge amount is made, serious prejudice is likely to be caused to the applicant, who is presently aged about 72 years. Learned counsel in the circumstances has prayed for setting aside the impugned order.

4. Shri S.K. Shirse, learned Presenting Officer reiterated the contentions raised in the affidavit in reply filed on behalf of respondent authorities. Learned P.O. invited my attention to the undertaking given by the applicant to the effect that if it is noticed that at some point of time he has been overpaid or wrongly paid certain amounts for which he was not entitled, he will refund the said amount paid in excess of his entitlement. Learned P.O. submitted that in the subsequent judgment delivered by the Hon'ble Apex Court in the case of **High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh, Civil Appeal No. 3500/2016 decided on 29.7.2016**, it is held that the respondents are within

their powers to direct such recovery and to recover the amount paid in excess to which the applicant was not entitled to. Learned P.O., therefore, sought dismissal of the O.A.

5. I have duly considered the submissions advanced on behalf of the applicant, as well as, the respondent authorities. It is not in dispute that the applicant served as Class-IV employee. It is further not in dispute that he retired on attaining the age of superannuation on 30.6.2008. It is further not in dispute that at the time of his retirement no such objection was raised as about the excess payment allegedly made to him. It is further not in dispute that the applicant has been receiving regular pension from the year 2011. The documents revealed that while the case of the applicant was send for revision of his pension, the office of Accountant General has raised objection that the pay of the applicant was wrongly fixed in the year 1996 because of which the applicant has been paid excess amount by way of pay and allowances, and as such, the applicant was liable to refund the said amount and hence the recovery was directed of the amount of Rs. 92,441/-.

6. The action of the respondents is apparently unsustainable for the reason that at the time of fixing the pension of the

applicant after his retirement also the Pay Verification Unit must have verified all these aspects. If at all it is the case of the respondents that the pay fixation was wrongly made in the year 1996, the said fact must have been noticed by the respondents at the time of pay verification while fixing the pension amount of the applicant after retirement in the year 2008. Even if it is accepted that the contention of the respondents is true and correct and the pay of the applicant was wrongly fixed in the year 1996 and on that fixation the applicant has received more pay and allowances than his entitlement, in view of the law laid down by the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc.** (cited supra), no recovery can be made of the said amount. The Hon'ble Apex Court has summarized the conclusions and the guidelines are recorded in paragraph No. 12 of the said judgment, which read thus: -

*“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."*

In view of the aforesaid guidelines, the respondents now cannot direct any recovery and, as such, the order deserves to be quashed and set aside.

7. The reliance placed by the learned P.O. on the judgment in the case of **High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh** (cited supra) may not apply to the facts of the present case. The undertaking which he has been relied upon by the learned P.O. does not bear any date over it, as well as, the signature column is also blank. Moreover, the undertaking is not taken before making payment but after retirement when nothing was to be

paid to the applicant. In the circumstances, the said undertaking may not be of any help to the respondents.

8. For the aforesaid reasons, the Original Application deserves to be allowed. It is accordingly allowed with the following order: -

### **ORDER**

The order of recovery is quashed and set aside. It is clarified that if any revision is to be made in the pension amount of the applicant, the respondents are at liberty to carry out such revision in accordance with law and to pay further pension according to the said pay revision. In such contingency the applicant of course will have right to challenge the revision so made, if it is not acceptable to him.

(ii) The Original Application stands allowed in the aforesaid terms however, without any order as to costs.

**VICE CHAIRMAN**