

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

ORIGINAL APPLICATION NO. 953 OF 2023

DISTRICT : AURANGABAD

Iliyas Khan Samsheer Khan Pathan,)
Age : 64 years, Occu. : Retired as A.S.I. from)
Traffic Branch, Badge No. 4282,)
Chhawani Division, Aurangabad.)
R/o. Plot No. 58/89, Power House Road,)
Ansar Colony, Padegaon, Aurangabad,)
Dist. Aurangabad.)

.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through Secretary,)
Home Department,)
Mantralaya, Mumbai-32.)

2. The Director General of Police,)
Maharashtra State, Shahid Bhagatsingh)
Marg, Coloba, Mumbai-39.)

3. The Commissioner of Police,)
Office at Mill Corner, Dr. Babasaheb)
Ambedkar Road, Chatrapati Sambhaji)
Nagar, Dist. Chatrapati Sambhaji Nagar)
(Aurangabad) 431001.)

... **RESPONDENTS**

APPEARANCE : Shri V.G. Pingle, Counsel for Applicant.

: Shri I.S. Thorat, Presenting Officer for
respondent authorities.

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

DATE : **22.02.2024**

ORAL - ORDER

1. Heard Shri V.G. Pingle, learned counsel appearing for the applicant and Shri I.S. Thorat, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application heard finally with the consent of both the parties at the admission stage.

3. Leave to insert the total amount recovered in para No. (VIII) (B) of the prayer clause.

4. By filing the present Original Application, the applicant is seeking direction to respondent authorities to refund the deducted amount of Rs. 1,23,931/- from installment of 7th Pay Commissioner arrears after his retirement on 30.06.2019 under the gab of excess payment made to him.

5. Learned counsel for the applicant submits that initially the applicant was appointed as Police Constable on 16.02.1987 and thereafter time to time he came to be promoted and lastly on 26.02.2010 he was promoted as A.S.I. He retired on attaining the age of superannuation on 30.06.2019. After retirement, his pension papers were forwarded to the Accountant General, Nagpur for sanction of pension and accordingly, he

started getting monthly pension from July, 2019 onwards. After lockdown of Covid-19 pandemic, the applicant came to know from the co-employees that they are receiving more amount of pension and they are also receiving the more amounts of installments of 7th Pay Commission arrears. Thus, the applicant has submitted representation dated 23.08.2022 to the respondent No. 3 to verify his service book and issue appropriate order for payment of correct amount. The applicant has again and again submitted representations, however, the respondent No. 3 authority neither considered the representations made by the applicant nor communicated anything to the applicant to that effect. Thus, the applicant was constrained to sought information by submitting application dated 09.08.2023 under the Right to Information Act. He provided with information after by issuing order dated 22.04.2019 stated therein that the pay fixation of the applicant was revised and excess payment is made to him. The applicant further came to know that the applicant has been granted total amount of Rs. 2,26,572/- towards the arrears of 7th Pay Commission from 01.01.2016 to 31.12.2018 receivable by the applicant in five equal installments of Rs. 45,286/- each. However, the applicant has received amount of

Rs. 20,529/- each installment due to the order 22.04.2019, thought the applicant was not at fault.

6. Learned counsel for the applicant submits that the applicant was class-III employee at the time of his retirement and he was not responsible in any manner for wrong pay fixation, if any. The said amount allegedly paid in excess to the applicant for the period of 01.01.2006 to 01.07.2018. After his retirement, the said amount has been recovered from the arrears of 7th Pay Commission.

7. Learned counsel for the applicant submits that the ratio laid down by the Hon'ble Apex Court in the case of **State of Punjab and others Etc. Vs. Rafiq Masih (White Washer) Etc. in Civil Appeal No. 11527/2014 (arising out of SLP (C) No. 11684 of 2012)**, dated 18.12.2014 is squarely applicable to the facts and circumstances of the present case. Learned counsel submits that though the applicant allegedly given the undertaking and copy of the undertaking annexed to the affidavit in reply, however, the said undertaking does not bear any date and place and it seems to have been obtained at the time of retirement. Learned counsel submits that the present Original Application

deserves to be allowed and the respondents are liable to refund the said recovered amount.

8. Learned Presenting Officer submits that the respondent No. 3 by order dated 22.04.2019 corrected the pay fixation of the applicant for the period of 01.01.2006 to 01.07.2018 and on the basis of said corrected pay fixation, an amount of Rs. 1,23,931/- came to be recovered from the arrears of 7th Pay Commission of the applicant. Thereafter, the Pay Verification Unit approved the pay fixation on 16.10.2019. Learned P.O. submits that the applicant has given undertaking to the office of respondent No. 3 in terms of G.R. dated 30.01.2019 and it is specifically stated in the said undertaking that if any excess amount is paid, then the applicant would be returned the aforesaid amount. Learned P.O. submits the ratio laid down by the Hon'ble Apex Court in the case of **State of Punjab and others Etc. Vs. Rafiq Masih (White Washer) Etc. (cited supra)** is not applicable to the facts and circumstances of the present case. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

9. In view of the ration laid down by the Hon'ble Apex Court in a case **State of Punjab and Others Vs. Rafiq Masih (White**

Washer) etc., (2015) 4 Supreme Court Cases 334, the recovery from class-III and class-IV employees after their retirement is impermissible on certain conditions. The Hon'ble Apex Court in para No. 18 has made the following observations :-

“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.”

The case of the applicant is fully covered under the clause Nos. (i), (ii) and (iii).

10. The applicant belongs to Class-III category employee. The said recovery has been done after his retirement. It is also clear from the pleadings that the excess payment has been made on account of wrong fixation of pay for the period of 01.01.2006 to 01.07.2018 and thus the period is in excess of five years before the order of recovery is issued. It is also not disputed that neither the applicant is responsible for the said wrong pay fixation nor he has mislead the respondent authorities at any point of time in this regard.

11. The Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 14296/2023 (Gautam Sakharam Mairale Vs. State of Maharashtra and Ors.)** and other connected matters in para Nos. 5 and 6 has made the following observations :-

*“5. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it is in these circumstances that an undertaking has been extracted. The learned Advocate representing the Zilla Parishad as well as the learned A.G.Ps., submit that, once an undertaking is executed, the case of the Petitioners would be covered by the law laid down by the Hon'ble Supreme Court in the case of **High Court of Punjab and Haryana and others vs. Jagdev Singh, 2016 AIR (SCW) 3523**. Reliance is placed on the judgment delivered by this Court on 1.9.2021, in **Writ Petition No. 13262 of 2018 filed by Ananda Vikram Baviskar Vs. State of Maharashtra and others**.*

6. We have referred to the law laid down by the Hon'ble Supreme Court in **High Court of Punjab and Haryana and others vs. Jagdev Singh (supra)**. The record reveals that no undertaking was taken from these Petitioners when the pay scales were revised. An undertaking from some of them was taken at the stroke of their retirement. An undertaking has to be taken from the candidate when the revised pay scale is made applicable to him and the payment of such pay scale commences. At the stroke of superannuation of the said employee, asking him to tender an undertaking, practically amounts to an afterthought on the part of the employer and a mode of compelling the candidate to execute an undertaking since they are apprehensive that their retiral benefits would not be released until such undertaking is executed. Such an undertaking will not have the same sanctity as that of an undertaking executed when the payment of revised pay scale had commenced. We, therefore, respectfully conclude that the view taken in **High Court of Punjab and Haryana and others vs. Jagdev Singh (supra)** would not be applicable to the case of these Petitioners, more so since the recovery is initiated after their superannuation.”

12. So far as the issue of undertaking is concerned, the said undertaking seems to have been taken after retirement of the applicant and further the said undertaking (Annexure R-2) does not bear any place and date. It is also not clear as to whom the said undertaking has been submitted. It seems that the said undertaking has been taken after retirement merely to comply with the G.R. dated 30.01.2019. Thus no importance can be

given to the said undertaking. In the result, the present Original Application deserves to be allowed and the applicant is entitled for refund of the said recovered amount with interest.

13. So far as grant of interest is concerned, learned Presenting Officer submits that there is no specific prayer in the Original Application to that effect. However, the Hon'ble Apex Court way back in the year 2014 has expressed that the recovery from the retired employees or employees who due to retired within a period of one year of the order of recovery, is impermissible. Even though, after retirement of the applicant, the respondent authorities have deducted the said amount from the arrears being paid to the applicant towards the arrears of 7th Pay Commission. In view of above, even if there is no specific prayer regarding the interest on recovered amount, this Tribunal can exercise discretion in such type of cases. Hence, the following order :-

ORDER

- (i) The Original Application is hereby allowed.
- (ii) The respondents are hereby directed to refund the amount of Rs. 1,23,931/- to the applicant within a period of three months from the date of this order with interest @ 9% p.a.

from the last date of installment recovered from the applicant till its realization of amount.

(iii) In the circumstances, there shall be no order as to costs.

(vi) The Original Application accordingly disposed of.

PLACE : Aurangabad.
DATE : 22.02.2024

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

KPB S.B. O.A. No. 953 of 2023 VKJ Recovery/ refund of recovered amount