

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 826 OF 2015

DIST. : LATUR.

Abdul Basit S/o Abdul Hamid Shattari
Age-58 years, Occ-Retired
R/o Behind Post Office, Nilanga
Tq. Nilanga, Dist. Latur.

V E R S U S

- 1) The State of Maharashtra
Through the Secretary,
Water Conservation Department
Mantralaya, Mumbai-32.
(Copy to be served on C.P.O.,
MAT, AURANGABAD.)
- 2) The Superintending Engineer
Small Scale Irrigation
(Water Conservation) Circle
Aurangabad.
- 3) The Executive Engineer
Lower Terna Canal Division
No. 2, Latur, Tq. & Dist. Latur.
- 4) The Accounts Officer
Pay Verification Unit
Koshagar Bhavan
Collectorate, Aurangabad.

.. RESPONDENTS.

APPEARANCE :- Shri K.G. Salunke, learned Advocate
for the Applicant.

: Shri N.U. Yadav, learned Presenting
Officer for the Respondent Nos. 1, 2
& 4.

: Shri G.N. Patil, learned Advocate for
respondent No. 3.

CORAM : **HON'BLE SHRI J.D. KULKARNI,**
MEMBER (J)

DATE : **21ST NOVEMBER, 2016**

ORAL ORDER

Heard Shri K.G. Salunke – learned Advocate for the applicant, Shri N.U. Yadav – learned Presenting Officer for respondent Nos. 1, 2 & 4 and Shri G.N. Patil – learned Advocate for respondent No. 3.

2. In the present Original Application the applicant has challenged the impugned order dated 30.10.2014 (Annexure “A-2” page-14 of paper book), whereby amount of Rs. 63,339/- was ordered to be recovered from his salary in 7 installments of Rs. 9048/- per month. This amount has already been recovered from the applicant’s salary. According to the applicant, such recovery is absolutely illegal. In the prayer clause ‘C’ of paragraph 18 the applicant has prayed as under: -

“C) By issuing appropriate order or directions respondent authorities may kindly be directed to refund the amount of Rs. 63,339/- recovered from the salary of the applicant to applicant with further directions to the respondent authorities to release all the pensionary benefits and regular pension to the applicant without deducting the single increment as per the objection raised by respondent No. 4 and calculate his pensionary benefits with all the increments which are granted to him till his retirement on superannuation with immediate effect.”

3. The learned Advocate for the applicant however, on instructions submits that the applicant is restraining his claim to the recovery and release of pension only, since till today the pension has not been released.

4. The applicant was appointed as Tracer and has retired from the said post on attaining the age of superannuation on 31.7.2015. However, before his retirement, the impugned order was received by him, whereby an amount has been recovered. The recovery is on the ground that the pay scale was wrongly fixed, as the

applicant did not pass the qualifying examination and was wrongly promoted. It is admitted fact that the applicant did not pass the examination, but attained the age of 45 years on 2.8.2002. The applicant admittedly was eligible for such promotion on the date of completion of 45 years of age. According to the applicant, he was not given an opportunity to appear for the qualifying examination. The learned Advocate for the applicant invited my attention to his representation dated 22.6.2016 along with chart giving details as to how he could not appear for the examination. The copy of the said letter and chart is placed on record at page Nos. 15 & 16 respectively.

5. From the aforesaid letter and chart, it seems that on number of occasions the applicant could not appear for the examination as his number could not reach for such examination.

6. In paragraph 9 of the application, the applicant has specifically stated that he was not given opportunity to appear for the examination and this chart is not specifically denied by the respondent Nos. 2 & 3. For

whatever reason that may be, it remains a fact that the applicant has not cleared the examination prior to completion of 45 years of age and admittedly he has completed the age of 45 years on 2.8.2002, and therefore, he should not have been held eligible for the release of increment on completion of age of 45 years. Thus, prima facie the pay revision seems to be correct and it is also not challenged in this Original Application and, therefore, the question remains of recovery.

7. The learned Advocate for the applicant submits that in view of recent judgment of the Hon'ble Supreme Court in the case of **STATE OF PUNJAB AND OTHERS Vs. RAFIQ MASIH (White Washer) etc.** reported in **(2015) 4 SCC 334**, the recovery against the applicant is illegal. The Hon'ble Apex Court has observed in paragraph 18 as under:

“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.”

8. Respondent No. 4 in paragraph No. 5 of the affidavit in reply stated as under: -

**“5. -- -- -- -- -- -- -- -- -- --
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After that, the applicant got exemption of Compulsory Departmental Examination because of completion of 45 years of his age on 03.07.2002 and time bound promotion's effect was given from this date by order dated 24.09.2007 in pay scale 4500-125-7000.

On date 03.05.2014 this office has taken objection that "the entry of recovery of overpayment for the period 03.10.1991 to 22.08.2007 because of wrong pay fixation was not taken in applicants service book.

Hence the objection taken by the Pay Verification Unit is just and legal."

9. Even the aforesaid observation clearly shows that so-called recovery of excess amount relates to the period from 03.10.1991 to 22.08.2007, there is nothing on record to show that the applicant was in any manner responsible for such excess payment or that the applicant has participated actively for getting such amount. The applicant is a Class-III employee and has retired on attaining the age of superannuation on 31.07.2015 and the impugned order of recovery has been passed on

30.7.2014 i.e. prior to one year of his retirement. The applicant, therefore, will be prejudiced, if such amount is recovered from his pensionary benefits, as he will be put to hardship.

10. In view of the observations and directions of the Hon'ble Supreme Court in the case of **STATE OF PUNJAB AND OHTERS Vs. RAFIQ MASHI (White Washer) etc.** (supra) I am satisfied that though the pay fixation of the applicant is legal, the order regarding recovery of excess amount is definitely not sustainable in the eye of law. The applicant is Group 'C' employee and has already retired on superannuation on 31.7.2015. The impugned order dated 30.10.2014, so far as it pertains to recovery of excess amount , therefore, is required to be quashed and set aside and hence, I pass the following order :-

11. In view thereof, I pass the following order : -

ORDER

- (i) The present Original Application is partly allowed.

- (ii) The impugned order of recovery of excess amount of Rs. 63,339/- dated 30.10.2014 issued by respondent No. 3, so far as it pertains to recovery of excess amount, is quashed and set aside.
- (iii) The respondent No. 2 is directed to repay amount recovered from the applicant within a period of four weeks from the date of this order.
- (iv) The respondent No. 2 shall take steps to release the applicant's pension and pensionary benefits, as may be admissible to the applicant, if not released up-till now.
- (v) In the facts and circumstances of the case, there shall be no order as to costs.

MEMBER (J)