

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.704 OF 2023 WITH  
ORIGINAL APPLICATION NO.705 OF 2023**

DISTRICT : PUNE

**O.A.No.704/2023**

Mr. Balu Gulab Bhintade, )  
Mukam Post Devachi Urali Hnade wadi, )  
Navele Nagar, Near Jai Tulja Bhavani )  
Mangal Karyalay, Taluka Haveli, )  
Dist. Pune 412 308 ) **....Applicant**

**Versus**

1. The Secretary, )  
Animal Husbandry, Dairy )  
Development, And Fisheries )  
Department, Mantralaya, )  
Mumbai 32 )
2. Commissioner of Animal Husbandry )  
Maharashtra State, Aundh )  
Pune 411 067 ) **....Respondents.**

**With**

**O.A.No.705/2023**

Mr. Mohiniraj Narayan Atre, )  
49/1 Ganesh Coloney, Gananjay Society )  
Gandhi Bhavan Raste, Kothrud, )  
Pune 411 038 ) **....Applicant**

**Versus**

The Secretary, Animal Husbandry & Anr. ) **....Respondents.**

Mr. S.B. Gaikwad, learned Counsel for the Applicants.

Mr. A.J. Chougule, learned Presenting Officer for the Respondents.

**CORAM** : **Ms. Medha Gadgil, Member (A)**

**RESERVED ON** : **12.09.2023.**

**PRONOUNCED ON** : **26.09.2023.**

### **J U D G M E N T**

1. Applicant in O.A.No.704/2023, Mr. B.G. Bhintade and Applicant in O.A.No.705/2023, Mr. M.N. Atre have challenged the impugned order dated 17.05.2021 issued by Respondent No.2. Further the Applicants pray for directions to the Respondent No.2 to refund the amount of Rs.1,65,526/-and Rs.1,11,503/- in respect of Applicant in O.A.No.704/2023 and O.A.No.705/2023 respectively.

2. Brief facts of the case are as below :

In both these Original Applications the Applicant have challenge the order of recovery of excess payment made to them by fixing of pay and allowance in terms of 6<sup>th</sup> Pay Commission. Both these Applicants were working as Naik in the office of Animal Husbandry, Dairy Development and Fisheries Department. Applicant in O.A.No.704/2023, Mr. B.G. Bhintade and Applicant in O.A.No.705/2023, Mr. M.N. Atre have retired from the Government Service on superannuation on 31.07.2021 and 31.10.2021 respectively.

Sr. No.	Name of the Applicant	O.A.Nos.	Impugned order dated	Amount to be recovered
1	Mr. Balu Gulab Bhintade	704/2023	17.05.2021	Rs.1,65,526/-
2	Mr. Mohiniraj Narayan Atre	705/2023	17.05.2021	Rs.1,11,503/-

3. Learned Counsel for the Applicants has submitted that both these Applicants were initially appointed as Peon and were subsequently promoted to the post of Naik. Learned Counsel has submitted that Applicants, Mr. B.G. Bhintade and Mr. M.N. Atre were given the benefit of First Time Bound Promotion on 18.03,1998 and 09.05.1995, Second Assured Career Progression Scheme on 18.03.2010 and 09.05.2007 and also the benefit of 30 years as per the 7<sup>th</sup> Pay Commission. Learned Counsel has relies on the decision of the Hon'ble Supreme Court in the case of **(2015) 4 SCC 334 (State of Punjab and Others Versus. Rafia Masih (White Washer))**. Learned Counsel has pointed out that the Applicants fall in Group C post and are therefore squarely covered by the said judgment. Therefore, the order of recovery is illegal.

4. Learned P.O. for the Respondents has relied on the affidavit-in-reply dated 27.07.2023 filed on behalf of Respondent No.2, through Dr. Prashant D. Kamble, Regional Joint Commissioner of Animal Husbandry Department, Mumbai Region, Mumbai. Learned P.O. has submitted that in the case of Applicant Mr. Mohiniraj Narayan Atre (O.A.No.705/2023) representation was made to the office mentioning that he was going to retire on 31.10.2021. However, fixing of salary should be done as per the

Revised Rules of 7<sup>th</sup> Pay Commissioner and that he was ready to pay whatever recovery made in lump sum. Similarly, in the case of Mr. Balu Gulab Bhintade (O.A.No.704/2023) affidavit-in-reply dated 27.07.2023 states that the Applicant gave representation to the office on 19.01.2023 stated that he retired on 31.07.2021. However, fixing of salary could be done as per the Revised Rules of 7<sup>th</sup> Pay Commission that he was ready to pay whatever recovery made in lump sum. He, therefore, prayed that both these O.As. should be dismissed.

5. In view of the judgment dated 13.04.2023 passed by this Tribunal in O.A.No.383/2021 & Ors., Smt. Geeta Jaiprakash Mhatre & Ors. Versus The State of Maharashtra & Ors. Relevant paragraph 11 of the said judgment reads as below :

“11. The issue of permissibility of excess payment from Group ‘C’ employee is no more res-integra in view of decision of Hon’ble Supreme Court in Rafiq Masih’s case (cited supra). After considering its various earlier decision Hon’ble Supreme Court culled out certain situation in which recovery from employee would be impermissible. In Para 12 of the Judgment of Hon’ble Supreme Court in Rafiq Masih’s (cited supra) which reads 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 belong to Class-III and Class-IV services (or Group ‘C’ and Group ‘D’ services).  
(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery. (iii) Recovery from 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 employee, 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 this case it is clearly seen that both the employees belong to Class III as such the action of recovery is bad in law and the impugned orders are liable to be quashed. Hence, the following order :

### **O R D E R**

- A) All these Original Applications are allowed. Impugned action of recovery to the extent of recovery is quashed and set aside.
- B) The amount recovered in pursuance of recovery orders, if any, shall be refunded to the Applicants within eight weeks from today.
- C) Impugned orders to the extent of re-fixation of pay are not disturbed.
- D) No order as to costs.

Sd/-

**(Medha Gadgil)**  
**Member (A)**