

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 101 of 2017

Sharad Laxman Naikale,
Aged about 61 years,
Occ. Pensioner as Forester,
R/o Sawai Pura, Zenda Chowk,
Achalpur City, Tq. Achalpur City,
Dist. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
- 2) The Chief Conservator of Forests &
Field Director, Melghat Tiger Project,
Amravati, Dist. Amravati.
- 3) The Deputy Conservator of Forests,
Sipna Wild Life Division,
Tiger Project, Paratwada,
Tq. Achalpur City, Dist. Amravati.

Respondents

**S/Shri V.A. Kothale, M.P. Gulhane, D.P. Dapurkar, Advs. for the
applicant.**

Smt. S.V. Kolhe, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 9th day of October,2017)

Heard Shri V.A.Kothale, Id. Counsel for the applicant and
Smt. S.V. Kolhe, Id. P.O. for the respondents.

2. The applicant is a retired Forester. He got retired on superannuation after completing 58 years on 30/11/2014. The Accountant General, Maharashtra, Nagpur has sanctioned his pension case on 12/01/2016 whereby an amount of Rs. 9,44,949/- has been recovered illegally. The applicant therefore filed representation on 27/6/2016. The said representation was forwarded by respondent no.3 to respondent no.2 for refund on 5/10/2016. According to the applicant, the order of recovery of Rs.9,44,949/- from the retiral benefits of the applicant is illegal and therefore the applicant has been placed to great hardship as he is getting monthly pension of Rs. 4,596/- p.m. only. The said order of the respondent authorities is against the provisions of Judgment delivered by the Hon'ble Apex Court in the case of **State of Punjab Vs. Rafiq Masih reported in AIR 2015 SCC, 696** and also against the Judgment delivered by this Bench in Writ Petition no.2648/2016 on 01/07/2016 in the case of **Lata Gajanan Wankhade Vs. State of Maharashtra & Ors.**

3. The applicant has claimed that it shall be declared that the recovery of amount of Rs. 9,44,949/- after retirement without any

inquiry from DCRG Commutation and arrears of Pension made by respondent no.3 is arbitrary and illegal and the same amount be refunded along with compensation of Rs.1 lakh.

4. The respondent no.3 The Deputy Conservator of Forests, Sipna Wild Life Division, Tiger Project, Paratwada, Tq. Achalpur City, Dist. Amravati has justified the order of the recovery. It is stated that the applicant's pay and allowances were wrongly fixed for the period from January,2006 to November,2016 and it was noticed that the an amount of Rs. 9,43,713/- was paid in excess to the applicant. The applicant himself has given consent on 16/09/2015 to recover and deduct the amount of Rs.3,07,785/- out of his retiral dues, i.e., amount of leave encashment. The applicant was well aware of the fact that the amount was paid in excess to him.

5. The applicant filed rejoinder stating that the so called consent letter was obtained from him by force and it was given understanding to him that his pension will not be finalised without such undertaking.

6. The counsel for the applicant has placed reliance on the observations made by the Apex Court in the **State of Punjab vs. Rafiq Masih (White Washer)**. The said observations are as under :-

“(10) In State of Punjab vs. Rafiq Masih (White Washer) this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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 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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer’s right to recover.” (emphasis supplied).

(11) The principle enunciated in proposition (ii) above cannot apply to a situation in the present case.”

7. From the reply affidavit itself it seems that while submitting the pension case of the applicant the entire history of payment to the applicant from time to time has been considered and his pay has been

revised right from the year January, 2006 as seems from the statement showing details of pay and allowances paid to applicant at Anex-R-1. There is nothing on the record to shows that the applicant was in any manner responsible for getting such over payment. There is nothing on the record to show that the applicant insisted for such over payment with due knowledge that he was being paid excessively and therefore such a recovery cannot be warranted in view of the directions delivered by the Apex Court as aforesaid.

8. The learned counsel for the applicant has placed reliance on the Judgment of the Hon'ble Bombay High Court in the case of **Sulbha Sharad Vithalkar Vs. Head Mistress, Mulinche Samartha Vidyalaya, Mumbai & Ors. reported in 2017 (5) Mh.L.J,144**, wherein it was observed that if there is no case of fraud, misrepresentation, suppression of fact, recovery cannot be ordered with retrospective effect.

9. The Id. P.O. however placed reliance on the Judgment of the Hon'ble Apex Court reported in 2016 SCC Online SC, 748 in the case of **High Court of Punjab & Haryana & Ors. vs. Jagdev Singh**, wherein the applicant a Judicial Officer furnished an undertaking while opting for revised pay scale and it was held that he was bound by such undertaking and therefore the case of **State of Punjab vs. Rafiq Masia** is not applicable in that case. It is material to note that in the

present case the applicant has given so called undertaking for the first time on 18/9/2015. It is material to note that the applicant has already got retired on 30/11/2014 and he was not getting any pension and therefore in such circumstances if he had given consent that the excess amount be recovered from his pensionary benefits, it cannot be said that such consent is, in fact, a consent in the real sense. A person who got retired prior to one year and not getting benefit by way of pension is bound to give any undertaking. It is not the case that on each and every occasion right from the beginning, i.e., from 2006 the applicant had given consent from time to time for recovery. The pay has been revised right from January, 2006 and all of a sudden such huge amount worth Rs.9,44,949/- has been recovered from the applicant who is a Class-III employee. One can just imagine as to what hardship the applicant must have faced when such huge amount was recovered from his pensionary benefits. Such recovery is therefore absolutely illegal and arbitrary and in any case the applicant is not responsible at all for such fault or excess payment. Hence, the following order :-

ORDER

The O.A. is allowed in term of prayer Clause 9 (i). The respondents are directed to refund whatever amount recovered from the applicant under the garb that it was over paid to him. The amount

shall be refunded within three months from the date of this order, failing which the applicant will be entitled to file a representation for interest on said amount from the date of retirement till said amount is actually received back by the applicant. No order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).

dnk.