

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 119 / 2017 (S.B.)

Jagatrao Sukhadevrao Lende,
Aged about 68 years,
Occupation – Pensioner as S.D.O.,
Irrigation Project & Water Resources
Investigation Division, Amravati,
R/o 27, Abhiyanta Colony,
Ganesh Nagar, Amravati-444 606,
Tq. & Dist. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra, through its Secretary,
Water Resources Department,
Mantralaya, Mumbai-32.
- 2) The Executive Engineer,
Irrigation Project & Water Resources
Investigation Division, Amravati.
- 3) The Accountant General (A & E-2),
Maharashtra, Nagpur.
- 4) The District Treasury Officer,
Amravati, Dist. Amravati.

Respondents

Shri V.A.Kothale, Id. Advocate for the applicant.

Shri A.M.Ghogre, Id. P.O. for the respondents.

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

JUDGMENT**(Delivered on this 22nd day of November, 2017)**

Heard Shri V.A.Kothale, learned counsel for the applicant and Shri A.M.Ghogre, learned P.O. for the respondents.

2. The applicant is a pensioner and has retired as a S.D.O. in Irrigation Department on 30/06/2017 on superannuation. His pension has been fixed by respondent no. 3, the Accountant General, Maharashtra, Nagpur on 18/07/2007 and the said pension was further revised vide order dated 09/12/2011.

3. While making revision of the pay, it was observed by the Accountant General that the applicant has been paid Rs. 745/- per month in excess and, therefore, the same was required to be recovered w.e.f. 01/07/2007. Such pay fixation was made by respondent no. 3, Accountant General, Nagpur, as per order dated 13/05/2016 and in view of the said pay fixation the respondent no. 4, the District Treasury Officer, Amravati issued a communication to the applicant on 15/11/2016 proposing recovery of Rs. 1,70,979/- from the pensionery benefit of the applicant. The applicant filed representation on 20/02/2017 and requested not to recover the amount. However, his request was turned down and, therefore, this O.A.

4. The applicant has claimed that the order dated 15/11/2016 passed by the respondent no. 4, District Treasury Officer, Amravati proposing recovery from the pensionary benefits of the applicant, be quashed and set aside and the applicant's regular pension be released without any deduction.

5. The respondent no. 2, Executive Engineer, Irrigation Project and Water Resources Investigation Division, Amravati files reply-affidavit and submitted that the State of Maharashtra had given benefit of higher pay scale to the employees who were working in Tribal/ Naxal affected area as per the G.R. dated 17/12/2013 and 18/10/2014. The Government has taken a decision that while calculating the pension the said benefits should not be taken into consideration. The applicant's pension was revised by the Accountant General and the excess amount is being recovered from him. The respondent no. 3 has filed reply-affidavit and submitted that the proposal for revision of pension while considering one special promotion was forwarded by the respondent no. 2 vide letter dated 06/01/2011 and as per the said letter, the pension was revised and fixed at Rs. 14,875/- .Thereafter, it was intimated to the Accountant General vide letter dated 14/01/2016 that one step promotion granted to the applicant was withdrawn as per G.R. dated 17/12/2013. The pension was granted at a higher stage to him on earlier occasions i.e. at Rs. 14,785/- and in fact the applicant was

entitled for pension worth Rs. 14,130/- and, therefore, there was a difference of Rs. 745/-. There was over payments as regards D.C.R.G. and commuted value of pension at Rs. 24,585/- and Rs.8,939/- respectively and the same was required to be recovered from the applicant. In short, the respondent no. 3 tried to justify the recovery and revision of the pay. The respondent no. 4 has also filed reply-affidavit and justified the recovery.

6. The Id. counsel for the applicant submits that the applicant is a pensioner and has retired long back in the year 2007 i.e. on 30/06/2007 and, therefore, in view of the directions given by the Hon'ble Apex Court in the case of **State of Punjab Vs. Rafiq Masih reported in AIR 2015, SC 696,** overdue payment cannot be recovered from retired employee.

7. From the documents on record, it seems that the applicant was serving in Naxal affected/Tribal area and, therefore, in view of such provisions, he was granted pay scale at higher side. However, the said pay scale continued even after the transfer of the applicant out of Naxal affected/Tribal area. In the meantime, the Government has issued a G.R. dated 17/12/2013 (Annexure-R-2) at P.B., Pg. No.34, from which it seems that those who stood retired on or after 01/01/2006 and who were working out of the Naxal affected area at the time of retirement and were overpaid, their pension was reviewed. Similar G.R. also has been

issued on 18/10/2014 by the Finance department of Government and a copy of which is at P.B., Pg. No. 33 (Annexure-R-1). The applicant has not challenged the validity of both the G.Rs. nor has challenged reduction of his pensionary pay in this O.A. He has merely asked for a relief to quash and set aside the order of recovery passed by District Treasury Officer, Amravati, i.e. respondent no. 4 on 15/11/2016 and, therefore, the issue as to whether deduction in the pay scale of the applicant after retirement is legal or not, is not a issue in this O.A. The only point to be considered is whether the recovery of excess payment is legal and proper.

8. Vide impugned order dated 15/11/2016, the respondent has directed recovery of Rs. 1,70,979/- as excess payment in instalment of Rs. 745/- per month from the pension of the applicant. Admittedly, this recovery pertains to the period from 01/07/2007 to 31/10/2016. Such recovery cannot be permitted in view of the Judgement passed by the Hon'ble Apex Court in the case of **State of Punjab and Ors etc. Vs. Rafiq Masih (White Washer) & Ors. (2015) 4 SCC 334.** This point has been considered by this Tribunal in number of cases. The Id. P.O. has invited my attention to one Judgment reported in O.A. 186/2016 by this Tribunal in the case of **Shri Tarachand S/o Urkudaji Gajbhiye Vs. State of Maharashtra & 3 Ors. delivered on 10/03/2017.** This Judgment shows that the applications in that case was dismissed on different legal aspects.

9. The Hon'ble Apex Court in **para No. 12** of the Judgment delivered in the **State of Punjab & Ors. etc. Vs. Rafiq Masih (White Washer) & Ors.** as referred (*cited supra*), the Hon'ble High Court has observed as under :-

“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.”***

10. In view of the aforesaid observations, the recovery of the excess amount from the retired employee after a gap of so many years after retirement, cannot be justified. The revised pay fixation made by the Accountant General may be correct, but that will not justify for the

respondents to recover the amount from pensionary benefits of the applicant. Hence, following order:-

ORDER

1. The impugned order (Annexure-A-1), dated 15/11/2016 issued by the respondent no. 4, The District Treasury Officer, Amravati, regarding proposed recovery of the excess amount paid to the applicant, is quashed and set aside.
2. The respondents shall release regular pension of the applicant without such deduction as regards excess recovery.
3. No order as to costs.

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

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