

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 373/2018 (S.B.)

Ku. Archana Bhayajji Waghmare,
Aged about 36 years, Occ. Service,
R/o Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Department of Forest,
Mantralaya, Mumbai-32.
- 2) The Additional Chief Conservator of Forest
(Administration), Maharashtra State, Nagpur.
- 3) The Chief Conservator of Forest,
Chandrapur Vanvruta, Chandrapur.

Respondents.

S/Shri P.J. Mehta, A.S. Tiwari, Advocates for the applicant.

Shri H.K. Pande, P.O. for the respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 12th February, 2020.

Date of Pronouncement of Judgment : 18th March, 2020.

JUDGMENT

(Delivered on this 18th day of March, 2020)

Heard Shri P.J. Mehta, learned counsel for the applicant
and Shri H.K. Pande, learned P.O. for the respondents.

2. The applicant is serving as Senior Statistics Assistant. The applicant was appointed in service on 16/12/2003 as Junior Statistics

Assistant (Group-C) from the Scheduled Caste (S.C.) category on compassionate ground by the Conservator of Forest, North Chandrapur. On 28/3/2012 the applicant was promoted as Senior Statistics Assistant (Group-C). On 17/4/2013 the applicant's pay was fixed in the cadre of Senior Statistics Assistant at Rs.14,890 (basic pay) + Rs.4400 (Grade Pay), the total Rs.19,380/- w.e.f. 1/3/2013. On 23/5/2016 as the applicant was due for transfer, therefore, she was transferred and posted in the office of Chief Conservator of Forest, Nagpur.

3. Vide order dated 26/7/2017 it was held by the respondent no.3 that the pay fixation of the applicant was wrongly done and the applicant was drawing more pay and consequently the respondent no.3 fixed the pay of the applicant at Rs.15,430/- on 1/3/2013. The respondent no.2 passed the order dated 17/4/2018 and directed to recover amount of Rs.3,41,443/- in 60 monthly instalments from the applicant from the month of May,2018.

4. The action of the respondent is challenged by the applicant mainly on the ground that the applicant is Class-III Government servant and as per the Judgment in case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. (2015) 4 SCC,334**, the action of the respondents is illegal. The learned counsel for the applicant submitted that the respondents have not

followed the law laid down by the Hon'ble Apex Court in case of **Rafiq Masih & Ors.**, and several Judgments delivered by the Hon'ble High Court and other Bench of M.A.T., therefore order is required to be quashed. The second submission of the applicant is that when the salary of the applicant was fixed, no undertaking was received from her that she would be liable to re-pay the excess amount in the event of wrong fixation, therefore, in view of the Judgment delivered by the Hon'ble Apex Court in case of **High Court of Pujab & Haryana & Ors. Vs. Jagdev Singh (2016) 14 SCC,267**, the respondents have no legal right to recover the amount from the applicant and reduce her salary. It is submitted that the salary of the applicant was rightly fixed, there was no error in it and therefore both the impugned orders dated 26/7/2017 re-fixing the pay of the applicant and order dated 17/4/2018 directing the recovery be quashed and set aside.

5. The learned P.O. has submitted that the action of the respondents is legal because when the pay of the applicant was fixed after her promotion, it was specifically mentioned in the order of pay fixation that the pay was fixed subject to approval by the Pay Unit. It is contention of the respondents that subject to this condition the salary of the applicant was fixed and was paid to her. In the course of time it was realised by the Nagpur Office that the pay fixation was apparently wrong as Grade Pay was added twice while fixing the salary and

consequently the pay of the applicant was re-fixed and direction was issued to recover.

6. It is submission of the learned P.O. that the applicant was not entitled to receive the excess this amount, there was a clerical mistake while fixing the salary of the applicant and there was no intention to pay this salary to the applicant as it was not in accordance with the law, therefore, the applicant cannot take benefit of the law in case of **Rafiq Masih** and defeat the recovery, which is legal.

7. The impugned order of the pay re-fixation is Annex-A-4 dated 26/7/2017. The respondents have filed the order dated 17/4/2013 by which the salary of the applicant was fixed. In this order it is specifically mentioned that the pay of the applicant was fixed subject to verification by the Pay Verification Unit and if it was found that excess amount was paid, then the Department will have right to recover the same. The learned P.O. has invited attention to the order dated 17/4/2013. It is submitted that at the time of promotion, the basic pay of the applicant was Rs.10,200/- and she was entitled for Grade Pay Rs.2400/- and she was given notional increment Rs.380/- as per the Maharashtra Civil Services (Pay) Rules, 1981 [Rule 11 (1) (a)]. The learned P.O. also invited my attention to order dated 17/4/2013 by which the pay of the applicant was fixed as she was working in naxalite area. Before joining in the naxalite area, the

applicant was in Pay Scale Rs.9300-34800+4300 (GP) and after resuming duty in naxalite area, she was entitled for the pay Rs.9300-34800+4400 (GP). While fixing the pay, the Department added the amount Rs.4300 GP to basic pay and her basic pay was fixed Rs.14,410 and again Rs.4300 was added and total Pay was Rs.18,710/- and in addition one notional increment Rs.570/- was given to the applicant and thus the total salary of the applicant erroneously fixed at Rs.19,380/-. The learned P.O. submitted that the Government servant is not entitled for two Grade Pays, the Government servant is entitled to only one Grade Pay. My attention is also invited to the re-fixation. As per the re-fixation at the time of promotion, the basic salary of the applicant was Rs.10,200 + Rs.2400 GP and as per the G.R. higher pay was given to the applicant, it was Rs.14,410+Rs.4300, total Rs.18,710, therefore, while fixing the salary of the applicant, it was necessary to fix the salary giving only one Grade Pay. As per the rules, the pay of the applicant should have been fixed Rs.10,580+ notional increment Rs.450+ Rs.4400 GP which comes to Rs.15,430. It is rightly demonstrated by the respondents that erroneously the Grade Pay was added while fixing the basic pay of the applicant and again Grade Pay was paid to her and therefore the applicant has received the excess Grade Pay + DA on it and this was amounting to Rs.3950 p.m. The learned counsel for the applicant

was unable to justify how pay fixation of the applicant was as per the law and it was correct.

8. In the course of the argument, the applicant has placed strong reliance on the Judgment in case of **Rafiq Masih** and the directions issued by the Hon'ble Apex Court in Para-18 of the Judgment. It is submission of the learned counsel for the applicant that as the applicant is Class-III employee and therefore the recovery is impermissible in law.

9. After perusal of the initial order of the pay fixation, it seems that specific understanding was given to the applicant that it was subject to verification by the Pay Unit and in event of excess payment, the Department will have right to recover it. It is pertinent to note that subject to this condition, the applicant received the excess payment. It is submission of the learned P.O. that as specific understating was given to the applicant that in event of the erroneous pay fixation, there would be recovery. It was accepted by the applicant and received the salary, therefore, now the applicant cannot dispute the right of the respondents to recover the excess payment.

10. In order to examine whether the applicant is entitled for relief on the basis of the ratio in case of **Rafiq Masih**, it is necessary to consider the factual background and the circumstances in which

directions were issued by the Hon'ble Apex Court in Para-18 of the Judgment. In para-4, the Hon'ble Apex Court has observed that as there was difference of views expressed by the Hon'ble Benches of the Apex Court, consequently, the reference was made to the Hon'ble Chief Justice of India for placing the matter before the Hon'ble three Judges Bench of the Apex Court. While disposing of the reference, the Hon'ble three Judges Bench observed in Para-6 –

"6. In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant-therein were in exercise of its extra-ordinary powers under [Article 142](#) of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice."

11. Similarly, the following observations were made in Para Nos. 13&14 –

"13. Therefore, in our opinion, the decisions of the Court based on different scales of [Article 136](#) and [Article 142](#) of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment.

14. In that view of the above, we are of the considered opinion that reference was unnecessary. Therefore, without answering the reference, we send back the matters to the Division Bench for its appropriate disposal. (emphasis supplied)."

12. It appears that the Hon'ble larger Bench of the Hon'ble Apex Court did not say which Judgment was incorrect and which Judgment was correct, but it was explained that the observations

made by the Court not to recover the excess amount paid were in exercise of its extra ordinary powers under Article 142 of the Constitution of India which vests the power in the Hon'ble Apex Court to pass equitable orders in the ends of justice and in view of this background, the law was again examined in case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. (2015) 4 SCC,334.**

In para-7, the Hon'ble Apex Court has observed as under -

"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under [Article 142](#) of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court".

13. Thus situation is clear that in view of the observations made in para-7, the directions were issued by the Hon'ble Apex Court in para-18, therefore, inference is to be drawn, the directions issued in para-18 are controlled by the observations made in para-7 of the Judgment.

14. In view of the specific observations in para-7, it can be said that the order passed by the employer seeking recovery of excess amount paid to the employees can only be interfered with where it will result in hardship which would far outweigh, the equitable balance. Similarly, it was held that the interference would be called for, only in cases where, it would be iniquitous to recover the payment made.

15. In the present case the applicant was unable to show how it is iniquitous to recover the amount wrongly paid to her. It must be remembered that in all the matters the aggrieved employees were retired persons and the orders of recovery were issued after long gap of 8 years and more after their retirements. In the present case the applicant is at present in service, she is drawing substantial salary and therefore, considering the financial condition of the applicant it is not possible to say that severe hardship would cause to the applicant or it will be iniquitous to recover the amount.

16. In this regard, I would like to point out that the present situation is also covered under Section 72 of the Indian Contract Act. Section 72 says that a person to whom money has been paid, or anything delivered, by mistake or under coercion must repay or return it. Section 72 is based on public policy that even in absence of express contract, the person is liable to refund a thing or amount

received by him under the mistake or under the **coercion**. It seems that statutory right is given to the respondents to recover the excess payment and this right cannot be defeated on equitable principles. In view of this legal position, as there is a vested right in the respondents to recover the excess amount wrongly paid to the applicant with specific idea that the respondents were retaining such right to recover, therefore, such right cannot be defeated on equitable principles. In view of the above discussion, I hold that the action of the respondents re-fixing the salary of the applicant and directing the recovery are within four corners of law, consequently, the applicant is not entitled for any relief. Hence, the following order –

ORDER

The O.A. stands dismissed. No order as to costs.

Dated :- 18/03/2020.

(A.D. Karanjkar)
Member (J).

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 18/03/2020.
and pronounced on

Uploaded on : 19/03/2020..