

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 836/2016 (S.B.)

Dhanraj Yeshwantrao Telang,
Aged about 58 years,
Retd. as Dy. Education Officer R/o near Rajan
Apartment, Laxmi Nagar, Wardha-442 001.

Applicant.

Versus

- 1) State of Maharashtra,
through the Secretary,
Ministry of School Education,
Mantralaya, Mumbai-400 032.
- 2) Commissioner of Education,
Govt. of Maharashtra, Senapati Bapat Marg,
N.A. Road, Bal Bharti Bhawan,
Pune.
- 3) Accountant General (A&E)-II,
Office of AG (A&E)-II, Maharashtra,
Nagpur-440 001.
- 4) Education Officer (Primary),
Zilla Parishad, Wardha-442 001.

Respondents.

S/Shri B. Lahiri, D.P. Shouche, A. Majumdar, Advs. for the applicant.

Shri S.A. Sainis, P.O. for respondent nos. 1 to 3.

None for respondent no.4.

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

Date of Reserving for Judgment : 13th August, 2019.

Date of Pronouncement of Judgment : 16th September, 2019.

JUDGMENT

(Delivered on this 16th day of September,2019)

Heard Shri B. Lahiri, Id. counsel for the applicant and Shri S.A. Sainis, Id. P.O. for respondent nos. 1 to 3. None for respondent no.4.

2. It is case of the applicant that he was appointed in service on 15/6/1993 as Block Education Officer and the applicant stood retired from the service on 30/4/2016 as Deputy Education Officer.

3. It is contended that the letter dated 13/4/2016 was received by the applicant and it was informed in the letter that amount Rs. 98,152/- was erroneously paid to the applicant and the excess amount paid would be deducted from the DCRG amount which was to be payable to the applicant.

4. The applicant made representation in detailed to the respondent no.4 to re-consider the decision and to pay the amount. It was also informed that the action was in violation of the Judgment delivered by the Hon'ble Apex Court in case of **State of Punjab & Ors. Vs. Rafiq Masih, 2015 (1) CLR,398** and also the law laid down by the Hon'ble Bombay High Court. It is grievance of the applicant that no heed was paid by the respondents to the representation of the applicant, therefore, he filed O.A. for quashing the order recovering

amount Rs. 98,152/- from the DCRG and for direction to refund this amount to the applicant.

5. The applicant is resisted by the respondent nos. 1&2 vide reply which is at page no.36 of the P.B. The respondent no.3, Accountant General, Nagpur also submitted reply which is at page no.28. All these respondents have justified their action on the ground that excess amount was paid to the applicant, it was error committed by the Office and in view of the provisions under Rule 134 (A) of the Maharashtra Civil Services (Pension) Rules, 1982 the respondents were empowered to recover the amount. It is submitted that there is no illegality committed by the respondents, therefore, there is no substance in the O.A.

6. The learned counsel for the applicant has placed reliance on the Judgment in Writ Petition No. 3792/2016 in case of **Ashok Ramrao Vichave Vs. Block Education Officer, Panchayat Samiti, Hinganghat** decided on 20/3/2017. It is submitted by the learned counsel for the applicant that the Hon'ble Division Bench of Bombay High Court placed reliance on the Judgment delivered by the Hon'ble Apex Court in case of **State of Punjab & Ors. Vs. Rafiq Masih, 2014 (8) SCC 883** and quashed the order recovering the amount from the retired Head Master. It is submitted that the Hon'ble Apex Court in SLP No. 24111/2017 in case of **Madhu Soodan Pasi & Ors. Vs.**

Union of India & Ors., decided on 4/2/2019 also taken the same view and therefore the action of the respondents recovering amount Rs. 98,152/- from the salary of the applicant is illegal and therefore the order be set aside.

7. The learned P.O. has placed reliance on the Judgment delivered by the Hon'ble Division Bench of the Bombay High Court, Bench at Aurangabad in case of **Vijay Sambrao Bharati Vs. State of Maharashtra & Ors., 2018 (5) Mh.L.J.,316**. It is submitted by the learned P.O. that in case of Vijay Bharati the Hon'ble Division Bench has elaborately discussed several Judgments of the Hon'ble Apex Court on this point and then came to the conclusion that as provided in Rule 134 (A) of the Maharashtra Civil Services (Pension) Rules, 1982 the excess amount paid to the Government servant can be recovered by the Government even after his retirement.

8. So far as State of Maharashtra is concerned, the Maharashtra Civil Services (Pension) Rules,1982 are specific on the point. The Rule 134 (A) is as under –

“ 134 (A) Recovery and adjustment of excess amount paid – If in the case of a Government servant, who has retired or has been allowed to retire, it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including service rendered upon re-employment after retirement or any amount is found to be payable by the pensioner during such period and which has not been paid by , or recovered from him, then the excess amount so paid or the amount so

found payable shall be recovered from the amount of pension sanctioned to him ;

Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him ;

Provided further that, the amount found due may be recovered from the pensioner in instalments so that the amount of pension is not reduced below the minimum fixed by Government.”

9. In Writ Petition No.5198/2013 the Hon'ble Division Bench of Bombay High Court Bench at Aurangabad in case of **Vijay Sambrao Bharati Vs. State of Maharashtra & Ors.**, decided on 17/04/2018, placed reliance on the Judgment of the Hon'ble Apex Court in the case reported in 2012 AIR SCW, 4742. The relevant observations made by the Hon'ble Apex Court are reproduced by the Hon'ble Division Bench of the Bombay High Court which are as under—

“11) *In the case reported as 2012 AIR SCW 4742 [Chandi WP No. 5198/2013 & Anr., Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors.], the Apex Court referred provision of section 72 of the Contract Act and has made observations which are relevant for the present purpose and the observations are as under :-*

"15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had

retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy”.

16. *We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise WP No. 5198/2013 & Anr., where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/ received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.*

17. *We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (2009 AIR SCW 1871) (supra) and in Col. B.J. Akkara (Retd.) case (2006 AIR SCW 5252) (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.*

18. *Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the*

fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012. The appeal stands WP No. 5198/2013 & Anr. ”

10. In W.P.No.4616/2016 Smt. Jayshree Trimbak Takalkar v C.E.O. Z.P. Aurangabad decided on 22-12-2017 the Hon'ble Division Bench of Bombay High Court, at Aurangabad, has elaborately examined the legal position and held as under:-

“Para 16. Taking into consideration the above discussion, definitely the step taken by the respondents for re-fixation of the pay-scale of the petitioners after about 13 years or more without hearing petitioners and thereafter recovery and actually deducting it from the gratuity cannot be upheld. As per the procedure laid down in Rule 134 (a) of the Maharashtra Civil Service (Pension) Rules 1982, ought to have been given to the petitioners herein, and therefore, now we would inclined to give an opportunity to the respondents to re-fix the pay of the petitioners after giving them an opportunity. This is a fir case where the writ jurisdiction of this court under Article 226 and 227 deserves to be invoked. For the reasons writ petitions deserve to be allowed.”

11. After reading Rule 134 (A) of the Maharashtra Civil Services (Pension) Rules, 1982 it is crystal clear that if excess amount

is paid to the government servant during his service, then the Government has a right to recover that amount from him after giving him a reasonable opportunity of hearing and in instalments. As there is a specific provision under the Maharashtra Civil Services (Pension) Rules, 1982 which empowers the State Government to recover the excess amount wrongly paid to the Pensioner, I do not see any merit in the submission of the applicant that the recovery is illegal.

12. In this case though the respondents are empowered to recover the excess amount paid as provided under Rule 134 (A) of the Maharashtra Civil Services (Pension) Rules, 1982, but the respondents were bound to follow the mandatory procedure under the rules. In the present case, it seems that the respondents did not follow that procedure, the respondents did not give opportunity of hearing to the applicant before arriving to the conclusion that really excess amount was paid to the applicant. Though in Para-4 of the reply of respondent nos.1&2 it is alleged that the proposal of recovery and the Chart of the recovery was submitted by the applicant himself, but in fact in order to substantiate this fact no reliable material was placed on record. As per Rule 134 (A) of the Maharashtra Civil Services (Pension) Rules, 1982, the respondents were bound to give reasonable opportunity to show cause why the amount due should not be recovered from him and also the respondents were bound to

consider whether it was a case to recover the due amount in monthly instalments. It is apparent that this procedure laid under rule 134 (A) of the Maharashtra Civil Services (Pension) Rules, 1982 was not followed by the respondents and the respondents straight way issued direction to recover the amount. In my view, this action of the respondents is apparently illegal, therefore, it cannot be justified. In the result, I pass the following order –

ORDER

The O.A. is partly allowed. It is declared that the action of the respondents recovering amount Rs. 98,152/- from the DCRG of the applicant is illegal. The respondents are directed to repay this amount to the applicant before expiry of three months from the date of this order. The respondents are at liberty to follow the procedure laid down under Rule 134 (A) of the Maharashtra Civil Services (Pension) Rules, 1982 for recovering the excess amount if paid to the applicant. No order as to costs.

Dated :- 16/09/2019.

(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 : 16/09/2019.
and pronounced on

Uploaded on : 17/09/2019.