

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 933/2017 (S.B.)

Pralhad S/o Natthuji Bhatkar,
Aged about 59 years, Occupation : Retired
(PSI), R/o Adharsh nagar, Congress nagar,
Amravati Tah. & Dist. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Ministry of Home Department,
Mantralaya, Mumbai- 32.
- 2) The Director General of Police,
Maharashtra State, D.G. Office, Hutatma
Chowk, Mumbai.
- 3) The Superintendent of Police (Rural),
Amravati, Camp Amravati, Tah. & Dist. Amravati.
- 4) The Account General Maharashtra
(Account and Entitlement) II, Post Box
No.114, in front of Ravi Bhawan, Nagpur.

Respondents.

Shri S.N. Gaikwad, Advocate for the applicant.

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

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

JUDGMENT

(Delivered on this 6th day of June,2019)

Heard Shri S.N. Gaikwad, learned counsel for the
applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. It is grievance of the applicant that he was appointed in service in the year 1980 as Police Constable. Later on he was promoted as Police Head Constable and thereafter he was promoted as Assistant Police Sub Inspector. The applicant passed the departmental qualifying examination in the year 2003 and thereafter the applicant was promoted as Police Sub Inspector.

3. It is case of the applicant that the applicant retired on superannuation on 30/06/2016 and at the time of retirement order was passed and amount Rs.96,801/- was deducted from the Gratuity of the applicant, on the ground that excess payments were made to the applicant due to wrong fixation of his pay. It is submission of the applicant that as per the legal principle after the retirement of the Government servant the excess payment cannot be recovered. It is also contended that no undertaking was received from the applicant at the time of fixation of the pay that in the event of the wrong fixation he will repay the excess amount. Under these circumstances, it is contention of the applicant that the action of the respondents is illegal.

4. The learned counsel for the applicant has placed reliance on the Judgment in case of **Prabhakar S/o Ramdas More & Ors. Vs. State of Maharashtra & Ors., 2018 (4) Mh.L.J., 383.**

5. The respondent no.3, the Superintendent of Police (Rural), Amravati has filed reply which is at page no.23 of the P.B. It is contention of the respondent no.3 that it is not correct to say that amount Rs.96,801/- is deducted out of Gratuity. It is submitted that only amount Rs.27,489/- was recovered as it was excess payment made to the applicant due to wrong fixation of the pay.

6. The second contention of the applicant is that as per the Maharashtra Civil Services (Pension) Rules,1982 the amount paid wrongly can be recovered from the employee. Accordingly the amount was recovered from the applicant and there is no illegality.

7. I have gone through the Judgment in case of **Prabhakar S/o Ramdas More & Ors. Vs. State of Maharashtra & Ors.** (cited supra) on which the reliance is placed by the applicant. The Hon'ble Division Bench in this case has placed the reliance on the Judgment delivered by the Hon'ble Apex Court in case of **State of Punjab & Ors. Vs. Rafiq Masih (2014) Mh.L.J.,47.**

8. In case of Rafiq Masih the service Rules applicable to the State of Punjab were under consideration of the Hon'ble Apex Court. 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. 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 the pensioner 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.

11. Even in case of **Vijay Sambrao Bharati Vs. State of Maharashtra & Ors.,** the Hon'ble Division Bench in para-9 of the Judgment has considered the provisions under Rule 134 (A) of the Maharashtra Civil Services (Pension) Rules,1982 and on the basis of this it is held that the Government is empowered to recover the excess amount.

12. The crux of the matter is that as discussed in this Judgment the excess amount paid to the applicant was public money and it was described as tax payer's money and if though there is a specific provisions in the Service Rules, the applicant is permitted to retain this amount, then it would amounts to unjust enrichment it will not be in the interest of the society at large and considering this view taken by the Hon'ble Apex Court reported in 2012 AIR SCW, 4742, I

do not see any merit in this application. Hence, the O.A. is dismissed.

No order as to costs.

Dated :- 06/06/2019.

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