

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 934/2017 (S.B.)

Kishor Mahadeorao Masram,
Aged about 58 years, Occ. Retired (API),
R/o Mangilal Plot, Behind Hotel Maifil Inn,
Amravati, Tq. & 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,
Tq. & Dist. Amravati.
- 4) The Accountant General,
Maharashtra (Account & Entitlement) II,
Post Box No.114, In front of Ravi Bhawan,
Nagpur.

Respondents.

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

Shri M.I. Khan, P.O. for respondents.

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

Date of Reserving for Judgment : 28th August, 2019.

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

JUDGMENT

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

Heard Shri S.N. Gaikwad, Id. counsel for the applicant and Shri M.I. Khan, Id. P.O. for the respondents.

2. It is case of the applicant that on 15-4-1981 he was appointed as Police Constable, thereafter he was promoted as Police Head Constable, Police Sub-Inspector and then as Assistant Police Inspector in year 2009. The applicant stood retired from the service on 31-3-2017 on superannuation.

3. It is grievance of the applicant that the respondents have deducted amount Rs.2,45,207/ from the amount of gratuity to which the applicant was entitled. It is submitted that this action of the respondents is apparently illegal for the reason that this order was passed without giving opportunity of hearing and it is passed after retirement of the applicant. It is submitted that the applicant made application under RTI Act then he received information that as excess salary was paid to the applicant due to wrong fixation of pay, therefore, the excess amount paid was recovered. It is contended that after retirement of the applicant the respondents had no authority to recover the amount, therefore, the action is illegal and direction be issued to the respondents to refund the amount recovered.

4. In support of the submissions the learned counsel for the applicant has placed reliance on the judgment in case of Deelip Harishchandra Jadhao v State of Maharashtra 2016 (1) Mh.L.J. 417.

5. The respondent No.3 & 4 have filed their separate reply which are at page No.19 and 30 of the paper book. The application is mainly attacked on the ground that while preparing the pension case of the applicant it was noticed that when pay of the applicant was fixed as per 6th pay commission, error was committed, due to which the applicant received excess payment Rs.2,45,207/-. This fact was informed to the applicant vide letter Anx. R 3-I dt/11-5-2016, but the applicant has suppressed this fact. The second contention is that the applicant, as per circular dt/29-4-2009 gave undertaking to refund the excess amount received due to wrong fixation of the pay. It is submitted that Anx. R 3-II is the undertaking given by the applicant. It is submitted that the action of the respondents is in accordance with the provisions under the M.C.S. (Revised Pay) Rules, there is no illegality, therefore, the application be dismissed.

6. The learned P.O. has invited my attention to page 28 of the paper book. It is contended that Anx. R 3- II undertaking was given by the applicant, therefore, the respondents have right to recover the excess amount paid. On perusal of this document it seems that it is undated and it was executed by the applicant when he

was Police Head Constable. It is submission of the respondents this undertaking was given by the applicant as per circular dt/29-4-2009. It seems that the applicant was promoted as A.P.I. on 19-8-2009 and this fact is not disputed by the respondents. In view these circumstances it is difficult to accept that Anx. R 3-II was executed as per circular dt/29-4-2009.

7. 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.”

8. 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. ”*

9. 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.”

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 as per ratio in case of **Vijay Sambrao Bharati Vs. State of Maharashtra & Ors., & Smt. Jayshree Trimbak Takalkar v C.E.O. Z.P. Aurangabad** the crux of the matter is that 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.

12. Anx. R 3-I is the order of pay fixation dt/ 11-5-2016. In this order it is nowhere mentioned that excess amount Rs.2,45,207/ was paid to the applicant due to wrong fixation of his pay. The applicant retired on 31-3-2017, but till his retirement he was never informed that this excess amount was paid to him and he was liable to refund the same. Though the respondents have right to recover the amount paid in excess, for doing so the respondents were bound to follow the procedure laid down under Rule 134 (A) of the M.C.S. (Pay) Rules 1982. In view of this the action of the respondents recovering the amount Rs.2,45,207/ without hearing the applicant, is contrary to law and it can't be justified. In result the following order.

ORDER

It is declared that the action of the respondents recovering amount Rs.2,45,207/ is bad in law, the respondents shall repay this

amount to the applicant within 3 months from the date of this order. The respondents are at liberty to recover this amount from the applicant after following the procedure under Rule 134 (A) of the M.C.S. (Pay) Rules 1982. No order as to costs.

Dated :- 16/09/2019.

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

*dnk..

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 : 16/09/2019.