

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 357 OF 2021

DISTRICT:- BEED

Mirza Jamil Baig Mirza Hayat Baig,
Age : 61 years, Occu: Retired,
R/o. Rajiv Nagar, Dhanora Road,
Beed.

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APPLICANT

V E R S U S

- 1) The State of Maharashtra
Through: The Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Director General of Police,
Shahid Bhagatsing Marg,
Mumbai.
- 3) The Superintendent of Police,
Beed.
- 4) The Pay Verification Unit,
Aurangabad.

.. **RESPONDENTS**

APPEARANCE : Shri Kakasaheb B. Jadhav, learned
counsel for the applicant.

: Smt. Sanjivni Deshmukh-Ghate, learned
Presenting Officer for the respondent
authorities.

CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN

DATE : 12.10.2023

ORAL ORDER

Heard Shri Kakasaheb B. Jadhav, learned counsel for the applicant and Smt. Sanjivani Deshmukh-Ghate, learned Presenting Officer for the respondent authorities.

2. Aggrieved by the order dated 11/12.1.2016, whereby the recovery of amount of Rs. 54,745/- is directed against the applicant, he has preferred the present Original Application. While working on the post of Assistant Sub Inspector of Police the applicant got retired on 31.8.2016 on attaining the age of superannuation. As is claimed by the applicant the post of Assistant Sub Inspector of Police is a Group-C post. It is the grievance of the applicant that the aforesaid recovery directed against the applicant is against the law laid down by the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., AIR 2015 SC 596**. The applicant has, therefore, sought quashment of the order of recovery and consequently has claimed the refund of the amount which has been recovered from the gratuity of the applicant paid to him after his retirement.

3. Learned counsel appearing for the applicant, referring to and relying upon the judgment of the Hon'ble Apex

Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** (cited supra), submitted that the recovery directed against the applicant is contrary to the law laid down by the Hon'ble Apex Court in the aforesaid judgment. Learned counsel more particularly read out the observations made and findings recorded by the Hon'ble Apex Court in paragraph 12 of the said judgment, which reads thus: -

“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."

Learned counsel submitted that as has been observed by the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** (cited supra) that the recovery directed against the present applicant has to be held impermissible, since it was directed when hardly 7 months were left for retirement of the applicant. Learned counsel submitted that even otherwise the applicant being falling in the category of Group-C employee, no recovery was permissible. Learned counsel submitted that according to the respondents, one increment was wrongly paid to the applicant before due date and based on that, mistake occurred in granting such increment, the recovery is directed of the amount allegedly paid in excess of the entitlement of the applicant. Learned counsel submitted that the applicant did not play any role in receiving the amount which is alleged to be paid in excess of his entitlement. Learned counsel submitted that as has been observed by the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** (cited supra), the amount paid in excess to the applicant on the ground of wrong fixation of his pay cannot be recovered, unless it is noticed that the

payment of such amount was result of any false representation made by the applicant or because of any fraud played by the applicant on the concerned authorities.

4. Learned counsel submitted that since the case of the applicant is squarely covered with the principles laid down in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** (cited supra), the impugned order of recovery deserves to be quashed and set aside and consequently the respondents are to be directed to refund the said amount illegally recovered by them from the applicant from his Gratuity.

5. Smt. Sanjivani Deshmukh-Ghate, learned Presenting Officer appearing for the State authorities, submitted that the impugned order was passed well within the date of retirement of the applicant. Learned P.O. further submitted that the applicant did not lodge any protest against the recovery so directed against him. Learned P.O. further submitted that the amount allegedly paid in excess of the entitlement of the applicant has been recovered from the Gratuity amount of the applicant payable to him. Learned P.O. submitted that on none of the occasion the applicant raised any objection as about the said recovery or protected/resisted the said recovery. Learned P.O. submitted that not making any complaint by the applicant

and silence observed by him impliedly leads to an inference that the recovery which was directed against the applicant was acceptable to him. Learned P.O. submitted that had there been any dispute, the applicant must have recorded the same in writing and accepted the amount under protest by reserving his right to challenge the recovery. Learned P.O. submitted that mistakes invariably occurred in fixing the pay of the employees and such mistakes are detected at the time of pay verification of the concerned employee at the time of his retirement. Learned P.O. submitted that the applicant was quite aware of the fact that he has been wrongly granted one increment though he was not due for such increment and in spite of that he went on receiving the amount in excess to his entitlement and, as such, he is estopped from raising any objection for the recovery directed against him. Learned P.O. for all these circumstances has prayed for dismissal of the Original Application.

6. I have duly considered the submissions made on behalf of the applicant, as well as, the respondents. The factual aspects are not in dispute. The date of retirement of the applicant and the dates on which notices came to be issued directing recovery against the applicant are not disputed by the respondents. As is revealing from the record one increment was

wrongly granted in favour of the applicant. The applicant has not come out with any case that as observed in the order of recovery wrong payment was not made to him. It is also not the case of the applicant that the contention that one increment was given to him before its due date is incorrect or false. However, fact remains that the respondents sought to recover the said amount at the verge of the retirement of the applicant. It is further significant to note that the amount, which is allegedly paid wrongly to the applicant in excess of his entitlement, was continuously being paid for more than five years to the applicant. In these circumstances, though the applicant may not have protested at the time of recovery of the said amount from him, the recovery cannot be said to be permissible in view of the judgment delivered by the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc.**, (cited supra). I have reproduced hereinabove paragraph 12 from the said judgment. The case of the present applicant squarely falls within the said exceptions. In the circumstances, the impugned order has to be set aside. In the result, the following order is passed: -

ORDER

- (i) Impugned order dated 11/12.1.2016 is quashed and set aside.

- (ii) The respondents shall refund the amount of Rs. 54,745/- to the applicant within four months from the date of this order.
- (iii) The Original Application stands allowed in the aforesaid terms. There shall be no order as to costs.

VICE CHAIRMAN

O.A.NO.357-2021(SB)-2023-HDD-Recovery