

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.106 OF 2021  
WITH  
ORIGINAL APPLICATION NO.209 OF 2021**

**DISTRICT: PUNE & SOLAPUR  
SUBJECT: RECOVERY**

**ORIGINAL APPLICATION NO.106 OF 2021**

Shri Hanumant Pandurang Kate, )  
Age-60 yrs, Occupation – Retired, )  
Residing at – 1 Kalthan Road, )  
Irrigation Colony, Indapur, Pune – 413 106. )... **Applicant**

**WITH**

**ORIGINAL APPLICATION NO.209 OF 2021**

Shri Dilip Kondiba Doke, )  
Age-59 yrs, Occupation – Retired )  
Residing at – Mukkam post Kanher gaon, )  
Post Akole Khurd, Taluka Madha, District - Solapur. )... **Applicant**

**Versus**

State of Maharashtra through, )  
The Executive Engineer, )  
Ujani Dam Management Division, )  
Bhimanagar, Taluka – Madha, District - Solapur. )... **Respondent**

**Ms. Savita Suryawanshi, learned Advocate holding for Shri V.V. Joshi, learned Advocate for the Applicant.**

**Smt. Archana B. Kololgi, learned Presenting Officer for the Respondent in O.A. No.106/2021.**

**Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondent in O.A. No.209/2021.**

**CORAM : A.P. Kurhekar, Member (J)**

**DATE : 31.03.2022.**

**JUDGEMENT**

1. These two O.As. are filed by retired Government servant (Group 'C' employee) challenging recovery of excess payment paid to them during tenure of their services and prayed for direction to refund the amount with interest.

2. In O.A. No.106/2021 the Applicant stands retired on 30.04.2019 from the post of Clerk (Group 'C' employee) and after retirement Department issued recovery order dated 23.07.2020 for recovery of excess amount of Rs.2,02,749/- (Rupees Two Lakhs Two Thousand Seven Hundred and Forty Nine Only) paid to him due to wrong fixation of pay from 2011. Accordingly, the said amount was recovered from leave encashment paid to the Applicant after retirement without issuing notices or without giving opportunity of hearing to him.

3. Whereas, O.A. No.209/2021 is filed by the Applicant who stands retired from the post of Cannal Inspector on 31.03.2020 (Group 'C' employee). After retirement Department issued recovery order dated 03.02.2021 seeking recovery of Rs.3,13,819/- (Rupees Three Lakhs Thirteen Thousand Eight Hundred and Nineteen Only) from his retiral benefits in view of objection raised by Pay Verification Unit and recovered the same from retiral benefits without opportunity of hearing.

4. Thus, admittedly in both the O.As recovery orders have been issued after retirement without giving opportunity of hearing or notices to the Applicant and amount was also recovered. Therefore, the Applicant's have challenged action of recovery and prayed for direction and to refund the amount deducted from the retiral benefits.

5. In O.A. No.106/2021 excess amount was paid from 2011 on account of wrong fixation of pay. Whereas, in O.A. No.209/2021 excess payment was paid from 2008. Admittedly, excess payment was made

due to wrong fixation by the Department and there is no role of the Applicant therein. As such, no fraud or mis-representation is attributable to the Applicant for getting excess pay. This is also not a case where the Applicants have given any undertaking to refund the amount since, there is no such pleading in Affidavit-in-Reply.

6. The issue of permissibility of excess payment from retired Government servant particularly Group 'C' employee is no more *res-integra* in view of the decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))** wherein the Hon'ble Supreme Court has culled out certain situation where recovery from employee held impermissible in law. Para.12 of the judgment of Hon'ble Supreme Court is material, which is an under:-

*“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 belong to Class-III and Class-IV services (or Group 'C' and Group 'D' services).*

*(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*

*(iii) Recovery from 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 employee, 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.”*

7. As such, Clause No. (i), (ii) & (iii) of Para 12 of the judgment are squarely covered and impugned orders are bad in law. Applicants are entitled for refund. Hence, the order.

**ORDER**

- A) Both the Original Applications are allowed.
- B) In O.A. No.106/2021, Respondent are directed to refund Rs.2,02,749/- (Rupees Two Lakhs Two Thousand Seven Hundred and Forty Nine Only) & in O.A. No.209/2021, Respondent are directed to refund Rs.3,13,819/- (Rupees Three Lakhs Thirteen Thousand Eight Hundred and Nineteen Only) to both the Applicants respectively within six weeks from today and if the amount is not paid within six weeks it will carry interest at the rate of 9% from the date of default till date of actual payment.
- C) No order as to costs.

**Sd/-  
(A.P. Kurhekar)  
Member (J)**

Place: Mumbai  
Date: 31.03.2022  
Dictation taken by: N.M. Naik.

Uploaded on: \_\_\_\_\_