

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.146 OF 2021

Shri Sahebrao A. Bhosale,)
Aged 61 yrs, Retired as Junior Engineer from)
Lift Irrigation Management Division, Swargate,)
Pune, R/o. Flat No.303, Jijau Niwas, A/P. Lohegaon,)
Sathe Vasti, Pune-47.).. **Applicant**

Versus

The Executive Engineer through)
Deputy Executive Engineer, Lift Irrigation Management)
Division, Having Office at Swargate, Pune-37.) ..**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Shri Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER(J)

DATE : 01.03.2022.

JUDGMENT

1. The Applicant has challenged order dated 18.03.2020 issued by Respondent thereby seeking recovery of Rs.5,59,435/- (Five Lakhs Fifty Nine Thousand Four Hundred Thirty Five Only) from Gratuity towards excess payment made to him during the period from 01.10.1994 to 31.03.2017.

2. The Applicant stands retired as Junior Engineer (Group 'C') from the establishment of Respondent w.e.f. 31.03.2017. However, his Gratuity was withheld on the ground of some excess payment made to him during the tenure of his service. He approached Respondents to release his withheld Gratuity but in vain. Ultimately, Respondents issue order dated 18.03.2020 stating that he was paid excess pay and allowance during the period from 01.10.1994 to 31.03.2017 amounting to Rs.5,59,435/- (Five Lakhs Fifty Nine Thousand Four Hundred Thirty Five Only). The over payment was noticed during the verification of service book by Account Pay Verification Unit, Pune. It is on the basis of order dated 18.03.2020 sum of Rs.5,59,435/- (Five Lakhs Fifty Nine Thousand Four Hundred Thirty Five Only) has been directly adjusted

from Gratuity payable to the Applicant and remaining amount was paid to him. Therefore, the Applicant has filed the present O.A. for refund of Rs.5,59,435/- (Five Lakhs Fifty Nine Thousand Four Hundred Thirty Five Only) with interest and also claim direction to release additional Gratuity of Rs.3,82,635/- (Three Lakhs Eighty Two Thousand Six Hundred and Thirty Five Only) which was become payable in view of 7th Pay Commission.

3. During the pendency of O.A. amount of Rs.3,82,635/- (Three Lakhs Eighty Two Thousand Six Hundred and Thirty Five Only) is paid to the Applicant on 23.07.2021 after deducting interest on home loan as fairly conceded by learned Advocate for the Applicant.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that the Applicant being Group 'C' retired Government servant, impugned action of recovery from Gratuity after 3 years from the date of retirement is totally bad in law. In this behalf he placed reliance on the Judgment of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**.

5. Learned P.O. made feeble attempt to justify the impugned action *inter-alia* contending that the Applicant had received excess pay and allowance, and therefore it was rightly recovered in view of Pay Verification Unit objection. According to her over payment was made due to wrong date of benefit of 1st Time Bound Promotion & 2nd Time Bound Promotion. As such, mistake was rectified and excess payment has been recovered.

6. Undisputedly, the Applicant stands retired as Group 'C' Government servant on 31.03.2017. Perusal of impugned order dated 18.03.2020 reveals that the excess payment was made from 01.10.1994 to 31.03.2017. As such, no fraud or mis-representation is attributable to the Applicant. Excess payment was made due to sheer mistake of the Department.

7. Indeed, issue of recovery of excess payment from retired Government servant particularly Group 'C' is no more *res-integra*. In view of decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**.

8. Hon'ble Supreme Court culled out certain situation in Judgment of **Rafiq Masih (cited supra)** in para 12 and held that the recovery falling in these situation would be impermissible in law. Para.12 of the Judgment of Hon'ble Supreme Court is as 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.”*

9. As such, the present case is squarely covered in Clause (i), (ii), (iii) & (v) of para 12 of the judgment of Hon'ble Supreme Court.

10. Impugned order is therefore liable to be quashed and the Applicant is entitled for refund of the amount. Insofar as interest is concerned the Applicant is at liberty to redress the grievance of interest independently, as permissible in law.

ORDER

A. O.A. is allowed.

B. Impugned order dated 18.03.2020 is quashed and set aside. Respondent is directed to refund Rs. 5,59,435/- (Five Lakhs Fifty Nine Thousand Four Hundred Thirty Five Only) to the Applicant within a month from today failing to which amount

shall be paid with interest at the rate of 9% from date of default till the date of actual payment.

C. No order as to costs.

Sd/-
(A.P. KURHEKAR)
MEMBER (J)

Place: Mumbai
Date: 01.03.2022
Dictation taken by: N.M. Naik.