

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.223 OF 2020**

**DISTRICT: PUNE  
SUBJECT: RECOVERY**

- 1) Shri Dayanand Narayan Kamble, )  
Aged 55 yrs, Working as Craft Inspector (Carpenter), )  
Having Office at Receiving Centre for Beggars Home, )  
Phule Nagar, Yerwada, Pune-6, )  
R/o. Gardenia So, Phase-2, A-6, B-Wing, Flat No.16, )  
Near Ramchandra Hall, Somnath Nagar, )  
Vadgaon Sheri, Pune-14. )
- 2) Smt. Usha Sugandh Waidande, )  
Aged 58 yrs, Working as Teacher, Pandit Jawaharlal )  
Nehru Udyog Kendra, Yerwada, Pune-6, )  
R/o. Madhuban Society Lane No.8, Shitole Nagar, )  
Old Sanghavi, Pune-27. )
- 3) Smt. Sunita Rajiv Raskar, )  
Aged 48 yrs, Working as Teacher, Pandit Jawaharlal )  
Nehru Udyog Kendra, Yerwada, Pune-6, )  
R/o. Khese Lane, Lohgaon, Pune-47. )
- 4) Shri Prakash Atmaram More, )  
Aged 57 yrs, Working as Instructor (Carpenter), )  
Having Office at Superintendent, Pandit Jawaharlal )  
Nehru Udyog Kendra, Yerwada, Pune-6, )  
R/o. Shri Vijaygad Apartment, A-Wing, Flat No.5, )  
Mandavgaon Road, Hanuman Nagar, Shrigonda, )  
Tal. Shrigonda, Dist. Ahmadnagar. )
- 5) Shri Dadabhau Hipanrao Aher, )  
Aged 55 yrs, Working as Instructor (Carpenter), )  
Having Office at Receiving Centre for Beggars Home, )  
Chembur, Mumbai-71, R/o. Malti Apartment, )  
Flat No.303, Deosaman Road, Netaji Chowk, )  
Near Shivneri Hospital, Ulhasnagar, Dist. Thane. )
- 6) Shri Hansrai Sawalaram Pawar, )  
Aged 58 yrs, Working as Craft Instructor, Having )

Office at Receiving Centre for Beggars Home, )  
 Phule Nagar, Yerwada, Pune-6, R/o.461, Guletkadi, )  
 Koyana Housing Society, House No.12, Pune-37. ) **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
 Through Principal Secretary, )  
 Women and Child Development Department, )  
 Having Office at New Administrative Building, )  
 3<sup>rd</sup> Floor, Mantralaya, Mumbai-32. )
- 2) The Commissioner for )  
 Women and Child Development Department, (M.S.) )  
 Having Office at 28, Queen Garden, Pune-1 )
- 3) The Superintendent, )  
 Pandit Jawaharlal, Nehru Udyog Kendra, Yerwada, )  
 Pune-6. )
- 4) The Superintendent )  
 Receiving Centre for Beggars Home, Phule Nagar, )  
 Yerwada, Pune-6. )
- 5) The Superintendent )  
 Receiving Centre for Beggars Home, )  
 Chembur, Mumbai-71. ) **Respondents**

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

**Shri A.J. Chougule, learned Presenting Officer for the Respondents.**

**CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)**

**DATE : 18.10.2021.**

**JUDGMENT**

1. The Applicants have filed this O.A. initially challenging order dated 29.01.2020 and 03.02.2020 thereby downgrading pay scale and during the pendency of O.A. by way of amendment further challenged orders of recovery dated 20.07.2020 whereby recovery of Rs.6,53,558/-, Rs.12,18,279/- & Rs.3,93,078/- is sought from the Applicant Nos.2, 3 &

4 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated undisputed facts giving rise to this O.A. are as under:-

The Applicants were appointed as Craft Instructor / Teacher and during the period of services they were given the benefit of two tier and three tier benefits in terms of Dr. Chatopandhyay Committee report as Assured Career Progression Scheme (A.C.P.S.). During the pendency of O.A. the Applicants No.2, 4 & 6 retired from services.

3. Following chart would show date of joining, benefits of two tier and three tier in terms of Dr. Chatopandhyay Committee report as well as present pay scale and recovery sought to be made from them.

Sr. No .	Name	Date of joining	Pay Scale at Joining Date	12 year Date with Scale	24 year Date with Scale	5 <sup>th</sup> - 1996 Pay Scale	6 <sup>th</sup> - 2006 Pay Scale	Date of Retirement in service	Recovery Order Date	Proposed Amount of Recovery
1	Shri D.N. Kamble Craft Instructor	10/04/1990	Rs.1200-2040	10-4-2002 Rs4500-7000 Three tier Scale Rs5000-8000	----	4500-7000 Three tier Scale 5000-8000	Rs 9300-34800 G.pay=4200	March 2023	29-1-2020	Pay Scale down graded but no recovery order issued
2	Smt. U.S. Waidande Teacher	12/5/1982	290-10-390-15-465-500	31-5-1994 Three tier Scale Rs 5000-8000	9300-34800 G.Pa y 4900	5000-8000 Three tier Scale	9300-34800 G.P 4300+600=4900	May 2020	3-2-2020	Pay Scale down graded Recovery Rs6,53,558/-
3	Smt. S.R. Raskar Teacher	22/5/1998	Rs. 1200-2040	22-5-2010 Three tier Scale Rs 9300-34800 G.pay 4200	---	4500-7000 (5200-20200 G.pay 2800) Three tier Scale	Rs 9300-34800 G.pay=4200	July 2030	3-2-2020	Recovery Rs.12,18,279/- Pay Scale down graded
4	Shri P.A. More Craft Instructor	15/10/1993	Rs. 1200-2040	15-10-2005 Rs 4500-7000 Three tier Scale Rs 5000-8000	---	4500-7000 Three tier Scale 5000-8000	Rs 9300-34800 G.pay=4200	May 2021	3-2-2020	Recovery Rs.3,93,078/- down graded pay scale

Sr. No .	Name	Date of joining	Pay Scale at Joining Date	12 year Date with Scale	24 year Date with Scale	5 <sup>th</sup> - 1996 Pay Scale	6 <sup>th</sup> - 2006 Pay Scale	Date of Retirement in service	Recovery Order Date	Proposed Amount of Recovery
5	Shri D.H. Ahire Craft Instructor	19/04/1990	Rs. 1200-2040	19-04-2002 Rs 4500-7000 Three tier Scale Rs 5000-8000	12-4-20214 9300-34800 G.Pa y 4900	4500-7000 Three tier Scale 5000-8000	Rs 9300-34800 G.pay=4200	February 2023	3-3-2020	Neither down graded Pay Scale nor order of recovery is issued
6	Shri H.S. Pawar Instructor	2/05/1991	Rs. 1200-2040	2-05-2003 Rs 4500-7000 Three tier Scale Rs 5000-8000	---	4500-7000 Three tier Scale 5000-8000	Rs 9300-34800 G.pay=4200	April 2020	29-1-2020	Pay Scale is down graded but no recovery order is issued.

4. Basically the Applicants claim is totally based on the decision rendered by this Tribunal in O.A. No.805/2016 (Mrs. Rekha V. Dubey v/s. State of Maharashtra) decided with O.A. No.806/2016 & O.A. No.807/2016 on 05.12.2018. In these matters the Applicants therein were also appointed as Craft Instructor, Wireman Radio and benefits of Dr. Chatopandhyay Committee report were granted to them. However, later in view of objection by Pay Verification Unit recovery from retirement benefits was sought by downgrading last pay drawn. Tribunal allowed the O.A. thereby setting aside impugned orders of recovery. Furthermore directions were given to consider the aspects of issuance of G.R. to protect their pay as a special case in view of hardship faced by the Applicants within three months from the date of order.

5. Undisputedly present Applicants are exactly similarly situated persons. In Affidavit-in-Reply Respondents fairly concedes this position. All that Respondents sought to contend that the Judgment delivered in **Rekha Dubey's** matter has been challenged by filing Writ Petitions No.7154 of 2019, 7221 of 2019 & 7191 of 2019 and so long as it is not finalized the Applicants are not entitled to the benefits of the said Judgment.

6. However, material to note that during the pendency of this O.A., Hon'ble High Court by order dated 15.09.2021 decided these Writ Petitions filed by Government and the decision rendered by this Tribunal has been confirmed by Hon'ble High Court granting three months' time for compliance.

7. In **Rekha Dubey's** matter, as regard recovery orders, this Tribunal placing reliance on **Civil Appeal No.11527/2014 arising out of SLP (C) No.11684/2012 (State of Punjab and others Vs. Rafiq Masih (White Washer) dated 18<sup>th</sup> December, 2014 (to be hereinafter called Rafiq Masih's case)** quashed and set aside the recovery orders with specific findings that the Applicants squarely falls within the parameter laid down in Para 12 of the Judgment in **Rafiq Masih's case**, which 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.”*

8. Admittedly, in the present case no misconduct or fraud can be attributed to the Applicant Nos.2, 4 & 6 who are already retired from service. Furthermore, admittedly, they fall in Group 'C'. In so far as Applicant Nos.1, 3, 5 are concerned, they are also due to retired in 2023, 2030 & 2023 respectively. Be that as it may, in view of decision of Hon'ble Supreme Court in **Rafiq Masih's case**, the recovery from them being Class-III & Class-IV service is impermissible.

9. As regard, benefits in terms of Dr. Chatopandhyay Committee report recommendation are concerned in Para No. 36 of this Tribunal held as under:-

**36.** It is thus apparent that the Applicants are subjected to discrimination and disparity in pay scale. In fact, they were already placed in pay scale of Rs.9300-34800 and benefits were extended to them and after retirement only, the objections are being raised. Had Respondent No.1 issued separate G.R. on the basis of G.R. of Finance Department dated 01.02.1990, the Applicants would not have faced this situation. Undoubtedly, it is in the domain of Government and Pay Commission to fix pay for various posts having regard to their nature of work, qualification, service conditions and so on. However, there is no denying that there should be parity amongst the employees who are similarly situated. In the present case, non-issuance of G.R. by Women & Child Development Department seems the only reason and hurdle in the way of Applicants to get the pensionary benefits on the basis of last pay drawn. It must be borne in mind that the employee is mainly dependent on his salary and on pension after retirement. Pension is not charity. It is his right guaranteed under the law. Pension is the only source of livelihood after retirement. It is common knowledge that employee is rest assured about future assuming certainty of pension as well it's quantum. Therefore, it would be iniquitous and unjust to deprive them from similar pension being paid to similarly situated employees, if otherwise entitled to it. Therefore, it would be appropriate to give directions to Respondent No.1 in this behalf and if necessary, to issue G.R. to that effect.

10. The Hon'ble High Court while deciding **Writ Petition Nos.7154/2019, 7221/2019 & 7191/2019** in Para Nos.11, 12, 13 & 14 held as under:-

**11.** Fourthly and finally, we had enquired of Mr. Pathan as to whether any of the original applicants by acts of misrepresentation or fraud had been instrumental in receiving excess payment. Law

is well-settled that fraud vitiates even the most solemn of acts. We would venture to observe that even if a Class III/Group 'C' employee, say a year or so after retirement or before retirement, is found to have indulged in fraud, recovery of excess payment may not be barred on equitable principles. There ought to be zero tolerance of fraudulent acts. Fortunately, for the original applicants, Mr. Pathan's answer to our query was in the negative; hence, the recovery process must be held to have been correctly interdicted by the Tribunal.

**12.** Since we have rendered a decision on the basis of our interpretation of the decisions in **Rafiq Masih** (supra) and **Jagdev Singh** (supra), we have not examined the other part of the Tribunal's judgment, by which it has been held that no excess payment was made in favour of the original applicants.

**13.** There is no merit in the writ petitions. Accordingly, the same stand dismissed. There shall, however, be no order as to costs.

**14.** The State shall proceed to implement the directions of the Tribunal within 3 (three) months from date of receipt of a copy of this judgment and order, failing which the original applicants shall be free to initiate appropriate proceedings in accordance with law before the Tribunal.

11. Learned P.O. on instructions submit that in view of the decision rendered by this Tribunal in **Rekha Dubey's** matter and confirmed by Hon'ble High Court, now necessary steps are being taken by the Government.

12. Indeed, the Applicants being exactly similarly situated person are entitled to the benefits of Judgment in **Rekha Dubey's** matter which has attained finality. In service jurisprudence, it is well settled principle of law that when particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefits and not doing so, would amount to discrimination and would be violative of Article 14 of the Constitution of India. In this behalf, a reference may be made to the Judgment of Hon'ble Supreme Court in **(2015) 1 SCC 347 (State of Uttar Pradesh Vs. Arvind Kumar Srivastava & Ors.)** wherein the Hon'ble Supreme Court emphasized that service jurisprudence evolved by the Courts from time to time postulates that, all similarly situated persons should be treated similarly. However,

this principle is of-course subject to certain well recognized exception in the form of latches, delays as well as acquiescence. In so far as the present matter is concerned, there is no question of latches, delay or acquiescence. This being the well settled legal principle, in my considered opinion, it would be travesty of justice if the relief claimed by the Applicant is denied to him.

13. Here material to note that as per letter tendered by learned P.O, it appears that Special Counsel appointed by Government in Writ Petition Nos.7154/2019, 7221/2019 & 7191/2019 in view of the decision rendered by the Tribunal and Hon'ble High Court has given following opinion.

“The Learned Tribunal directed to issue G.R. if necessary as a special case or issue special order as the case may be. The Tribunal order could be thus complied with either by issuing the G.R. as a special case or by issuing a special order of releasing the Pensionary benefits and retiral benefits as per their last pay drawn as a special case.

In my opinion therefore even issuance of a special order fixing the pension and retiral benefits of the applicants as per their pay drawn as a Special case could be a sufficient compliance of the Tribunal's order dated 5.12.2018 and the Hon'ble High Court's order dated 24.9.2021 instead of issuing the GR.”

14. As such, this O.A. also needs to be disposed of on similar line, since no other ground is raised. Hence, the following order.

### **ORDER**

- A) The Original Application is allowed partly.
- B) The impugned communications dated 29.01.2020, 03.02.2020 and recovery orders dated 20.07.2020 are quashed and set aside. There shall be no recovery of alleged excess payment paid to the Applicants.
- C) In view of decision in **Rekha Dubey's** matters, the Respondents are required to issue G.R. as special case

protecting last drawn pay of the Applicant Nos.2, 4 and 6 for retiral benefits or Government may issue special order of fixing the pensionary and retiral benefits as per their last drawn pay as a special case instead of issuance of G.R.

- D) In so far as Applicant Nos.1, 3 & 5 are concerned, their present pay is also needs to be protected either by issuance of G.R. as a special case or special order by Government.
- E) The Respondents are directed to take necessary steps for the compliance of direction given above within three months from today.
- F) No order as to costs.

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

Place: Mumbai  
Date: 18.10.2021  
Dictation taken by: N.M. Naik.