

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.340 OF 2020

**DISTRICT: NASHIK
SUBJECT: RECOVERY**

Shri Shridhar Pandharinath Thombare)
Age: 60 yrs, Occ: Retired.)
R/o: HO No.14/15, Sardar Vallabh Bhai Road,)
Near Ved Mandir, Tidake colony, Nashik.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through Principal Secretary,)
Public Work Department,)
Mantralaya, Mumbai-32.)
- 2) The Executive Engineer,)
Public Work Department, Nashik Division,)
Trimbak road, Nashik – 422 002.)
- 3) The Accountant General, M.S.)
Pratishtha Bhavan, 2nd Floor, 101,)
Maharshi Karve Road, Mumbai – 20.)... **Respondents**

Smt. Avanti Inamdar, learned Advocate holding for Shri Rameshwar N. Gite, learned Advocate for the Applicant.

Shri Ashok J. Chougule, learned Presenting Officer for the Respondents.

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

DATE : 24.03.2022.

JUDGMENT

1. The Applicant who stands retired as Driver (Group 'C' employee) has challenged order dated 16.08.2019 and 17.09.2019 whereby recovery of Rs.2,29,999/- (Rupees Two Lakhs Twenty Nine Thousand Nine Hundred and Ninety Nine Only) is sought from his Gratuity.

2. Heard Smt. Avanti Inamdar, learned Advocate holding for Shri R.N. Gite, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

3. Undisputedly, the Applicant stands retired as Driver (Group 'C' employee) w.e.f. 31.03.2019. After retirement when the pension papers were processed it was noticed that excess payment was made to the Applicant from 1996 till his retirement. In view of objection raised by pay verification unit, Department downgraded the pay resulting into recover of Rs.2,29,999/- (Rupees Two Lakhs Twenty Nine Thousand Nine Hundred and Ninety Nine Only) and it is sought to be recovered from Gratuity.

4. When specific query was raised to learned Advocate for the Applicant as to whether challenge is to the downgrading of pay and pension or it is restricted to the recovery only, she fairly stated that challenge is restricted to the recovery of Rs.2,29,999/- (Rupees Two Lakhs Twenty Nine Thousand Nine Hundred and Ninety Nine Only) from Gratuity and the Applicant is not challenging downgrading of pay and pension. As such, the issue is restricted as to whether recovery from retired Government servant of Group 'C' employee from Gratuity is permissible and this issue 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))**.

5. Hon'ble Supreme Court in **Rafiq Masih's case (cited supra)** culled out certain situation wherein recovery of excess payment paid to the employee during the pendency of his service is held impermissible in Para 12 of the judgment, 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."*

6. Now turning to the facts of the present case, excess payment was made from 1996 and it was continued upto 31.03.2019 i.e. till the retirement of the Applicant. There was no mis-representation or fraud attributable to the Applicant in getting the excess payment. Excess payment was made due to sheer mistake on the part of the Department. As such, present case is squarely covered under clause (i), (ii), (iii) & (v) of Para 12 of the judgment of Hon'ble Supreme Court in **Rafiq Masih's case (cited supra)**.

7. In view of above, inevitable conclusion is that recovery of Rs.2,29,999/- (Rupees Two Lakhs Twenty Nine Thousand Nine Hundred and Ninety Nine Only) from the retiral benefits of the Applicant is unsustainable in law and liable to be quashed. Hence the Order.

ORDER

- A) O.A. is partly Allowed.
- B) Impugned communication dated 16.08.2019 & 17.09.2019 to the extent of recovery only are quashed.

- C) Interim relief granted by the Tribunal is made absolute.
- D) No order as to costs.

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

Place: Mumbai
Date: 24.03.2022
Dictation taken by: N.M. Naik.

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