IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.477 OF 2020

DISTRICT: NASHIK
SUBJECT: RECOVERY

Smt. Madhuri Shivaji Markand,	)
R/o. Plot No.16, Alav Residency,	)
Near Indira Nagar Jogging Track, Suchita Nagai,	)
Nasik.	)… **Applicant**

Versus

1)	The State of Maharashtra,	)
	through its Secretary, Revenue and forest	)
	Department, Mantralaya, Mumbai-32.	)
2)	Tahasildar,	)
	Taluka Igatpuri, Nasik, Dist Nasik.	)
3)	Dy. Collector,	)
	Land Acquisition officer, Irrigation No.1	)
	In the premises of Collector Compound,	)
	Nasik-422 002.	)… **Respondents**

Shri Rajesh M. Kolge, learned Advocate for the Applicant.

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

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

DATE   :   02.02.2022.

JUDGMENT

1.   The Applicant has challenged order dated 27.09.2021 passed by Respondent No.2 - Tahasildar, Igatpuri thereby confirming notice dated 16.06.2019 seeking the recovery of Rs.6,49,715/- (Rupees Six Lakhs Forty Nine Thousand Seven Hundred and Fifteen Only) paid in excess on account of wrong fixation invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant came to be appointed as Talathi and joined on 09.01.2008 at Igatpuri. She was given pay scale of Rs.9300/- though she was entitled to pay scale of Rs.7810/-. The mistake in pay fixation was noticed by pay verification unit, Nashik in 2017. Therefore, Tahsildar, Igatpuri issued notice dated 16.06.2019 thereby re-fixing pay and recovery of Rs.6,49,715/- (Rupees Six Lakhs Forty Nine Thousand Seven Hundred and Fifteen Only) was sought. The Applicant was called upon to explain why recovery should not be made from salary. The Applicant submitted reply stating that no recovery is permissible in view of decision of Hon'ble Supreme Court in *(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer)*. However, Respondent No.2 - Tahsildar, Igatpuri by order dated 27.09.2021 rejected her explanation and directed for recovery of excess amount paid to her.

3.   Learned Advocate for the Applicant sought to contend that the Applicant being Group 'C' employee recovery on account of wrong fixation of pay is not permissible in view of the judgment of Hon'ble Supreme Court in **Rafiq Masih's case (cited supra).** He fairly stated that the Applicant is not challenging re-fixation of pay and what is under challenge is recovery.

4.   Learned P.O. in reference to page 65 submits that the Applicant was entitled to pay scale of Circle Officer, but she was given pay scale of Nabib Tahasildar from 2009. Whereas, in Show Cause Notice dated 16.09.2019 it is stated that since the Applicant did not pass S.S.C. examination in terms of service Rules she was not entitled to increments and secondly pay was required to be re-fixed in terms of G.Rs. dated 06.08.2002 and 27.05.2005 pertaining to advance of salary to the Government servant serving in Tribal Region. As per Show Cause Notice

dated 16.06.2019 pay of the Applicant was accordingly re-fixed and excess amount of Rs.6,49,715/- (Rupees Six Lakhs Forty Nine Thousand Seven Hundred and Fifteen Only) was sought to be recovered.

5.   As such, there is no denying that there is mistake of the Department in pay fixation of the Applicant and no fraud or misrepresentation is attributed to the Applicant.   The Applicant was given excess pay due to sheer mistake of the Respondent since 2008. Admittedly the Applicant is Group 'C' employee.

6.   The issue of recovery particularly from Group 'C' employee is no more *res-integra* in view of decision of Hon'ble Supreme Court in ***Rafiq Masih's case (cited supra).*** In para 12, Hon'ble Supreme Court held as under:-

> "**12.**   *It is not possible to postulate all situation s 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.   Thus, recovery from employee falling in Clause No. (i) to (v) is held impermissible. As per Clause No.(i) Recovery from employees belonging to Group 'C' and Group 'D' is impermissible. Whereas, as per Clause No. (iii) Recovery from employee when the excess payment has been made for a period in excess of five years, before the order of recovery is issued is impermissible. As such, the Applicant's case is squarely covered by Clause (i), (iii) & (v) of para 12 of judgment of Hon'ble Supreme Court in **Rafiq Masih's case (cited supra)**.

8.   For aforesaid discussion I have no hesitation to sum up that the impugned orders pertaining to recovery of Rs.6,49,715/- (Rupees Six Lakhs Forty Nine Thousand Seven Hundred and Fifteen Only) are clearly unsustainable in law and liable to be quashed. Hence, the order.

ORDER

(A)   Original Application is allowed.

(B)   Impugned orders dated 16.06.2019 and 27.09.2021 are quashed and set aside to the extent of recovery only.

(C)   No order as to costs.

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

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Place: Mumbai
Date: 02.02.2022
Dictation taken by: N.M. Naik.