

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.603 OF 2022**

**DISTRICT: PUNE  
SUBJECT: RECOVERY**

Shri Sayed Ashfaq Mheboob Ali, )  
Age – 59 years, Retired Police Head Constable, )  
Office of the Inspector General of Police, )  
Motor Transport Department, Aundh, Pune. )  
R/at House No.673, Khondwe Dhawe Khadkavar, )  
Near N.D.A. Road, Khondwe Gate, Pune-411 023 ).... **Applicant**

**Versus**

- 1) State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, Mantralaya, Mumbai-32. )
- 2) The Director General of Police, )  
Maharashtra State, Mumbai, )  
Maharashtra Police Headquarter, )  
Shahid Bhagat Singh Marg, Colaba, )  
Mumbai – 400 001. )
- 3) The Additional Director General of Police, )  
(The then Special Inspector General of Police), )  
Motor Transport Department, Maharashtra State )  
Aundh, Pune, Pin - 411 027. )  
email – spmtpune7@gmail.com )...**Respondents**

**Smt. Punam Mahajan, learned Advocate for the Applicant.**

**Shri Archana B. Kologi, learned Presenting Officer for the Respondents.**

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

**DATE : 03.08.2022.**

**JUDGMENT**

1. Heard at the stage of admission finally.
2. The Applicant has filed present O.A. challenging recovery of Rs.3,04,535/- (Rupees Three Lakhs Four Thousand Five Hundred and Thirty Five Only) from his retiral benefits and prayed to refund the said amount invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.
3. The Applicant stands retired on 30.11.2020 as Police Head Constable (Group 'C' employee). It is only after retirement Department has noticed that excess payment was made from 2000 till his retirement resulting into excess payment of pay and allowances. Consequent to it, Respondent by order dated 04.02.2021 directed for revision of pay and allowances as well as recovery of excess payment made to the Applicant during the period of his service. Respondents have recovered Rs.3,04,535/- (Rupees Three Lakhs Four Thousand Five Hundred and Thirty Five Only).
4. Learned Advocate for the Applicant submits that the Applicant being Group 'C' employee the recovery is not permissible in view of judgment of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**.
5. When specific query was raised to learned Advocate for the Applicant she made categorical statement that challenge is restricted to the recovery of Rs.3,04,535/- (Rupees Three Lakhs Four Thousand Five Hundred and Thirty Five Only) and there is no challenge to the revision of pay and allowances and pension.
6. Learned P.O. submits that appropriate order be passed.

7. Undisputedly the Applicant stand retired as Group 'C' employee and it is after retirement only issue of excess payment was noticed by the Department. Excess payment was paid from 2000 mistakenly by the Department without there being any mis-representation or fraud on the part of the Applicant. In such situation recovery will have to be said impermissible in view of the judgment of the Hon'ble Supreme Court in **Rafiq Masih's case (cited supra)**. Para 12 of the judgment 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. Thus, Clause no.(i), (ii), (iii) & (v) of the Para 12 of the judgment is squarely attracted. The Applicant being retired Police Head Constable now it would be very harsh & iniquitous to recover such amount from his retiral benefits and it would outweigh equitable balance of employer's

right to recover. As such, the recovery of Rs.3,04,535/- (Rupees Three Lakhs Four Thousand Five Hundred and Thirty Five Only) from the retiral benefits of the Applicant is totally bad in law and said amount is liable to be refunded to the Applicant. Hence the order.

**ORDER**

- a) Original Application is allowed.
- b) Recovery of Rs.3,04,535/- (Rupees Three Lakhs Four Thousand Five Hundred and Thirty Five Only) from the retiral benefits is bad in law and liable to be quash and set aside.
- c) Respondents are directed to refund Rs.3,04,535/- (Rupees Three Lakhs Four Thousand Five Hundred and Thirty Five Only) to the Applicant within a month from today.
- d) No order as to costs.

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

Place: Mumbai  
Date: 03.08.2022  
Dictation taken by: N.M. Naik.

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