

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.629 OF 2022

**DISTRICT: PUNE
SUBJECT: RECOVERY**

Shri Mahindra Manohar Chavan,)
Age – 59 years, Retired Police Head Constable,)
Office of the Inspector General of Police,)
Motor Transport Department, Aundh, Pune.)
R/at Shastrinagar, Rahatni Phata, Chinchwad, Pune.)... **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 Ashok J. Chougule, learned Presenting Officer for the Respondents.

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

DATE : 01.08.2022.

JUDGMENT

1. Heard at the stage of admission finally.
2. The Applicant has filed present O.A. challenging recovery of Rs.4,37,682/- (Rupees Four Lakhs Thirty Seven Thousand Six Hundred and Eighty Two Only) paid to him in excess during the period of his service invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.
3. The Applicant stood retired on 30.06.2021 as Police Head Constable (Group 'C' employee). It is only after retirement Department has noticed that the Applicant was paid excess payment from 1997 because of wrong fixation of pay. Consequent to it Respondent by order dated 18.01.2022 revised pay and allowances from 1997 resulting into recovery of excess amount of Rs. 4,37,682/- (Rupees Four Lakhs Thirty Seven Thousand Six Hundred and Eighty Two 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 categorical statement was made that challenge to the impugned order is to the extent of recovery only and the Applicant is not challenging revision of pay scale.
6. Whereas, learned P.O. made feeble attempt to justify recovery.
7. Undisputedly the Applicant stand retired as Group 'C' employee and it is after retirement only issue of excess payment was noticed which was paid to the Applicant from 1997 without there being any misrepresentation or fraud on the part of the Applicant. In 1997 while

granting pay scale mistake was committed by the Department itself resulting in excess payment till his retirement. This being the admitted position the recovery is 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. The impugned order dated 18.01.2022 is therefore liable to be quashed to the extent of recovery. Hence the order.

ORDER

- a) Original Application is allowed. Impugned order dated 18.01.2022 is quashed and set aside to the extent of recovery only.
- b) Respondents are directed to release retiral benefits of the Applicant which are withheld because of recovery within a month from today.
- c) No order as to costs.

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

Place: Mumbai
Date: 01.08.2022
Dictation taken by: N.M. Naik.

Uploaded on: _____