

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.824 OF 2022

**DISTRICT: MUMBAI
SUBJECT: RECOVERY**

Shri Rahul Krishna Gaikwad,)
Age : 58 years,)
Retried as Assistant Superintendent,)
O/o. Medical Superintendent, Rural Hospital)
Virar, Dist. Palghar, Date of Birth : 21/06/1963)
Mobile No.8369326072)
Email: rahulgaik786@gmail.com)
Residential Address:)
Nldg. No.208/8302, Kannamwar, Nagar 1,)
Vikhroli (E), Mumbai 400 083.)... **Applicant**

Versus

- 1) The Director of Health Services,)
Aarogya Bhavan, 5th Floor,)
St. George's Hospital Campus,)
P.D' Mello Road, Mumbai 400 001.)
- 2) The Deputy Director of Health Services,)
Regional Mental Hospital Campus,)
Dharamvir Nagaar, Thane 400 604.)
- 3) The Medical Superintending,)
Rural Hospital, Virar, Dist. Palgahar.)...**Respondents**

Shri Uday V. Bhosale, learned Advocate for the Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 14.10.2022.

JUDGMENT

1. The Applicant has challenged order dated 23.06.2022 whereby sum of Rs.12,77,649/- (Rupees Twelve Lakhs Seventy Seven Thousand Six Hundred and Forty Nine Only) is sought to be recovered. It is inclusive of amount towards excess payment of pay and allowance Rs.07,01,471/- (Rupees Seven Lakhs One Thousand Four Hundred and Seventy One Only) & Rs.05,76,178/- (Rupees Five Lakhs Seventy Six Thousand and One Hundred Seventy Eight Only) of Home building advance.

2. The Applicant stands retired as Assistant Superintendent group 'C' from the establishment of Respondent No.3 from 30.06.2021. It is only after retirement it was realized that he was paid excess amount till his date of retirement quantified at Rs.07,01,471/- (Rupees Seven Lakhs One Thousand Four Hundred and Seventy One Only) & sum of Rs.05,76,178/- (Rupees Five Lakhs Seventy Six Thousand and One Hundred Seventy Eight Only) found due on account of Home loan dues. Respondent therefore issued recovery notice dated 23.06.2022 for recovery of total amount of Rs.12,77,649/- (Rupees Twelve Lakhs Seventy Seven Thousand Six Hundred and Forty Nine Only). Though enough time is granted no Reply is filed to O.A.

3. Heard Shri U.V. Bhosle, learned Advocate for the Applicant and A.J. Chougule, learned Presenting Officer for the Respondents.

4. At the very outset, it needs to be clarified that insofar recovery of Rs.05,76,178/- (Rupees Five Lakhs Seventy Six Thousand and One Hundred Seventy Eight Only) towards Home building advance dues is concerned, the Applicant has given undertaking on 03.08.2022 giving no objection to deduct the sum from his retiral benefits.

5. Learned Advocate for the Applicant further fairly stated that he is not challenging revision of pay and allowances but challenge is restricted

to the recovery of Rs.07,01,471/- (Rupees Seven Lakhs One Thousand Four Hundred and Seventy One Only) which was paid in excess of pay and allowances from 2007 till retirement.

6. Learned P.O. submits that excess payment was made and notice of recovery is rightly issued.

7. Whereas, learned Advocate submits that in view of the Judgment of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))** recovery from the Applicant is totally impermissible and sought direction to the Respondents to release retiral benefits which are withheld on account of the recovery.

8. Thus, what transpires from the record that the Applicant admittedly retired as group 'C' employee and excess payment was paid to him mistakenly while fixing pay and allowances. The excess payment was made from 2007 till retirement. There is no fraud and misrepresentation attributable to the Applicant. The excess payment was made due to mistake on the part of the Department and the Applicant has no role to play in it.

9. At this juncture, it would be apposite to reproduce Para No.12 of the Judgment of Hon'ble Supreme Court in **Rafiq Masih's (cited supra)** which reads as follows.

“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."*

10. Thus, the present situation is clearly covered by Clause (i), (ii), (iii) & (v) of the Judgment of Hon'ble Supreme Court. At this juncture, it would be impermissible to recover the amount from the retiral benefits of the Applicant and it outweigh right of the Department to recover amount. Order of recovery to the extent of Rs.07,01,471/- (Rupees Seven Lakhs One Thousand Four Hundred and Seventy One Only) is therefore liable to be quashed. Hence the Order.

ORDER

- A) The Original Application is partly allowed.
- B) Impugned order dated 23.06.2021 is quashed and set aside to the extend of recovery of Rs.07,01,471/- (Rupees Seven Lakhs One Thousand Four Hundred and Seventy One Only)
- C) Respondents are directed to adjust amount of Rs.05,76,178/- (Rupees Five Lakhs Seventy Six Thousand and One Hundred Seventy Eight Only) issued against the Applicant towards Home Loan Advance and remaining retiral benefits be paid to him within six weeks from today.
- D) No order as to costs.

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

Place: Mumbai

Date: 14.10.2022

Dictation taken by: N.M. Naik.

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