

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.83 OF 2021

**DISTRICT: THANE
SUBJECT: RECOVERY**

Shri Manoj Shankar Deo,)
Aged 56 yrs, Working as Rexine Instructor in the)
Government Girls Observations Home, Special Home,)
Shanti Bhavan, Ulhasnagar-5, Dist. Thane,)
R/o. Pranji Garden, Rose Finch C.H.S., First Floor,)
Flat No.104, Katrap, Badlapur, Dist. Thane.)... **Applicant**

Versus

- 1) The Commissioner,)
Women and Child Development)
Commissionerate, (M.S.), Pune Having Office at)
28, Ranicha Baug, Near Old Circuit House,)
Pune-1.)
- 2) The District Women and Child Development)
Office, Thane.)
- 3) The Superintendent,)
Government Girls Observations Room/)
Special Home, Shanti Bhavan, Ulhasnagar-5,)
Dist. Thane.)... **Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

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

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 06.12.2021.

JUDGMENT

1. The Applicant has challenged orders dated 17.08.2020, 02.11.2020 & 06.11.2020 whereby his pay has been downgraded and recovery of Rs.10,14,562/- (Ten Lakhs Fourteen Thousand Five Hundred and Sixty Two Only) has been sought through monthly installment.

2. The Applicant was appointed as Instructor in the year 1984 and he was given benefit of Time Bound Promotion / benefits of three tier pay scale in terms of Dr. Chatopandhyay Committee report. The Applicant is retiring in August of 2022. At the verge of retirement impugned orders are issued for downgrading of pay stating that he is not entitled to the pay scale granted to him.

3. During the course of hearing, the learned Advocate for the Applicant has submitted that the Applicant's claim is basically based on the decision rendered by this Tribunal in O.A. No.805/2016 (Mrs. Rekha V. Dubey v/s. State of Maharashtra) decided with O.A. No.806/2016 & O.A. No.807/2016 on 05.12.2018. In these matters the Applicants therein were also appointed as Craft Instructor, Wireman Radio in same department and benefits of Dr. Chatopandhyay Committee report were granted to them. However, later in view of objection by Pay Verification Unit recovery from retirement benefits was sought by downgrading last pay drawn. Tribunal allowed the O.A. thereby setting aside impugned orders of recovery. Furthermore directions were given to consider the aspects of issuance of G.R. to protect their pay as a special case in view of hardship faced by them.

4. The learned Advocate for the Applicant has further pointed out that the decision rendered by the Tribunal in **Mrs. Rekha V. Dubey's** (supra) matter has been challenged in Writ Petition Nos.7154 of 2019, 7221 of 2019 & 7191 of 2019. The Hon'ble High Court dismissed W.Ps. In para 11, 12, 13 & 14 the Hon'ble High Court held as under:-

11. Fourthly and finally, we had enquired of Mr. Pathan as to whether any of the original applicants by acts of misrepresentation or fraud had been instrumental in receiving excess payment. Law is well-settled that fraud vitiates even the most solemn of acts. We would venture to observe that even if a Class III/Group 'C' employee, say a year or so after retirement or before retirement, is found to have indulged in fraud, recovery of excess payment may not be barred on equitable principles. There ought to be zero tolerance of fraudulent acts. Fortunately, for the original applicants, Mr. Pathan's answer to our query was in the negative; hence, the recovery process must be held to have been correctly interdicted by the Tribunal.

12. Since we have rendered a decision on the basis of our interpretation of the decisions in **Rafiq Masih** (supra) and **Jagdev Singh** (supra), we have not examined the other part of the Tribunal's judgment, by which it has been held that no excess payment was made in favour of the original applicants.

13. There is no merit in the writ petitions. Accordingly, the same stand dismissed. There shall, however, be no order as to costs.

14. The State shall proceed to implement the directions of the Tribunal within 3 (three) months from date of receipt of a copy of this judgment and order, failing which the original applicants shall be free to initiate appropriate proceedings in accordance with law before the Tribunal.

5. The learned Advocate for the Applicant has further pointed out that this Tribunal has dealt with similar issue in O.A. No.223/2020 (Shri Dayanand Narayan Kamble & Ors. v/s. State of Maharashtra & Ors.) decided on 18.10.2021 and in view of the confirmation of the Judgment in **Mrs. Rekha V. Dubey's** matter by Hon'ble High Court, O.A. No.223/2020 was allowed. In that O.A. the Applicant Nos.2, 4 & 6 were already retired from service, whereas Applicant Nos.1, 3 & 5 were in service. Directions were given to protect present pay of the Applicant Nos. 1, 3 & 5.

6. In view of above, the learned Advocate for the Applicant submits that the Applicant being similarly situated person particularly in view of the decision rendered by this Tribunal and confirmed by the Hon'ble High Court, this O.A. also needs to be allowed on similar line.

7. Shri A.J. Chougule, the learned P.O. tried to contend that the decision tendered in **Mrs. Rekha V. Dubey's** (supra) were person specific and that Judgment is applicable only to the parties therein. In other words, according to him the present Applicant is not entitled to the benefits of said Judgment. I find no substance in this submission since admitted the Applicant is similarly situated person to whom benefits of in terms of Dr. Chatopandhyay Committee report was granted and now on the verge of retirement it is being withdrawn.

8. In service jurisprudence, it is well settled principle of law that when particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefits and not doing so, would amount to discrimination and would be violative of Article 14 of the Constitution of India. In this behalf, a reference may be made to the Judgment of Hon'ble Supreme Court in **(2015) 1 SCC 347 (State of Uttar Pradesh Vs. Arvind Kumar Srivastava & Ors.)** wherein the Hon'ble Supreme Court emphasized that service jurisprudence evolved by the Courts from time to time postulates that, all similarly situated persons should be treated similarly. However, this principle is of-course subject to certain well recognized exception in the form of latches, delays as well as acquiescence. In so far as the present matter is concerned, there is no question of latches, delay or acquiescence. This being the well settled legal principle, in my considered opinion, it would be travesty of justice if the relief claimed by the Applicant is denied to him.

9. As regard, benefits in terms of Dr. Chatopandhyay Committee report recommendation in Para No. 36 of Judgment in **Mrs. Rekha V. Dubey's** (supra) Tribunal held as under:-

36. It is thus apparent that the Applicants are subjected to discrimination and disparity in pay scale. In fact, they were already placed in pay scale of Rs.9300-34800 and benefits were extended to them and after retirement only, the objections are being raised. Had Respondent No.1 issued separate G.R. on the basis of G.R. of Finance

Department dated 01.02.1990, the Applicants would not have faced this situation. Undoubtedly, it is in the domain of Government and Pay Commission to fix pay for various posts having regard to their nature of work, qualification, service conditions and so on. However, there is no denying that there should be parity amongst the employees who are similarly situated. In the present case, non-issuance of G.R. by Women & Child Development Department seems the only reason and hurdle in the way of Applicants to get the pensionary benefits on the basis of last pay drawn. It must be borne in mind that the employee is mainly dependent on his salary and on pension after retirement. Pension is not charity. It is his right guaranteed under the law. Pension is the only source of livelihood after retirement. It is common knowledge that employee is rest assured about future assuming certainty of pension as well it's quantum. Therefore, it would be iniquitous and unjust to deprive them from similar pension being paid to similarly situated employees, if otherwise entitled to it. Therefore, it would be appropriate to give directions to Respondent No.1 in this behalf and if necessary, to issue G.R. to that effect.

10. In so far as, recovery aspect is concerned the Applicant being group 'C' employee retiring within a year the issue is squarely covered by the decision of Hon'ble Supreme Court in **Rafiq Masih's case** under para.12 of the Judgment of Hon'ble Supreme Court 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."

11. The orders of recovery from the Applicant who is on the verge of retirement squarely falls in the Clause No.1, 2, 3 & 5 of para 12 of the Judgment in **Rafiq Masih's case**. By impugned order dated 06.11.2020 benefits granted from 02.05.1996 are sought to be withdrawn. Excess payment made from 1996, now being recovered at the verge of retirement which is iniquitous and unjust. Admittedly there was no fraud or misrepresentation attributable to the Applicant in getting the said pay scale.

12. Since the issue involved in present O.A. is already adjudicated and decision in **Mrs. Rekha V. Dubey's** (supra) case is confirmed by Hon'ble High Court, this O.A. needs to be disposed of on similar line. Suffice to say this O.A. deserves to be allowed. Hence, order.

ORDER

- a) O.A. is allowed partly, impugned order dated 17.08.2020, 02.11.2020 and 06.11.2020 are quashed and set aside.
- b) In view of decision in **Mrs. Rekha V. Dubey's** (supra) matter, Respondents are required to issue G.R. to protect their pay without downgrading the same as a special case or special order.
- c) Respondent are directed to take necessary steps for the compliance of the direction given above within three months from today.
- d) No order as to costs.

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

Place: Mumbai
Date: 06.12.2021
Dictation taken by: N.M. Naik.