

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1128 OF 2016

DISTRICT : PUNE

Shri Shivaji B. Mahadik.)
Age : 70 Yrs, Venkateshwara Cable)
Network, Shirol (Pulachi), Ta. Hatkanangale)
District : Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Vocational Education & Training)
Department, Mantralaya,)
Mumbai - 400 032.)
2. The Director.)
Vocational Education & Training,)
3, Mahapalika Marg, Mumbai.)
3. The Joint Director.)
Vocational Education & Training,)
Regional Office, Ghole Road,)
Pune 411 005.)
4. The Office of the Principal Accountant))
General (Accounts and Entitlement))
(M.S), 2nd Floor, Pratishtha Bhawan,))
New Marine Lines, 101-Maharshi)
Karve Road, Churchgate,)
Mumbai 400 020.)...**Respondents**



Mr. R.M. Kolge, Advocate for Applicant.

Ms. S.T. Suryawanshi, Presenting Officer for Respondents.

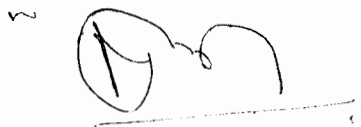
P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 04.07.2017

JUDGMENT

1. The Applicant, an employee having retired on superannuation on 31.1.2001 herein impugns an order dated 27.10.2016 made by the Principal Accountant General (Accounts and Entitlement), M.S. whereby the downward revision of the pension was made with a further direction to recover so called excess amount either in lump sum or in installments which recovery arose in the context of the payment of one additional increment in addition to what was allowed by this Tribunal in **OA 173/2009 (Mr. Avinash G. Sathe Vs. State of Maharashtra and one another, dated 4.9.2009)** to which the present Applicant was the Applicant No.2.

2. I have perused the record and proceedings and heard Mr. R.M. Kolge, the learned Advocate for the Applicant and Ms. S.T. Suryawanshi, the learned Presenting Officer (PO) for the Respondents.



3. The 1st Respondent is the State of Maharashtra in Vocational Education and Training Department, the 2nd Respondent is the Director, Vocational Education & Training, the 3rd Respondent is the Joint Director there and the 4th Respondent as already mentioned above is the Principal Accountant General (A & E).

4. The order herein impugned is at Exh. 'D' (Page 32 of the Paper Book (PB)) issued by the 4th Respondent to the Treasury Officers, Sangli and Satara. The subject is the downward revision of pension of the Applicant. The following pensionary benefits were authorized to the Applicant as therein mentioned.

“PPO No.P00MAH40620 for Rs.5288 payable from 01/02/2001.

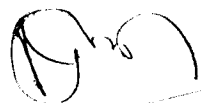
GPO No.12100182366 for Rs.8250/- payable in lumpsum.

CVP No.13100182366 for Rs.6777/-

EFP for Rs.5288/- payable from _____ to 31/01/2008.

FP for Rs.3225/- payable from 01/02/2008 to _____.”

It was mentioned thereafter that, “on account of change in the pay, the pensionary benefits of the Applicant had undergone downward revision with the result, the following amount became payable.

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“PPO No.P00MAH40620 for Rs.5163/- payable from 01/02/2001.

GPO No.12100182366 for Rs.(-)4125/- payable in lumpsum.

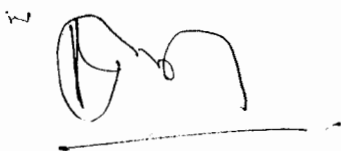
CVP No.13100182366 for Rs.(-)5147/-.

EFP for Rs.5163/- payable from _____ to 31/01/2008.

FP for Rs.3150/- payable from 01/02/2008 to _____.”

5. Quite pertinently, it is not elaborated as to in what circumstances, the change in pay took place. It was thereafter mentioned that, necessary arrangements had to be made to pay revised pensionary benefits after making due adjustment of the pension already paid and excess payment made would have to be recovered in lump sum or suitable instalments. It is this order which is challenged herein.

6. The OA 173/2009 detailed at the outset was brought by one Mr. Avinash Sathe and the present Applicant. A copy thereof is at Exh. '8-A' (Page 10 of the PB). A perusal of the said order would show that the Applicant along with his co-applicant challenged the failure of the Respondent – State of Maharashtra to implement Rule 11(1) of the Maharashtra Civil Service (Pay) Rules,



1981 (to be hereinafter called 'Pay Rules). The non-extension on the basis of parity of the decision of this Tribunal in **OA 349/2003 and OA 67/2008 (Shri Ramesh G. Joshi Vs. State of Maharashtra and one another, dated 21.7.2008)**.

7. It was recorded in the Applicant's earlier OA that the said Applicants were appointed as Craft Instructors in 1965-1966. They superannuated on 31st January, 2001 and 31st July, 2001 respectively. As far as the Applicant is concerned, he superannuated on 31.1.2001. The benefit of the Time Bound Promotion was decided to be given to ITI Instructors. At the time of the retirement on superannuation, the Applicant was working as Group Instructor.

8. Reading further, the earlier OA of the Applicant, it was mentioned in the Judgment of this Tribunal that the benefits of Time Bound Promotion was given to the ITI Instructors and two tier / three tier system of pay scale came to be introduced vide Resolution of 15th May, 1995 and G.R. of 8th March, 1999. It was clarified that the employees who had completed 12/24 years of service without getting functional promotion, would be given the benefit of the higher selection grade w.e.f.1st January,



1986. The Applicant was given this benefit. It was, thereafter, that he got actual promotion as Group Instructor and became entitled to the benefit of one additional increment pursuant to the provisions of Rule 11(1) of the Pay Rules. His pay, however, was not fixed. The benefits were given to other similarly placed retired employees in OA 349/2003 wherein a certain Circular dated 14th November, 2002 was quashed and set aside and thereafter, five similarly placed retired employees were given the same benefit and these employees were the Applicants in OA 67/2008. It was contended before the Tribunal in Applicant's earlier OA that, in OA 67/2008, it was laid down that Rule 11(1) and not 11(2) of the Pay Rules was applicable to the post of Group Instructors. In Para 6 of Applicant's earlier OA, it was held that the Applicant was also similarly placed as the Applicant of OA 67/2008 and it was, therefore, explicitly clear that the Applicants in the earlier OA of the Applicant were entitled to one additional increment in the pay scale of Rs.7500-12000 as was held in OA 67/2008. In the Service Book of the 1st Applicant therein, there was such an entry of one additional increment. In Para 7, it was directed that the Respondents should grant one additional increment in the pay scale of Rs.7500-12000 to the Applicants therein in accordance with OA 67/2008 with interest in accordance

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with Section 129-B of the Maharashtra Civil Services (Pension) Rules 1981 (Pension Rules) and also the G.R. of 22nd November, 1995.

9. In as much as in Applicant's earlier OA, an earlier OA 67/2008 was already relied upon, it is not necessary to read in extenso the Judgment in the matter of OA 67/2008. That OA in the record has also been described as **Ramesh Joshi's** matter.

10. Rule 131 of the Pension Rules reads as follows :

“131. Revision of pension after authorization :

(1) Subject to the provision of rules 26 and 27, pension once authorized after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently.

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Finance Department if the clerical error is detected after a period of two years from the date of authorization of pension.

(2) For the purpose of sub-rule (1), the retired Government servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a

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period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, the Head of Office shall, by order in writing direct that such excess payment shall be adjusted in installments by short payments of pension in future, in one or more installments as the Head Office may direct.”

11. Now, in the light of the above discussion, turning to the Affidavit-in-reply filed on behalf of the 3rd Respondent – Joint Director, Vocational Education and Training, I find that, it is an admitted position that while the Tribunal directed the payment of one increment to the Applicant, actually two increments were paid and it is that particular amount represented by the 2nd increment that is being sought to be recovered from the Applicant and the consequent downward revision in the pension in the pay and pension are being sought to be made. Probably, influenced by the express text of Rule 131 of the Pension Rules, as if somewhat mechanically, in the Affidavit-in-reply at places more than one, it has been pleaded that the downward revision was necessitated due to clerical mistake. Now, in OA **342/2016 (Shri Prakash L. Hotkar Vs. The Principal, Industrial Training Institute, Mumbai and 4 Others, dated 9.3.2016)** whereagainst the Respondents unsuccessfully brought **Revision**

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Application No.08/2017 in OA 342/2016 (The Joint Director of Vocational Education & Training, Mumbai Vs. Prakash L. Hotkar & Ors, dated 28.6.2017).

Further, in **OA 820/2016 (Shri Dilip M. Diwane Vs. The Accounts Officer and 3 others, dated 13.6.2017)**, it was held by this Tribunal presided over by me that, post retirement of an employee under Rule 131 of the Pension Rules, it is only the amount paid in excess on account of a clerical error that can be recovered and the consequential changes could be made. Now, as I just mentioned, it seems that, influenced by this phraseology of Rule 131 of the Pension Rules, a defense is taken that it was due to clerical mistake. Now, mere faithful quotation of the words, "clerical mistake" would hardly be sufficient to hold it to be so in the absence of particularization and details being given of just who made the mistake and how. The matter of payments in such instances is of great moment and certain rights accrue to a retired Government employee, and therefore, there has to be compelling material to show that there was clerical mistake. Quite pertinently, there was no collateral document in the form of any notice, etc. which made specific reference to the clerical mistake. In fact, in the review of **Prakash Hotkar** (supra), it was contended on behalf of the Respondents in effect that, by virtue of the Judgment of the Hon'ble



Supreme Court in **State of Punjab Vs. Rafiq Masih : AIR 2015 SC 696** though the actual recovery may not be made, but the revision of pay scale can always be made by a detailed discussion, I had effectively rejected this contention in rejecting the RA.

12. Rule 131 of the Pension Rules is a complete answer to all, that the Respondents would like to say in rebutting the case of the Applicant, and in my opinion, the mistake even if it was there, was not attributable to clerical mistake. All the submissions so assiduously advanced by Ms. Suryawanshi, the learned PO fail to impress me.

13. The parties in their pleadings have set out several details in the matter of pay scale, etc. However, as this discussion must have made it clear, the Tribunal at this stage, must proceed by making the earlier OA of this very Applicant in OA 173/2009 as the basis and it will not be necessary in my view to enter into the discussions based on the facts and facts at issue, which were involved in the earlier OA. Similarly and for the same reason, I do not think, it is necessary for me to deal with the facts and the facts at issue in the contempt matter which contempt notice is brought by the Applicant against the Respondents. My scope herein is limited to the facts



involved in this OA and the basis thereof, will be the order in the earlier OA.

14. In a similar set of facts, a Division Bench of the Hon'ble Bombay High Court at its Nagpur Bench in **Writ Petition No.2648/2016 (Lata G. Wankhede Vs. The State of Maharashtra and 3 others, dated 1st July, 2016)** was pleased to rely upon **Rafiq Masih** (supra) and after a detailed discussion, it was held by the Hon'ble High Court that, in the circumstances like the present one, the recovery could not be made. **Rafiq Masih** was discussed by me also in **Dilip Diwane** (supra) with particular reference to Paras 14 and 15. Para 15 thereof, needs to be reproduced for guidance.

“15. The doctrine of equality with all its dynamics was then discussed by Their Lordships. Thereafter, the reference was made to certain earlier Judgments and in Para 12, it was observed as follows :

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments mistakenly been made by the employer, in excess of their entitlements. 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 :

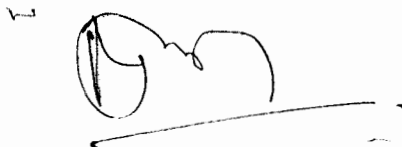
(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retired 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

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far outweigh the equitable balance of the employer's right to recover."

It would become very clear from I and II of the above principles laid down by the Hon'ble Supreme Court that there should be no recovery from the Applicant herein."

15. The learned PO relied upon another Judgment of the Hon'ble Supreme Court in the matter of **Civil Appeal No.3500/2006 (High Court of Punjab & Haryana and others Vs. Jagdev Singh, dated 29th July, 2016)**. It would appear from the Judgment in the matter of **Dilip Diwane** (supra) that **Jagdev Singh** (supra) was discussed by me in that matter. In Para 17, the following observations were made.

"17. Ms. Suryawanshi, the learned Presenting Officer (PO), however, invited reference to an unreported Judgment of the Hon'ble Supreme Court in **Civil Appeal No.3500/2006 (High Court of Punjab & Haryana and others Vs. Jagdev Singh, dated 29th July, 2016)**. That was a case of a Civil Judge who was appointed in the year 1987. In 2001, the pay scales of that cadre came to be allowed for the said party. The

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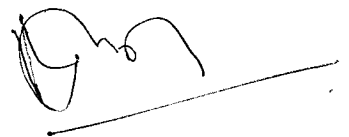

recommendation of 1st National Judicial Pay Commission (Shetty Commission) came to be accepted by the Apex Court and consequent steps were taken by the Government of Haryana. The revisions of pay scales took place w.e.f. 1.1.1996 and it was ultimately found that, excess payment was made to the Respondents of the Hon'ble Supreme Court. In the meantime, the said Civil Judge had retired and the argument was that post retirement, the recovery be not made. In that matter, an undertaking was given by the said party regarding refund of any excess amount, if paid. In Para 10, Their Lordships referred to **Rafiq Masih's** case and reproduced what I have reproduced hereinabove. In Para 11 of **Jagdev Singh** (supra), Their Lordships observed that Clause II of the above extract, would not apply to a situation where an undertaking was given and that Clause was for recovery from a retired employee or employees, who were due to retire within one year of the order of recovery because they had given an undertaking. It is, however, quite clear that as far as the other aspects of **Rafiq Masih** is concerned, including more particularly the fact

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that the mandate of **Rafiq Masih** would apply in case of Group 'C' and Group 'D' employees would still remained in-tact. The Civil Judge who was a party before the Hon'ble Supreme Court in **Jagdev Singh** (supra) was obviously a Super Class-I Officer. That common knowledge could also be invoked."

16. It is quite clear, therefore, that the present is an instance of the Applicant being a Group 'C' employee as opposed to the Applicant in **Jagdev Singh** who was a Super Class-I Officer in the judiciary. Further, the whole matter is governed by the Rules framed under the proviso to Article 309 of the Constitution of India and here, in this matter, Rule 131 of the Pension Rules is a governing one. That is Respondents' undoing.

17. The upshot, therefore, is that, in the context of the present facts, the material on record does not permit a finding and I hold it accordingly that the excess payment was on account of clerical mistake. By a mere say so or *ipse-dexie* of the Respondents, it could not be held it to be a clerical mistake. That being the state of affairs, the OA will have to be accepted.



18. The order herein impugned stands hereby quashed and set aside. The Respondents are directed, not to make any recovery from the Applicant and to rework out his emoluments on the ground as if the impugned order was never made. Compliance within six weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
04.07.2017

Mumbai

Date : 04.07.2017

Dictation taken by :

S.K. Wamanse.

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