

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1207 OF 2019

DISTRICT : MUMBAI

Shri Maruti D. Magdum.)
Age : 60 Yrs., Occu.: Retired Senior)
Inspector of Police and residing at)
Surya Mahal, Room No.4, Vasudeo)
Pednekar Marg, Bhoiwada, Parel,)
Mumbai – 400 014.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Director General of Police,)
Mumbai.)
3. The Addl. Director General of Police)
[Establishment] and Member)
Secretary, State Police Complaint)
Authority, 4th Floor, Cooperage)
Telephone Exchange, Maharshi)
Karve Road, Nariman Point,)
Mumbai – 400 021.)
4. The Commissioner of Police.)
Dr. Dadabhai Naoroji Road,)
Police Colony, Dhobi Talao,)
Chhatrapati Shivaji Terminus Area,)
Fort, Mumbai – 400 001.)
5. Additional Commissioner of Police)
Special Branch (CID) having office)
at Badruddin Tayyabji Marg,)
Near Rangbhavan, Mumbai – 1.)

6. Deputy Commissioner of Police.)
 Special Branch-1 (CID),)
 Badruddin Tayyabji Marg,)
 Near Rangbhavan, Mumbai – 1.)
7. The Pay and Accounts Officer,)
 Bandra (E), BKC, Mumbai – 51.)
8. Accountant General.)
 M.S, having office at Maharshi)
 Karve Road, Mumbai.)...**Respondents**

Mr. M.B. Kadam, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 29.10.2021

JUDGMENT

1. The Applicant has challenged the order dated 01.08.2019 issued by Respondent No.3 for recovery of Rs.83,251/- as well as order dated 18.10.2019 of recovery of Rs.3,40,564/- issued by Respondent No.7 invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant stands retired from the post of Senior Police Inspector, Group-B on 31.08.2017. At the time of retirement, his pension was fixed at Rs.18,621/-. After retirement, in 2018, he was re-appointed on purely contract basis in State Police Complaints Authority under the control of Respondent No.3. At the time of re-appointment, his remuneration on contract basis was fixed considering his pension Rs.18,621/- and admissible Dearness Allowance. However, later it was noticed that there was error while fixing pension of Rs.18,621/- and he was entitled to pension Rs.15,270/- p.m. However, pension was released

considering his pension Rs.18,621/- plus admissible D.A. as well as he was granted remuneration in re-employment equal to his monthly pension Rs.18,621 plus permissible D.A. Thus, the Applicant received double benefit namely excess pension as well as excess remuneration on contract basis. It was noticed that some of Rs.3,40,564/- was paid towards excess pension and sum of Rs.83,251/- was paid towards excess remuneration in re-employment. The Respondent No.3, therefore, issued direction to recover Rs.83,251/- in installments starting from July, 2019 whereas, Respondent No.7 issued order dated 23rd October, 2019 for recovery of Rs.3,40,564/- in 69 installments from his pension.

3. Shri M.B. Kadam, learned Advocate for the Applicant fairly submits that he is not challenging the order dated 01.08.2019 issued by Respondent No.3 pertaining to recovery of Rs.83,251/- paid towards excess payment of contractual remuneration, since the said amount is already recovered and he is restricting his challenge to the order dated 23.10.2019 issued by Respondent No.7 whereby recovery of Rs.3,40,564/- paid towards excess pension is sought.

4. Shri Kadam, learned Advocate for the Applicant sought to assail the impugned order dated 18.10.2019 pertaining to recovery of Rs.3,40,564/- on following grounds.

(i) Prior to issuance of recovery order dated 23.10.2019, no prior notice was given calling explanation of the Applicant, and therefore, there being breach of principles of natural justice, the impugned order dated 23.10.2019 is bad in law.

(ii) In view of Judgment of Hon'ble Supreme Court in **(2015) 2 SCC (L & S) 33 [State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors.]**, the Applicant being pensioner, the recovery is not permissible since there is no mistake or *malafide* on the part of Applicant in receiving excess pension.

5. Per contra, Mrs. A.B. Kololgi, learned Presenting Officer sought to justify the impugned order dated 23.10.2019 *inter-alia* contending that after retirement, the pension of the Applicant was wrongly fixed as Rs.18,621/- instead of Rs.15,270/- and it was paid to him with permissible D.A. It happened due to clerical error in computation of pension and it was detected by Accountant General. Therefore, the Office of A.G, Mumbai by letter dated 26.06.2019 informed Respondent No.7 that sum of Rs.3,40,564/- were paid in excess and it is on that basis, the Respondent No.7 by order dated 23.10.2019 issued order of recovery of the said amount in 69 installments. As regard issuance of notice, she submits that there is no requirement of giving prior notice and all that the requirement is intimation of deduction as contemplated under Rule 131 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity). She thus submits that the situation is squarely covered by this Rule and there is no illegality in recovery. As regard decision in **Rafiq Masih's** case, she submits that it apply only in a situation where excess payment is made to a Government servant during service period and where it falls within the parameters carved out by Hon'ble Supreme Court in Para No.27 of the Judgment. Thus, according to her, the present case does not fall within the scope of said Judgment.

6. In view of submissions advanced at the Bar, the issue posed for consideration is whether the impugned order dated 23.10.2019 is bad in law and the answer is in emphatic negative.

7. Indisputably, the Applicant stands retired as Senior Police Inspector (Group 'B'). He retired on 31.08.2017. It is also not in dispute that his pension was fixed at Rs.18,621/- and accordingly, he received the said pension with permissible DA. Later, he was appointed on contractual basis in State Police Complaints Authority under the control of Respondent No.3 and joined on 29th May, 2018. At the time of re-appointment on contractual basis, his remuneration on contract basis

was fixed in the light of G.R. dated 17.12.2016 whereby guidelines were issued for fixing remuneration where a Government servant is reappointed on contract basis. As per Clause 9(d) of G.R. dated 17.12.2016, a retired Government servant would get monthly remuneration equal to his pension including admissible pension thereon on contract basis. As such, the Applicant received contractual remuneration considering his pension Rs.18,621/- and simultaneously, he was receiving the pension. The said mistake was detected by the Office of AG and by letter dated 26.06.2019, the Respondent No.7 was directed to recover the excess amount. Thus, the Applicant received excess amount of Rs.83,251/- towards contractual remuneration and had also received Rs.3,40,564/- towards excess pension.

8. There is no denying that the Applicant was entitled to pension of Rs.15,270/- but due to clerical error, it was fixed at Rs.18,621/- which resulted into excess payment towards contractual remuneration as well as towards monthly pension.

9. At this juncture, it would be apposite to refer Rule Nos.131 and 134-A of 'Pension Rules of 1982', which are as follows :-

“131. Revision of pension after authorization.-(1) Subject to the provisions 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 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 instalments by short payments of

pension in future, in one or more instalments, as the Head of Office may direct.”

134-A. Recovery and adjustment of excess amount paid.- If in the case of a Government servant, who has retired or has been allowed to retire.-

- (i) it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including service rendered upon re-employment after retirement.
- (ii) any amount is found to be payable by the pensioner during such period and which has not been paid by or recovered from him, or
- (iii) it is found that the amount of licence fee and any other dues pertaining to Government accommodation is recoverable from him for the occupation of the Government accommodation after the retirement,

then the excess amount so paid, the amount so found payable or recoverable shall be recovered from the amount of pension sanctioned to him.

Provided that the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him :

Provided further that the amount found due may be recovered from the pensioner in instalments so that the amount of pension is not reduced below the minimum fixed by Government.”

10. Thus, the perusal of Rule 131 of ‘Pension Rules of 1982’ makes it quite clear that where pension is fixed wrongly and the error is detected, the Head of Office is empowered to revise the pension and to recover the same in installments. As per proviso to Rule 131(1) of ‘Pension Rules of 1982’, it is only in case of detection of error after two years from the date of authorization of pension, the concurrence of Finance Department is required. In the present case, the Applicant stands retired on 31.08.2017 and the error was detected in the month of June, 2019 and consequent to it, by order dated 26.06.2019, the Office of A.G. informed to Respondent No.7 to recover excess payment of Rs.3,40,564/- as explicit from impugned order dated 23.10.2019 (Page No.14 of P.B.). The

letter of A.G. dated 26.06.2019, which is at Page No.23 of P.B. Suffice to say, the clerical error was detected within two years from grant of pension, and therefore, the concurrence of Finance Department is not required. All that required is notice by Head of Office requesting the Applicant to refund the excess payment of pension. Admittedly, the copy of Notice dated 26.06.2019 was served upon the Applicant, as conceded by learned Advocate for the Applicant. However, the Applicant did not refund excess payment, and therefore, Respondent No.7 by order dated 23.10.2019 directed for recovery of excess payment of Rs.3,40,564/- in 69 installments. This being the position, the action of recovery is in consonance with Rule 131 of 'Pension Rules of 1982'.

11. In so far as applicability of Rule 134-A is concerned, it pertained to recovery of excess payment made to a Government servant during the period of his service including service rendered upon re-employment. So far as this aspect is concerned, as stated above, the recovery of Rs.83,251/- by order dated 01.10.2019 is not challenged. Apart, the Applicant was reappointed purely on contract basis and it is not a case of re-employment in *stricto-sensu* from the point of service law. Therefore, Rule 134-A which requires issuance of notice is not attracted in the present context.

12. Now turning to the decision of Hon'ble Supreme Court in **Rafiq Masih's** case, in Para No.18, the Hon'ble Supreme Court held 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."*

13. **Rafiq Masih's** case was relating to fixation of wrong pay scale to a Government servant during the period of service and it is in that context, the Hon'ble Supreme Court carved out the situations (i) to (v) where recovery would be impermissible. The said relief was granted on the principle that it would be iniquitous to recover the payment made to a Government servant long ago after his retirement, since it would cause severe hardship to him. In my considered opinion, the Applicant does not fall in any of the categories (i) to (v) laid down by Hon'ble Supreme Court. As per Clause (i), the recovery of employees belonging to Class-III and Class-IV service is impermissible. Whereas, in the present case, the Applicant is Group 'B' employee. As per Clause (ii), the recovery from retired employees who are due to retire within one year of the order of recovery is permissible. While in the present case, the recovery is about the excess pension and not of excess payment made during the period of service. As per Clause (iii), the recovery from employees when the excess payment was made for a period in excess of five years before the order of recovery is held impermissible, but in the present case, the mistake is detected within two years and it is not a case of payment of excess payment for a period in excess of five years, and therefore, Clause (iii) is also not attracted. Clause (iv) states that recovery in cases where an employee has wrongfully been required to discharge duties of higher post and has been paid accordingly, even though he should have rightfully been required to work against an inferior post, which is not at all the situation in the present case. Lastly, as per Clause (v), in any other case

where 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 is impermissible. In the present case, the Applicant retired as Senior Police Inspector (Group 'B') and also reappointed on contract basis. As such, he is not depending only on pension but in addition to pension, he is being paid remuneration on contract basis. This being so, it cannot be said that recovery would be harsh, arbitrary or iniquitous.

14. Basically, the decision in **Rafiq Masih's** case pertain to the situations where excess payment is made to the employees on account of wrong fixation of pay scale or during their period of service in excess of five years and recovery is sought after retirement. Whereas, the present case is about fixation of wrong pension and not of wrong payment during the period of service. As such, this is very distinguishing factor which tilt the issue in favour of recovery. In my considered opinion, if in such situation, the recovery is held impermissible, it would amount to unjust enrichment, since it is not a case of any hardship to a pensioner so as to attract the parameters laid down in **Rafiq Masih's** case. Only because there was no fraud or mistake on the part of Applicant in the matter of fixation of pension, that itself is not determinative factor.

15. For the aforesaid discussion, in my considered opinion, with due respect, the Judgment in **Rafiq Masih's** case is of no assistance to the Applicant in the present case. Consequently, the reliance placed by learned Advocate for the Applicant in the Judgment of Hon'ble Court in **Writ Petition No.6146/2014 (Deelip H. Jadhav Vs. State of Maharashtra) decided on 18.04.2015** in which recovery is held impermissible on the basis of Judgment in **(2009) 3 SCC 475 [Syed Abdul Qudir Vs. State of Bihar & Ors.]** is not attracted. Indeed, the decision in Syed Qudir's case is already referred by the Hon'ble Supreme Court in **Rafiq Masih's** case and laid down the situations in Para No.18 of the Judgment in which recovery would be impermissible.

16. The totality of aforesaid discussion, therefore, leads me to sum-up that the challenge to the impugned recovery orders is devoid of merit and O.A. deserves to be dismissed. Hence, the order.

ORDER

The Original Application is dismissed with no order as to costs.

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

Mumbai
Date : 29.10.2021
Dictation taken by :
S.K. Wamanse.

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