

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.1269 OF 2022**

**DISTRICT : Satara  
SUBJECT : RECOVERY**

Shri Ratikant P. Mane, )  
Aged: 60 years, retired as Civil Engineer Assistant, )  
Group C, from the office of Respondent No.3. )  
R/at 1061, Shanivar Peth, Dist. Satara 415002. )... **Applicant**

**Versus**

- 1) State of Maharashtra, through the Additional )  
Chief Secretary, Public Works Department, )  
Mantralaya, Mumbai 32. )
- 2) The Superintendent of Engineer, PWD, Central )  
Building (Extension), Pune 411 001. )
- 3) The Executive Engineer, PWD, (West), Division )  
Satara. ) ...**Respondents**

**Shri M. B. Kadam, learned Advocate for the Applicant.**

**Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.**

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

**DATE : 19.04.2023**

**JUDGMENT**

1. The Applicant has challenged the order dated 30.12.2021 and 09.12.2022 issued by the Respondent No.3 - Executive Engineer, Satara whereby directions were issued to recover sum of Rs.8,50,658/- from retirement benefits of the Applicant which was paid to him in excess from 01.08.2009 to 30.11.2020.

2. Heard Shri M. B. Kadam, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

3. Indisputably, the Applicant stands retired as Civil Engineer Assistant from Group 'C' post on 30.11.2020 from the establishment of Respondent No.3. It is only after retirement, the Respondent No.3 by impugned orders dated 30.12.2021 and 09.12.2022 issued orders of recovery of excess payment made to him during service amounting to Rs.8,50,658/-.

4. Shri M. B. Kadam, learned Counsel for the Applicant submits that since the Applicant retired as Group 'C' employee, recovery is not permissible in view of the decision of the Hon'ble Supreme Court in **Civil Appeal No.11527/2014 {State of Maharashtra & Others Vs. Rafiq Masih (White Washer)}**, decided on 18<sup>th</sup> December, 2014. Besides, he has pointed out that Government by letter dated 13.07.2021 had also issued directions (page 44 of PB) to Chief Engineer, Superintendent Engineer for compliance of directions issued by the Hon'ble Supreme Court in **Rafiq Masih's** case (cited supra) and not to recover excess payment from Civil Engineer Assistant if recovery is found while re-fixing pay and allowances.

5. Smt. Kranti Gaikwad, learned Presenting Officer made feeble attempt to justify the action of recovery stating that while absorbing the Applicant on the post of Civil Engineer Assistant, the benefit was given to him from 27.11.2007 instead of 06.07.2010 and this aspect was noticed by the department later on and, therefore, recovery order is issued. She fairly concedes that Applicant retired as Group 'C' employee.

6. In view of above, short issue arises for consideration is whether recovery as sought to be recovered by impugned order is permissible and the answer is in emphatic negative.

7. Shri M.B. Kadam, learned Counsels for the Applicant fairly concedes that he is not challenging re-fixation of pay and allowances whereby his pay is downgraded but challenge is restricted to recovery only in terms of the decision in **Rafiq Masih's** case.

8. As regard recovery, the legal position is no more *res-integra* in view of the judgment of the Hon'ble Supreme Court in **Rafiq Masih's** case. Considering the hardship faced by retired Government servant, the Hon'ble Supreme Court after considering its various earlier decisions has culled out certain situations in clause nos.(ii) and (v) of Para 12 wherein recovery is held impermissible. Para No.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.”*

9. There is absolutely nothing to attribute any malafide or fraud or misrepresentation to the Applicant while pay fixation was done. It was sheer mistake on the part of the department which resulted in fixation of wrong date while giving benefit of absorption for the post of Civil Engineer Assistant. The benefits were given to Applicant in 2007 and he availed it till retirement. As such, the situation is squarely covered by Clause (i), (ii), (iii) and (v) of para no.12 of the decision in Rafiq Masih's case. At his juncture to recover such huge amount from the retired

Group 'C' person would be iniquitous to the extent to outweigh the equitable balance of the Respondent's right to recover.

10. In result, the impugned action to the extent of recovery is totally unsustainable in law and Original Application is liable to be allowed. Hence, the following order :-

**ORDER**

- (A) The Original Application is allowed.
- (B) Impugned orders dated 30.12.2021 and 0912.2022 to the extent of recovery only are quashed and set aside
- (C) The Respondents are directed to release the retirement benefits of the Applicant within two months from today as per his entitlement in law.
- (D) No order as to costs.

Sd/-

**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 19.04.2023. .  
Dictation taken by: Vaishali S.Mane  
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