

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.146/2016. (S.B.)

Dilip Mahadeo Pinge,
Aged about 48 years,
Occ- Service,
R/o Chandradhara Mangal Karyalaya,
Dutta Nagar, "Tukum", Chandrapur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Rural Development
and Water Conservation,
Mantralaya, Mumbai-400 032.
2. The Executive Engineer,
Small Scale Irrigation (Water Conservation),
Division, Chandrapur.
3. Office of Pay Verification Unit, Nagpur
Through its Accounts Officer, Civil Lines,
Nagpur.

Respondents

ORIGINAL APPLICATION NO.208/2016.

Amit Premdas Ambade,
Aged about 30 years,
Occ- Service,
R/o Plot No.13, Civil Lines, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Rural Development
and Water Conservation,
Mantralaya, Mumbai-400 032.
2. The Executive Engineer,
Small Scale Irrigation (Water Conservation),
Division, Chandrapur.
3. Office of Pay Verification Unit, Nagpur
Through its Accounts Officer, Civil Lines,
Nagpur.

Respondents

ORIGINAL APPLICATION NO.209/2016.

Milind Dinanath Dhongade,
Aged about 40 years,
Occ- Service,
R/o Civil Lines, Near Zilla Stadium,
Chandrapur.

Applicant.**-Versus-**

1. The State of Maharashtra,
Through its Secretary,
Department of Rural Development
and Water Conservation,
Mantralaya, Mumbai-400 032.
2. The Executive Engineer,
Small Scale Irrigation (Water Conservation),
Division, Chandrapur.
3. Office of Pay Verification Unit, Nagpur
Through its Accounts Officer, Civil Lines,
Nagpur.

Respondents

Shri A.J. Thakkar, Ld. Advocate for the applicants.
Shri M.I. Khan, the Ld. P.O. for the respondents 1 and 3.
Shri K.D. Deshpande, Ld. Adv. for respondent No.2.

Coram:- Shri J.D. Kulkarni, Vice-Chairman (J)

JUDGMENT

(Delivered on this 14th day of March, 2018.)

Heard Shri A.J. Thakkar, the learned counsel for the applicants, Shri M.I. Khan, the learned P.O. for respondent Nos. 1 and 3 and Shri K.D. Deshpande, Ld. counsel for respondent No.2.

2. All the applicants in these O.As came to be appointed as Junior Clerks-Grade-III in the departments of the respondents and were posted at Chandrapur in the pay scale of Rs. 3050-75-3950-80-4590. District Chandrapur was declared as 'Naxalite Affected Area' and, therefore, as per Government Resolution dated 6.8.2002, the applicants were given senior / promotional pay scale of Rs. 4,000-6,000.

3. As per the Maharashtra Civil Services (Revised Pay) Rules, 2006, the applicants are receiving salary as per Sixth

Pay Commission under pay band-1 for Rs. 5200-20200 plus grade pay of Rs. 1900/-.

4. Vide impugned order dated 9.2.2016 in O.A.No.209/2016, the impugned order dated 26.11.2015 in O.A. No. 146/2016 and the impugned order dated 17.2.2016 in O.A. No. 208/2016, respondent No.1, without issuing any notice abruptly declared that the fixation of pay scale of the applicants was incorrect and further ordered to fix the pay as per Annexure A-3 of the G.R. dated 22.4.2006. Consequently, the respondent No.2 issued another officer order dated 18.3.2016 and 2.2.2016 in O.A. No. 146/2016 and directed to recover the excess amount from the applicants. Excess amount to be recovered from the applicant in O.A. No. 209/2016 is from 30.8.2006 to 22.9.2016. In O.A. No. 146/2016, the said period is from 5.1.2009 to 30.11.2015, whereas in O.A.No. 208/2016, the said period is from 31.8.2006 to 31.7.2015. All these orders regarding re-fixation of pay scale of the applicants and consequent recovery of so-called excess amount have been challenged in the respective O.As. Since the point involved in the O.As is similar, the O.As are being disposed of by this common order.

5. In the affidavit in reply filed on behalf of the respondents, the respondents have justified the order of re-fixation of pay and recovery. It is an admitted fact that the applicants were working on the post of Junior Clerk, Grade-III in the naxalate affected area in Chandrapur district and various types of incentives / higher pay were made applicable to them and were also paid such incentives. It is stated that the Executive Engineer, Chandrapur (R.2) has passed an order on 12.1.2010 in O.A. No. 209/2016, order on 12.1.2010 in O.A. No. 146/2016 and order on 12.1.2010 in O.A. No. 208/2016. In the said order, it was made specifically clear that the fixation of pay done under the order, shall be subject to the approval of the Pay Verification Unit, Nagpur. It was also made further known to the respective applicants that any type of excess amount, if found / objected, during the scrutiny by the Pay Verification Unit, Nagpur shall be recoverable. It is further stated that all the applicants have given clear undertaking that they will repay the excess amount if paid to them due to wrong fixation of pay, if any. It is thus stated that even though the applicants are not responsible for the excess payment, they are not entitled to the pay as per incorrect fixation of pay and they are liable to pay whatever excess amount paid to them.

6. The respondent No.3 i.e. the Pay Verification Unit, Nagpur filed separate affidavit in reply and has justified re-fixation of pay and recovery.

7. Material question to be considered in these O.As is, (i) whether the order of re-fixation of pay of the applicants as per G.R. dated 22.4.2006 is legal and proper ? and (ii) whether the order directing recovery of excess amount paid to the applicants is legal and proper ?

8. From the pleadings as well as documents placed on record, it is clear that there is no doubt that the applicants were appointed in naxalate affected area of Chandrapur district on the post of Junior Clerk and were accordingly given financial benefit as per G.R. dated 6.8.2002 and they were getting such benefits. It is also an admitted fact that the pay was revised as per the Pay Commission. The orders of pay fixation in all the O.As, though of different dates, are similar in nature. While re-fixing the pay as per Sixth Pay Commission, it was specifically stated in the order itself as under:-

“इतर अनुषंगिक माहिती: वरील वेतन निश्चिती वेतन पडताळणी पथकाचे तपासनीस अधीन राहून करण्यात येत असून वरील वेतन निश्चितीमुळे अति प्रदान झाल्यास आतप्रदानाची रक्कम वसूल करणे बंधनकारक राहिल.”

9. This condition in the pay fixation order clearly shows that it was stated in clear words that the pay fixation will be subject to verification of Pay Verification Unit, Nagpur and in case some excess amount is paid to the employees on account of such fixation, the same will be recoverable. The learned P.O. has also invited my attention to the undertaking given by the applicants while accepting the revised pay scale. Since there is no dispute that such undertaking was given by each of the applicants, the undertaking in one of the O.As that the undertaking given by the applicant in O.A. No. 209/2016 (Milind Dinanath Dhongade) at page No.35 is considered for the purpose of convenience. The said undertaking is as under:-

“I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against the excess payment made to me or otherwise.”

10. Thus, by way of undertaking as aforesaid, the applicants have agreed that they will be liable to pay excess amount.

11. The learned counsel for the applicants placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **State of Punjab V/s Rafiq Masih reported in (2015) 4 SCC 331** and particularly relied on para 10 of the said judgment which reads as under:-

“10. In *State of Punjab V/s Rafiq Masih*, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:)SCC p.334/35)

- (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 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."

12. The learned P.O., however, submits that the judgment of **State of Punjab V/s Rafiq Masih** (supra) is not applicable to the present set of facts and in the present case, the applicants were given undertaking at the time of fixation of pay scale itself that the pay fixation will be subject to approval of the Pay Verification Unit and that if the excess amount is paid under pay fixation, the same will be recoverable. The learned P.O. has placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **High Court of Punjab and Haryana and others V/s Jagdev Singh, reported in (2016) 14 SCC 267.** In the said case while discussing the judgment in case of **State of Punjab V/s Rafiq Masih** (supra), the Hon'ble Apex Court has observed that, "in the present case, officer to whom payment was made in the first instance was clearly placed on notice that any payment is found to have been made in excess, will be required to be refunded. The

officer furnished that undertaking while opting for the revised pay scale. He is bound by the undertaking.”

For the aforesaid reason, the Hon'ble Apex Court set aside the High Court's judgment wherein the action of recovery was held unsustainable and it was observed that the recovery should be made in reasonable instalments.

13. The learned P.O. has also placed reliance on the recent judgment delivered by the the High Court of Judicature at Bombay, Bench at Aurangabad in **W.P. No. 7885/2016 in case of Walmik Sitaram Sirsat V/s State of Maharashtra and others**. In this judgment, all the aspects as in the present case have been considered and the case of **State of Punjab V/s Rafiq Masih** (supra) and **High Court of Punjab and Haryana and others V/s Jagdev Singh** (supra) have also been considered and it was observed in para 16 as under:-

“16. The facts in the present case are similar to that of the facts in the case of **High Court of Punjab and Haryana and others V/s Jagdev Singh** (supra) and, therefore, the ratio laid down is squarely applicable. In the present case in hand, the petitioner was put on notice that any

payment found to have been made in excess would be required to be refunded. The petitioner has furnished an undertaking while opting for the revised pay scale and, therefore, he is bound by the said undertaking.”

14. The learned counsel for the applicants submits that before issuance of the order of recovery, no show cause notice was given to the applicants and, therefore, order passed by the respondent authority is against the principles of natural justice. However, the applicants were given clear understanding at the time of pay fixation itself that the fixation of pay will be subject to approval from the Pay Verification Unit and they had also undertaken that they will be liable to pay excess amount, if paid due to wrong pay fixation. In such circumstances, question of issuance of show cause notice, does not arise. It is also material to note that, the excess amount is being recovered from the applicants in as many as 130 instalments in O.A. No. 209/2016, in 45 instalments in O.A. No. 146/2016 and in 116 instalments in O.A. No. 208/2016. Thus, no prejudice will be caused to the applicants in payment of excess amount. The applicants could not place on record any convincing evidence to show that their re-fixation of pay was incorrect or that the respondent authorities have committed any illegality in passing

the impugned orders. I am, therefore, satisfied that there is no merit in the O.As. Hence, I pass the following order:-

ORDER

The O.A. Nos. 146, 208 and 209 of 2016 stand dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)

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