

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.218 OF 2015**

**DISTRICT : PUNE**

Shri Chandrakant G. Gaikwad. )  
Retd. as Librarian and R/o. Morwadi, Pimpri, )  
District : Pune – 411 018. )...**Applicant**

**Versus**

1. The Divisional Deputy Director of )  
Education, Pune Division, 17, )  
Dr. Ambedkar Road, Opp. Red Temple, )  
Pune – 01. )
2. The Director of Education [Secondary & )  
Higher Secondary], Central Building, )  
Annie Besant Road, Pune. )
3. The State of Maharashtra. )  
Through Principal Secretary, )  
School Education & Sports Department, )  
Mantralaya, Mumbai – 400 032. )...**Respondents**

**Mr. B.A. Bandiwadekar, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

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

**DATE : 29.07.2019**

**JUDGMENT**

1. The Applicant has challenged the order or recovery of Rs.1,13,843/- from his gratuity, fixation of pay in the pay scale of Rs.5200-20200, Grade Pay

2800 and for declaration that he is entitled to pay scale of Rs.9300-34800 with G.P. 4300.

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

The Applicant joined Government servant as Librarian (Class-III) in 1981 in pay scale of Rs.365-760 in the office of State Institute of English Language Teaching Institute, Mumbai. Later, the said institute was shifted to Aurangabad and the issue of accommodation of the Applicant in the post of Librarian cropped-up. As one post of Librarian was vacant in the Vocational Guidance and Training Institute, Mumbai, the Applicant made representation on 17.02.1986 for his transfer to the said post. However, it was not responded. He was informed by the Deputy Director of Education that there was no such equivalent vacant post, and therefore, he could not be transferred in Mumbai. Ultimately, he was transferred in the office of Maharashtra State Education Research and Training Council, Pune and posted in District Institute of Education and Training, Pune in 1999. As he had completed 12 years continuous service, he was granted time bound promotion in pay scale of Rs.1640-2900 w.e.f.01.10.1994, and accordingly, pay fixation was done. He contends that the post of Librarian (Institute of Vocational Guidance) in the Director of School Education was having pay scale of Rs.5500-9000 as per 5<sup>th</sup> Pay Commission which was then revised as per 6<sup>th</sup> Pay Recommendation. Accordingly, pay fixation of the Applicant was done in 2009 in the pay scale of Rs.9300-34800 grade pay 4300. He stands retired on 31.12.2012 on attaining the age of superannuation. However, when the Service Book was referred to Pay Verification Unit, the objection was raised that the post of Librarian held by the Applicant was isolated post and the pay scale granted to him 9300-34800 with G.P.4300 was incorrect and his correct pay scale would be 5200-20200 G.P. 2800 + 300 + 450. As such, his pay was downgraded and recovery of Rs.1,13,843/- was ordered, and accordingly, the

same was recovered from his gratuity. The Respondents, consequently, re-fixed his pay in the pay band of Rs.5200-20200 with G.P. 2800 + 300 + 450 at the time of retirement. Despite the representation made by the Applicant, the Respondents failed to correct his pay in the original pay scale of 9300-34800 G.P. 4300. The Applicant, therefore, approached this Tribunal for declaration that the recovery of Rs.1,13,843/- is illegal and further sought declaration that he is entitled to pay band of Rs.9300-34800 with G.P. 4300 and retiral benefits in consonance of the said pay band.

3. The Respondents opposed the application by filing Affidavit-in-reply (Page Nos.46 to 54 of Paper Book) as well as Affidavit-in-Sur-rejoinder (Page Nos.94 to 97 of P.B.) *inter-alia* denying the entitlement of the Applicant to the relief claimed. It is not in dispute that in 1981, the Applicant was appointed on the post of Librarian in pay scale of Rs.365-760 in the office of State Institute of English Language Teaching Institute, Mumbai and the said Institute was later shifted to Aurangabad. That time, the Applicant has given option to remain in State Government service and submitted option form on 10.07.1993. In pursuance of option given by the Applicant, he was posted as Librarian at District Institute of Education and Training, Pune on 19.11.1999. He was posted on the post of Librarian which was isolated post in the pay scale of Rs.1640-2900. The pay scale for the post of Librarian in District Institute of Education and Training, Pune was Rs.4500-125-7000. Before joining the said Institute, the Applicant was in pay scale of Rs.1640-2900 in 4<sup>th</sup> Pay Commission recommendation. In 4<sup>th</sup> Pay Commission, the Applicant was given 12 years' service benefit and his pay scale was fixed 5500-175-9000 as per 5<sup>th</sup> Pay Commission. As such, the Applicant was getting higher pay scale than the pay scale sanctioned for the post of Librarian in District Institute of Education and Training, Pune. In 6<sup>th</sup> Pay Commission, corresponding pay was Rs.9300-34800 with grade pay 4300. As such, mistakenly, the higher pay scale was granted to the Applicant and having noticed the same by Pay Verification

Unit, it was corrected. The correct pay for the Applicant's post was in the pay band of Rs.5200-20200 G.P. 2800 + 300 + 450. Accordingly, the pay was corrected and excess amount of Rs.1,13,843/- paid to the Applicant on account of wrong fixation of pay was recovered from his gratuity. With these pleadings, the Respondents prayed to dismiss the O.A.

4. On filing of O.A, the Tribunal has granted interim relief and sum of Rs.1,13,843/- recovered from the gratuity of the Applicant has been refunded to him.

5. Shri A.V. Bandiwadkar, learned Advocate for the Applicant has pointed out that in 2006, the Applicant's pay scale was shown 5500-175-9000 which was corresponding to new pay scale of Rs.9300-34800 + GP 4300 as per 6<sup>th</sup> Pay Commission, and accordingly, the principal, District Institute of Education and Training, Pune had passed the order in July, 2009 placing the Applicant in revised pay scale of Rs.9300-34800 + GP 4300. He has further pointed out that, thereafter, the benefit of 2<sup>nd</sup> TBP was given to the Applicant in terms of G.R. dated 11.06.2012 w.e.f.01.10.2006 and additional GP of Rs.600 was sanctioned. On this line of submission, he contends that the Applicant was rightly placed in pay scale of Rs.9300-34800 + GP 4300 + 600 and availed the said pay scale till the date of his retirement i.e. upto 31.12.2012. However, by impugned action, the Respondents have downgraded the pay scale of the Applicant as 5200 to 20200 with GP 2800. He, therefore, contends that the action of recovery of Rs.1,13,843/- is unsustainable in law and the Applicant has entitled to retiral benefits in pay scale of Rs.9300-34800 + GP 4300 + 600.

6. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer has pointed out that, as per the option given by the Applicant, he was posted in District Institute of Education and Training, Pune by order dated 19.01.1999 and that

time, his pay scale was 1640-2900. The appointment order is at Page No.60 of P.B. She has further pointed out that the pay scale 1640-2900 was as per 5<sup>th</sup> Pay Commission. However, mistakenly, he was placed in pay scale of Rs.5500-175-9000 while fixing his pay as per 5<sup>th</sup> Pay Commission. She has also pointed out that the pay scale of Rs.5500-9000 corresponding to 9300-34800 was applicable to the post of Librarian working with Institute of Vocational Guidance and not to the Applicant, who was working with District Institute of Education and Training, Pune for which correct pay scale for the post of Librarian was 4500-7000 corresponding to 5200-20200 + GP 2800 as per 6<sup>th</sup> Pay Commission. She, therefore, submits that the mistake was noticed by Pay Verification Unit and the same was accordingly corrected by re-fixing the Applicant's pay in pay band of Rs.5200-20200 + GP 2800.

7. In so far as recovery of Rs.1,13,843/- on account of excess payment due to wrong fixation of pay scale is concerned, the same is not permissible in view of Judgment in ***AIR 2015 SC 696 (State of Punjab and others Vs. Rafiq Masih (White Washer)***. As stated above, by way of interim relief, directions were given to refund of Rs.1,13,843/- to the Applicant, which was accordingly complied with.

8. Now, the question comes about fixation of pay scale and the entitlement of the Applicant to the retiral benefits in terms of his pay scale. No doubt, at the time of retirement, he was shown in pay scale of Rs.9300-34800 + GP 4300 + 600, but it was downgraded showing him in pay scale of Rs.5200-20200 + GP 2800. One need to see where the mistake occurred and what pay scale was applicable to the Applicant. Admittedly, when the Applicant was transferred and posted at District Institute of Education, Loni, Kalbhor, Pune, he had given option to accept the post of Librarian for which pay scale was Rs.1640-2900. The Applicant did not dispute this position. The Principal, District Institute of Education and Training, Pune had accordingly

issued order on 19.01.1999, which is at Page No.60 of P.B. The pay scale 1640-2900 was in accordance to 4<sup>th</sup> Pay Commission. However, while giving the benefit of TBP, he was shown in pay scale of Rs.5500-175-9000 for which corresponding pay scale was Rs.9300-34800. Whereas, the correct pay scale for the post of Librarian as per Clause No.165 of Recommendation of 6<sup>th</sup> Pay Commission (Page No.49 of P.B.), he was in pay scale of Rs.4500-7000 for which corresponding revised pay was Rs.5200-20200 + GP 2800. The pay scale for the post of Librarian for Institute of Vocational Guidance (as per Page No.84 of Booklet at Serial No.133) was Rs.5500-9000 which was corresponding to 9300-34800.

9. It is thus apparent that there are two different cadres of Librarian for which different pay scale apply. As per Clause No.165 of Booklet, for the post of Librarian with District Institute Education and Training Centre, the pay scale was Rs.4500-7000 corresponding to 5200-20200 + GP 2800 in 6<sup>th</sup> Pay Commission. Whereas, as per Clause No.133, for the post of Librarian serving with Institute of Vocational Guidance under the control of Director of Education, the pay scale for the post of Librarian was 5500-9000 corresponding to 9300-34800 in 6<sup>th</sup> Pay Commission. As such, it is obvious that the Applicant was entitled to pay scale applicable to District Institute of Education and Training Centre which was 4500-5500-7000 corresponding to 5200-20200 + GP 2800 but incorrectly, he was given pay scale for the post of Librarian was 5500-9000 corresponding to 9300-34800 which was applicable to the post of Librarian serving with Institute of Vocational Guidance. It is thus quite clear that there was mistake in application of pay scale and he was wrongly placed in pay scale of Rs.9300-34800 + GP 4300 though he was entitled to pay scale of Rs.4500-7000 which was corresponding to 5200-20200 + GP 2800. Needless to mention that the Respondents were entitled to correct the mistake having noticed the same in view of objection raised by

Pay Verification Unit. Accordingly, his pay was revised in the pay scale of Rs.5200-20200 + GP 2800 for the fixation of pension and other retiral benefits. The Applicant could not point out how he is entitled to pay scale of Rs.9300-34800 + GP 4300, which was wrongly given to him. As the post of Librarian was isolated, therefore, senior grade pay was sanctioned in pay band of Rs.5200-20200 + GP 3100 + additional pay Rs.450. I, therefore, see no illegality in the revision of pay scale of the Applicant.

10. The totality of aforesaid discussion leads me to sum-up that the challenge to the fixation of pay as done by the Respondents is without any merit. However, in so far as the order of recovery of Rs.1,13,843/- is concerned, the same deserves to be quashed in view of the Judgment of Hon'ble Supreme Court in *Rafiq Masih's* case. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed partly.
- (B) The impugned action of recovery of Rs.1,13,843/- is quashed.
- (C) In so far as the re-fixation of pay of the Applicant is concerned, the impugned order needs no interference.
- (D) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 29.07.2019

Dictation taken by :

S.K. Wamanse.