

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.229 OF 2021

DISTRICT : MUMBAI

Shri Macchindra D. Karande.)
Age : 58 Yrs., Occu.: Retires as Laboratory)
Technician and residing at Room No.17,)
Type-3 Building, Employees Colony of)
ESIS Hospital, Mumbai – 400 018.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Commissioner,)
State Employees Insurance Scheme,)
Panchdeep Bhavan, 6th Floor,)
Lower Parel, Mumbai – 400 013.)
2. The Medical Superintendent.)
State Employees Insurance Scheme,)
Ganpat Jadhav Marg, Mumbai – 18.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 02.02.2022

JUDGMENT

1. The Applicant has challenged impugned communication dated 09.03.2020 whereby recovery of Rs.2,66,700/- is sought from the Applicant towards unauthorized occupation of service quarter, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

Applicant stands retired as Laboratory Technician (Group 'C' post), ESIS Hospital, Worli, Mumbai on 30.06.2019. He was in occupation of service quarter. His wife was also serving as Senior Clerk in other Department viz. Labour Department. On 15.11.2018, the Applicant made an application to Medical Superintendent, State Employees Insurance Scheme, Mumbai to transfer service quarter in the name of his wife, so that he can continue possession over service quarter. He stands retired on 30.06.2019 and even after retirement, he continued the possession over service quarter. The Respondents issued notices dated 13.03.2019, 01.04.2019, 20.07.2019 and 25.09.2019 to vacate service quarter, failing which he was to pay penal charges and he was further informed that request for transfer of service quarter in the name of his wife is not accepted.

3. The Applicant has challenged notices dated 25.01.2019, 13.03.2019, 07.06.2019, 20.09.2019 and 25.09.2019 by filing O.A.No.986/2019 before this Tribunal. O.A. was heard on merit and dismissed on 27.01.2020. When O.A. was dismissed, learned Advocate for the Applicant requested for leave to challenge the recovery of penal rent. He was allowed to take action in accordance to law in respect of recovery. As such, the claim of Applicant for transfer of service quarter in the name of Applicant's wife was dismissed.

4. It is on the above background, the Respondents have issued notice dated 09.03.2020 thereby seeking recovery of Rs.2,66,700/- for unauthorized occupation of service quarter for the period from 01.10.2019 to 31.01.2020. Permission was granted to continue service quarter for three months upto 30.09.2019. However, he continued the possession, and therefore, recovery of penal charges was sought for four months amounting to Rs.2,66,700/-. The Applicant has challenged the notice dated 09.03.2020 in the present O.A.

5. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the notice dated 0903.2020 on following grounds :-

(i) Before action of recovery dated 09.03.2020, no prior notice was issued and there is breach of principles of natural justice and contravention of Rule 134-A of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity.

(ii) Since Applicant retired as Group 'C' employee, the recovery is not permissible in view of decision of Hon'ble Supreme Court in **(2015) 2 SCC (L & S) 33 [State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors.]**.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that various notices were given to the Applicant which were challenged in O.A.No.986/2019 along with prayer to transfer service quarter in the name of wife, which came to be dismissed, and therefore, grievance of non-issuance of notice does not survive. As regard Judgment in **Rafiq Masih's** case, he contends that it was a matter of recovery of wrong fixation of pay to a Government servant while in service where after retirement, recovery is not permissible. Whereas, in the present case, recovery is pertaining to penal charges on account of unauthorized occupation of service quarter. Learned P.O. has further pointed out that recovery of Rs.2,66,700/- is already done from gratuity and remaining amount is paid to the Applicant. He has tendered letter dated 10th October, 2021 to that effect.

7. Indisputably, Applicant stands retired on 30.06.2019 and after 3 months' concession, he was under obligation and bound to vacate service quarter. However, he did not vacate the service quarter. He made application to the Department for transfer of service quarter in the name of his wife, but it was rejected. He challenged the rejection by filing O.A.No.986/2019 which was dismissed by the Tribunal on 27.01.2020.

that Judgment had attained finality. The claim for transfer of service quarter in the name of wife was rejected mainly on the ground that service quarter was assigned service quarter of ESIS Department. Whereas, Applicant's wife was in Labour Department who put claim of quarter from common pool.

8. Shri K.R. Jagdale, learned Advocate for Applicant referred Rule 134 of 'Pension Rules of 1982' which is as follows :-

“134A. 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, or

(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 installments so that the amount of pension is not reduced below the minimum fixed by Government.)”

It is thus explicit from the perusal of Rule 134(iii) that where dues pertaining to Government accommodation is found recoverable from Government servant, it can be recovered even after retirement, subject to giving reasonable opportunity to the pensioner as to why the amount due should not be recovered from pensionary benefits.

9. Insofar as issuance of notice and opportunity of hearing before impugned action by communication dated 09.03.2020 is concerned, as rightly pointed out by the learned P.O. that several notices were given to the Applicant to vacate service quarter and to pay penal charges. The perusal of Judgment in O.A.No.986/2019 reveals that Applicant has challenged notices dated 25.01.2019, 13.03.2019, 07.06.2019, 20.09.2019 and 25.09.2019. The copy of notice dated 25.09.2019 is also placed on record of this O.A. which is at Page No.35 of P.B. whereby Applicant was directed to vacate service quarter and failing which he will be liable to pay penal charges at the rate of 150/- per sq.ft. in terms of G.R. dated 30.08.2018. Despite service of this notice, the Applicant did not vacate the service quarter. He ultimately vacated it only on 01.02.2020. This being the position, the grievance now raised about absence of notice prior to impugned action is totally untenable. The Applicant was in fact served with the various notices which he challenged in O.A.No.986/2019 which came to be dismissed by the Tribunal on 27.11.2020. Suffice to say, enough opportunity and notices were given to the Applicant to vacate service quarter with specific intimation that failing to which, he would be liable to pay penal charges.

10. In view of above, the submission advanced by the learned Advocate for the Applicant that in absence of notice as contemplated under Rule 134-A of 'Pension Rules of 1982', the impugned action is illegal holds no water. There is compliance of issuance of notice as contemplated under Section 134-A of 'Pension Rules of 1982', which inter-alia provides for giving reasonable opportunity to the pensioner where certain amount is required to be recovered from his pension. Needless to mention, pension includes gratuity. This being the position, reliance placed by learned Advocate for the Applicant on the decision in **O.A.No.739/2017 (Shivaji N. Pophale Vs. Commissioner of Police, Thane) decided on 04.06.2019** is totally misplaced. In that case, the impugned action of recovery from gratuity was held impermissible in absence of show cause notice, as mandatory in Rule 134-A of 'Pension Rules of 1982'.

11. As regard applicability of Judgment of Hon'ble Supreme Court in **Rafiq Masih's** case, it was a matter of permissibility of recovery of excess amount paid to the employee due to wrong fixation of pay. It is in that context, in Para No.12 of the Judgment, the Hon'ble Supreme Court laid down 5 situations wherein recovery would be impermissible in law. In Para No.12, 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.”*

12. As such, it was a matter of wrong fixation of pay resulting into excess payment of pay and allowances during the period of service due to sheer mistake on the part of Department, and therefore, considering hardship of employee, the recovery was held impermissible in situation Nos.(i) to (v). Whereas, in the present case, recovery is on account of unauthorized possession of service quarter despite issuance of various notices to the Applicant. The Applicant was aware of rejection of his request to get service quarter transferred in the name of wife, but continued the possession even after retirement. Therefore, such recovery

which is on account of unauthorized continuation of service quarter cannot be equated with an excess payment of pay and allowances paid wrongly to the employee during the period of service.

13. Reliance placed by learned Advocate for the Applicant on the decision of Hon'ble High Court in **Writ Petition No.4616 of 2016 [Smt. Jayashree T. Takalkar Vs. Chief Executive Officer, Z.P, Aurangabad]** is also arising on account of wrong fixation of pay and therein in view of decision of Hon'ble Supreme Court in **Rafiq Masih's** case, the recovery order was quashed. As such, the facts are quite distinguishable, since in the present case, the recovery pertains to totally unauthorized/illegal possession of service quarter. The possession of service quarter after stipulated date was totally illegal for which Applicant is liable to pay penal charges. He cannot escape from the liability to pay penal charges, otherwise it would be giving the benefit to the wrong doors and to perpetuate illegality which cannot be countenanced in law.

14. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned communication dated 09.03.2020 holds no water and O.A. is liable to be dismissed. Hence, the order.

ORDER

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

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

Mumbai
Date : 02.02.2022
Dictation taken by :
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2022\February, 2022\O.A.229.21.w.2.2022.Recovery.doc

Uploaded on