

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.271 of 2021**

**District : SATARA**

Shri Nandkumar Manohar Pore, )  
Age 62 years, Occ : Retired Police Head )  
Constable-Electgrician, O/o The Addl. )  
Director General of Police and Director, )  
Police Wireless, Pune. )  
R/at 225, Somwar Peth, Rajwada, Nx Flat )  
No.11, Near Rajwada, Satara 415 001. )...**Applicant**

**Versus**

1. The Director General of Police, M. S. )  
Chhatrapati Shivaji Maharaj Marg, )  
Colaba, Mumbai 400 001. )
2. The Addl. Director General of Police )  
& Director, Police Wireless, Pune. )  
Dr. Homi Bhabha Road, Chavan )  
Nagar, PUNE 411 008. )...**Respondents**

Shri U. V. Bhosale, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 22.10.2021.

**J U D G M E N T**

The Applicant has challenged the orders dated 16.11.2019 to the extent of recovery of Rs.1,93,620/- from his retiral benefits *inter-alia* contending that it is not permissible after retirement.

2. The Applicant stands retired on 30.06.2016 from the post of Police Head Constable (Group-C Employee). After retirement without giving any notice, sum of Rs.1,93,620/- was deducted from his gratuity

on account of excess payment made to him onward 2016. The Applicant made representation for refund of amount but the same was not responded.

3. Heard Shri U. V. Bhosale, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

4. Indisputably, the Applicant stands retired as Police Head Constable and falls in Group-C category. The sum of Rs.1,93,620/- was deducted directly from his gratuity without notice to him. Indeed, the issue of recovery after retirement is no more *res-integra* in view of the decision of the Hon'ble Supreme Court in **Civil Appeal No.11527/2014 (State of Punjab and others Vs. Rafiq Masih (White Washer), decided on 18th December, 2014** wherein Para No.12, the Hon'ble Supreme Court has carved out the situations where recovery is impermissible. In Para No.12 of the judgment, it is stated 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.*

5. Admittedly, the excess payment was made without there being any fraud or mistake attributed to the Applicant. The pay was wrongly fixed by the department in 2016 and it continued till his retirement. It is not a case where the Applicant has furnished any undertaking to refund the excess amount. This being the situation, the present case squarely falls in Clause (i), (iii) & (v). Indeed, the office of Director General of Police had issued Circular dated 05.09.2018 instructing all the concerned departments working under it that recovery from retiral benefits in terms of the decision of the Hon'ble Supreme Court in **Rafiq Masih's** case (cited supra) is not permissible. However, despite this position and law, sum of Rs.1,93,620/- has been deducted from gratuity of the Applicant without giving any notice.

6. Learned Counsel for the Applicant fairly states that he is challenging recovery and claim is restricted for direction to refund the said amount and he is not challenging re-fixation of pay and allowances/pension.

7. In this view of the matter, there is no other option except to direct the Respondents to refund sum of Rs.1,93,620/- to the Applicant. Hence the following order :-

**ORDER**

(A) O.A. is allowed.

(B) Respondents are directed to refund sum of Rs.1,93,620/- to the Applicant within two months from today failing to which, the amount would carry interest @ 9% from today till actual payment.

(C) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**MEMBER (J)**

