IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.305 OF 2019

DISTRICT : MUMBAI

Smt. Manjiri P. Padval.)
Age : 58 Yrs., Working as Supervisor in the)
Office of Director of Languages, M.S,)
Having its office at Administrative Building,)
5th Floor, Government Colony, Bandra (E),)
Mumbai – 400 051.)**...Applicant**

Versus

The Director of Language (M.S),)
Having office at Administrative Building,)
5th Floor, Government Colony, Bandra (E),)
Mumbai – 400 051.)**…Respondent**

Mr. Suraj S. Ghogare, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 09.05.2019

JUDGMENT

1. In the present Original Application, the challenge is to the impugned order dated 6th March, 2019 whereby recovery of Rs.59,606/- has been ordered from the salary of the Applicant who is due to retire at the end of May, 2019.

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

The Applicant was appointed as a Translator in 1990 and promoted to the post of Supervisor (Class-III). He is due to retire on 31st May, 2019. When pension papers were forwarded to Pay Verification Unit, an objection was raised for excess payment of Rs.59,606/- made to him in the period from 13.03.2003 to 14.10.2009. Therefore, by order dated 06.03.2019, the Respondents issued order for recovery of Rs.59,606/- in four monthly installments from the salary of the Applicant starting from February, 2019. The Applicant contends that the recovery at the fag end of service without issuing show cause notice is unsustainable in view of Judgment of 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***. He, therefore, prayed to set aside the impugned order dated 6th March, 2019 and for refund of the amount already deducted from his salary.

3. The Respondents opposed the application by filing Affidavit-in-reply denying the entitlement of the Applicant to the relief claimed. The Respondents contend that the excess payment of Rs.59,606/- was paid to him in the period from 13.03.2003 to 14.10.2009 due to wrong fixation of higher pay scale. The Pay Verification Unit raised an objection while verifying the Service Book of the Applicant, and therefore, by order dated 06.03.2019, the directions were issued to recover the same from his salary. The Respondents further contend that the Applicant had given Undertaking in 2009 to refund the excess amount if paid to him, and therefore, now he cannot raise objection. With this pleading, the Respondents prayed to reject the application.

4. The limited question posed for consideration is whether the recovery of Rs.59,606/- on account of excess payment made to the Applicant in the period from 13.03.2003 to 14.10.2009 is permissible, when the Applicant is at the verge

of retirement and the answer is in negative in view of the Judgment of Hon'ble Supreme Court in ***Rafiq Masih's*** case (cited supra).

5. Admittedly, the excess payment was made to the Applicant in between 13.03.2003 to 14.10.2009 due to mistake on the part of Department in fixation of pay scale. No fraud or misrepresentation is attributable to the Applicant.

6. This issue is no more *res-integra* in view of Judgment in ***Rafiq Masih's*** case (cited supra) which has been followed consistently by this Tribunal and was also upheld by the Hon'ble High Court. In ***Rafiq Masih's*** case, the Hon'ble Supreme Court held as follows :-

> *"**11.** For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.*
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> *(i) Reference may first of all be made to the decision in Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475, wherein this Court recorded the following observation in paragraph 58:*
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> > *"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma v. Union of India, (1994) 2 SCC 521, Union of India v. M. Bhaskar, (1996) 4 SCC 416, V. Ganga Ram v. Director, (1997) 6 SCC 139, Col. B.J. Akkara (Retd.) v. Govt. of India, (2006) 11 SCC 709, Purshottam Lal Das v. State of Bihar, (2006) 11 SCC 492, Punjab National Bank v. Manjeet Singh, (2006) 8 SCC 647 and Bihar SEB v. Bijay Bahadur, (2000) 10 SCC 99." (emphasis is ours).*
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> > *First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir's case (supra) recognized, that the issue of*

recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee." "

7. The Hon'ble Supreme Court having considered its earlier decisions in Para No.12 held as follows :

*"**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, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

(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."

8. In so far as alleged Undertaking is concerned, it is the normal practice to obtain Undertaking from the employees. The Applicant being Group 'C' employee, was not in a position to bargain with the Government, who is in stronger/dominant position. Furthermore, the alleged Undertaking seems to have been given on 22.06.2009, whereas the excess payment was made to the Applicant in the period from 2003 to 2009. Therefore, the alleged Undertaking cannot be the ground to recover excess payment in the teeth of Judgment of Hon'ble Supreme Court in ***Rafiq Masih's*** case. The Applicant's case is squarely covered by Clause Nos.1 and 3 of Para No.12 of the Judgment of Hon'ble Supreme Court.

9. The necessary corollary of aforesaid discussion leads me to sum-up that the impugned order dated 06.03.2019 is unsustainable in law and deserves to be quashed. Hence, the following order.

O R D E R

(A) The Original Application is allowed.

(B) The impugned order dated 06.03.2019 is hereby quashed and set aside.

(C) The amount recovered from the Applicant in pursuance of order dated 06.03.2019 be refunded to the Applicant within two months from today.

(D) No order as to costs.

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

Mumbai
Date : 09.05.2019
Dictation taken by :
S.K. Wamanse.
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