

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.346 OF 2019**

**DISTRICT : MUMBAI**

Smt. Bharati Sunil Awale. )  
Age : 48 Yrs., Occu.: Housewife, )  
W/o. Late Sunil Namdeo Awale, )  
Police Hawaldar, R/o. Room No.102, )  
Ramgopal Building, Cabin Road, )  
Bhaindar (E), Thane – 401 107. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )  
2. Deputy Commissioner of Police. )  
Armed Police, Worali, Mumbai – 30. )  
3. Accountant General (A & E)-I, )  
101, Maharshi Karve Road, )  
Mumbai – 400 020. )...**Respondents**

**Mr. C.T. Chandratre, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

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

**DATE : 13.12.2019**

## JUDGMENT

1. The issue posed for consideration in the present Original Application is whether the order dated 15.12.2017 directing the recovery of Rs.6,11,465/- made in excess and whether the subsequent action of Respondents in recovering the same from the retiral benefits of deceased employee is legal and valid.

2. The Applicant is widow of deceased employee viz. Sunil Awale. The deceased was Police Hawaldar on the establishment of Respondent No.2. He was due to retire on 30.09.2021. However, he passed away on 28.06.2017 in harness. As deceased had completed qualifying service, his pension papers were prepared and forwarded to Accountant General. However, at the time of verification of Service Book, it was revealed that in 1992 though deceased was brought down in the cadre of Police Constable, he was continued on same pay scale of Hawaldar, which resulted in excess payment to him from 1992 till his demise. It was revealed that sum of Rs.6,11,465/- was paid in excess due to continuation of deceased on same pay scale. Accordingly, the entire amount of Rs.6,11,465/- was recovered from the retiral benefits. The Applicant being widow of deceased has therefore filed the present O.A. challenging the impugned order dated 15.12.2017 and sought direction to refund the amount recovered from retiral benefits of deceased husband.

3. Shri C.T. Chandratre, learned Advocate for the Applicant submits that the excess payment was made to the deceased right from 1992 without any fraud or mistake attributable to the employee and it being on account of mistake of the Department, now after the death of the employee, it cannot be recovered from the retiral benefits, in view of the decision of Hon'ble Supreme Court in **AIR 2015 SC 696 (State of Punjab and others Vs. Rafiq Masih (White Washer))**. In this behalf, he further referred to the decision rendered by this Tribunal in

**O.A.47/2019 decided with O.A.No.98/2019 (Shri Suresh R. Tapkir & Anr. Vs. State of Maharashtra) decided on 07.03.2019** as well as on decision in **O.A.255/2016 (Dr. Vijaykumar K. Patne Vs. The State of Maharashtra & Anr.) decided on 06.03.2017.** He thus submits that, in view of settled legal position, the O.A. deserves to be allowed.

4. Per contra, Smt. A.B. Kololgi, the learned P.O. sought to justify the impugned action of recovery contending that the deceased was aware of receipt of higher pay scale, and therefore, the recovery is legal. She further submits that the Applicant had given Undertaking that he will refund excess payment and in view of this Undertaking, the recovery cannot be faulted with.

5. Indisputably, the excess payment was made onward 1992 till the demise of deceased Sunil Awale. The perusal of order dated 04.05.1993 (Page No.63 of P.B.) reveals that in 1993, the Police Personnel who were servicing in Arm Police were transferred to Unarm Police. That time, the orders were passed to revert them to the post of Police Constable and to re-fix their pay. However, no such step was taken and deceased was continued on same pay scale which resulted into excess payment and the same was noticed only at the time of verification of Service Book. This being the position, no fraud or mistake can be attributed to the deceased, as the excess payment was made by the Department due to its own mistake and negligence. Once the excess payment is found made for more than five years due to mistake on the part of Department, the guidelines laid down by Hon'ble Supreme Court in **Rafiq Masih's** case are squarely attracted.

6. The issue whether such recovery is permissible from the retiral benefits is no more *res-integra* in view of decision in **Rafiq Masih's** case wherein 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.”*

7. There is no denying that the deceased was Group ‘C’ employee. In the present case, the recovery is effected after the demise of the deceased employee from his retiral benefits. As such, in such situation, the recovery of the excess payment mistakenly made by the employer is definitely iniquitous and harsh. The present case squarely falls within the parameters of Clause Nos.(i), (ii), (iii) and (v) of the Judgment in **Rafiq Masih’s** case.

8. In so far as the Undertaking relied by the Respondents is concerned, it was given by the deceased at the time of fixation of pay in 2009 as seen from Page No.59 of P.B. Whereas, in the present case, the excess payment was made from 1992 on account of mistake on the part of Department. Therefore, the Undertaking dated 14.05.2009 furnished by the Applicant at the stage of fixation of pay cannot be related to the excess payment made to the deceased.

Therefore, this Undertaking heavily relied by the Respondents is of no assistance to them.

9. The learned Advocate for the Applicant rightly referred to the decisions rendered by this Tribunal in **O.A.47/2019 with O.A.98/2019** and **O.A.255/2016** referred to above, wherein the orders of recovery of excess payment made to the employee due to mistake on the part of Department are quashed and directions were issued to refund the amount.

10. The necessary corollary of aforesaid discussion leads me to sum-up that the impugned order and action of recovery from the retiral benefits of the deceased is not sustainable in law and the O.A. deserves to be allowed. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The impugned order dated 15.12.2017 is quashed and set aside.
- (C) The Respondents are directed to refund the amount of Rs.6,11,465/- recovered from the retiral benefits of the deceased within six weeks from today.
- (D) No order as to costs.

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

Mumbai  
Date : 13.12.2019  
Dictation taken by :  
S.K. Wamanse.