

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.350 OF 2020

**DISTRICT : PUNE
SUBJECT : RECOVERY**

Dr. Shaikh Mukhtar Ahmed Sayeed,)
Aged: 64 years, retired as Medical Officer, Class II,)
R/at D-301, Sankla Exclusive Vistas, near)
Dharmavat Petrol Pump, Pisol, Pune 411 060.)... **Applicant**

Versus

- 1) State of Maharashtra, through Principal)
Secretary, Public Health Department,)
Mantralaya, Mumbai 400 032.)
- 2) Accountant General Indian Audit & Accounts)
Department, (Accounts & Entitlement)-1,)
2nd Fl., Pratishtha Bhavan, New Marine Lines)
101, Maharashi Karve Road, Mumbai 400 020.)
- 3) District Health Officer, Public Health Dept.)
Zilla Parishad, Yashvantrao Chavan Bhavan,)
4th Fl., Health Department, Zilla Parishad,)
Pune 411 001.) ...**Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

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

CORAM : A.P. Kurhekar, Member (J)

DATE : 12.04.2023

JUDGMENT

1. The Applicant has challenged the order dated 21.01.2020 whereby directions were issued by the office of AG to recover sum of Rs.1,56,584/- from his pension. In addition to it, the Applicant is also seeking directions to Respondents to release balance amount of GPF Rs.1,43,307/-.

2. The Applicant stands retired on 30.06.2014 from the post of Medical Officer, Class -II. He had G.P.F. account and used to pay subscription in the GPF and also withdrew certain amount as a non-refundable amount as well as ordinary refundable allowance during the period of his tenure. After his retirement, the department has sent proposal to the office of A.G. to release his GPF fund as per the position of account of GPF account NO.PHMH19181. However, nothing happened for six years. It is only after six years, the office of A.G. by letter dated 21.01.2020 informed to Treasury Officer that on scrutiny of GPF account, he noticed minus balance of Rs.1,56, 584/- in his GPF account and directed the Treasury office to recover the same from his account. The Applicant, therefore, filed this O.A. to challenge communication dated 21.01.2020 issued by A.G. At the same time, he contends that in fact there was balance of Rs.1,43, 307/- at his credit as per GPF slip and sought directions to Respondents to pay the same.

3. Heard Smt. Punam Mahajan, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

4. Thus, in present case, the Applicant is seeking two reliefs. First relief is to set aside the communication dated 21.01.2020 whereby recovery of Rs,1,56,584/- sought on account of minus balance in GPF after scrutiny and second relief is for directions to Respondents to pay him Rs.1,43,307/- which was allegedly at his credit at the time of retirement.

5. Smt. Mahajan, learned Counsel for the Applicant sought to assail the impugned order *inter-alia* contending that recovery after retirement of Government servant that to after six years from retirement is totally impermissible. In this behalf, she placed reliance on the decision of the Hon'ble Supreme Court in **Civil Appeal NO.11527/2014 {State of Maharashtra & Others Vs. Rafiq Masih (White Washer)}**, decided on 18th December, 2014.

6. Per contra, Shri A. J. Chougule, learned Presenting Officer sought to justify the impugned order *inter-alia* contending that while the Applicant was in service, he withdrew GPF fund as a non-refundable amount as well as ordinary refundable allowances from time to time but one entry of Rs.30,000/- of ordinary refundable allowance availed by the Applicant in 1995 was not informed to the office of A.G. by his department and it is only after retirement when the account is reconciled, it resulted into minus balance of Rs.1,56,584/-. He, therefore, submits that there is no illegality in impugned recovery order.

7. As stated above, the Applicant has claimed two reliefs, one is for setting aside the recovery of Rs.1,56,584/- and second relief is of direction to Respondents to pay him Rs.1,43,307/- which according to Applicant was his credit at the time of retirement. Insofar as amount of Rs.1,43,307/- is concerned, all that Applicant sought to place reliance on the GPF slip in which opening balance of Rs.1,43,307/- is shown (page no.29 of PB). Except this statement at page no.29 of PB, no other material is forthcoming to substantiate that actually there was balance of Rs.1,43,307/- at his credit. On the other hand, the Respondents contend that because of non-communication of debit voucher of Rs.30,000/-, entries were not updated and after noticing it, when the account is reconciled, it resulted in minus balance of Rs.1,56,584/-. It is thus apparent that because of non-sending of debit voucher by the department to the office of A.G., certain entries remained to be taken in the GPF account of the Applicant. It is probably because of this, sum of Rs.1,43,307/- is wrongly shown at his credit in GPF. As such, it is only after reconciliation, one needs to see whether there was any such balance at credit of Applicant in his GPF account at the time of retirement.

8. The situation after reconciliation is that there is minus balance of Rs.1,56,584/- in the GPF account. This being so, the Applicant's contention that he had Rs.1,43,307/- at his credit in GPF account cannot be accepted and GPF statement at Page No.29 showing balance

credit of Rs.1,43,307/- which was before reconciliation of the account is apparently incorrect. There is no conclusive material to establish that sum of Rs.1,43,307/- was really at his credit. Indeed, learned Counsel for the Applicant during course of hearing fairly stated that she is not pressing for refund of Rs.1,43,307/- and challenge is restricted to recovery of Rs.1,56,584/- which is now shown as minus balance in impugned communication dated 21.01.2020.

9. In this matter hearing was taken thrice to enable learned P.O. to produce relevant record to find out whether the Applicant had availed over payment by making misrepresentation. However, no such record is produced. Learned P.O. submits that no record is available now with the department it being quite old one. The Tribunal repeatedly asked to learned P.O. as to whether Applicant had availed withdrawal without there being no such balance at his credit. However, learned P.O. on instructions submits that withdrawals were sanctioned from time to time since there was balance at the credit of Applicant. That apart, he also submits on instructions that whatever amount was withdrawn by the Applicant towards refundable allowance, it was repaid later in installments. Thus, this is not a case where Applicant made misrepresentation to the department or applied for withdrawal of GPF without balance at his credit. Indeed, as per practice, the withdrawal is always granted after verification of balance at the credit of the subscriber. Suffice to say, it is not a case of any misrepresentation by the Applicant while withdrawing GPF amount. It is also not a case of over payment to the Applicant.

10. The fault is on the part of department in not sending debit voucher to the office of A.G. at appropriate time which was subsequently noticed and after reconciliation, the account goes in minus. This being so, no such recovery as sought in impugned order dated 21.01.2020 is permissible in view of the decision of the Hon'ble Supreme Court in **Rafiq Masih's** case (cited supra). Indeed, this is not a case of excess payment paid to Government servant and later noticed. Rather this is a

case where at the time of reconciliation of GPF account after retirement, it is shown gone into minus because of failure of the department to send debit voucher of Rs.30,000/- in 1995. This being so, no such liability can be imposed upon the Applicant for the failure of the department. No fraud or misrepresentation is attributable to the Applicant.

11. Apart as regard recovery, the legal position is no more *res-integra* in view of the judgment of the Hon'ble Supreme Court in **Rafiq Masih's** case. Considering the hardship faced by retired Government servant, the Hon'ble Supreme Court after considering its various earlier decisions has culled out certain situations in clause nos.(ii) and (v) of Para 12 wherein recovery is held impermissible. Para No.12 of the judgment is 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. The Applicant's case squarely falls in Clause (ii) and (v).

13. The totality of the aforesaid discussion, leads me to sum up that impugned order dated 21.01.2010 seeking recovery of Rs.1,54,584/- is totally bad in law and liable to be quashed. Hence, the following order :-

ORDER

- (A) The Original Application is allowed partly.
- (B) Impugned communication dated 21.01.2020 is quashed and set aside.
- (C) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 12.04.2023. .
Dictation taken by: Vaishali S.Mane
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