

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.351 OF 2012

Sou. Agnes Nandkumar Ranade,)
 Age : 63 years, Occu : Retd.)
 Resi. At : 469, Vadgaonsheri,)
 (Shri Sagar Park), Nagar Road,)
 Pune 411 014) **...Applicant**

Versus

1. The State of Maharashtra,)
 Through the Secretary,)
 Public Health Department,)
 Mantralaya, Mumbai 400 032)
2. The Superintendent,)
 Sasoon General Hospital,)
 Pune 411 001)
3. The Superintendent,)
 Swami Ramanand Teerth Medical)
 College & Hospital, Ambejogai,)
 Dist. Beed.)
4. The Accounts Officer,)
 Pay Verification Unit,)
 Aurangabad) **..Respondents**

PK

Shri K.R. Jagdale, learned Counsel for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI R.B. MALIK, MEMBER (J)

DATE : 16.02.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Counsel for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This O.A. has been filed by the Applicant seeking revised authorization of pension from 30.06.2008 under Rule 131 of the Maharashtra Civil Services (Pension) Rules, 1982. The Applicant is also seeking refund Rs.37,510/- which was recovered from her.


3. Learned Counsel of the Applicant argued that the Applicant was appointed as Staff Nurse on 03.12.1976. She was granted Time Bound Promotion in terms of G.R. dated 08.06.1995, with effect from 01.10.1994. Learned Counsel for the Applicant argued that the pay of the Applicant was fixed as per option given by her at that time. However, the option

form was not seen in the service book of the Applicant and as a result, her pay was re-fixed as if she has not given any option and a recovery of Rs.37,510/- for the period from December, 1994 to June, 2008 was made from her. The Applicant retired on superannuation on 30.06.2008 in the post of Sister-in-charge. Learned Counsel for the Applicant argued that there was no reason to presume that the Applicant had not given option for fixation of pay, when she was granted Time Bound Promotion w.e.f. 01.10.1994. In fact, the natural presumption should have been that her pay was fixed as per option given by her. Otherwise, there was no reason for the Respondents to fix her pay in the manner it was fixed. Learned Counsel for the Applicant argued that the Respondents may be directed to rework her pension on the basis of the pay which was fixed when she was granted Time Bound Promotion w.e.f. 01.10.1994.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that as per the Rules, whenever, a person gets higher pay scale, she has to give an option regarding pay fixation and that option form is attached to the service book of the employee. In the service book of the Applicant, the option form was not attached when she was given Time Bound Promotion w.e.f. 01.12.1994 (not 01.10.1994 as claimed by the Applicant). Her pay was wrongly fixed presuming that she had given option and when this fact was brought to the

notice of the Respondent No.3 by the Pay Verification Unit, her pay was fixed from 01.12.1994 as if she has not given any option. Learned P.O. argued that on that basis her pay was re-fixed and she was asked to refund Rs.37,510/- which was the amount of excess payment made to her for the period from December, 1994 to June, 2008. Learned P.O. argued that her pension has been fixed correctly, and there is no basis of her demand to re-fix her pay from 01.12.1994 on the basis of wrong fixation of pay. There is no reason to refund Rs.37,510/- to her, as it was excess payment wrongly made to her.

5. We find that the service book of the Applicant did not contain her option for pay fixation when she was granted Time Bound Promotion w.e.f. 01.12.1994 in terms of G.R. dated 08.06.1995. The Applicant has placed duplicate copy of her service book on record. On internal page 24 of the service book, entry regarding grant of Time Bound Promotion from 01.12.1994 is there. From the pay scale of Rs.1400-2300, her pay was fixed at Rs.2,000/- in the pay scale of Rs.1640-2900 w.e.f. 01.12.1994. There does not appear to be any mention that the Applicant had given any option to fix her pay. The claim of the Applicant that she had given option at the time is not supported by facts. In the O.A. also, there is no categorical assertion by the Applicant that she did in fact



submit her option, when her pay was fixed in higher pay scale consequent upon grant of Time Bound Promotion to her. In the affidavit-in-reply dated 29.12.2012 on behalf of the Respondent No.3, it is stated in paragraph 4 :

“4. With reference to para 6.5., I say that the Respondent No.4 had raised the objection on the pay fixation on 01.12.1994 that for pay fixation at higher pay, option form was not available in the service book which should be there.”

In the affidavit-in-rejoinder dated 23.01.2013, the Applicant has not denied this. Only in para 5, it is mentioned that :

“5. I also state that the recovery statement worked out by the Respondent No.3 in its officer without verifying the pay fixation carried was in accordance with law or otherwise, and ignoring that option exercised was in record of office.” (emphasis supplied.)

6. We have carefully search for this ‘option’ in the records of this O.A. However, no such document is found. In the additional affidavit filed on behalf of the Respondent No.2 on 22.12.2015, it is stated in para 4 that the Applicant had given option form on 20.05.2009. There is another letter placed on record by the Applicant viz. Exhibit A-3 on page 14 of the paper book. That letter mentions that option form was

found. However, that letter is in respect of Smt. Pratibha Gopal Shaligram and not the Applicant. Why the Applicant has placed this letter on record is not understood. It only goes to show that other employees had furnished option forms at the time of pay fixation on getting Time Bound Promotion, while the Applicant did not do so. Considering all these facts, it is difficult to hold that the fixation of pay of the Applicant by order dated 16.09.2008 by the Respondent No.2 was wrong. The request of the Applicant for re-fixation of her pension cannot be considered.

7. The Applicant has claimed that excess payment of Rs.37,510/- was wrongly recovered from her. It is seen that the Applicant was required to pay Rs.37,510/- due to the excess payment made to her for the period from December 1994 to June 2008 after her retirement due to wrong fixation of her pay w.e.f. 01.12.1994. It was not due to any misrepresentation or fraud on part of the Applicant. The Applicant was a Group 'C' employees and such recovery after her retirement is clearly inequities. Hon'ble Supreme Court in the case of **Syed Abdul Qadir V/S State of Bihar, (2009)3SCC 475** has held that in such circumstances, no recovery of excess payment wrongly made to a lower level Government employee could be made if there was no case of

fraud or misrepresentation. In the latest judgment of Hon'ble Supreme Court in the **State of Punjab and Others Vs. Rafiq Mosih (2015) 4 SCC 334** a similar view has been taken. We are of the view that the Applicant is entitled to refund of this amount of Rs.37,510/- which was recovered from her.

8. Having regard to the aforesaid facts and circumstances, of the case, the Respondent No.3 is directed to refund the amount of Rs.37,510/- which was recovered from her, within a period of eight weeks from the date of this order. This O.A. is partly allowed accordingly with no order as to costs.

Sd/-

(R.B. MALIK)
MEMBER (J)

Sd/-

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 15.02.2016
Typed by : PRK