

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.383 OF 2021 WITH
ORIGINAL APPLICATION NO.385 OF 2021 WITH
ORIGINAL APPLICATION NO.387 OF 2021 WITH
ORIGINAL APPLICATION NO.435 OF 2021 WITH
ORIGINAL APPLICATION NO.436 OF 2021 WITH
ORIGINAL APPLICATION NO.442 OF 2021**

**DISTRICT : MUMBAI
SUBJECT : RECOVERY**

ORIGINAL APPLICATION NO.383 OF 2021

Smt. Geeta Jaiprakash Mhatre,)
Age 53 years. Occ. STI,)
R/o A-2/603, Vadant Complex, Pokharan Road,)
No.1, Vartak Nagar, Thane West, 400 606.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
through the Secretary, Finance Department,)
Mantralaya, Mumbai-32.)
- 2) The Asstt. Commissioner of State Tax (Adm.),)
Thane, Office of the Ht. Commissioner of State Tax,)
GST Office, 4th Floor, Collector Campus,)
Court Naka, Thane West, 400 601.)...**Respondents**

ORIGINAL APPLICATION NO.385 OF 2021

Smt. Gayatri Vipin Sawant,)
Age 48 years. Occ. STI,)
R/o, 24/B/602, Maitri Co.op, Society,)
Bimbisar Nagar, Goregaon east, Mumbai 400 065.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
through the Secretary, Finance Department,)
Mantralaya, Mumbai-32.)

- 2) The Asstt. Commissioner of State Tax (Adm.),)
 Sales Tax Office, Nodal Division 10, Office of the Jt.)
 Commissioner of State Tax, Nodal Division-10,)
 BKC, Bandra, Mumbai-51.)...**Respondents**

ORIGINAL APPLICATION NO.387 OF 2021

- Smt. Ruta Hemant Borkar,)
 Age 46 years. Occ. STI,)
 R/o 104, Shreena Apartment, Shiv Vallabh Cross)
 Road, Ashokvan, Rawalpada, Dahisar (East),)
 Mumbai 68.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
 through the Secretary, Finance Department,)
 Mantralaya, Mumbai-32.)
- 2) The Asstt. Commissioner of State Tax (D -601),)
 Large Tax Payer Unit-1, Mumbai (Office of the Jt.)
 Commissioner of large Tax Payer Unit-1),)
 3rd Floor, F-wing, Goods and service Tax Bhavan,))
 Mazgaon, Mumbai-10.)...**Respondents**

ORIGINAL APPLICATION NO.435 OF 2021

- Smt. Sneha Sanjeev Raorane,)
 Age: 49 years, Occ. STI,)
 R/o A-2/104, Vaishnavidham Co-op Society,)
 Parsik Road, Kharegaon, Kalwa, Thane 400605.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
 through the Secretary, Finance Department,)
 Mantralaya, Mumbai-32.)
- 2) Dy. Commissioner of State Tax (estt.),)

Office of the Special Commissioner of state Tax,)
M.S., Mumbai, 3rd Floor New Bldg. Mazgaon,)
Mumbai-10.)...**Respondents**

ORIGINAL APPLICATION NO.436 OF 2021

Smt. Anjali Rajnish Borkar,)
Age: 55 years, Occ. STI,)
R/o. A-15, Plot No.727, Sector-7, Guudatta)
Co-op. Hsg. Society, Near Kirti Nursing Home,)
Charkop, Kandivali (W), Mumbai 67.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
through the Secretary, Finance Department,)
Mantralaya, Mumbai-32.)
- 2) The Asstt. Commissioner of Sales Tax)
(issue base Audit) N D-05, Mumbai 10.)...**Respondents**

ORIGINAL APPLICATION NO.442 OF 2021

- 1) Smt. Sujata Vijay Kelkar,)
Age: 47 years, Occu. STI,)
R/o C/o Sandeep D. Gore, Kapila Vastu,)
Bldg No.4, Flat No.602, Near Pratap Cinema,)
Kolbaad Road, Thane (W) 400 601.)
- 2) Smt. Sharmila Deelip Deodhar,)
Age: 53 years, Occ. STI,)
R/o CC-1/201, Yaman CHS, Kavyadhara)
Complex, Kolshet Road, Near Dhokali Naka,)
Thane (W) – 400 607.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
through the Secretary, Finance Department,)
Mantralaya, Mumbai-32.)

- 2) The Asstt. Commissioner of Sales Tax)
(Business Audit) 2, PA, Mumbai.)...**Respondents**

Shri Rajesh M. Kolge, learned Advocate for the Applicant.

Smt. Archana B. Kologi, Smt. Kranti S. Gaikwad along with Shri Ashok J. Chougule, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 13.04.2023.

JUDGMENT

1. In all these O.As the Applicants have challenged orders of recovery issued by the Respondents for recovery of the excess payments made to them while fixation of pay and allowances in terms of 6th Pay Commission.

2. Following chart would show date of impugned order of recovery, amount sought to be recovered etc.

Sr. No.	Name of the Applicant	O.A. No.	Impugned order	Amt. to be recovered
1	G. J. Mhatre	383/2021	22/08/17 Pg.9	2,09,268/-
2	G.V. Sawant	385/2021	16/11/18 Pg.11	1,93,958/-
3	R.H. Borkar	387/2021	20/06/19 Pg.9	2,52,594/-
4	S.S. Rao Rane	435/2021	6/03/17 Pg.11,15	2,73,020/-
5	A.R. Borkar	436/2021	28/11/16 Pg.11	1,88,498/-
6	Sujata V. Kelkar	442/2021	19/11/16 Pg.21	1,75,787/-
	Sharmila Deodhar			1,86,437/-

3. All these Applicants were initially appointed on the post of Clerk Typist in the year 1994. Later at the time of implementation of 6th Pay Commission their pay and allowances were fixed and accordingly they

availed benefits of pay and allowances fixed by the Department. However, later in between 2016-2019 Respondents noticed mistakes in the pay fixation done by the Department at the time of implementation of 6th Pay Commission recommendation. Therefore respondents issued orders of recovery as shown in the above chart and sought recovery from the salary of the Applicants in monthly installments.

4. It is on the above background the Applicants have filed these O.As. challenging the orders of recovery *inter-alia* contending that the recovery after lapses of 5 years is impermissible and reliance is placed on the decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**.

5. In all these Original Applications Respondent have filed Affidavit-in-Reply accept in O.A. No.436/2021. All that Respondents contend that the Applicants fall in Group 'B' Non-Gazetted post and being in service the order of recovery is legal and valid.

6. Shri R.M. Kolge, learned Advocate for the Applicants sought to contend that the Applicants post is Group 'C' post and therefore recovery is impermissible in view of decision of **Rafiq Masih's case (cited supra)**. He has further pointed out that because of mistake of Department excess amount is paid and no fraud or misrepresentation is attributable to the Applicant. On this line of submission, he urged that recovery orders are totally unsustainable in law.

7. Shri R.M. Kolge fairly concedes that he is challenging recovery only and not challenging re-fixation of pay and allowances done by the Respondent.

8. Per contra, learned P.O. opposed the O.A. *inter-alia* contending that the Applicants present post of State Tax Inspector is a Group 'B' Non-Gazetted post and therefore decision in **Rafiq Masih's case (cited**

supra) could not be applied. In this behalf, reliance is placed on the Rules namely the State Tax Inspector, Non-gazetted Group- 'B' (Recruitment) Rules, 2021.

9. By impugned orders of recovery pay and allowances is revised from 2006. The mistake happened while implementing recommendation of 6th Pay Commissioner which are made applicable w.e.f. 1.1.2006. As such, it is because of wrong interpretation or wrong understanding of the Department pay was fixed at little higher level than the entitlement of the Applicant. Admittedly, neither there was any such misrepresentation or fraud attributable to the Applicants. It is due to mistake of the Department, pay was wrongly fixed and later when it is noticed, Department corrected by re-fixing pay and allowance resulting into recovery.

10. In sofaras the classification of the post is concerned, Shri R.M. Kolge, learned Advocate for the Applicant in reference to Maharashtra State Tax Inspector Rules, 1995 submits that it is Group 'C' post whereas learned P.O. in view of recent Rules of 2021 submits that the post is reclassified as Group 'B' Non-Gazetted post. One needs to see classification of the post held by the Applicants at the time of impugned action of recovery. Admittedly, impugned action of recovery pertains to the orders of 2016 to 2019. As such, at the time of issuance of recovery order the Applicants post was classified as Group 'C' post. True, later by Rules 2021 it is classified as Group 'B' Non-Gazetted post. As such obviously on the date of impugned action of recovery the Applicants post was classified as Group 'C' post.

11. The issue of permissibility of excess payment from Group 'C' employee is no more *res-integra* in view of decision of Hon'ble Supreme Court in **Rafiq Masih's case (cited supra)**. After considering its various earlier decision Hon'ble Supreme Court culled out certain situation in which recovery from employee would be impermissible. In

Para 12 of the Judgment of Hon'ble Supreme Court in **Rafiq Masih's (cited supra)** which reads 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, 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. Indeed, even assuming for sake of arguments that the Applicants post falls in Group 'B' Non-Gazetted post in terms of Rules, 2021, in that event also the issue is squarely covered by the decision of **Rafiq Masih's case (cited supra)**. Hon'ble Supreme Court culled out 5 situations where recovery from employee would be impermissible. The Applicants case squarely falls in Clause (iii) and (v) of the Para 12 of the Judgment in **Rafiq Masih's case (cited supra)**. Even if the Applicants are in services still recovery is impermissible since excess payment has been made for period of excess of 5 years before the order of recovery is issued as clarified in Clause (iii) and in my considered opinion recovery from the Applicant at this stage would be iniquitous and harsh so as to outweigh the equitable balance of Respondents right to recover.

13. In view of above, the totality of aforesaid discussion leads me to sum-up that the impugned action of recovery is totally bad in law and recovery orders are liable to be quashed. Hence, the order.

ORDER

- A) All these Original Applications are allowed. Impugned action of recovery to the extent of recovery is quashed and set aside.
- B) The amount recovered in pursuance of recovery orders, if any, shall be refunded to the Applicants within six weeks from today.
- C) Impugned orders to the extent of re-fixation of pay are not disturbed.
- D) No order as to costs.

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

Place: Mumbai
Date: 13.04.2023
Dictation taken by: N.M. Naik.

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