

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.388 OF 2021 WITH
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ORIGINAL APPLICATION NO.390 OF 2021**

**DISTRICT : MUMBAI
SUBJECT : RECOVERY**

ORIGINAL APPLICATION NO.388 of 2021

Shri Ajay Baliram Kothekar, Age – 58 years,)
Occ. STI, R/o. F 303, Viennna, Panvelkar Estate)
Shirgaon MIDC, Badalapur (E),)
Dist. Thane - 421503.)...**Applicant**

Versus

1. The State of Maharashtra, through)
the Secretary, Finance Department,)
Mantralaya, Mumbai 400 032.)
2. Dy. Commissioner for State Tax -)
(VAT Admn), 3rd floor, In the office of)
Vikrikar, Kalyan.)... **Respondents**

ORIGINAL APPLICATION NO.389 of 2021

Shri Ashok Chandrakant Mantri, Age – 58 years,)
Occ. STI, R/o. Ashiyana Apartment, AL6/4/15,)
Sector 5, opp. Siddhivinayak Temple, Airoli,)
New Mumbai 400 708.)...**Applicant**

Versus

1. The State of Maharashtra, through)
the Secretary, Finance Department,)
Mantralaya, Mumbai 400 032.)
2. The Commissioner for State Tax Office,)
Establishment Office (Estt-1), GST Bhavan)
New Bldg., 9th floor, Mazgaon, Mumbai 10.) ... **Respondents**

ORIGINAL APPLICATION NO.390 of 2021

Shri Dhananjay Maruti Vishwasrao, Age – 60 years,)
 Occ. STI, R/o.205, Aishwarya Heights, 100 ft.)
 Road, Amrai Tisgaon, Kalyan (E)-421306.)...**Applicant**

Versus

1. The State of Maharashtra, through)
 the Secretary, Finance Department,)
 Mantralaya, Mumbai 400 032.)
2. The Joint Commissioner for State Tax)
 (Admn), Establishment Officer, Thane city)
 Thane.) ... **Respondents**

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

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents in O.A. No.388/2021.

Smt. Archana B. Kologi, learned Presenting Officer for the Respondents in O.A. No.389/2021 & 390/2021.

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

DATE : 13.01.2023.

JUDGMENT

1. Heard Shri R.M. Kolge, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents in O.A. No.388/2021 and Smt. Archana B.K., learned Presenting Officer for the Respondents in O.A. No.389/2021 & 390/2021.

2. All these O.As are filed by retired Government servant who stands retired from the post of Sales Tax Inspector (STI) (Group C) and challenging recovery orders and also sought refund of the amount invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

3. The Applicant in O.A. No.388/2021 stands retired on 20.07.2020. Before few days of retirement Respondents issued notices of recovery order dated 10.06.2019 thereby seeking recovery of excess amount of Rs.2,31,954/- (Two Lakhs Thirty One Thousand Nine Hundred and Fifty Four Only) having wrongly paid w.e.f 01.01.2006. Accordingly, the amount was recovered from the arrears payable to the Applicant. The Applicant in O.A. No.389/2021 stands retired on 10.05.2020. Before his retirement Respondents noticed certain excess payment wrongly paid to him from 01.01.2006. Accordingly, recovery of Rs.1,31,644/- (One Lakh Thirty One Thousand Six Hundred and Forty Four Only) was calculated and by notice dated 26.09.2017 it was recovered from pay and allowances. Whereas, in O.A. No.390/2021 the Applicant stands retired on 30.06.2019 and in this case also Department found excess payment of Rs.02,08,819/- (Two Lakhs Eight Thousand Eight Hundred and Nineteen Only) made to the Applicant w.e.f. 01.01.2006 and accordingly it is recovered from pay and allowance

4. The Applicants have challenged the recovery and sought refund of the amount deposited by them *inter-alia* contending that impugned action is totally impermissible in view of the Judgment of the Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))** and in violation of principal of natural justice.

5. Shri R.M. Kolge, learned Advocate for the Applicant fairly submits that he is not challenging re-fixation and challenge is restricted to the recovery orders only. Relying on the decision in **Rafiq Masih's case (cited supra)** he submits that impugned action of recovery is impermissible and sought direction to Respondents to refund the amount.

6. Per contra, learned P.O. sought to support impugned action *inter-alia* contending that the Applicants were given excess payment because

of wrong fixation and having noticed same, it is corrected and the amount is recovered.

7. Undisputedly, the Applicant stands retired from Group 'C' post, the aspect of excess payment was noticed by the Department quite belatedly. Excess payment was made due to sheer mistake of the Department or inadvertently and no mis-representation or fraud is attributed to the Applicant.

8. 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 card-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.”*

9. In present case, Clause No.(i) and (iv) are squarely attracted since admittedly the Applicants are Group 'C' employee and recovery is made in excess payment made for more than five years before the order of recovery is issued. Suffice to say, impugned action of recovery is totally impermissible and liable to be quashed and set aside. Respondents are required to refund the amount. Hence, the order.

ORDER

- A) The Original Application is allowed.
- B) Impugned action of recovery is quashed and set aside.
- C) Respondents are directed to refund Rs.2,31,954/- (Two Lakhs Thirty One Thousand Nine Hundred and Fifty Four Only) to the Applicant in O.A. No.388/2021, sum of Rs. 1,31,644/- (One Lakh Thirty One Thousand Six Hundred and Forty Four Only) to the Applicant in O.A. No.389/2021 and sum of Rs.02,08,819/- (Two Lakhs Eight Thousand Eight Hundred and Nineteen Only) to the Applicant in O.A. No.390/2021 within six weeks from today.
- D) No order as to costs.

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

Place: Mumbai
Date: 13.01.2023
Dictation taken by: N.M. Naik.

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