

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.391 OF 2019**

**DISTRICT : SOLAPUR**

Shri Ajinath Hiraji Nikalaje. )  
Occu.: Service, residinag at Madha, )  
Tal.: Madha, District : Solapur. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Ministry of Cooperation, Mantralaya,) )  
Mumbai. )
2. Divisional Joint Registrar of )  
Cooperative Societies (Audit), Pune )  
Division, Pune and having Office at )  
22, Ambedkar Road, Mazda Building) )  
Pune – 411 001. )
3. District Special Auditor Class-I, )  
Co-operative Societies, Solapur )  
Having Office at 102, Siddheshwar )  
Peth, Suravase Building, Solapur. )
4. District Treasury Officer. )  
District Treasury Office, Solapur. )...**Respondents**

**Mr. Manoj Sawardekar holding for Mr. P.G. Kathane, Advocate  
for Applicant.**

**Mr. S.D. Dole, Presenting Officer for Respondents.**

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

**DATE : 13.03.2020**

## **JUDGMENT**

1. The Applicant has challenged the impugned orders dated 18.06.2016 and 26.11.2018 whereby recovery of Rs.2,49,323/- is sought towards excess payment from his retiral dues.

2. The Applicant was appointed as Muster Assistant by order dated 26.11.1985. Accordingly, he joined on the establishment of Deputy Engineer, Works (Z.P.) Sub-Division, Bhoom and Paranda, District Osmanabad. The Government took policy decision by G.R. dated 21.04.1999 to absorb all existing Muster Assistants in Government service in the pay scale of existing Muster Assistant on absorption. However, it was made clear that Muster Assistants working on Employment Guarantee Scheme (E.G.S.) would not be entitled for the benefit of 5<sup>th</sup> Pay Commission. Later in due course, the Applicant came to be posted on the post of Junior Clerk and later to the post of Sub-Auditor, Cooperative Societies. In 2016, it was noticed that though the Applicant was not entitled to pay scale of 5<sup>th</sup> Pay Commission, he was given the benefit of pay fixation in terms of recommendation of 5<sup>th</sup> Pay Commission wrongly. It was noticed by Pay Verification Unit when service book was sent for verification. In pursuance of it, the Respondent No.2 – Divisional Joint Registrar, Cooperative Societies (Audit), Pune issued order on 18.06.2016 thereby re-fixing the pay of the Applicant. The directions were accordingly issued to recover the excess amount paid to the Applicant. In pursuance of it, the Respondent No.3 – District Sub-Auditor Class-I, Cooperative Societies, Solapur by order dated 26.11.2018 directed for recovery of Rs.2,49,323/- i.e. excess payment paid to him during the period from 01.01.1996 to 31.01.2017. The Applicant was due to retire on 30.04.2019. Accordingly, he stands retired. However, the retiral benefits were not paid in view of recovery. It is on this background, the Applicant

has filed the present O.A. contending that the recovery from retiral benefits is unsustainable in law.

3. Shri Manoj Sawardekar holding for Shri P.G. Kathane, learned Advocate for the Applicant fairly stated that he is restricting his claim to the extent of recovery and not challenging re-fixation of pay for the purpose of grant of pension. He submits that in view of decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**, the recovery of Applicant, he being Group 'C' employee is not permissible.

4. Per contra, Shri S.D. Dole, learned Presenting Officer sought to justify the impugned order of recovery contending that the Applicant had given Undertaking that he would refund excess money, if found paid to him.

5. The issue of recovery of excess money paid to the employee from his retiral benefits is no more *res-integra* in view of decision of Hon'ble Supreme Court in **Rafiq Masih's** case. Para No.12 of the decision in **Rafiq Masih's** case is material, which is 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."*

6. Indisputably, the Applicant is Group 'C' employee and retired on 30.04.2019. It is nowhere the case of the Respondents that the Applicant had made any misrepresentation or fraud in the matter of pay scale given to him. As such, no fraud or misrepresentation is attributed to the Applicant. Wrong pay scale was applied due to sheer mistake by the Department. Now, by impugned order, the recovery is sought for excess amount paid to the Applicant in between 01.01.1996 to 30.01.2017. Though the Respondents sought to contend that the Applicant had given Undertaking, no such Undertaking is placed on record. Needless to mention, a Government servant particularly, who is in lower rungs of service would spend whatever emoluments he receives for the up-keep of his family believing that he is entitled to it, in such situation, the subsequent action of recovery of excess payment will definitely cause undue hardship to him. As such, it is on this background, the Hon'ble Supreme Court in **Rafiq Masih's** case held that recovery of such excess payment from the retiral benefits of the employee falling in Clause Nos.(i) to (v) is impermissible in law. The case of the Applicant definitely falls in Clause Nos.(i), (ii), (iii) and (v). The impugned orders of recovery are, therefore, unsustainable in law and deserve to be quashed. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed partly.

- (B) The impugned orders dated 18.06.2016 and 26.11.2018 are quashed and set aside.
- (C) The retiral benefits of the Applicant be released as per his entitlement under Rules within a month.
- (D) No order as to costs.

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

Mumbai  
Date : 13.03.2020  
Dictation taken by :  
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2020\March, 2020\O.A.391.19.w.3.2020.Recovery.doc