

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.473 OF 2020

DISTRICT : NASHIK

Shri Sahebrao Narayan Maule.)
Age : 68 Yrs, Occu.: Retired as)
Photographer from Maharashtra Policy)
Academy, Tryambak Road, Nashik and)
residing at Sai Ashis Apartment,)
Flat No.2, Gulmohar Colony, Behind)
Reliance Petrol Pump, Nashik – 2.)...**Applicant**

Versus

The Director.)
Maharashtra Police Academy, Nashik,)
Having Office at Traymbak Road,)
Nashik – 2.)...**Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondent.

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

DATE : 25.11.2021

JUDGMENT

1. The challenge is to the communication dated 13.04.2020 thereby rejecting the claim of the Applicant for refund of Rs.3,02,644/- deducted from his gratuity on account of excess payment after retirement invoking

jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as under :-

The Applicant stands retired on 28.02.2010 from the post of Photographer (Group 'C' employee). After retirement, sum of Rs.3,02,644/- were deducted from his retiral benefits on account of excess payment due to wrong fixation of pay in 2002. The Applicant contends that at the time of deduction, the Respondent insisted for his consent to deduct the said amount from gratuity and other retiral benefits. Later, Applicant came to know about the Judgment of Hon'ble Supreme Court in **(2015) 2 SCC (L & S) 33 [State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors.]** decided on 18th December, 2014 wherein recovery from retired Government servant is held impermissible. The Applicant has, therefore, filed O.A.No.862/2017 for direction to the Respondent to refund the same, since it was not refunded despite the representation made by him. O.A.No.862/2017 was disposed of by the Tribunal on 13.02.2020 with direction to the Respondents to decide the representation made by the Applicant and to pass appropriate orders within two months. It is on this background, the Respondent by communication dated 13.04.2020 informed to the Applicant that the recovery of excess amount has been done in pursuance of the consent given by him and secondly, the decision of Hon'ble Supreme Court in **Rafiq Masih's** case cannot be made applicable to him with retrospective effect. The Applicant has again challenged it in the present O.A.

3. The Respondent resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that after retirement, it was noticed that there was mistake in fixation of pay in 2002 and excess amount of Rs.3,02,644/- paid to him was recoverable. That time, the Applicant voluntarily gave consent to deduct the same from his retiral benefits and accordingly, it

was recovered. Therefore, the decision of Hon'ble Supreme Court in **Rafiq Masih's** case is not attracted.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned order *inter-alia* contending that since recovery of excess payment paid to a Government servant during the tenure of his service is held impermissible by Hon'ble Supreme Court in **Rafiq Masih's** case (cited supra), the Respondent ought to have refunded the amount though it was recovered much prior to the decision of Hon'ble Supreme Court. He further tried to contend that the consent given by the Applicant heavily relied by the Respondent was given in duress and it cannot be termed as a free consent permitting recovery of excess payment. He further submits that the decisions referred by the Respondent in impugned order pertains to Group 'A' Officer and in the present case, the Applicant being admittedly retired as Photographer (Group 'C' employee), those decisions are not attracted. He, therefore, prayed for direction to the Respondent to refund the amount with interest.

5. Per contra, learned Presenting Officer opposed the O.A. *inter-alia* contending that recovery of excess payment was done in 2010 much before the decision of Hon'ble Supreme Court in **Rafiq Masih's** case, and therefore, it has no application to the present situation, particularly in view of voluntary consent given by the Applicant for recovery and the situation is squarely covered by Rule 134-A of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982').

6. In view of pleadings and submissions advanced at the Bar, the issue posed for consideration is whether the Applicant is entitled to refund of the amount deducted from his retiral benefits on his retirement in 2010.

7. Indisputably, the Applicant retired as Group 'C' employee on 28.02.2010. After retirement, sum of Rs.3,02,644/- was found paid to

him in excess on account of wrong fixation of pay in 2010. Thus, he got the benefit of wrong fixation of pay from 2002 till retirement. Having noticed it, the Respondent issued letter dated 08.07.2010 to the Applicant (Page No.136 of P.B.) directing him to deposit the excess payment and to submit Challan. Notably, the Applicant gave reply to the said notice on 13.07.2010 giving consent for recovery from commuted pension. Then again, Applicant by his application dated 20.10.2010 gave consent for recovery of excess payment from commuted pension. Accordingly, the amount was deducted from retiral benefits and matter ended there. Later in 2015, the Hon'ble Supreme Court by Judgment dated 18.12.2014 in **Rafiq Masih's** case considered the issue of probable hardship in recovery of excess payment from retired Government employees and laid down (v) situations where recovery of excess payment could be held impermissible in law. It is on the basis of this decision, the Applicant made representation on 09.03.2017 to the Respondent seeking refund of the said amount. Since representation was not decided and kept pending for a long time, the Applicant had filed O.A.No.882/2017 which was disposed of by this Tribunal by order dated 13.02.2020 giving direction to the Respondent to decide the representation in accordance to law. The Respondent accordingly decided the representation and rejected the claim of Applicant by impugned order.

8. While rejecting the claim of Applicant, the Respondent in impugned order made reference of the decision of MAT, Aurangabad Bench delivered in **O.A.No.689/2019 (Wahab Beg Vs. State of Maharashtra) decided on 16.01.2020**, the Judgment in **Writ Petition No.5198/2013 (Vijay Bharati Vs. State of Maharashtra) decided on 17.04.2018** and decision of Hon'ble Supreme Court in **Civil Appeal No.3500 of 2006 (High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh) decided on 29.07.2016**. True, these matters pertain to Class-I retired Government servant and in view of Undertaking given by the said employees, the recovery was held legal. Whereas, in the present

case, the Applicant retired as a Group 'C' employee. However, material to note that, admittedly in the present case, the Applicant has given consent for recovery of excess payment paid to him. This is the crucial and distinguishing aspect in the present matter.

9. Material to note that after retirement, the Respondent by letter dated 08.07.2010 (Page No.136 of P.B.) informed to the Applicant that sum of Rs.3,02,644/- has been paid to him in excess and he was informed that out of it, the sum of Rs.90,955/- can be recovered from the arrears of 6th Pay Commission in five installments and remaining 2,11,689/- was required to be paid to him in Treasury. In letter, it has been further clarified that sum of Rs.10 Lakh is already paid to him towards other retiral benefits. It is in response to this letter, the Applicant by his reply dated 13.07.2010 (Page No.71 of P.B.) informed to the Respondent in following words :-

“महोदय,

उपरोक्त संदर्भ व विषयान्वये सविनय सादर की सूचित केलेली रक्कम रु.२,११,६८९/- (रुपये दोन लाख अकरा हजार सहाशे एकोनव्वद) मला रोख भरणे शक्य नाही. तरी सदरची रक्कम पेन्शन विक्री रकमेतून वजा करून घेता येऊ शकेल.

माहिती व कार्यवाहीसाठी सादर.”

10. On receipt of it, the Respondent again issued letter dated 27.08.2010 to the Applicant to deposit Rs.2,11,669/- in Treasury and submit the Challan. The Applicant again gave letter dated 20.10.2010 (Page No.72 of P.B.) giving consent for recovery of the said amount from retiral benefits in following words :-

“महोदय,

वरील विषय व संदर्भान्वये सविनय सादर कि माझेकडे वेतन व भत्ते फरक अतिप्रदान रक्कम रु.२,११,६८९/- (दोन लाख अकरा हजार सहाशे एकोनव्वद फक्त) वसूल होणे बाकी आहे पैकी रु.१८,३०० (रु. अठरा हजार तिनशे फक्त) इतकी रक्कम महालेखापाल, मुंबई यांनी उपदानातून वसूल करणेचे आदेश दिलेले आहेत. उर्वरित रक्कम रु.१,९३,३८९/- (एक लाख त्याणव हजार तिनशे एकोनव्वद फक्त) इतकी रक्कम माझे पेन्शन विक्री रकमेतून एक रकमी वसूल करावी.”

11. It is thus explicit that the Applicant has given free and clear consent for recovery of excess payment twice. It is on this factual and

admitted background, the excess amount has been recovered, which is in consonance with 'Pension Rules of 1982'.

12. The submission advanced by the learned Advocate for the Applicant that the said consent was under duress or under compulsion is devoid of any merit. There is absolutely no iota of material or any circumstance indicating consent in duress or compulsion. It is in response to the letter given by the Respondent, the Applicant voluntarily gave his consent twice by sending letter through post. Thus, *ex-facis*, the Applicant on his own volition gave free consent for deduction of the said amount since, he had already received substantial amount of Rs.10 Lakh towards other retiral benefits, and therefore, gave consent for deduction of the same from remaining benefits, since it was not ensuing any hardship to him. Notably, he did not raise the issue of hardship, equity, etc.

13. At this juncture, it would be apposite to refer Rule 134-A of 'Pension Rules of 1982' which is as under :-

“134-A. - Recovery and adjustment of excess amount paid.-

If in the case of a Government servant, who has retired or has been allowed to retired, it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including service rendered upon re-employment after retirement or any amount is found to be payable by the pensioner during such period and which has not been paid by, or recovered from him, then the excess amount so paid or the amount so found payable shall be recovered from the amount pension sanctioned to him :

Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him :

Provided further that, the amount found due may be recovered from the pensioner in instalments so that the amount of pension is not reduced below the minimum fixed by Government.”

14. As such, Rules provide for recovery of excess of amount paid to a Government servant mistakenly during the tenure of his service from the

amount payable to the pensioner, subject to giving reasonable opportunity to the pensioner to show cause why the amount has not been recovered from him. In the present case, the Respondent gave letter to the Applicant twice and it is in response to those two letters, the Applicant gave consent twice. As such, reasonable opportunity to the Applicant was given and Applicant voluntarily consented for recovery. This being the position and recovery is in terms of Rule 134-A, now the Applicant cannot be allowed to contend that consent was in duress. He did not raise any such objection for years together and it is only after the decision of Hon'ble Supreme Court in **Rafiq Masih's** case, he asked for refund of the amount.

15. In **2012 AIR SCW 4742 [Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors.]**, the Apex Court referred provision of section 72 of the Contract Act and has made observations which are relevant for the present purpose and the observations are as under :-

"15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/ received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (2009 AIR SCW 1871) (*supra*) and in Col. B.J. Akkara (Retd.) case (2006 AIR SCW 5252) (*supra*), the excess payment made due to wrong/irregular pay fixation can always be recovered.

18. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012. The appeal stands dismissed with no order as to costs. IA Nos.2 and 3 are disposed of.”

16. The issue of recovery again came up in **Rafiq Masih's** case decided on 18.12.2014 (after more than four years from the date of recovery from the Applicant). The Hon'ble Supreme Court considered hardship likely to be faced by a Government servant where recovery is sought in respect of excess payment of pay and allowances paid to them during the tenure of service mistakenly and in Para No.12 of the Judgment held 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."*

17. Thus, on equitable considerations and considering probable hardship likely to be caused to a Government servant, the recovery in certain situation carved out in Paragraph 12 is held impermissible. As such, legally right to recovery could be sustainable so long as the same is not iniquitous or arbitrary and where it is in consonance with Rules. Whereas, in the present case, as stated above, the Applicant voluntarily gave consent twice for recovery of the said amount from retiral benefits. He had already received sum of Rs.10 Lakh towards retiral benefits and obviously there was no such hardship. Therefore, he did not raise any issue of hardship, etc. and consented for recovery. The consent was given pursuant to the letter issued by Respondent, which has to be construed compliance of Rule 134-A of 'Pension Rules of 1982. Suffice to say, the amount was recovered after giving reasonable opportunity to the Applicant. Admittedly, the Applicant was not entitled to retain the said amount, since it was paid in excess than his entitlement. In such situation, returning the amount by Applicant would be unjust enrichment. He consciously and voluntarily consented for recovery. Therefore, in my considered opinion, he is estopped from raising the issue of recovery and principle of estoppel is squarely attracted.

18. The learned Advocate for the Applicant referred to the decision rendered by Hon'ble High Court in ***Writ Petition No.5367/2016 [Ravindra Patil Vs. State of Maharashtra] decided on 18.07.2017.*** It was a case of recovery of excess payment from PSI who retired on 31.05.2012. The Hon'ble High Court directed for refund of amount recovered from the Applicant on the basis of Judgment of Hon'ble Supreme Court in ***Rafiq Masih's*** case. The distinguishing aspect is that, in that case, there was no such consent for recovery of excess payment from retiral benefits, which is appearing in the present case. It

is also equally true that this Tribunal also in **O.A.No.890/2017 (Uttamrao P. Ugale Vs. Superintendent of Police, Nashik [Rural]) decided on 04.02.2020** directed for refund amount recovered from a Government servant who retired on 31.07.2014. In that case, the amount was recovered without giving any opportunity of hearing to the Applicant. Therefore, in fact situation, considering the decision in **Rafiq Masih's** case, directions were issued to refund the amount. Needless to mention that little difference in facts or single additional fact makes a lot of difference in the precedential value of a decision, and therefore, matter needs to be decided in the light of facts and circumstances of a case in hand.

19. In view of above, in my considered opinion, no exception can be taken to the recovery.

20. The totality of aforesaid discussion leads me to sum-up that the O.A. holds no water and liable to be dismissed. Hence, the order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 25.11.2021

Dictation taken by :

S.K. Wamanse.

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