

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.630 OF 2018

DISTRICT : THANE

Shri Shivaji D. Patil.)
Retired Police Officer, presently residing at)
Sanskruiti Cooperative Hsg.Soc.Ltd.,)
Room No.102, Building No.5,)
Kankiya Road, Mira Road, Thane – 401107)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. Commissioner of Police, Mumbai.)
Crawford Market, Fort, Mumbai.)
3. Addl. Commissioner of Police.)
North Region, Kandivali (E),)
Mumbai – 400 101.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

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

DATE : 28.02.2020

JUDGMENT

1. The Applicant has challenged the order dated 26.03.2018 whereby sum of Rs.3,50,742/- was sought to be recovered from his retiral benefits and for direction to refund the amount.

2. Shortly stated facts are as under :-

The Applicant was appointed on the post of Police Constable in SRPF, Mumbai in 1979. He served in SRPF, Mumbai from 05.05.1979 to 17.04.2014. Later, he stands retired on the post of Police Sub-Inspector (Group 'C') on 30.06.2017. After retirement, his pay was revised in view of objection raised by Pay Verification Unit and recovery of Rs.80,970/- towards interest on Home Loan and amount of Rs.2,69,772/- was also sought to be recovered towards excess payment made to the Applicant after his transfer on the establishment of Police Commissionerate, Mumbai. Accordingly, the said amount was recovered from his gratuity. The Applicant has, therefore, challenged the order dated 26.03.2018 and prayed for direction to refund the said amount.

3. Shri M.D. Lonkar, learned Advocate for the Applicant fairly submits that he is restricting the claim to the extent of recovery of Rs.2,69,772/- already recovered from gratuity and not pressing for recovery of Rs.80,970/- towards interest on Home Loan. As such, the issue remains to the recovery of Rs.2,69,772/- only.

4. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

5. The perusal of O.A. reveals that after the Applicant was transferred on the establishment of Police Commissionerate, Mumbai in 2004, his pay was wrongly fixed in 6th Pay Commission. The said mistake was noticed by Pay Verification Unit and in pursuance of statement of Due and Drawn (Page Nos.119 to 122 of Paper Book), the sum of Rs.2,69,772/- was found paid in excess.

6. There is no denying that the Applicant stands retired as Group 'C' employee by the Department. It is not the case of the Respondents that any sort of Undertaking was given by the Applicant at the time of pay

fixation of 7th Pay Commission. Suffice to say, it was due to mistake of the Department excess payment was made and no fraud or misrepresentation is attributed to the Applicant.

7. The issue of recovery from the retiral benefits of the employee is no more *res-integra* 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 Hon'ble Supreme Court in Para 12 of the Judgment held 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.”*

8. In the present case, the excess payment was made from 2004 and it was noticed only after retirement of the Applicant. As such, the Applicant's case squarely falls within Clause Nos.1, 2 and 3 of Para No.12 of the Judgment in **Rafiq Masih's** case.

9. The learned Advocate for the Applicant further referred to the decision of Hon'ble High Court, Bench at Nagpur in **Writ Petition No.2648/2016 (Lata Wankhede Vs. State of Maharashtra) decided on 1st July, 2016**, **Writ Petition No.695/2016 (Prabhakar More Vs. State of Maharashtra) decided on 12th February, 2018** and decision rendered by the Tribunal in **O.A.No.784/2016 (Shaikh Yakubsab Vs. Superintendent of Police) decided on 14th December, 2017**. In all these Judgments, in view of decision of Hon'ble Supreme Court in **Rafiq Masih's** case, the recovery held impermissible and directions were issued to refund the amount.

10. In view of above, the claim of the Applicant for refund of Rs.2,69,772/- deserves to be allowed. To this extent, the order dated 26th March, 2018 is liable to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 26.03.2018 is set aside to the extent of recovery of Rs.2,69,772/- only.
- (C) The Respondents are directed to refund Rs.2,69,772/- to the Applicant within two months from today, failing which amount shall carry interest at the rate of 9% p.a. from the date of order till actual payment.
- (D) No order as to costs.

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

Mumbai
Date : 28.02.2020
Dictation taken by :
S.K. Wamanse.