

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.79 OF 2017  
(Subject : Recovery)

DISTRICT: PUNE

Shri Babusha Genbhau Tambe )  
Retired as Police Constable Driver, )  
From the office of )  
The Superintendent of Police, )  
Motor Transport (Admn), )  
Police Line, Aundh, )  
Pune 411 007. )

Residing at 702/H, Nano Home, )  
Plot No.256, Survey No.208, )  
Bhondve Corner, Ravet, )  
Pune 412 101. )

**.. Applicant**

**Versus**

1) The Special Inspector General of Police, )  
Motor Transport, Maharashtra State, )  
Aundh, Pune 411 007 . )

2) The Superintendent of Police, )  
Motor Transport (Admn.) )  
Police Line, Aundh, )  
Pune 411 007. )

3) The Principal Accountant General, )  
(Accounts and Entitlement)-1, Maharashtra, )  
Pratishtha Bhavan, )  
101 Maharshi Karve Road, )  
New Marine Lines, Churchgate, )  
Mumbai 400 020. )

**..Respondents**

Shri M.R. Patil, the learned Advocate for the Applicant.

Shri N.K. Rajpurohit, the learned Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN  
SHRI P.N. DIXIT, MEMBER(A)

DATE : 23.03.2018.

PER : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

### J U D G M E N T

1. Heard Shri M.R. Patil, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Presenting Officer for the Respondents.

2. Applicant has approached this Tribunal feeling aggrieved by the recovery of the sum of Rs.69,882/- from the Death-cum-Retirement Gratuity (D.C.R.G.) of the Applicant.

3. Respondents have filed affidavit-in-reply and opposed the applicant's claim. The recovery done by the Respondents is sought to be justified. The averments justifying recovery are contained in paragraph 4 and Annexures leading to the recovery which are at page 41 onwards of the paper book of O.A..

4. The substance of the objection raised by the Respondents are summarized as follows :-

While granting to the Applicant revised pay scale, his pay was due to a bonafide mistake, wrongly fixed, and the total excess payment which has now emerged as found by the office of Accountant General is Rs.69,882/-.

5. The Applicant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **STATE OF PUNJAB AND OTHERS VERSUS RAFIQ MASIH (WHITE WASHER) AND OTHERS, Civil Appeals No.11527 of 2014 with others decided on December 18, 2014** (copy whereof is at page 19, Exhibit A-5 of the paper book of O.A.).

6. By the judgment relied on by the Applicant recovery cannot be done which is belated and sought to be done from pensionary benefits of Class III employees.

7. Respondents have opposed the reliefs sought in the O.A. by relying on the subsequent judgment of Hon'ble Supreme Court in case of **HIGH COURT OF PUNJAB & HARYANA & ORS. VERSUS JAGDEV SINGH, Civil Appeal No.3500 of 2006, decided on 29.07.2016**, urging that the judgment in case of **WHITE WASHER'S case (supra)** shall not apply in certain circumstances. For enabling the State to show that Applicant's case and recovery under challenge falls within the exception, the State has to show that :-

“The Government servant has given undertaking at the time of payment, to refund the money which he had received and that he was put to notice in that regard.”

8. On facts it transpires that at no point of time on the date when revision of pay was done and on the date when the applicant was paid the revised pay, applicant gave an undertaking as is contemplated in the judgment relied upon the State. It is also seen that the issue of excess payment was raised only after applicant's superannuation. Moreover admittedly excess payment is caused due to erroneous fixation occurred due to bonafide error of staff, for which applicant is in no way blamed.

9. Thus, though learned P.O. for the Respondents has relied on judgment of Hon'ble Supreme Court in case of **HIGH COURT OF PUNJAB & HARYANA & ORS. VERSUS JAGDEV SINGH, Civil Appeal No.3500 of 2006, decided on 29.07.2016**, he has failed to show that at the time of payment when it was made at the first instance, that the applicant has furnished undertaking to refund the money, in the event amount is found to be excess than the entitlement.

10. In these circumstances discussed hereinbefore, Original Application succeeds with following directions :-

**ORDER**

- (a) Respondents are directed to refund to the applicant an amount of recovery done from D.C.R.G. as evidenced from Annexure A-4, page 18 of the paper book of O.A., an amount of Rs.69,882/- (Rupees Sixty Nine Thousand Eight Hundred and Eighty Two only) with interest at the rate of 9% p.a. from the date of applicant's superannuation.
- (b) Parties are directed to bear their own costs.

Sd/-

**(P.N. Dixit)**  
**Member(A)**

Sd/-

**(A.H. Joshi J.)**  
**Chairman**

prk