

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.880 of 2019

DISTRICT : NASHIK

Shri Laxman Baburao Sonawane)
Age : 58 years Occ : Retired Talathi)
R/o. Govind Nagar, Sasti-Shree, Behind Satyam)
Sweets, Nashik.)..... **Applicant**

Versus

1. The State of Maharashtra, through its)
Secretary, Revenue and Forest Department,)
Mantralaya, Mumbai 32.)
2. Tahasildar, Taluka Igatpuri Nashik, Dist. Nashik.)....**Respondent**

Shri R. M. Kolge, Advocate for the Applicant

Shri A. J. Chougule, Presenting Officer for the Respondent.

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

DATE : 13.03.2020

JUDGEMENT

1. Short issue posed for consideration in the present O.A. is whether the impugned order dated 16.06.2019 whereby the recovery of Rs.2,79,510/- is sought from the retiral benefits of the Applicant is sustainable in law.

2. The Applicant was initially appointed as Muster Assistant and later absorbed on the post of Talathi in the year 2004. In the year 2010, the Applicant was serving in Tahsil Office, Igatpuri and was transferred to Peth, District Nashik. Accordingly, he joined at Tahsil Office, Peth, Dist. Nashik on 07.06.2010. Later, in 2011, he was again transferred to Igatpuri and accordingly joined on 01.07.2011. While he joined at Tahsil Office, Peth, his pay was Rs.8,890/- but he was paid Rs.11,240/- due to wrong fixation of pay. The Applicant continued to avail the benefit of wrong fixation till his retirement. He stands retired on 30.04.2019. After retirement, the mistake was noticed in pay fixation and accordingly, the pay was revised. Consequently, sum of Rs.2,79,510/- was found paid in excess. Therefore, notice dated 16.06.2019 was issued to deposit Rs.2,79,510/- which is under challenge in the present O.A.

3. Shri R. M. Kolge, learned Counsel for the Applicant fairly states that he is not challenging the fixation of pay but restricting challenge to the recovery of Rs.2,79,510/-. He placed reliance on the judgment of the Hon'ble Supreme Court in **Civil Appeal No.11527/2014 (State of Punjab and others Vs. Rafiq Masih (White Washer), decided on 18th December, 2014**, wherein it has been held that the recovery from retired employee is not permissible.

4. Whereas Shri A.J. Chougule, learned Presenting Officer for the Respondents fairly submits that the Applicant is Group 'C' employee but sought to contend that recovery is justified.

5. In the present matter, no reply is filed though enough time is granted, and therefore, matter is taken up for hearing as the Applicant's retiral benefits are withheld for alleged recovery.

6. Perusal of O.A. reveals that when the Applicant joined at Peth in 2010, the mistake was committed by the department while fixation of his pay. As such, no fraud or misrepresentation is attributable to the Applicant. Wrong pay was fixed due to sheer mistake of department. Admittedly, the Applicant stands retired on 30.04.2019 as Group 'C' employee.

7. The issue of permissibility of recovery of excess payment from Group 'C' employee who already stands retired is no more *res-integra* in view of the judgment of the Hon'ble Supreme Court in **Rafiq Masih's** case (cited supra).

8. At this juncture, it would be apposite to reproduce Para No.12 of the judgment 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."*

9. In the present case, the Applicant's case squarely falls within the Clause Nos.(i), (ii), (iii) and (v) of the judgment of Hon'ble Supreme Court in **Rafiq Masih's** case. Needless to mention, a Government servant, particularly, who is in lower rungs of service would spent whatever emoluments he receives for the up keep of his family believing that he is entitled to it and in such situation the subsequent action of recovery of excess payment will definitely cause undue hardship to him. Suffice to say, it would be iniquitous and harsh to recover such huge amount from the retiral benefits of the Applicant who retired from the post of Group 'C' employee.

10. For the aforesaid discussion, I have no hesitation to sum-up that the impugned order dated 16.06.2019 seeking recovery of retiral benefits of the Applicant is not sustainable in law and deserves to be quashed. Hence the following order:-

ORDER

- (A) Original Application is allowed partly.
- (B) Impugned order of recovery dated 16.06.2019 is hereby quashed and set aside.
- (C) Respondents are directed to release the retiral benefits of the Applicant as per his entitlement in rules within a month.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Place : Mumbai
Date : 13.03.2020
Dictation taken by. V. S. Mane