

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.896 OF 2018**

**DISTRICT : RAIGAD**

Shri Bhimrao T. Lahupachang. )  
Age : 59 Yrs, Retired Laboratory Scientific Officer)  
Office of District Tuberculosis Officer, Raywadi )  
Complex, Alibaug, Dist : Raigad 402 201 and )  
Residing at Aakar Building, 2<sup>nd</sup> Floor, Chendhare)  
Shivaji Nagar, Alibaug, District : Raigad. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Secretary, Public Health Dept., )  
G.T. Hospital Compound, Fort, Mumbai. )
2. District Tuberculosis Officer. )  
District Tuberculosis Centre, Raywadi )  
Complex, Alibaug, District : Raigad. )
3. Office of Accountant General. )  
Mharshi Karve Road, Fort, Mumbai – 21. )...**Respondents**

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

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

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

**DATE : 10.12.2018**

**JUDGMENT**

1. In the present Original Application, the Applicant has challenged the order of recovery dated 10<sup>th</sup> July, 2017 issued by Respondent No.2 whereby the excess

amount paid to the Applicant were sought to be recovered from the pensionary benefits of the Applicant.

2. The shortly stated facts are as follows :

The Applicant was appointed as Laboratory Technician with Respondent No.1 and falls in Group 'C' in Government service. He stands retired on 31.03.2017. After retirement, by impugned order dated 10.07.2017 passed by Respondent No.2, recovery was ordered on the ground that, in 2010 while fixing the pay scale of the Applicant for Time Bound Promotion, the basic pay was fixed at Rs.6700 instead of Rs.6500. The same mistake was carried forward at the time of implementation of 6<sup>th</sup> Pay Commission as well as at the time of benefit of 2<sup>nd</sup> Time Bound Promotion / Assured Career Progression Scheme in 2012. As such, after retirement, the recovery of Rs.2,18,190/- is sought from the Applicant's retiral dues. The Applicant contends that the order of recovery is not sustainable in law and facts, as it is being done without issuance of show cause notice as well as it is in contravention of the Judgment of Hon'ble Apex Court in **Civil Appeal No.11527/2014 decided on 18<sup>th</sup> December, 2014 (State of Punjab Vs. Rafiq Masih)**. Out of retiral benefits, Rs.60,000/- has been already recovered and remaining amount has been ordered to be recovered at Rs.7,500/- p.m. from the pension of the Applicant. On this background, the Applicant has challenged the impugned order dated 10.07.2017.

3. The Respondent No.2 is the contesting Respondent and resisted the application by filing Affidavit-in-reply inter-alia contending that, at the time of fixation of pay in 2000, mistakenly, basic pay was fixed at Rs.6500 instead of 6700. He was to be placed in pay scale of Rs.6500-10500 but mistakenly, he was fixed at Rs.6700/-. The same mistake carried forwarded at the time of 6th Pay

Commission as well as at the time of benefit of 2nd Time Bound Promotion / Assured Career Progression Scheme in 2012. The said mistake was realized at the time of verification of Service Book by Pay Verification Unit. Accordingly, the recovery order of Rs.2,18,190/- has been issued. The Respondents further contend that, at the time of fixation of pay, the Applicant has submitted an Undertaking to refund excess amount, and therefore, there is no hurdle in recovering the excess amount paid to the Applicant. On these pleadings, the Respondents prayed to dismiss the application.

4. Heard Mr. M.D. Lonkar, learned Advocate for the Applicant and Mrs. A.B. Kololgi, learned Presenting Officer for the Respondents.

5. The short issue posed for consideration in this O.A. is, whether the impugned order of recovery of the excess amount paid to the Applicant due to mistake in pay fixation can be rectified with retrospective effect and the recovery can be done from the pensionary benefits. This aspect is, in fact, no more *res-integra* in view of decision of Hon'ble Supreme Court in **Rafiq Masih's** case (cited supra).

6. Admittedly, before issuance of impugned order, no show cause notice has been issued to the Applicant. The Applicant stands retired on 31.03.2017. There is no dispute that the Applicant falls in Group 'C' employee. This being the position, the Judgment of Hon'ble Supreme Court in **Rafiq Masih's** case is clearly attracted, as pointed out by the learned Advocate for the Applicant. The mistake occurred in 2000 at the time of fixation of pay of 1<sup>st</sup> Time Bound Promotion and it was continued. Admittedly, there was no fraud or mistake attributed to the Applicant. It was the mistake on the part of Department to correct fixed pay while granting benefit of Time Bound Promotion. The Applicant has no role to play in it.

7. The learned Advocate for the Applicant rightly relied on **Rafiq Masih's** case wherein Hon'ble Supreme Court in Para No.12 issued directions, which are 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.*

*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. Thus, the Applicant's case squarely falls within Clause 1 as well as 3 of the aforesaid direction.

9. The learned Advocate for the Applicant further placed reliance on the Judgment passed by this Tribunal in **O.A.No.923/2015 (Balkrishna Nikam)** **decided on 18.02.2016** which has been confirmed by the Hon'ble High Court in Writ Petition No.7404/2016 decided on 03.10.2016.

10. In the present case, I see nothing to deviate from the consistent view taken by this Tribunal in similarly situated cases on the basis of Judgment of Hon'ble Supreme Court in **Rafiq Masih's** case.

11. In so far as alleged Undertaking submitted by the Applicant is concerned, the perusal of Page No.59 reveals that it was of the year 2009 whereas in the present case, the mistake on the part of Department pertained to pay fixation done in 2010 which was continued later. This being the position, the alleged Undertaking is of no help to the Respondents. The Undertakings is given to the employer who is in dominant position and the employee has nothing to bargain. Therefore, the alleged Undertaking shall not come in the way of Applicant in view of Judgment of Hon'ble Supreme Court in **Rafiq Masih's** case.

12. For the aforesaid discussion, I have no hesitation to sum-up that the impugned order is not sustainable in law and facts and requires to be quashed. Hence, I pass the following order.

### **ORDER**

(A) The Original Application is allowed.

(B) The impugned order dated 10.07.2017 is hereby quashed and set aside.

(C) The order of recovery of Rs.2,18,190/- is set aside. Whatever amount recovered from the pensionary benefits of the Applicant be refunded to the Applicant within two months from today, failing which, it shall carry interest at the rate of 9% p.a. till its actual realization.

(D) No order as to costs.

Sd/-

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

Mumbai

Date : 10.12.2018

Dictation taken by :

S.K. Wamanse.