

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1058 OF 2022

(Subject:- Revised Pay Fixation/Recovery/Refund of Recovered Amount)

DISTRICT:-AHMEDNAGAR

Balasaheb S/o. Nanasaheb Sonawane,)
Age : 60 years, Occ: Civil Engineering)
Assistant (Retired),)
R/o. at House No. 8, Akshay Row Housing)
Society, Lokmanyanager, Savedi, Savedi Road,)
Ahmednagar – 414303.)
Mobile No. 7709359298.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra**)
Through the Secretary,)
Public Works Department, Mantralaya,)
Madam Cama Road, Hutatma Rajguru)
Chowk, Mumbai-400032.)
2. **The Superintending Engineer,**)
Public Works Circle, Ahmednagar,)
Bandhkam Bhavan, Aurangabad Road,)
Ahmednagar -414001.)
3. **The Executive Engineer,**)
Public Works Division, Bandhkam)
Bhavan, Ahmednagar-414001.) **RESPONDENTS**

APPEARANCE : Shri A.D. Sugdare, learned Counsel
for the applicant.
: Shri I.S. Thorat, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

DATED : **07.02.2024.**

ORAL-ORDER

Heard Shri A.D. Sugdare, learned counsel for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondent authorities.

2. By this Original Application the applicant is challenging the order of recovery dated 05.02.2021 issued by the office of Executive Engineer, Public Works Division, Ahmednagar by referring authorization letter dated 04.12.2020 issued by the Accountant General, Mumbai, thereby directing recovery of excess amount of Rs. 5,34,734/- from the sanctioned Death Cum Retirement Gratuity (DCRG) (Annexure 'A-11').

3. Brief facts giving rise to the Original Application are as follows:-

(i) The applicant was appointed as a Muster Clerk on the work charged establishment by office order No. 43/1982, dated 06.02.1982, issued by the Executive Engineer, Public Works Department, Division- Ahmednagar. The said order is marked as Annexure 'A-1'. The applicant was brought on CRT Establishment from 12.02.1987. According to the applicant he has completed 12 years continuous service on

regular establishment and therefore, he was granted Time Bound Promotion by order dated 19.12.1996 in terms of Government Resolution dated 08.06.1995. He was working on the post of Muster Clerk in the pay scale of Rs. 950-1500 and after grant of Time Bound Promotion, he was given the higher pay scale.

(ii) It is the case of the applicant that the office of Superintending Engineer, Public Works Department, Ahmednagar considered the claim of the applicant on the post of Civil Engineering Assistant from the cadre of Muster Karkoon. His case was considered for grant of exemption from passing the departmental professional examination. By order dated 10.04.2008, he was absorbed/ appointed on the post of Civil Engineering Assistant in the pay scale of Rs. 4000-6000/-. The said order is marked as Annexure 'A-3'.

(iii) It is the further case of the applicant that while working on the post of Civil Engineering Assistant continuously, he was granted Time Bound Promotion as on 01.10.1994 and on completion of 24 years of service, granted second Modified Assured Career Progression Scheme from 2006 by order dated 22.10.2010 (Annexure 'A-4'). Therefore he was granted revised pay scale vide office order dated 20.05.2013 issued by

the Executive Engineer, P.W.D. Ahmednagar as per Annexure 'A-5'.

(iv) It is the further case of the applicant that he retired on superannuation on 31.05.2020 from the post of Civil Engineering Assistant. After his retirement his pension papers were sent to Accounts Officer, Pay Verification Unit, Nashik for verification. The Pay Verification Unit, Nashik has raised the objection dated 17.03.2020 and returned the pension papers for rectification to respondent No.3. In view of the said objection, the respondent No.3 has prepared the revised pay fixation of the applicant on 22.07.2020 and it is observed by him that the applicant has paid excess amount during the period from 01.04.2010 to 31.05.2020 and further directed to recover the said amount from the pensionary benefits of the applicant. In view of same, the respondent No.3 has recovered the amount of Rs. 5,34,734 out of sanctioned amount of D.C.R.G. by order dated 05.02.2021 without giving any notice to the applicant. Hence, this Original Application.

4. Learned counsel for the applicant submits that in view of ratio laid down by the Hon'ble Apex Court in a case

State of Punjab & Ors. Vs. Rafiq Masih, in Civil Appeal No.11527/2014 decided on 18.12.2014, the said recovery of amount of Rs. 5,34,734/- from the DCRG amount of the applicant after his retirement is impermissible. The applicant was Group 'C' employee at the time of retirement and in view of same, the ratio laid down by the Hon'ble Apex Court in the aforesaid case is squarely applicable to the facts and circumstances of the present case.

5. On the basis of affidavit in reply filed by respondent Nos. 1 to 3, the learned Presenting Officer submits that after completion of 24 years of service, the applicant was granted second benefit under modified Assured Career Progression Scheme from the date of 01.10.2006 and at the time of second benefit the applicant was working on the post of Muster Clerk and not on the post of Civil Engineering Assistant. He was absorbed to the post of Civil Engineering Assistant from 02.05.2008. Learned P.O. submits that though both the benefits were already given to the applicant, it was granted again from 05.02.2013. Thus the pay fixation done in the year 2013 was a wrong action. Consequently the excess payment was made to the applicant and the same is required to be recovered from the applicant.

Learned P.O. submits that the applicant has given undertaking at the time of submission of pension papers so also after his retirement about refund of the said amount. Learned P.O. submits that there is no substance in the Original Application and the Original Application is liable to be dismissed.

6. The applicant came to be retired on superannuation on 31.05.2020 from the post of Civil Engineering Assistant and admittedly, the amount allegedly paid in excess to the applicant has been recovered from his pensionary benefits. The applicant is retired as a Group 'C' employee and the applicant is certainly not at fault for the wrong pay fixation, if any, by the department. Further it is not the case of respondent Nos. 1 to 3 that the applicant has mislead the authorities in any manner for wrong fixation of his pay. It appears that in view of the revised pay fixation of the year 2013, the applicant has been paid the salary as per revised pay during the period of 01.04.2010 to 31.10.2020 i.e. for more than 10 years.

7. In case of **State of Punjab & Ors. Vs. Rafiq Masih, in Civil Appeal No.11527/2014 decided on 18.12.2014.** In

the said decision, the Hon'ble Apex Court has observed 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, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(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.”

In view of the aforesaid authoritative pronouncement of the Hon'ble Apex Court and since the case of the applicant is squarely covered by circumstances (i) to (iii) mentioned in the

above paragraphs, the recovery from the retiral benefits of the applicant is impermissible.

8. So far as the so called undertaking given by the applicant is concerned, admittedly the same has been given after his retirement. Furthermore though the learned P.O. has pointed out one undertaking allegedly given by the applicant during his tenure, however so called undertaking does not bare date or any endorsement. The applicant was Group 'C' employees at the time of his retirement and at the time of submissions of pension papers, the said undertaking appears to have been taken. In view of same, no importance can be given to the said undertaking.

9. In view of above discussion and in terms of the ratio laid down in the aforesaid facts, the applicant is entitled for the refund of the said amount. Hence, the following order:-

ORDER

The Original Application No. 1058 of 2022 is hereby allowed with the following terms:-

- (A) The order of recovery dated 05.02.2021 issued by the respondent No.3 for recovery of amount of Rs. 5,34,734/- is hereby quashed and set aside.

- (B) The respondents are hereby directed to refund the said recovered amount of Rs. 5,34,734/- to the applicant within three months from the date of receipt of certified copy of this order with interest @ 9% p.a. from the date of actual recovery till the date of refund.
- (C) In the circumstances there shall be no order as to costs.
- (D) The Original Application stands disposed of in aforesaid terms.

MEMBER (J)

Place:-Aurangabad

Date : 07.02.2024

SAS O.A. 1058/2022 (S.B.) VKJ Recovery.