

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 365 OF 2017

DISTRICT: - NANDED.

Sarang S/o. Kerba Gorge,

Age : - 60 years, Occu: Pensioner,

R/o. Sawargaon Mal Tq. Bhokar

District Nanded.

.. APPLICANT.

V E R S U S

- 1. Superintendent of Police,**
Nanded District, Nanded.
- 2. Accounts Officer,**
Pay Assessment Unit,
Aurangabad.
- 3. Treasury Officer,**
Treasury Office, Nanded.
- 4. The Accountant General,**
Pension Department Old Building
In front of Ravi Bhawan
Civil Lines Nagpur,
Maharashtra.

.. RESPONDENTS

APPEARANCE : Shri G.N. Kulkarni (Mardikar) –
learned Advocate for the applicant.

: Mrs. Priya R. Bharaswadkar –
learned Presenting Officer for the
respondents.

CORAM : **HON'BLE SHRI B.P. PATIL,**
MEMBER (JUDICIAL)

DATE : **2ND JANUARY, 2018.**

ORAL ORDER

1. Heard Shri G.N. Kulkarni, learned Advocate for the applicant and Mrs. Priya R. Bharaswadkar, learned Presenting Officer for the respondents.

2. The applicant is claiming refund of an amount of Rs. 1,54,237/- recovered from his pensionary benefits by the impugned order dated 24.07.2014 on account of excess payment of salary made to him due to wrong pay fixation by filing the present Original Application.

3. It is contention of the applicant that initially he was appointed as Muster Assistant / Attendant in the Zilla Parishad, Nanded in the year 1977. Thereafter, he was brought on the consolidated pay from time to time as per the policy of the Government of Maharashtra. On 1.12.1995 the Government of Maharashtra has taken a decision to absorb the Muster Attendants, who were serving on 31.5.1993. Accordingly, he was absorbed on the post of Sweeper on the establishment of Dean, Government Medical College, Nanded District, Nanded, in

the year 1997. Thereafter, he has been absorbed in Group 'C' post with respondent No. 1 w.e.f. 1.8.2008. Since then he has served as Junior Clerk till his retirement. He retired on 31.08.2014. During his service tenure his pay has been fixed by the respondent no.1 from time to time. There was no misrepresentation on his part in that regard. However, on 24.07.2014 the respondent No. 1 issued communication and directed to recover the amount of Rs. 1,54,237/- from his pensionary benefits on the ground that excess payment was made to him due to wrong fixation of pay. Accordingly, the said amount has been recovered by the respondents. It is contention of the applicant that his pay has been wrongly fixed by the respondents on their own accord and there was no fraud or misrepresentation on the part of the applicant and he was not responsible for the same. It is his contention that the said amount has been recovered at the time of his retirement, which is against the guidelines issued by the Hon'ble Apex Court in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** reported in **[AIR 2015 SC 696/(2015) 4 SCC 334]**. It is contention of

the applicant that respondents have illegally recovered the amount from him without following the guidelines given by the Hon'ble Apex Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) (supra)** and, therefore, he prayed to refund the amount of Rs. 1,54,237/-.

4. The respondents have filed their affidavit in reply and resisted the contention of the applicant on the ground that pay of the applicant was wrongly fixed on his absorption in the Government service though he was not entitled to it. It is their contention that as per the Government Resolution dated 21.04.1999, the service of the applicant on the post of Mustering Assistant under the Employment Guarantee Scheme (EGS) prior to his appointment on the post of Sweeper cannot be considered as a Government service. He was drawing pay of Rs. 846/- prior to his appointment in Government service and it was fixed @ Rs. 846/- on his initial appointment on the post of Sweeper in the pay scale of Rs. 750-940. It is their contention that Mustering Assistants working under Employment

Guarantee Scheme were not granted the benefit of 5th Pay Commission. It is their contention that as per the recommendation of 5th Pay Commission the pay scale of the applicant was revised from Rs. 750-940 to Rs. 2550-3200 w.e.f. his initial appointment in the government service i.e. from 30.04.1997, but the Government Medical College, Nanded granted the applicant the benefit of time bound promotion scheme on 1.10.2000 prior to his completion of 12 years of Government service on the post of Sweeper and his pay was fixed @ Rs. 3040/- in the higher pay scale of Rs. 2610-4000 though he was not eligible for the same. It is their contention that again his pay has wrongly been fixed as on 01.01.2006 as per the recommendations of 6th Pay Commission.

5. It is contention of the respondents that the applicant was promoted as Junior Clerk on 1.8.2008 and granted pay scale of Rs. 3050-4590 as per 5th Pay Commission. As per recommendation of 6th Pay Commission the pay scale of Rs. 4440-7440 was granted to him. It is their contention that pay of the applicant has been wrongly

fixed on the basis of earlier pay scale and, therefore, excess amount of Rs. 1,54,237/- has been paid to him. It is their contention that the said mistake has been noticed by the respondents and, therefore, the recovery has been directed. There is no illegality on the part of the respondents and, therefore, they prayed to reject the present Original Application.

6. I have perused the application, affidavit, affidavit in reply filed by the respondents. I have also perused the documents placed on record by both the parties.

7. Learned Advocate for the applicant has submitted that the pay of the applicant has been fixed by the respondents on his absorption in the Government service and he has been given benefit of 5th Pay and 6th Pay Commission accordingly. It is his contention that there was no fraud or misrepresentation on the part of the applicant in fixing his pay by the respondents and mistake was committed by the respondents and accordingly excess amount has been paid to the applicant. He has submitted that the applicant retired on 31st August, 2014 on

superannuation. Prior to that the respondents issued the communication dated 24.7.2014 and directed recovery of amount of Rs. 1,54,237/- from the pensionary benefits of the applicant on account of excess payment of salary made to him due to wrong fixation of pay made by the respondents. He has submitted that the applicant retired on 31st August, 2014 on attaining the age of superannuation. He was Group 'C' employee. The said recovery has been made when the applicant was on the verge of retirement. He has submitted that the recovery was made against the guidelines given by the Hon'ble Apex Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc. (supra)** and, therefore, he prayed to direct the respondents to refund the amount recovered from his pensionary benefits by allowing the present Original Application.

8. Learned Advocate for the applicant has further submitted that similarly situated person viz. Shaikh Mehboob Yakubsab had filed O.A. No. 784/2016 before this Tribunal on similar grounds and this Tribunal has

allowed that Original Application on 14th December, 2017 directing the respondents to refund the amount recovered from the applicant in that Original Application towards the excess payment made to him due to wrong fixation of pay. He has submitted that in view of the said fact it is just to allow the present Original Application.

9. Learned Presenting Officer has submitted that on absorption of the applicant in the Government service, the Dean Government Medical College has wrongly fixed his pay as per the recommendation of the 5th & 6th Pay Commission. She has submitted that the payment was made to the applicant on the basis of wrong fixation of pay. She has submitted that the said mistake was noticed by the respondents at the time of preparing the pension papers of the applicant and thereafter the said mistake has been corrected and on the basis of the revised pay fixation the impugned order dated 24.7.2017 directing the recovery of the excess amount of Rs. 1,54,237/- has been passed by the respondents. She has submitted that there

is no illegality while issuing the impugned order and the impugned order is legal one.

10. She has further submitted that the Hon'ble Apex Court had issued the guidelines in the decision of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc. (supra)** regarding the contingencies in which the recovery cannot be made. She has submitted that there is no guideline in the said decision to refund the amount already recovered from the employee. Therefore, the guidelines in the said decision are not attracted in this case.

11. I have gone through the documents on record. Admittedly, the applicant was working as Mustering Assistant with Zilla Parishad, Nanded under E.G.S. since the year 1977. In the year 1997 he was absorbed in the Government service as per the Government policy. He was absorbed on the post of Sweeper in the Government Medical College, Nanded. On absorption, his pay has been fixed by the Dean, Government Medical College, Nanded. He was posted on the establishment of respondent No. 1

as Junior Clerk w.e.f. 1.1.2008. Thereafter, his pay has been fixed as per the recommendation of 5th & 6th Pay Commission from time to time and salary was disbursed to him accordingly. The record shows that the pay has been fixed by the respondent No. 1 on his own accord and prior to his posting on the establishment of respondent No. 1 his pay has been fixed by the Dean, Government Medical College, Nanded. There was no misrepresentation or fraud practiced by the applicant while fixing the pay. Not only this, but the respondents have not noticed the excess payment made to the applicant on account of wrong fixation of pay earlier, but the said mistake has been noticed by the respondents at the time of preparation of pension papers of the applicant, when he was on the verge of the retirement. Thereafter the revised pay has been fixed and the recovery of excess payment was directed. Accordingly an amount of Rs. 1,54,237/- has been recovered from the pensionary benefits of the applicant by the impugned order dated 24.07.2014.

12. The similar issue has been dealt with by this Tribunal in the case of **SHAIKH MEHBOOB YAKUBSAB [O.A. NO. 784/2016] decided on 14th December, 2017** and it has been held that the recovery made by the respondents was not legal and permissible and, therefore, the respondents are directed to refund the said amount. In the said decision the guidelines laid down by the Hon'ble Apex Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc. (supra)** has been considered. The decision in the above said Original Application is squarely applicable to this case and, therefore, recovery made by the respondents from the applicant from his pensionary benefits is not permissible in view of the guidelines given by the Hon'ble Apex Court in the above cited case. The applicant was belonging to Group 'C' services and, therefore, the said recovery is not permissible. In these circumstances, in my opinion, it is just to direct the respondents to refund the amount of Rs. 1,54,237/- recovered from his pensionary benefits due to wrong fixation made by the respondents to the applicant.

13. In view of the above discussion the present Original Application deserves to be allowed.

14. In these circumstances, the Original Application is allowed. The respondents are directed to refund an amount of Rs. 1,54,237/- to the applicant within 3 months from the date of this order, failing which the amount shall carry interest @ 9% p.a. from the date of the order. There shall be no order as to costs.

MEMBER (J)

PLACE : AURANGABAD.

DATE : 2ND JANUARY, 2018.

O.A.NO.365-2017(SB)-HDD-2018-recovery