

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 543 OF 2018

DISTRICT: - NANDED.

Shaikh Ahmed S/o Shaikh Bashir,
Age-61 years, Occu. : Pensioner
R/o. Adaynan Garden, K.G.N. Colony,
Dhanegaon, Nanded
Tq. & Dist. Nanded.

.. APPLICANT.

V E R S U S

- 1. The State of Maharashtra,**
Through Secretary,
Agricultural Department,
Mantralaya, Mumbai – 32.
- 2. The Agricultural Commissioner,**
Agricultural Commissionarate
Maharashtra State,
Pune 411 001.
- 3. The Divisional Agricultural,**
Joint Director, Latur Division, Latur,
Tq. & Dist. Latur.
- 4. The Taluka Agricultural Officer,**
Kandhar Taluka, Kandhar,
Tq. Kandhar, Dist. Nanded.
- 5. The Accountant General**
Maharashtra (Accounts and Entitlement)
Civil Lines, Nagpur-440001.
- 6. The Accounts Officer,**
Payment Verification Division,
Aurangabad.
- 7. The Treasury Officer,**
Nanded, Dist. Nanded.
(Copy to be served on P.O. M.A.T.
of Bombay Bench at Aurangabad) .. RESPONDENTS.

APPEARANCE : Shri. Vaibhav B. Dhage, learned
Advocate for the applicant.
: Shri M.S. Mahajan, learned Presenting
Officer for the respondent.

CORAM : **SHRI B.P. PATIL, VICE CHAIRMAN**

RESERVED ON : **17.07.2019**

PRONOUNCED ON : **22.07.2019**

ORDER

By filing the present Original Application the applicant has sought directions to the respondents to refund the amount of Rs. 3,42,940 recovered from him with interest.

2. The applicant was initially appointed as Mustering Assistant in Irrigation Department in the month of April 1984. On 15.05.2002 he was absorbed in Agricultural Department as Peon. Thereafter, he served in the said department till his retirement. He rendered service of 33 years. On attaining the age of superannuation he retired from the Government service on 31.05.2017. Before his retirement the proposal for grant of pension and pensionary benefit has been processed by the respondents and that time respondent No. 4 informed to him by letter dated 07.06.2017

that he was appointed as Peon on 15.02.2000. His initial appointment was Mustering Assistant and for the post of Mustering Assistant 5th pay scale was not applicable. Therefore, the respondent No. 4 had re-fixed the pay of the applicant and directed the applicant to pay amount of Rs. 3,42,940/- towards the excess payment made to him on account of wrong pay fixation. The respondent No. 4 has withheld the retiral benefits of the applicant and, therefore, the applicant was compelled to deposit the amount of Rs. 3,42,940 with the office of respondent No. 7 by challan No. 0013 on 06.01.2018. After depositing the amount by him with the respondent No. 7, respondent No. 4 has issued No-Dues-Certificate and thereafter the applicant has received the pensionary benefits. It is his contention that respondent No. 6 has already informed the respondent No. 4 for re-fixation of the pay in the year 2012, but the respondent No. 4 had not taken any steps in that regard and he passed the order dated 07.06.2017 after retirement of the applicant. It is contention of the applicant that he was not responsible for wrong pay fixation made by the respondent No. 4 and it was duty of the respondents to fix correct pay of the applicant. It is his contention that an amount of Rs. 3,42,940/- has been recovered from him illegally by the respondents when he was

on the verge of the retirement. It is his contention that he was Group 'D' employee and, therefore, no such recovery is permissible from the applicant after his retirement and, therefore, he sought direction to the respondents to refund the amount of Rs. 3,42,940 recovered from him with interest.

3. Respondent Nos. 1 to 3 have filed affidavit in reply and resisted the contentions raised by the applicant in the present Original Application. They have admitted the fact that the applicant was absorbed in the Agricultural Department on the post of Peon on 15.02.2000 and after rendering the services for 33 years he retired on 31.05.2017. It is their contention that the pension papers of the applicant have been processed by them within stipulated time. The applicant was getting pay scale of Rs. 750-940 as per 4th pay commission before his absorption in the Agriculture Department as Peon. On his absorption in the Agriculture Department his pay was required to be fixed at Rs. 2550/- w.e.f. 15.02.2000. The Mustering Assistant was not entitled to get the benefit of 5th Pay Commission. However, their office had granted pay to the applicant as per 5th Pay Commission w.e.f. 01.01.1996 and fixed his pay at Rs. 2660/-.

4. It is their contention that when the service book of the applicant has been sent to the Pay Verification Unit, Aurangabad, the concerned authority had pointed out the said mistake committed by the respondents while fixing the pay of the applicant by raising objection vide objection slip dated 20.03.2012. They relied on the letter of the Government of Maharashtra, Planning Department dated 15.07.2006. Due to wrong pay fixation overpayment in the tune of Rs. 3,42,940/- was made to the applicant. It is their contention that as per objection raised by the Pay Verification Unit, Aurangabad, the respondents re-fixed the pay of the applicant and directed recovery of amount in the tune of Rs. 3,42,940/- on account of excess payment made to him. The applicant deposited the said amount through challan on 06.01.2018 and thereafter the pensionary benefits have been released. It is their contention that the applicant has given consent for recovery of the said amount and, therefore, there is no illegality. On these counts, they prayed for dismissal of the Original Application.

5. Respondent No. 4 has also filed affidavit in reply and resisted the contentions raised by the applicant in the Original application. He has raised similar contentions to

that of the contentions raised by the respondent Nos. 1 to 3 and prayed to reject the Original Application.

6. Respondent No. 5 has also filed affidavit in reply and resisted the contentions raised by the applicant in the Original Application. He has contended that, the Comptroller & Auditor General of India discharges his duties through field offices, i.e. Accountants General Offices in accordance with the provisions of Article 149 of the Constitution of India read with the Comptroller and Auditor General (Duties, Power and Conditions of Service) Act, 1971. Accordingly, the role of the Respondent in respect of pension cases is limited to scrutiny of proposals received from Heads of offices of Govt. of Maharashtra / Pension Sanctioning Authorities in respect of persons who retired from various State Government offices situated in Vidarbha and Marathwada regions, with reference to the rules in M.C.S. (Pension) Rules, 1982 and other Government Resolutions issued from time to time and subsequently authorization of pensionary benefits, if found admissible. The office of respondent does not act on its own volition, but authorizes pensionary benefits only on receipt of proper pension papers duly attested by the Head of Office / Pension Sanctioning Authority of the State Government. The

respondent is not in a position to authorize pensionary benefits if, either the proposal is not received from the Head of the Office / Pension Sanctioning Authority in the prescribed format with requisite documents or if it is found not conforming to any of the provisions of the M.C.S. (Pension) Rules, 1982 and other Government Resolutions issued from time to time.

7. It is further contention of the respondent No. 5 that the applicant retired on attaining the age of superannuation on 31.05.2017. His pension proposal was forwarded by the Pension Sanctioning Authority i.e. the Taluka Agriculture Officer, Kandhar, District Nanded, by letter dated 06.11.2017 and the said proposal was received to his office on 13.11.2017. It is his contention that his office has finalized the pension case of the applicant within a period of one month from the date of receipt of the pension proposal. It is his further contention that pension, Gratuity and Commuted Value of pension were authorized by his office by the letter dated 29.11.2017. It is his contention that his office had issued instructions to the office of respondents that overpayment of Pay and Allowances if any may be adjusted at Departmental Level and his office has not mentioned any

particular amount of recovery. It is his contention that the said directions have been issued by his office as per the provisions of rule 132 of the Maharashtra Civil Services (Pension) Rules, 1982, and there is no illegality and, therefore, he prayed to reject the Original Application.

8. Respondent No. 6 has resisted the contentions raised by the applicant in the Original Application by filing affidavit in reply. It is his contention that before absorption of the applicant he was getting pay scale of Rs. 750-940, as per 4th Pay Commission and after absorption of the applicant his pay was required to be fixed at Rs. 2550/- w.e.f. 15.2.2000. It is his contention that Mustering Assistant was not eligible to get pay as per the 5th Pay Commission, but the office of the respondent No. 4 has granted the benefit of 5th Pay Commission to the applicant and fixed his pay at Rs. 2660/- on 01.01.1996. It is his contention that prior service of the applicant was considered by the office of respondent No. 4 while granting benefit under the scheme of time bound promotion and granted him the pay scale of Rs. 2610-4040 w.e.f. 01.04.1996. Because of the wrong pay fixation, overpayment of Rs. 3,42,490/- was made to the applicant. It is his further contention that the Government of Maharashtra

Planning Department by letter dated 15.07.2006 and 26.12.2007 clarified that Mustering Assistant are not Government servant and are not entitled to get the benefit of 5th Pay Commission. The employees who were working as Mustering Assistant and were absorbed in Government service will be eligible for the pay scale of the post on which they are absorbed from the date of their absorption in the Government service. It is his contention that the Answering Respondent is a Pay Verification authority and verifies the pay fixation done at the time of pay commission revision (i.e. 5th pay commission, 6th pay commission etc.) as per the pay fixation rules and various Government Resolutions and notifications issued from time to time. It is his duty to verify the pay fixation done by the office of the applicant as per rules and to bring to the notice of the concerned office regarding errors in pay fixation and the overpayment made to the employees. Accordingly, he pointed out the mistake in the pay fixation of the applicant noticed by him and communicated to the office of the applicant vide objection slip dated 20.3.2012. It is his contention that pay fixation of the applicant done by the office of the applicant by order dated 07.06.2017 is correct as per pay fixation rules and there is no

illegality and, therefore, he prayed to reject the Original Application.

9. I have heard the arguments advanced by Shri. Vaibhav B. Dhage, learned Advocate for the applicant and Shri M.S. Mahajan, learned Presenting Officer for the respondent. I have perused the application, affidavit, affidavit in reply filed by the respondents. I have also perused the documents filed by both the parties.

10. Admittedly, the applicant was initially appointed as Mustering Assistant in the Irrigation Department in the month of April 1984. Admittedly, on 15.05.2002 he was absorbed in Agricultural Department as Peon. Since then till his retirement on superannuation i.e. 31.05.2017 he served as Peon in the said department.

11. Admittedly, before his retirement the proposal for grant of pension and pensionary benefit has been processed by the respondents. Admittedly, his service record has been sent to the respondent No. 6 viz. The Account Officer, Pay Verification Division, Aurangabad for verification and that time respondent No. 6 informed that mistake has been committed by the respondent No. 4 while fixing the pay of the

applicant. Accordingly, respondent No. 4 passed the order dated 7.6.2017 and re-fixed the pay of the applicant and also directed to the applicant to deposit amount of Rs. 3,42,940/- on account of excess payment made to him due to wrong pay fixation. Admittedly, the applicant deposited the said amount of Rs. 3,42,940 with the office of respondent No. 7 by challan No. 0013 on 06.01.2018. Admittedly, the applicant retired as Peon i.e. Group 'D' employee. The amount has been recovered after his retirement.

12. Learned Advocate for the applicant has submitted that the applicant was Group 'D' employee. The order directing recovery has been passed after his retirement and amount has been recovered from his pensionary benefits after his retirement. He has submitted that the mistake has been committed by respondent No. 4 while fixing the pay and, therefore, excess payment was made to the applicant. The applicant never misrepresented or practiced fraud on the respondents in getting the excess payment. He has submitted that the applicant has no role in getting excess pay and, therefore, he cannot be blamed. He has submitted that the recovery of the excess payment made to the applicant due to wrong pay fixation is not permissible in view of the

guidelines given by the Hon'ble Supreme Court in the decision in the 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**] and, therefore, he approached this Tribunal challenging the order directing the recovery and prayed to direct the respondents to refund the amount of Rs. 3,42,490/-. He has submitted that the respondents have illegally recovered the excess amount paid to the applicant due to wrong pay fixation after his retirement and, therefore, the applicant is entitled to get refund of the same. Learned Advocate for the applicant, therefore, prayed to allow the Original Application.

13. Learned Presenting Officer has submitted that there was no illegality on the part of the respondents directing recovery of excess amount of Rs. 3,42,490/- paid to the applicant due to wrong pay fixation. He has submitted that the applicant was absorbed in Agricultural Department as Peon on 15.05.2002. Prior to that, he was serving with Irrigation Department as Mustering Assistant. He was not a Government servant when he was serving as Mustering Assistant. As per the letters of the Planning Department by letter dated 15.07.2006 and 26.12.2007 it is clarified that

Mustering Assistant are not Government servants and they are not entitled to get the benefit of 5th Pay Commission. The employees who were working as Mustering Assistant and were absorbed in Government service will be eligible for the pay scale of the post on which they are absorbed from the date of their absorption in the Government service. He has submitted that due to mistake committed by the office of respondent No. 4 the applicant was granted pay scale as per the recommendation of 5th Pay Commission and the time bound promotion was given to him w.e.f. 1.4.1996 and, therefore, the excess payment was made to him. He has submitted that the said mistake has been noticed by the respondent No. 6 when the service record of the applicant was sent to him and he communicated to the office of the applicant vide objection slip dated 20.3.2012. On the basis of the objection of respondent No. 6, the respondent No. 4 re-fixed the pay scale of the applicant and directed recovery of amount of excess payment made to him. He has submitted that the applicant has given consent for recovery of the said amount and, therefore, the said amount has been recovered from the applicant. He has argued that there is no illegality in recovery of the said amount and, therefore, he prayed to reject the Original Application.

14. On going through the record, it reveals that the applicant was serving as Peon i.e. in Group 'D' category at the time of his retirement. His pay scale has been wrongly fixed by the respondent No. 4 and accordingly the amount has been paid to him since 1.4.1996. The applicant neither misrepresented the respondent No. 4 nor practiced fraud on respondent No. 4 while getting the excess payment. No role has been attributed to the applicant in getting the excess payment. On the contrary, due to mistake of the respondent No. 4 the excess payment has been made to the applicant due to wrong fixation of pay. Therefore, the applicant cannot be blamed for getting excess amount of Rs. 3,42,490/- on account of wrong fixation of pay. Said amount has been recovered from the pensionary benefits of the applicant after his retirement. The applicant was compelled to give consent for recovery of the said amount as respondent No. 4 informed him that No-Dues-Certificate will not be issued to him unless he deposits the amount. The excess amount paid to the applicant due to wrong fixation of pay cannot be recovered from the pensionary benefits of the applicant and that too after his retirement. The said recovery is impermissible in view of the guidelines given by the Hon'ble Supreme Court in

case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** (supra), wherein it is 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, summarize 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 the 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 employees, 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.”

15. The case of the applicant is covered under clause (i), (ii) & (iii) contained in paragraph No. 12. It would be appropriate to reproduce these clauses: -

(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 the employees when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

16. The excess amount of Rs. 3,42,490/- has been illegally recovered from the applicant. The said recovery is impermissible. Therefore, the applicant is entitled to get refund of the same.

17. In view of the above, the present Original Application is allowed. The impugned order directing the recovery of Rs. 3,42,490/- is hereby quashed and set aside. The respondents are directed to refund the amount of Rs. 3,42,490/- to the applicant within a period of 3 months from the date of this order, failing which the amount shall carry interest @ 9% p.a. from the date of this order till its realization. There shall be no order as to costs.

VICE CHAIRMAN

PLACE : AURANGABAD.

DATE : 22.07.2019

O.A.NO.543-2018(SB-Recovery)-HDD-2019