

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 548 OF 2018

DISTRICT: - AURANGABAD.

Smt. Ganga Ramrao Waghmare,

Age-59 years, Occu. : Nil
(Pensioner), R/o : "Gautam" Niwas
Agasti Society, N-9, E-4,
Plot No. 1, Near M-2 Corner,
Behind Baliram Patil School,
Cidco, Aurangabad.

.. APPLICANT.

V E R S U S

- 1) The Director of Health Services,**
M.S., Arogya Bhawan,
St. George's Hospital Compound,
P.D'Mello Road, Mumbai - 01.
- 2) The Deputy Director of Health
Services,** Aurangabad Circle,
Mahaveer Chowk,
Oppo. Baba Petrol Pump,
Aurangabad - 01.
- 3) The District Health Officer,**
Zilla Parishad, Aurangabad,
Zilla Parishad Campus,
Amba-Apsara Road,
Nageshwarwadi, Aurangabad - 01.
- 4) The Accountant General (A & E),**
M.S., Nagpur.
W. High Court Road, CBI Colony,
Civil Lines, Nagpur - 01.
- 5) The Senior Treasury Officer,**
Lekha Kosh Bhavan,
Near Collector Office,
Chandani Chowk,
Aurangabad - 01.

.. RESPONDENTS.

APPEARANCE : Shri. Avinash S. Deshmukh, learned Advocate for the applicant.

: Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondent Nos. 1, 2, 4 & 5.

: Shri S.N. Deshmukh, learned Advocate for respondent No. 3 (**absent**).

CORAM : **B.P. PATIL, ACTING CHAIRMAN**

RESERVED ON : **29.07.2019**

PRONOUNCED ON : **31.07.2019**

ORDER

The applicant has challenged the order passed by the respondents directing the recovery of amount of Rs. 3,06,500/- from her pensionary benefits i.e. from the DCRG. She also prayed to direct the respondents to refund the amount of Rs. 3,06,500 recovered from her.

2. The applicant is from reserved category. She had completed General Nursing Course in July, 1983. On 07.08.1984 she had entered service of the Government of Maharashtra at Health Department as a Staff Nurse. In the month of February, 1984 she acquired Midwifery Diploma.

She was posted as Staff Nurse at 'Shri Guru Govindsinghji Memorial Hospital' at Nanded. She had completed the Public Health Nursing Course in the month of April, 1991. On 03.01.1997, the respondent No. 1 issued an order and posted her at Aurangabad Zilla Parishad under the immediate control of respondent No. 3 viz. the District Health Officer, Zilla Parishad, Aurangabad. Pursuant to the said order she joined her posting and started discharging her duties. After rendering service for more than 32 & ½ years she retired from Government service w.e.f. 31.03.2017 on attaining the age of superannuation.

3. It is her contention that at the time of her retirement she was occupying a Group-C/Class-III post. In the month of July, 2017 i.e. after her retirement when her pension papers had been sent to the respondent No. 4 by the respondent No. 3, respondent No. 4 sought a clarification from the respondent No. 3 about two additional increments given to the applicant on 01.10.2007. On receipt of the said communication from respondent No. 4, respondent No. 3 issued an order dated 18/08.05/10/2017 cancelling two advanced / additional increments given to the applicant on 01.10.2007 and ordered to recover the excess amount paid to

her by re-fixing her pay for the period from 01.10.2007 to 31.03.2017.

4. On the basis of the aforesaid order and on receiving the pension papers of the applicant, sent by the respondent No. 3 the respondent No. 4 issued GPO (Gratuity Payment Order) in favour of the applicant on 14.11.2017 and ordered that amount of Rs. 3,06,500/- shall be recovered from the gratuity amount of the applicant. On the basis of the said GPO dated 14.11.2017 the amount of Rs. 3,06,500/- has been recovered from the total DCRG amount of Rs. 4,45,088/- and balance amount has been paid to her by respondent No. 5. It is her contention that the said recovery has been ordered after her retirement. It is her contention that two advance / additional increments has been given to her by respondent No. 2 on their own and she never misrepresented them for the same. She was not responsible in getting the said increments in the year 2007. It is her contention that excess payment has been made to her due to the act of the respondents and, therefore, she cannot be held responsible. It is her contention that recovery of excess payment made to her has been made from her pensionary benefits and that too from DCRG though it is impermissible, in view of the guidelines given by the Hon'ble

Supreme Court 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, she approached this Tribunal challenging the order directing the recovery from her. It is her further contention that she was Group 'C' employee and, therefore, no such recovery is permissible from her after her retirement and, therefore, she sought direction to the respondents to refund the amount of Rs. 3,06,500/- recovered from her.

5. Respondent No. 3 has resisted the contentions of the applicant raised in the Original Application by filing his affidavit in reply. He has not disputed the fact that the applicant was serving under his control and she retired on attaining the age of superannuation w.e.f. 31.3.2007. It is his contention that he has complied the directions issued in G.R. dated 03.07.2009 and letter dated 21.07.2017 issued by the respondent No. 4 and re-fixed the pay of the applicant. It is his contention that the applicant has given undertaking dated 03.03.2017 and 18.08.2017 and undertook to deposit the amount if any paid to her due to wrong pay fixation. On the basis of her undertaking excess amount of Rs. 3,06,500/- has

been recovered from her and there is no illegality in it. Therefore, he prayed to reject the Original Application.

6. Respondent No. 4 resisted the contentions of the applicant raised in the Original Application, by filing his affidavit in reply. In paragraph No. 2 of the affidavit in reply the respondent No. 4 contended as under: -

“2. I say and humbly submit that the Comptroller & Auditor General of India discharges 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 this 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 to authorization of pensionary benefits, if found admissible. This Respondent Office 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. This respondent shall not be 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 formats prescribed by the Government of Maharashtra with requisite documents or if it is found not conforming with any of the provisions of the M.C.S. (Pension) Rules, 1982.

At the outset, it is submitted that, the proposal for authorization of the pensionary benefits was forwarded by the Pension Sanctioning Authority viz. the District Health Officer, ZP, Aurangabad, vide his letter dated 6.7.2017. The pension case was scrutinized. The proposal was not in conformity with the MCS (P) Rules, 1982 and many lacunae were noticed viz. incorrect fixation of pay, application for commutation was not signed by the applicant etc. Hence, the proposal was returned vide this Respondent Office letter dated 21.7.2017 with a request to comply with the observations made. In response to the compliance received vide letter dated 5.10.2017 from the District Health Officer, ZP, Aurangabad, the pension case was again scrutinized and the pensionary benefits were authorized vide this Respondent's authority dated 14.11.2017. In Form 7, column 2 (b), the PSA had intimated that there was overpayment of pay and allowances to the tune of Rs. 3,06,500/- (Annex R/4/1). Accordingly, a clause was inserted in the GPO Authority to recover the said

amount. As per the proviso contained in Rule 132 of MCS (P) Rules, any amount which is outstanding on account of overpayment of pay and allowances shall be recoverable from the government servant. Hence, the action taken by this Respondent is as per the provisos of the rule.”

(Quoted from page Nos. 36 & 37 of paper book of O.A.)

It is his contention that he acted as per the provisions of rules and there is no illegality in it and, therefore, prayed to reject the Original Application.

7. Respondent No. 5 resisted the contentions of the applicant raised in the Original Application by filing his affidavit in reply. It is his contention that respondent No. 4 viz. the Accountant General, (A & E), M.S., Nagpur issued authority dated 4.11.2017 and directed to recover amount of Rs. 3,06,500/- from the DCRG amount of the applicant. It is his contention that it is his duty to check the bill and sanction the bill submitted by Drawing and Disbursing Officer. It is his further contention that he is not Drawing and Disbursing Officer. It is his contention that he has not played any role in recovering the excess amount paid to the applicant from his DCRG amount. It is his contention that Drawing and Disbursing Officer has not submitted D.C.R.G.

bill to him till date. It is his contention that he has no concern with the dispute of the applicant and, therefore, prayed to reject the Original Application.

8. I have heard the arguments advanced by Shri. Avinash S. Deshmukh, learned Advocate for the applicant, Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondent Nos. 1, 2, 4 & 5. Shri S.N. Deshmukh, learned Advocate for respondent No. 3 (**absent**). 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 sides.

9. Admittedly the applicant had completed General Nursing Course in July, 1983. Admittedly, in the month of February, 1984 the applicant acquired Midwifery Diploma. Admittedly, on 07.08.1984 the applicant had entered service of the Government of Maharashtra in Health Department as a Staff Nurse and thereafter she has been posted as Staff Nurse at 'Shri Guru Govindsinghji Memorial Hospital' at Nanded. Admittedly, the applicant had completed the Public Health Nursing Course in the month of April, 1991. Admittedly, on 03.01.1997, the respondent No. 1 issued an order and posted

the applicant at Aurangabad Zilla Parishad under the immediate control of respondent No. 3 viz. the District Health Officer, Zilla Parishad, Aurangabad. Pursuant to the said order the applicant joined her posting and started discharging her duties. After rendering service for more than 32 & ½ years she retired from Government service on attaining the age of superannuation w.e.f. 31.03.2017. There is no dispute about the fact that after her retirement the respondent No. 3 forwarded the proposal to the respondent No. 4 and that time respondent No. 4 has raised the objection regarding two additional / advance increments granted the applicant on 1.10.2007. On the basis of the objections raised by the respondent No. 4, respondent No. 3 re-fixed the pay of the applicant and cancelled two additional / advance increments granted to her from 01.10.2007 to 31.03.2017 and ordered recovery of Rs. 3,06,500/- from the applicant. Admittedly, the said amount has been recovered from the amount of DCRG payable to the applicant after her retirement.

10. Learned Advocate for the applicant has submitted that two advance increments have been granted to the applicant w.e.f. 1.10.2007 by the respondent No. 3 as per the policy of the Government. He has submitted that the applicant had

not misrepresented the respondents in getting the said advance increments. Not only this, but the applicant has not practiced any fraud while getting the said advance increments. He has submitted that the excess payment has been made to her due to advance increments granted by respondent No. 3. He has submitted that after her retirement the pay has been re-fixed by the respondent No. 3 and advance increments granted to her have been cancelled and recovery of amount of Rs. 3,06,500/- has been ordered. He has submitted that the said excess amount paid to the applicant has been recovered from her DCRG amount after her retirement. He has submitted that the said recovery is impermissible in view of the guidelines given by the Hon'ble Supreme Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.**(supra), as the applicant retired as Staff Nurse, which falls in Group 'C' category.

11. Learned Advocate for the applicant also placed reliance on the judgment dated 12th December, 2018 delivered by this Tribunal in the case of **PRAKASH VASUDEV RAMEKAR VS. THE CIVIL SURGEON, PARBHANI & ORS. [O.A. No. 435/2018]**. He has submitted that the case of the applicant

is squarely covered under the said decision also and, therefore, he prayed to allow the Original Application by quashing and setting aside the impugned order. He has further prayed that the respondents be directed to refund the amount of Rs. 3,06,500/- recovered from her DCRG amount.

12. Learned Presenting Officer has submitted that two advance increments have been granted to the applicant in the year 2007. In view of the Government Resolution dated 3.7.2009, she was not entitled to receive the same. The applicant was receiving the excess pay on the basis of advance increments granted to her though she was not entitled to get advance increments. The amount of Rs. 3,06,500/- has been excessively paid to the applicant during her service tenure. He has submitted that when the pension papers of the applicant have been sent to the respondent No. 4 by respondent No. 3, the respondent No. 4 noticed the said irregularity and, therefore, respondent No. 4 raised the objections. In view of the said objections raised by the respondent No. 4, the respondent No. 3 re-fixed the pay of the applicant cancelling two advance / additional increments granted to the applicant in the year 2007 and directed recovery of amount of Rs. 3,06,500/- on account of excess

payment made to the applicant during 1.10.2007 to 31.3.2017. He has submitted that there is no illegality in the impugned order directing the recovery from the applicant. He has argued that the applicant has given undertaking dated 03.03.2017 and 18.08.2017 and undertook to refund the excess payment made to her on account of incorrect fixation of pay. He has submitted that on the basis of the said undertaking, the respondent Nos. 3 & 4 recovered the excess amount paid to the applicant from the amount of DCRG and there is no illegality in it and he supported the impugned order.

13. On perusal of the record, it reveals that the applicant was appointed as Staff Nurse in the year 1984. She retired on attaining the age of superannuation from the same post w.e.f. 31.03.2017. The post of Staff Nurse falls under Group 'C' category. There is no dispute about the fact that on 01.10.2007 the respondent No. 4 granted two advance / additional increments to the applicant and accordingly her pay has been fixed and she received the pay accordingly from 01.10.2007 till the date of her retirement i.e. 31.03.2017. The applicant never misrepresented the respondent No. 3 in getting two advance increments. She had also not practiced

any fraud on the respondent No. 3 in getting the said advance increments. Therefore, she cannot be blamed for receiving the excess payment due to advance increments given to her by the respondent No. 3 wrongly. The respondent No. 3 on his own granted advance increments to the applicant though she was not eligible. Mistake committed by the respondent No. 3 has been noticed by the respondent No. 4 when the pension proposal of the applicant has been sent to him after her retirement and, therefore, respondent No. 4 raised objection regarding two additional / advance increments granted the applicant on 1.10.2007. Therefore, the respondent No. 3 issued impugned order dated 18/08.05/10/2017 cancelling two advanced / additional increments given to the applicant on 01.10.2007 and ordered to recover the excess amount paid to the applicant from her pensionary benefits by re-fixing her pay for the period from 01.10.2007 to 31.03.2017. The said recovery has been ordered towards excess payment made to the applicant during the period from 01.10.2007 to 31.03.2017. The said order has been passed after the retirement of the applicant and the amount has been recovered from the pensionary benefits i.e. DCRG of the applicant. No role has been

attributed to the applicant in getting the said advance increments. 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.”

14. The case of the applicant is squarely covered under clause (i), (ii) & (iii) contained in paragraph No. 12 of the aforesaid decision. 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.

15. The order directing the recovery of excess amount and the recovery of excess amount of Rs. 3,06,500/- made from the pensionary benefits of the applicant after her retirement are illegal in view of the aforesaid settled legal principle. Therefore, the impugned order directing the recovery requires to be quashed and set aside and the said amount requires to be refunded to her by allowing the Original Application.

16. In view of the foregoing discussion, the present Original Application is allowed. The impugned order directing the recovery of Rs. 3,06,500/- from the pensionary benefits of the applicant is hereby quashed and set aside. The respondents are directed to refund the amount of Rs. 3,06,500/- to the

applicant within a period of three 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.

ACTING CHAIRMAN

PLACE : AURANGABAD.

DATE : 31.07.2019

O.A.NO.548-2018(SB-Recovery)-HDD-2019