

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 563 OF 2016

DISTRICT: - AHMEDNAGAR

Devidas S/o. Khandu Kardule,
Age: 61 years, Occu: Nil,
(Pensioner), R/o. Lal Gulab
Colony, H. No. 38, Oppo. Bist
Baug Naka, Savedi Pipeline
Road, Ahmednagar

.. APPLICANT.

V E R S U S

- 1) The State of Maharashtra
Through its Secretary, Agriculture
Animal Husbandry Dairy Development
& Fisheries Department, M.S.
Mantralaya, Mumbai-32.
- 2) The Deputy Dairy Manager,
Government Milk Scheme,
Ahmednagar.
- 3) The Accounts Officer,
Govt. Milk Scheme,
Ahmednagar.
- 4) The Accounts Officer,
Pay Verification Unit,
Nashik.

.. RESPONDENTS.

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

: Mrs. Deepali S. Deshpande – learned
Presenting Officer for the res.

CORAM : **HON'BLE SHRI B.P. PATIL,**
MEMBER (J)
DATE : **6TH JULY, 2017.**

O R A L O R D E R

1. Heard Shri Avinash S. Deshmukh – learned Advocate for the applicant and Mrs. Deepali S. Deshpande – learned Presenting Officer for the respondents.
2. The applicant has prayed to quash and set aside the impugned order dated 07.08.2015 by which respondent No. 2 directed to recover an amount of Rs. 5,87,824/- from the applicant towards excess payment of salary paid to him due to wrong fixation of pay. The applicant has also sought directions to the respondents to refund the said amount recovered from him.
3. It is the contention of the applicant that he entered Government Service in Dairy Development Department as a Labourer on daily wages basis. Thereafter, he was absorbed in Government service as Class-IV employee

with retrospective effect. In view of the Government Resolution dated 12.3.1999 pay scale of Rs. 950-1400 was made applicable to him w.e.f. 1.1.1986 by the order passed by the then General Manager, Government Milk Scheme, Ahmednagar. It is the contention of the applicant that the said pay scale was made applicable to him by the department and he never made any representation in that regard to the respondents. He had not misrepresented to the respondents. Respondent No. 4 viz. Pay Verification Unit never raised objection in that regard. The applicant retired on 31.08.2015 from Government service on attaining the age of superannuation of 60 years. At the time of sending his papers to the Accountant General for grant of pension, the respondent No. 2 issued notice calling explanation as to why excess amount paid to him on the basis of wrong fixation of pay in the pay scale of Rs. 950-1400 shall not be recovered from him. Before retirement, on 7.8.2015, the respondent No. 2 issued communication directing recovery of Rs. 5,87,824/- from the applicant. As the applicant was going to retire within a 24 days' from the

date of communication dated 7.8.2015, the applicant most unwillingly paid an amount of Rs. 3,90,184/- lump-sum to the respondent No. 2 on 20.11.2015 by cheque and an amount of Rs. 1,97,640/- was adjusted from the amount of his gratuity. The applicant had deposited the said amount unwillingly in order to process his pension papers and to get the pensionary benefits at the earliest. It is the contention of the applicant that after depositing the said amount respondent No. 2 issued no dues certificate to him to collect his pension amount granted by the Accountant General. It is the contention of the applicant that recovery of excess amount of salary paid to the applicant since Government Resolution dated 12.03.1999 w.e.f. 1.1.1986 was ordered because of the wrong fixation of the pay scale fixed by the respondents and he is not concerned with it. The applicant was serving as a Sampler in Class-IV cadre and, therefore, the said recovery is illegal and not permissible by law. It is his contention that the recovery is in respect of amount paid to him before 5 years of retirement and, therefore, on that ground also the recovery is illegal. It is the contention of the applicant

that recovery has been ordered when he was on the verge of the retirement and, therefore, it is not permissible. Therefore, he prayed to quash and set aside the communication dated 7.8.2015 by which recovery an amount of Rs. 5,87,824/- has been ordered by the respondent No. 2. He has also prayed to direct the respondents to refund the amount of Rs. 5,87,824/- recovered from him by filing the present Original Application.

4. Respondent Nos. 1 to 4 have filed affidavit in reply and resisted the contentions of the applicant on the ground that the impugned order is legal, proper and in accordance with the provisions of Government Circulars and guidelines issued by the Government from time to time. It is the contention of the respondents that the applicant was working on the post of Milk Sampler at Govt. Milk Scheme, Ahmednagar. The Government of Maharashtra published Government Resolution dated 12.03.1999 regarding revised pay scale applicable for the post of Laboratory Assistant and it was not applicable to

the post of Milk Sampler, but the benefit of the Government Resolution has been given to the applicant wrongly and accordingly wrong pay scale has been given to him, though the applicant was not entitled to get the salary in the said pay scale. Respondent No. 4 came to know about the said fact when the service book of the applicant was submitted to Pay Unit for verification and, when the Pay Unit raised the objection in that regard. On the basis of the said objection, respondent No. 2 passed the order of recovery of excess amount salary paid to the applicant on the basis of wrong fixation of pay in the pay scale of Rs. 950-1400 which was wrongly made to the applicant. It is their contention that the said action has been taken in view of the direction given in the Government Resolution dated 10.1.1991. It is their contention that the applicant was entitled to pay scale of Rs. 200-280 (unrevised) and Rs. 750-940 from 1.1.1986, but instead of that he was wrongly granted pay scale of Rs. 952-1400 w.e.f. 1.1.1986 and, therefore, the recovery has been directed against him. It is their contention that the applicant had given undertaking to repay/recover

excess amount paid to him on account of wrong fixation of Pay.

5. It is their contention that the applicant had himself accepted his liability to pay the entire amount. But he made request to the respondents to recover partial amount from the gratuity amount payable to him and deposited balance amount by cheque. It is their contention there is no illegality in the order under challenge. Therefore, they prayed to dismiss the present Original Application.

6. Learned Advocate for the applicant has submitted that the applicant was serving as a Milk Sampler in Class-IV cadre with the respondents. He retired on 31.08.2015 on attaining the age of superannuation. He has submitted that initially his pay has been fixed in the pay scale of Rs. 952-1400 with retrospective effect from 1.1.1986 in view of the Government Resolution dated 12.3.1999 by the then General Manager, Government Milk Scheme, Ahmednagar (now the Deputy Dairy Manager, Ahmednagar i.e. respondent No. 3). He has submitted

that the respondent No. 2 on his own accord fixed the pay and there was no misrepresentation or fraud on the part of the applicant in fixing the pay. He has submitted that the Pay Unit has verified the pay fixation of the applicant from time to time, but no objection had been raised by Pay Verification Unit till the year 2014. He has submitted that when the applicant was on the verge of retirement his service record has been sent and at that time Pay Verification Unit raised the objection that the pay scale of Rs. 952-1400 was wrongly made applicable to the applicant though he was not entitled as per the Government Resolution dated 12.3.1999. He has submitted that the applicant received the communication dated 7.8.2015 by which recovery of Rs. 5,87,824/- has been ordered by the respondent No. 2. As he was on the verge of the retirement, he unwillingly consented to repay an amount of Rs. 3,90,184/- by cheque and consented to recover amount Rs. 1,97,640/- by adjusting it from the amount of his gratuity. The applicant had deposited the said amount unwillingly and under compelling circumstances in order to process his pension papers to

get the pensionary benefits at the earliest. He has submitted that the said recovery is not legal as the payment of excess amount has been made before a period more than 5 years, before the order of recover i.e. impugned communication dated 7.8.2015 is issued. He has further submitted that the applicant was Class-IV person. He was on the verge of retirement at the time of issuing communication dated 7.8.2015. Therefore, on that ground also the recovery from the applicant is not permissible, in view of 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.*** reported in ***2014 DGLS (SC) 1064 : 2015 AIR (SC) 696.***

7. He has further submitted that in the similarly situated employees' case, this Tribunal also passed order to refund the amount in view of guidelines given by the Hon'ble Apex Court. He has placed reliance on the judgment passed in ***O.A. No. 491/2016 decided by the Aurangabad Bench of this Tribunal on 04.10.2016.***

He has also placed reliance on the unreported judgment of

the Hon'ble Bombay High Court Bench at Aurangabad in ***Writ Petition No. 1054/2012 & Group) [DR. VINAYAK NARAYANRAO DASARE & OTHERS VS. STATE OF MAHARASHTRA AND OTHERS]*** decided on October 01, 2013 in support of his submission and prayed to quash the impugned communication and to refund the amount.

8. He has submitted that in view of the aforesaid position, it is just to declare that the communication dated 7.8.2015 directing recovery of Rs. 5,87,824/- issued by the respondent No. 2 is illegal and the recovery made thereon on the basis of the said communication is also illegal and, therefore, he prayed to direct the respondents to refund the amount recovered from the applicant.

9. Learned Presenting Officer has submitted that the applicant was working as a 'Sampler' and, therefore, the Government Resolution dated 12.3.1999 was not applicable to the 'Sampler' and it was applicable to the post of Lab. Assistant. Pay scale of Rs. 952-1400 was wrongly made applicable to the applicant and this fact has been noticed by the respondent No. 4 i.e. Pay Verification

Unit when the service book of the applicant was to be sent to the Accountant General for grant of pension. Therefore, respondent No. 2 had passed the impugned order directing recovery of an amount of Rs. 5,87,824/- from the applicant. She has submitted that the applicant has given undertaking before the respondents authorizing to recover the excess amount, if any paid to him towards salary. Therefore, on the basis of the undertaking the respondents are entitled to recover the amount. She has further submitted that the applicant had submitted applications dated 13.1.2015, 11.8.2015 and 20.11.2015 and admitted that wrong pay scale has been granted to him though he was not entitled. She has submitted that the excess amount was paid to him due to wrong pay fixation. She has submitted that by submitting those applications the applicant requested to the respondents to adjust amount of Rs. 1,97,640/- from the gratuity amount and he deposited balance amount of Rs. 3,90,184/- by cheque. She has submitted that as the applicant has tendered the amount willingly there is no illegality on the part of the respondents in recovering the said amount.

She has submitted that as the applicant tendered undertaking, he cannot claim refund of the said amount recovered from him. She has placed reliance on the judgment delivered by the Aurangabad Bench of this Tribunal in **O.A. No. 545/2012 (Namdeo Sahadu Dhadge Vs. the State of Maharashtra & Ors.) on 9th January, 2015** in support of her submission.

10. On perusal of the documents placed on record, it reveals that the applicant was appointed as Sampler and in view of the G.R. dated 11.3.1999 pay scale of Rs. 950-1400 was made applicable to him w.e.f. 1.1.1986 in view of the order passed by respondent No. 2. Accordingly, he received pay from time to time. No objection has been raised by the respondents till the year 2014. The pay scale has been fixed by respondent No. 2. There was no misrepresentation or fraud practiced by the applicant in fixation of his pay. When the applicant was on the verge of the retirement, Pay Unit noted irregularity in fixation of the pay of the applicant and found that the Government Resolution was not applicable to the applicant who was

-serving as ‘Sampler’ and it was applicable to the Lab. Attendant and, therefore, his pay has been re-fixed accordingly and the recovery has been ordered by the respondent No. 2 by communication dated 7.8.2015, 24 days’ prior to the applicant’s retirement. No doubt the applicant has deposited the amount on his own as he was in need to get the pensionary benefits at the earliest.

11. On perusal of the record, it reveals that the applicant was serving as Class-IV Government employee. He was on the verge of retirement when the impugned order was passed.

12. I have gone through the decision of Hon’ble Apex Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** (*supra*). The following guidelines issued by their Lordship are material and, therefore, the same are reproduced herein under: -

“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."

13. Considering the aforesaid guidelines given by the Hon'ble Apex Court in the above said decision, the impugned recovery order passed by the respondent No. 2 cannot be said to be legal and permissible as the recovery has been ordered when the applicant was on the verge of the retirement. The recovery has been ordered against the

applicant, who is Class-IV Government servant. Moreover, the recovery has been ordered when the excess payment has been paid to the applicant before more than 5 years, before the order of recovery is issued. In the present case, the amount of salary has been paid to the applicant w.e.f. 1.1.1986 and, therefore, the said recovery is not permissible in view of the said guidelines. It is also material to note here that the excess amount was not paid to the applicant because of misrepresentation or fraud on the part of the applicant and, therefore, on that count also the said amount cannot be recovered from the applicant.

14. The decision of the Hon'ble Bombay High Court Bench at Aurangabad in **W.P. No. 1054/2012 & Group) [DR. VINAYAK NARAYANRAO DASARE & OTHERS VS. STATE OF MAHARASHTRA AND OTHERS]** decided on **October 01, 2013** is also squarely applicable in the present case.

15. Considering the above said settled legal principles, it is just to declare that the impugned communication dated 7.8.2015 and the recovery made on the basis of the said

order as illegal. Therefore, the impugned communication dated 7.8.2015 directing recovery of an amount of Rs. 5,87,824/- issued by the respondent No. 2 required to be quashed and set aside. Consequently, the applicant is entitled to get refund of the said amount from the respondents. Therefore, the present Original Application deserves to be allowed. Therefore, I pass the following order: -

ORDER

- (i) The Original Application is allowed.
- (ii) The communication dated 7.8.2015 issued by respondent No. 2 directing the recovery amount of Rs. 5,87,824/- on account of excess payment of salary made to the applicant on account of wrong pay fixation is hereby quashed and set aside.
- (iii) The respondents are directed to refund the amount of Rs. 5,87,824/- to the applicant with interest @ 9% from the date of recovery till its realization within a period of 3 months.

There shall be no order as to costs.

MEMBER (J)