

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 711 OF 2016

DIST. : AURANGABAD.

Omprakash S/o Dhondiram Mane,
Age-58 years, Occu. Service as
Deputy Superintendent of Police,
R/o. AH-1, H-65, N-2, Thakarenagar,
CIDCO, Aurangabad.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra,
Through : Secretary,
Home Department, M.S.,
Mantralaya, Mumbai-32.
2. The Superintendent of Police,
Beed, Dist. Beed.
3. The Accounts Officer,
Pay Verification Unit,
Near Collector Officer,
Aurangabad, Dist. Aurangabad. .. RESPONDENTS.

APPEARANCE :- Shri S.D. Joshi, learned Advocate
for the Applicant.

: Shri V.R. Bhumkar, learned
Presenting Officer for the
Respondents.

**CORAM : HON'BLE SHRI J.D. KULKARNI,
MEMBER (J)**

J U D G E M E N T**[Delivered on this 20th day of December, 2016]**

1. The applicant viz. Omprakash S/o Dhondiram Mane, is directly recruited as PSI. He was so recruited in the year 1985 and was promoted as P.I. in the year 2003 and thereafter, as Dy. Superintendent of Police in January, 2016. He got retired on superannuation on 30.4.2016.

2. Respondent No. 3, Accounts Officer, Pay Verification Unit, Aurangabad, has taken objection in respect of pay fixation of the applicant, which was carried out in the year 2000 vide letter dated 22.1.2016 and on the basis of the said objection the pay of the applicant was re-fixed on 8/9.2.2016. The said re-fixation pertains to the period from 1.2.2000 to 1.7.2015. On the basis of such re-fixation an amount of Rs. 2,86,615/- has been directed to be recovered from the applicant on the ground that it was paid in excess. No show cause notice has been served on the applicant and, therefore, the applicant has filed this Original Application.

3. The applicant has claimed appropriate order or direction to that effect that the impugned communication dated 9.2.2016 as well as the order bearing Outward No. Accounts-7/Mane/Excess Payment/2016/4208, dated 25.2.2016, issued by respondent No. 2, thereby proposing recovery of an amount of Rs. 2,86,615/- be quashed and set aside.

4. The respondent No. 2 filed affidavit in reply. It is submitted that the objection was taken by the Pay Verification Unit and, therefore, the pay was re-fixed. It is stated that two departmental enquiries were pending against the applicant, but they were dropped on technical ground, but new proposals have been sent for initiating departmental enquiry against the applicant. It is stated that at the time of verification of the pay it was noticed that the applicant has been wrongly paid and, therefore, it was decided to re-fix his pay. It was also noticed that Rs. 2,86,615/- was paid in excess and, therefore, the same has to be recovered.

5. Heard Shri S.D. Joshi, learned Advocate for the applicant and Shri V.R. Bhumkar – learned Presenting Officer for the respondents. I have also perused the application, affidavit, affidavit in reply filed by the respondents and rejoinder affidavit filed by the applicant and various documents placed by the learned Advocates for the respective parties.

6. The only point is to be considered as to whether the impugned orders/ communications of so-called recovery of the amount issued by respondent No. 2 dated 9.2.2016 & 25.2.2016 are legal and proper?

7. The learned Advocate for the applicant submits that the pay fixation of order of the applicant is placed on record at Annexure 'A-1' (page-10 of the paper book), it is dated 8/9.2.2016. The said order has been passed in view of the objection taken by the Pay Verification Unit and from the said order, it seems that the applicant is alleged to have been paid excess amount since the pay fixation was wrongly done. The said period of pay fixation is from 1.2.2002 to 31.7.2015. It was also ordered that the excess

payment shall be recovered. In view of this fixation the Superintendent of Police seems to have been issued the order dated 21.1.2016 directing the recovery of Rs. 2,86,615/-.

8. The learned Advocate for the applicant submits that the applicant was never served with any show cause notice for such recovery and the entire recovery has been proposed only after retirement of the applicant.

9. The learned Advocate for the applicant has placed reliance on the judgment of Hon'ble Apex Court in the case of ***State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.*** reported in a group of cases ***Civil Appeal No.11527/2014 arising out of SLP (C) No.11684 of 2012 & ors.*** He particularly placed reliance on the paragraph No. 12, wherein directions were issued as 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."

10. The learned Presenting Officer however, submits that the said judgment is not applicable in the present case, since the applicant is a Class-I officer. He has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **HIGH COURT OF PUNJAB & HARYANA &**

ORS. VS. JAGDEV SINGH [CIVIL APPEAL NO. 3500 OF 2006], wherein it was held that :

“9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the State. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.”

11. The applicant has filed rejoinder affidavit in view of the affidavit in reply filed by the respondents and in the said rejoinder affidavit the applicant has stated that the applicant has never given any undertaking to the

respondents at the time of fixation of his pay and, therefore, the judgment relied upon by the respondents is not applicable.

12. I have gone through both the judgments i.e. the judgment of ***State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc. (supra); and HIGH COURT OF PUNJAB & HARYANA & ORS. VS. JAGDEV SINGH [CIVIL APPEAL NO. 3500 OF 2006]***. In the present case, there is nothing on record to show that the applicant has given any undertaking that he will pay excess amount, if found to be admissible on re-fixation of pay. The pay fixation period is almost covering 15 years since the pay is revised from 1.2.2000 to 31.7.2015, it includes the period when the applicant was PSI, PI etc. The applicant has already retired and the recovery is being initiated after his retirement. The pay fixation of the applicant has not been challenged and, therefore, the said re-fixation of the applicant may be correct, but that does not mean that the respondents can recover the excess amount as alleged.

13. In view thereof, I pass the following order: -

ORDER

The present Original Application is allowed in terms of prayer clause 'B' with no order as to costs.

MEMBER (J)

O.A.NO. 711-2016(hdd)-2016