

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 802 OF 2016**

**DISTRICT: - AURANGABAD.**

**Dattu S/o. Tulshiram Sable,**

Age : - 59 years, Occu: Pensioner,

R/o. Plot No. 11, New Nandanwan Colony,

Cantonment Area, Aurangabad

Tq. & Dist. Aurangabad.

**.. APPLICANT.**

**V E R S U S**

- 1) The State of Maharashtra,**  
Through its Principal Secretary  
School Education Department,  
Mantralaya, Mumbai-32.
- 2) Accountant General (A & E)-II**  
Maharashtra, Nagpur  
Post Box No. 114,  
Nagpur
- 3) The Divisional Deputy Director,  
of Education,**  
Aurangabad Division,  
Aurangabad.
- 4) The Education Officer (C.E.)**  
Zilla Parishad, Aurangabad  
Tq. & Dist. Aurangabad.
- 5) The Account Officer,**  
Pay Verification (Squad),  
Aurangabad.  
Tq. & Dist. Aurangabad.

**.. RESPONDENTS**

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**APPEARANCE :** Shri P.B. Salunke, learned Advocate  
holding for Shri V.G. Salgare, learned  
Advocate for the applicant

: Shri S.K. Shirse – learned  
Presenting Officer for the  
respondents.

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

**DATE** : **16<sup>TH</sup> MARCH, 2018.**

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### **O R A L O R D E R**

The applicant has filed the present Original Application and prayed to direct the respondent Nos. 3 and 4 to refund the amount of Rs. 1,63,839/- deducted from his pensionary benefits on account of excess payment made to him due to wrong fixation of the pay.

2. It is the contention of the applicant that he was serving as an Assistant Project Officer with respondent No. 4 viz. the Education Officer (C.E.) Zilla Parishad, Aurangabad. He retired on 30.6.2016 on attaining the age of superannuation. Thereafter, he received the pensionary benefits. It is his contention that respondent No. 5 granted amount of gratuity to the applicant by the communication dated 11.07.2016. While granting the gratuity, the respondent No. 4 directed to recover the

amount of Rs. 1,63,839 from the gratuity amount on account of overpayment made to him towards pay and allowances. Accordingly, the said amount has been recovered and balance amount has been paid to the applicant. It is contention of the applicant that he was not responsible for fixation of pay and the pay has been wrongly fixed by respondent Nos. 3 & 4 and, therefore, the said amount cannot be recovered from him. It is his contention that the recovery has been made for the period exceeding 5 years prior to the date of the order and, therefore, the same cannot be recovered. It is his contention that he was serving as a Group 'C' employee. The said amount has been recovered from his retiral benefits and, therefore, the recovery is not permissible in view of 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]***. He has submitted that the respondents are made recovery of the said amount illegally in violation of the guidelines given by the Hon'ble Apex

Court and, therefore, he prayed to direct the respondent Nos. 3 & 4 to refund the said amount to the applicant

3. Respondent Nos. 1 & 3 have filed common affidavit in reply and resisted the contentions of the applicant. It is their contention that wrong pay scale has been awarded to the applicant w.e.f. 10.10.2002 instead of 19.06.2003 and, therefore, overpayment was made to him. It is their contention that the said mistake has been noticed by the Accounts Officer, Pay Verification (Squad), Aurangabad, at the time of preparation of the pension papers of the applicant and, therefore, the pay scale of the applicant has been corrected and consequently the recovery has been ordered and accordingly the same has been recovered. It is their contention that the recovery has been made in accordance with the undertaking given by the applicant in view of the Circular dated 29<sup>th</sup> April, 2009 and, therefore, the same cannot be said to be illegal. On these counts they prayed to reject the present Original Application.

4. Respondent No. 2 has filed affidavit in reply and resisted the contentions of the applicant on the ground

that the role of this respondent in respect of pension cases is limited to scrutiny of proposals received from heads of offices of Government of Maharashtra/ Pension Sanctioning Authorities in respect of persons who retired from various State Government offices situated in Vidarbha and Marathwada regions in view of the provisions of Maharashtra Civil Services (Pension) Rules, 1982 and Government Resolutions issued from time to time. It used to scrutinize the proposal received to it as per the rules and pass the necessary sanction order. It is not authorized to grant pensionary benefits, if the proposal is not received in the prescribed format along with the requisite documents or it is found not conforming to any of the provisions of the M.C.S. (Pension) Rules, 1982. It is contended that the proposal of release of pensionary benefits to the applicant was forwarded by the respondent No. 4 by letter dated 27.5.2016. During the scrutiny of the record, it reveals that there was nothing in the service book regarding an overpayment of Rs. 1,63,839/- and, therefore, the clause has been inserted in the GPO authority to recover the overpayment towards pay

and allowances. It is contended by it that if it is found that due to any reason excess amount has been paid to the Government servant during his service then the said amount has to be recovered from his pensionary benefits and accordingly, it has passed the order. Therefore, it has prayed to reject the present O.A.

5. Respondent No. 5 has filed affidavit in reply and resisted the contentions of the applicant on the ground that the applicant was appointed on the post of Supervisor on 5.1.1982 in the pay scale of Rs. 335-680. His pay was revised in the pay scale of Rs. 1200-2040 w.e.f. 1.1.1986 as per the recommendation of the 4<sup>th</sup> Pay Commission. On 12.10.1990 the applicant was absorbed in the post of Assistant Project Officer in the pay scale of Rs. 1400-2600 (4<sup>th</sup> Pay Commission). As per the Government Notification, Finance Department dated 10<sup>th</sup> December, 1998, the applicant's pay scale was revised from existing Pay Scale of Rs. 1400-2600 (4<sup>th</sup> Pay Commission) to the pay scale of Rs. 5000-8000 as per the 5<sup>th</sup> Pay Commission and his pay was fixed at Rs. 5300 on 1.1.1996 by the

applicant's office. Thereafter the applicant's pay was wrongly re-fixed in the pay scale of Rs. 5500-9000 (5<sup>th</sup> Pay Commission) w.e.f. 1.1.1996. Because of the wrong fixation, overpayment was made to the applicant. On completion of 10 years' service on the post of Assistant Project, the applicant was granted benefit of time bound promotion scheme w.e.f. 10.10.2002 and the pay scale of Rs. 6500-10500 was granted to him. The applicant was granted exemption from passing the departmental examination on 19.6.2003 by the order dated 30.7.2005 issued by the Deputy Director of Education, Aurangabad. On the basis of office order by Education Officer (Continuation), Aurangabad dated 30.11.2015 the pay verification was done by it shows that the time bound promotion was granted to him w.e.f. 10.10.2002 and not from 19.7.2003. Therefore, the recovery of overpayment of pay was made to the applicant, as the applicant was wrongly placed in the pay scale of Rs. 5500-9000 instead of Rs. 5000-8000. It is contention of the respondents that it is the duty of the respondents to verify the pay of the applicant in the light of the Pay Fixation Rules and

Government Resolutions and to raise query to the concerned office if the pay is not fixed as per the rules. It is contention of the respondents that the overpayment was made to the applicant since 1.1.1996 because of the wrong fixation of pay scale. The applicant was working on the post of Assistant Project Officer w.e.f. 12.10.1990 and was eligible to draw pay in the pay scale of Rs. 5000-9000 (5<sup>th</sup> Pay Commission) and not in the pay scale of Rs. 5500-9000 (5<sup>th</sup> Pay Commission) from 1.1.1996. It is contended by the respondents that the said mistake has been noticed while scrutinizing the pension papers of the applicant and, therefore, the said amount has been recovered. There is no illegality in the order. Therefore, the respondent prayed to reject the Original Application.

6. I have heard Shri P.B. Salunke, learned Advocate holding for Shri V.G. Salgare, learned Advocate for the applicant and Shri S.K. Shirse – learned Presenting Officer for the respondents. 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.

7. Admittedly, the applicant was initially appointed on the post of Supervisor w.e.f. Supervisor on 5.1.1982 in the pay scale of Rs. 335-680. As per the recommendation of the 4<sup>th</sup> Pay Commission, his pay was revised in the pay scale of Rs. 1200-2040. On 12.10.1990 the applicant was absorbed in the post of Assistant Project Officer in the pay scale of Rs. 1400-2600, as per the 4<sup>th</sup> Pay Commission. Thereafter, his pay scale was revised to Rs. 5000-8000 as per the 5<sup>th</sup> Pay Commission and his pay was fixed at Rs. 5300 as on 1.1.1996, as per the Government Notification, Finance Department dated 10<sup>th</sup> December, 1998. There is no dispute about the fact that thereafter the applicant's pay was fixed in the pay scale of Rs. 5500-9000, as per the 5<sup>th</sup> Pay Commission w.e.f. 1.1.1996 by his office wrongly and because of the wrong fixation, the overpayment was made to the applicant since then. On the basis of the wrong fixation of pay scale, the applicant received excess pay and salary. At the time of

submitting the pension papers the respondent No. 5 noticed the said mistake and raised the objection and, therefore, the applicant's pay has been re-fixed in the pay scale of Rs. 5000-8000 w.e.f. 1.1.1996 and consequently it was found that overpayment of Rs. 1,63,839 was made to him because of the wrong fixation of pay scale made as on 1.1.1996. The said amount has been recovered from his pensionary benefits by the impugned order issued by the respondent No. 2. Admittedly, the applicant retired on 30.6.2016 as Assistant Project Officer. The impugned order came to be passed on 11.7.2016 after his retirement and the said amount has been recovered from his pensionary benefits. Admittedly, the post of Assistant Project officer is a Group 'C' post. Admittedly, the recovery has been made in respect of the overpayment made to the applicant towards pay and allowances w.e.f. 1996.

8. Learned Advocate for the applicant has submitted that the applicant was not responsible for the wrong fixation of pay made w.e.f. 1.1.1996. He has submitted

that respondent No. 3 had wrongly fixed his pay w.e.f. 1.1.1996 and granted pay scale of Rs. 5500-9000 instead of Rs. 5000-8000 and accordingly payment was made to the applicant. He has submitted that the applicant has not made any misrepresentation before the respondent Nos. 3 and 4 for getting the said pay scale and, therefore, he cannot be held responsible for mistake committed by respondent No. 3. He has submitted that the amount of Rs. 1,63,839/- had been recovered from the applicant from his pensionary benefits for the period in excess of 5 years. He has submitted that the applicant was belonging to Group 'C' employee and, therefore, in these circumstances the said recovery is not permissible in view of the guidelines laid down by the Hon'ble Apex Court in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.**(supra), wherein it has been observed 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."***

9. Learned Advocate for the applicant has submitted that because of the recovery made by the respondents, inconvenience and hardship has been caused to the

applicant and, therefore, the recovery, which is harsh and arbitrary, requires to be set aside by allowing the Original Application. Therefore, he prayed to allow the original application by quashing and setting aside the impugned order of recovery.

10. Learned Presenting Officer has submitted that the overpayment towards pay and allowances has been made to the applicant because of the wrong fixation of the pay scale w.e.f. 1.1.1996. He has submitted that the applicant was serving as Assistant Project Officer w.e.f. 12.10.1990. The pay admissible for the said post is Rs. 5000-8000 as per the 5<sup>th</sup> Pay Commission, but while fixing the pay, the mistake had been occurred on the part of the respondent No. 3 and his pay has been fixed in the pay scale of Rs. 5500-9000 w.e.f. 1.1.1996 and consequently, the overpayment has been made to him. He has submitted that while making the payment of arrears on the basis of revised pay scale as per 5<sup>th</sup> Pay Commission, an undertaking has been given by the applicant to deposit the amount of overpayment if any made to him due to wrong

fixation of pay. He has submitted that the applicant has given the said undertaking and, therefore, the applicant is liable to pay the said amount. He has submitted that the mistake committed while fixing the pay scale of the applicant has been noticed by the Pay Verification (Squad) i.e. respondent No. 5 at the time of verification of the pension papers. On the basis of the objection raised by the respondent No. 5, respondent No. 3 fixed revised pay of the applicant and ordered recovery of the excess payment made to him. He has submitted that on the basis of the said order, the respondent No. 2 issued the impugned order directing the recovery of the excess payment made to the applicant from the amount of gratuity and accordingly the amount has been recovered. He has submitted that there is no illegality in the impugned order. Therefore, he prayed to reject the Original Application.

11. On perusal of the record, it reveals that the respondent No. 3 on its own accord fixed the pay of the applicant as per the recommendation of the 5<sup>th</sup> Pay

Commission. Initially the respondent fixed the pay of the applicant in the pay scale of Rs. 5000-8000, but thereafter it has revised the pay scale and fixed pay of the applicant in the pay scale of Rs. 5500-9000 w.e.f. 1.1.1996. Accordingly, the pay has been disbursed to the applicant till his retirement. There is nothing on record to show that there was misrepresentation or fraud practiced by the applicant in getting the pay fixed in the pay scale of Rs. 5500-9000. Therefore, the applicant cannot be blamed for it. No role has been attributed to the applicant in wrong fixation of pay. The mistake occurred on the part of the respondent No. 3, has been noticed by respondent No. 5 while scrutinizing the pension papers of the applicant and, therefore, revised pay fixation has been made by respondent No. 3 and the amount of Rs. 1,63,839 had been recovered towards overpayment made to the applicant. The said recovery is against the guidelines laid down by the Hon'ble Apex Court in the above cited decision in the case of ***State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.*** The Hon'ble Apex Court has laid down the circumstances in which the

recovery is not permissible that too in the cases of retired employees. The present case is squarely covered by the guidelines mentioned in the above said decision. The case of the applicant is covered by the situation Nos. (i) to (iii) and, therefore, the recovery of amount of Rs. 1,63,839 made from the pensionary benefits of the applicant is illegal. Not only this, but no opportunity was given to the applicant to explain as to why the recovery has been made towards the excess payment made to him as provided under Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982. On that account also the impugned order is illegal.

12. As discussed above, the recovery made by the respondents of Rs. 1,63,839/- from the pensionary benefits of the applicant on account of overpayment made to him on account of pay and allowances is in violation of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** Therefore, it is just to direct the



respondents to refund the said amount to the applicant by allowing the original application.

13. In view of the aforesaid discussion, the present Original Application is allowed. The respondents are directed to refund the amount of Rs. 1,63,839/- to the applicant within a period of three months' from the date of this order, failing which the amount shall carry interest @ 8% p.a. from the date of this order.

14. There shall be no order as to costs.

**MEMBER (J)**

**PLACE : AURANGABAD.**

**DATE : 16<sup>TH</sup> MARCH, 2018.**

O.A.NO.802-2016(SB)-HDD-2018-recovery