

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**T.A.NO. 9 OF 2022 (W.P.NO. 8518 OF 2022)
(Subject:- Refund of Recovered Amount)**

DISTRICT:-AURANGABAD

Parmeshwar s/o Wamanrao Jawale)
Age: 59 years, Occ.: Pensioner,)
R/o. N-6 Cidco, Aurangabad,)
Tq. & Dist. Aurangabad.)

APPLICANT NO.8

Vilas S/o Baburao Khatal)
Age: 65 years, Occu.: Pensioner,)
R/o. Adhalgaon, Tq. Shrigonda,)
Dist. Ahmednagar.)

APPLICANT NO. 9

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Home Department, Mantralaya,)
Mumbai -32.)
2. **The Director General of Police,**)
Maharashtra State Police)
Directorate, Mumbai.)
3. **The Special Inspector General**)
of Police Nashik Ranga, Nashik.)
4. **The Superintendent of Police,**)
Ahmednagar.)
5. **Principal Accountant General (A & E),**)
Maharashtra Mumbai -20.)

)RESPONDENTS

APPEARANCE : Shri A.G. Ambetkar, learned counsel
for the applicants.

: Shri B.S. Deokar, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

DATE : **22.02.2024.**

O R A L - O R D E R

Heard Shri A.G. Ambekar, learned counsel for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondent authorities.

2. Initially there were total 22 applicants in this T.A. They all have a common prayer that on the ground of wrong fixation of pay the respondents have illegally and unauthorisedly recovered the amounts as is mentioned in the chart annexed with the T.A. and thus sought refund of the said amount. In the affidavit in reply submitted by the respondents it is admitted that excluding the applicant Nos. 8 and 9, other applicants at Sr. Nos. 1 to 7 and 10 to 22 are entitled for the refund and the respondents are ready to refund the amount which has been recovered from them.

3. By order dated 19.04.2023, this Tribunal has directed that the respondents shall refund the recovered

amounts to the applicants at Sr. Nos. 1 to 7 and 10 to 22 within 3 weeks from the date of the order and partly allowed the T.A.No. 10/2022 to the extent of as above. This Tribunal has further observed that applicant Nos. 8 & 9 may prosecute the O.A. further.

4. Learned counsel for the applicants submits that the applicant Nos. 1 to 7 and 10 to 22 have received the refund as agreed by the respondents and recorded by this Tribunal in the order dated 19.04.2023 as aforesaid.

5. The applicant Nos. 8 and 9 i.e. namely Parmeshwar Wamanrao Jawale and Vilas Baburao Khatal respectively were appointed in the Home Department as a Police Constable. The applicant Parmeshwar Jawale retired on 31.07.2021 as a Assistant Sub Inspector (A.S.I.) on attaining the age of superannuation whereas applicant Vilas Khatal came to be retired as a Assistant Sub Inspector (A.S.I.) on 31.05.2015 on attaining the age of superannuation.

6. Learned counsel for the applicants submits that till their retirement, both the applicants worked in the Group 'C' category and after retirement, the amount which has been paid in excess to them, recovered from their gratuity amount.

7. Learned counsel for the applicants submits that so far as other applicants are concerned, though respondent authorities took policy decision to refund their amount in the light of G.R. dated 17.03.2022, however, the present applicants were not given the said refund for the reason best known to the respondents.

8. Learned counsel for the applicants submits that in terms of the ratio laid down by the Hon'ble Apex Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer) reported in 2015 (4) SSC 334**, the recovery from the employees from their retiral benefits is impermissible under certain conditions.

9. So far as issue of filing of undertaking by the applicant Parmeshwar Jawale is concerned, learned counsel for the applicants submits that on the due drawn statement prepared after retirement, for the first time, the applicant Parmeshwar Jawale seems to have written on the said due drawn statement in his handwriting itself and the amount of Rs. 2,44,806/- has been recovered from gratuity amount. It is treated as an undertaking. However, the endorsement doesn't bear date, place, time and the name of the authority

to whom the undertaking has been given. So far as the applicant Vilas Khatal is concerned, he has admittedly not given any undertaking and the amount of Rs. 34,097/- has been recovered from the gratuity amount.

10. Learned counsel for the applicants submits that in the identical facts of the case the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad by order dated 09.11.2023 in **Writ Peittion No. 14296 of 2023** and other connected matters has held that the said undertaking will not have the same sanctity submitted after retirement as that of an undertaking executed when the payment of revised pay scale had commenced.

11. Learned Presenting Officer submits that Finance Department has given consent for refund of the recovered amount to the employees. However, the present applicants at Sr. Nos. 8 & 9 are not entitled for the refund of the said amount. Learned P.O. submits that the applicant Parmeshwar has been paid excess payment from 01.01.2006 to 01.07.2017 and as per the objection of Pay Verification Unit, Nashik, the excess payment was deducted from his retiral benefit. The application Parmeshwar Jawale has also

given his consent to recover the said amount and the said endorsement of undertaking bear his signature. The applicant Vilas Khatal has been given the excess payment from 01.07.2002 to 01.07.2014 and in terms of the objection raised by the Pay Verification Unit, Nashik the excess payment was to be deducted as per the norms and rules of 5th and 6th Pay Commission and the same is proper. Learned Presenting Officer submits that there is no substance in the Original Application and the same is liable to be dismissed.

12. Both the applicants are the retired Group 'C' employees. The applicant Parmeshwar Jawale retired on 31.07.2021 whereas the applicant Vilas Khatal retired on 31.05.2015 on attaining the age of superannuation. So far as Parmeshwar Jawale is concerned, the excess payment was given to him between 01.01.2006 to 01.07.2017 and so far as the applicant Vilas Khatal is concerned, the excess payment was given to him for the period of 01.07.2002 to 01.07.2014. It appears that the said amount has been paid in excess due to wrong pay fixation in view of benefit granted as per 5th and 6th Pay Commission.

13. It is the case of the department that the excess payment was required to be deducted as per the norms and Rules of 5th and 6th Pay Commission and it has been done accordingly. However, it appears from the documents annexed to reply more particularly Annexure –B for the applicant Parmeshwar Jawale and for applicant Vilas Khatal Annexure –B(1), the revised pay fixation was done after their retirement and the said revised pay fixation was done due to objection raised by the Pay Verification Unit.

14. In the background of the facts, the ratio laid down by the Hon'ble Apex Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer), reported in 2015 (4) SSC 334** is squarely applicable to the facts and circumstances of the present case. In the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer), (supra)**, the Hon'ble Apex Court in paragraph No. 12 has made the following observations:-

“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, summarise 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 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 employee, 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. It is thus clear that the circumstances (i) to (iii) are squarely applicable to the applicants and as such, the recovery from their retiral benefit is impermissible.

16. So far as the undertaking allegedly given by the applicant Parmeshwar Jawale is concerned, view expressed by the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in **Writ Petition No. 14296 of 2023** and other connected matters squarely applies to the facts of the present case. In paragraph Nos. 5 and 6 the Hon'ble High

Court of Bombay, Bench at Aurangabad has made the following observations:-

“5. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it is in these circumstances that an undertaking has been extracted. The learned Advocate representing the Zilla Parishad as well as the learned A.C.Ps., submit that, once an undertaking is executed, the case of the Petitioners would be covered by the law laid down by the Hon’ble Supreme Court in the case of **High Court of Punjab and Haryana and others Vs. Jagdev Singh, 2016 AIR (SCW) 3523**. Reliance is placed on the judgment delivered by this Court on 1.9.2021, in **Writ Petition No. 13262 of 2018 filed by Ananda Vikram Baviskar Vs. State of Maharashtra and others**.

6. We have referred to the law laid down by the Hon’ble Supreme Court in **High court of Punjab and Haryana and others Vs. Jagdev Singh (supra)**. The record reveals that no undertaking was taken from these Petitioners when the pay scale were revised. An undertaking from some of them was taken at the stroke of their retirement. An undertaking has to be taken from the candidate when the revised pay scale is made applicable to him and the payment of such pay scale commences. At the stroke of superannuation of the said employee, asking him to tender an undertaking, practically amounts to an afterthought on the part of the employer and a mode of compelling the candidate to execute an undertaking since they are apprehensive that their retiral benefits would not be released until such undertaking is executed. Such an undertaking will not have the same sanctity as that of an undertaking executed when the payment of revised pay scale had commenced. We, therefore, respectively concluded that the view taken in **High Court of Punjab and Haryana and others Vs. Jagdev Singh (Supra)** would not be applicable to the case of these petitioners, more so since the recovery is initiated after their superannuation.”

17. However, considering the facts of the case, the said undertaking is not given in any format not addressed to any one nor it bear date and time. It is merely an endorsement on due drawn statement which was prepared at the time of retirement or immediately after the retirement of the applicant. So far as applicant No.9 is concerned, he has admittedly not given any undertaking. Thus the said undertaking will have no importance. Thus considering the entire facts of the case, this application deserves to be allowed. Hence, the following order:-

ORDER

- (A) The T.A.No. 9 of 2022 is hereby allowed.
- (B) The respondents are hereby directed to refund the said recovered amount of Rs. 2,44,806/- to the applicant viz. Parmeshwar Wamanrao Jawale and amount of Rs. 34,097/- to the applicant viz. Vilas Baburao Khatal which is deducted from the retial benefits within three months from the date of receipt of copy of this order with interest @ 9% p.a. from the date of actual recovery till the date of refund.

- (C) In the circumstances there shall be no order as to costs.
- (D) The T.A. is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 22.02.2024

SAS T.A. 09/2022 (S.B.)Refund of Recovered Amount