

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.718/2022

DISTRICT:- NANDED

[Shankar s/o. Fulsing Pawar, died],
Through L.R. **Laxmibai Shankar Pawar**,
Age : 58 years, Occ : Household,
R/o. Fulsing Niwas, Kailas Nagar,
Nanded Road, Near Mauli Water Plant,
Dandve Colony, Bhokar, Dist. Nanded. **...APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Director General of Police,
Old Vidhan Bhanvan,
Shahid Bhagatsing Marg, Kulaba,
Mumbai-39.
- 3) The Superintendent of Police,
Nanded. **...RESPONDENTS**

APPEARANCE :Shri Kakasaheb B. Jadhav, Counsel
for Applicant.

:Smt. Sanjivani Ghate, Presenting
Officer for the respondents.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on: 13-09-2023.

O R A L O R D E R :

1. Heard Shri Kakasaheb B. Jadhav, learned
Counsel for the applicant and Smt. Sanjivani Ghate,
learned Presenting Officer appearing for the respondent
authorities.

2. Present O.A. was filed by Government servant, namely Shankar s/o. Fulsing Pawar taking exception to the recovery made from his salary as well as his Death-cum-Retirement Gratuity (DCRG) amount on the ground of excess payment made to him during the period between 01-09-2000 to 31-01-2016. The total recovery was of the amount of Rs.1,01,611/-. After filing of the present O.A., applicant Shankar Pawar died in the meanwhile period and after his death, his wife Laxmibai Shankar Pawar has prosecuted the matter further.

3. Deceased Shankar Pawar was working in the Police department of the State and retired on 30-09-2017 while working on the post of Assistant Sub Inspector (ASI). ASI is admittedly a Group-C post. As is revealing from the contentions raised in the O.A. and the documents filed on record, directions were issued by the Accountant General, Nagpur Office in the name of Superintendent of Police, Nanded (SP) vide communication dated 26-07-2017, directing recovery of the amount of Rs.46,611/- from the salary and amount of Rs.55,000/- from the amount of Death-cum-Retirement Gratuity (DCRG). The overpayment was stated to have been made during the period between

01-09-2000 to 31-01-2016. Accordingly, installments of Rs.2500/- per month were being deducted from the salary of the applicant and the remaining amount of Rs.55,000/- was recovered from the gratuity amount of the applicant.

4. After retirement, applicant has preferred the present O.A. seeking refund of the amount which was allegedly recovered from his salary and DCRG. It is the contention of the applicant that in view of the law laid down 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 [**AIR 2015 SC 696**], such recovery was impermissible. Learned Counsel for the applicant submitted that the Hon'ble Apex Court in the case of Rafiq Masih, *cited supra*, has laid down certain circumstances wherein recovery is made impermissible. Such circumstances are recorded in paragraph 12 of the said judgment. Learned Counsel submitted that the case of the applicant is covered by the circumstances which are enumerated by the Hon'ble Apex Court in the judgment cited supra.

5. Learned Counsel submitted that, admittedly, the applicant was a Group-C employee. Recovery was

directed against the applicant when he was on the verge of retirement and hardly a year was left for his retirement. Excess payment was allegedly made towards wrong fixation of pay wherein no role has been played by the applicant nor was it made due to any misrepresentation made by the applicant. Lastly, the recovery of the alleged extra payment made from the year 2000, in the year 2017 when applicant was on the verge of retirement is iniquitous as observed by the Hon'ble Apex Court. Learned Counsel in the circumstances has prayed for allowing the application and sought directions against the respondents for refund of the said amount.

6. The contentions so raised in the O.A. are opposed by the respondents. Affidavit in reply has been filed by respondent no.3. In the reply, it is contended that the applicant never raised any objection at the time when recovery was directed against him. It is further contended that monthly installments of the alleged excess amount were recovered from the salary of the applicant when he was alive and the applicant did never resist or lodge any protest in respect of the recovery so made. It has also been contended that at the time of pay verification, it was

noticed by the respondents that pay of the applicant was wrongly fixed which has resulted in excess payment to the applicant than his entitlement during the period from 01-09-2000 to 31-01-2016 and total amount which was paid in excess was stated to be Rs.1,01,611/-.

7. Learned P.O. reiterated the contentions raised in the O.A. and referring to the defense taken by the respondents in their affidavit in reply submitted that the action which was never objected to by the applicant and the order of recovery so made was accepted by him without any demur, applicant cannot be permitted to raise any objection thereafter. Learned P.O. further submitted that, the applicant has also not come out with any case contending that, his pay was rightly fixed and no recovery can be directed against him. Learned P.O. submitted that as the recovery of amount has not been disputed by the applicant, it has been established that the pay of the applicant was wrongly fixed because of which the excess amount was paid to the applicant than his entitlement. Learned P.O. submitted that a Government servant has no right to receive anything in excess of his entitlement and if it is received, he is liable to repay the said amount and

exactly the same has happened in the present matter. Learned P.O. submitted that in such circumstances, no case can be said to be made out by the applicant for accepting his request for refund of the said amount. Learned P.O. in the circumstances has prayed for dismissal of the O.A.

8. I have duly considered the submissions made on behalf of the applicant as well as the respondent authorities. It is not disputed that the recovery was directed in pursuance of the communication received from A.G. Office dated 26-07-2017. There is further no dispute that the applicant was to retire on attaining the age of superannuation thereafter i.e. on 30-09-20217. It is further not in dispute that the amount of Rs.46,611/- has been recovered from the salary of the deceased Government servant and an amount of Rs.55,000/- has been recovered from the DCRG amount. From the record, further there appears no dispute that at the time when the recovery was made the Government servant did not protest the said recovery nor preferred any representation or application making a grievance that the recovery directed was illegal, unsustainable and that the pay which was

fixed earlier was correctly fixed. The record further reveals that for the first time the deceased Government servant raised dispute about the recovery so made from his wages as well as the DCRG amount on 10-03-2021 i.e. almost after about 4 years. It is also not in dispute that some delay was occasioned on part of the applicant in approaching this Tribunal and hence separate application was filed seeking condonation of delay. It is the matter of record that said application has been allowed by the Tribunal and the applicant has been given an opportunity to prosecute the O.A. on merit.

9. Having regard to the facts as aforesaid, it has been argued by the learned P.O. that this is a case where the judgment in the case of Rafiq Masih, cited supra, would not apply. It has been further argued by the learned P.O. that for about 4 years, there was absolutely no grievance on the side of the applicant that any prejudice was caused to him because of such recovery. In the circumstances, according to the learned P.O., the recovery made from the applicant of the aforesaid amount cannot be held to be iniquitous so as to fall within the category of cases as enumerated in the case of Rafiq Masih. Learned

P.O. on these lines has prayed for dismissal of the O.A. Whereas, the learned Counsel for the applicant has vehemently argued that in view of the judgment of the Hon'ble Apex Court in the case of Rafiq Masih, the recovery has to be held impermissible. Learned Counsel pointed out that recovery has been directed by the respondents when the judgment of the Hon'ble Apex Court was very well holding the field. Learned Counsel submitted that respondents have acted contrary to the law laid down by the Hon'ble Apex Court. Learned Counsel submitted that the circumstances which are laid down by the Hon'ble Apex Court in paragraph 12 of the judgment are required to be considered for arriving at a conclusion whether the recovery was permissible or was impermissible.

10. In view of the submissions as are made by the learned Counsel for the applicant and learned P.O. for the respondents, I have again gone through the entire text of the judgment delivered by the Hon'ble Apex Court in the case of Rafiq Masih, *cited supra*. Hon'ble Apex Court has considered all the eventualities which are argued by the learned P.O. The Hon'ble Apex Court has presumed that certain benefits were wrongly received to the employee.

The issue which has been considered by the Hon'ble Apex Court in the aforesaid judgment is, in what circumstances the recovery of the said amount will be impermissible. The Hon'ble Apex Court has laid down that if the recovery is directed at the time when less than one year's period is left for retirement of the employee belonging to Class-III and Class-IV recovery shall be impermissible. Hon'ble Apex Court has further laid down that recovery from employees when the alleged excess payment is made for a period in excess of 5 years before the order of recovery is issued, the said recovery shall be impermissible.

11. In the present matter, it is not in dispute that the recovery is towards the excess payment made during the period from the year 2000 till 2016 i.e. much more than the five years limit prescribed by the Hon'ble Apex Court. Lastly, to determine whether the recovery made from the employee was iniquitous, harsh or arbitrary, the observations made by the Hon'ble Apex Court in earlier paragraphs will have to be looked into. The Hon'ble Apex Court in earlier part of its judgment has in many words observed that the recovery would be iniquitous and arbitrary if it is sought to be made after the date of

retirement or soon before the retirement. Hon'ble Apex Court has also observed that if the beneficiary is subjected to recovery of excess payment discovered after 5 years then also it would be iniquitous and arbitrary.

12. Having considered the facts and circumstances involved in the instant matter and having regard to the circumstances enumerated in paragraph 12 of the cited judgment, I have no hesitation in arriving at a conclusion that recovery was impermissible in the present matter. O.A., therefore, deserves to be allowed and is accordingly allowed with the following order:

O R D E R

[i] Respondents shall refund an amount of Rs.1,01,611/- to Smt. Laxmibai Shankar Pawar, the widow of the deceased Government employee, within 12 weeks from the date of this order.

[ii] O.A. is allowed in the aforesaid terms, however, without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 13.09.2023.