MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.937 OF 2018

DISTRICT : NANDED

Pradip Shridharrao Dahale,
Age : 58 years, Occu. : Service
98, Kailashnagar, Nanded-5.   **...APPLICANT**

V E R S U S

1)   The State of Maharashtra,
      Through Principal Secretary,
      Water Resources (Irrigation) Department,
      Mantralaya, Mumbai-32.

2)   The Superintending Engineer,
      Data Collection & Planning &
      Hydrology Circle, Nasik.

3)   The Executive Engineer,
      Hydrology Project Division,
      Aurangabad.

4)   The Accountant General (II),
      Accounts & Entitlements-I,
      Post Box No.114, GPO,
      Civil Lines, Nagpur 440 001.   **...RESPONDENTS**

APPEARANCE   : Smt. Suchita Dhongde, Advocate for the
                   Applicant.

                  : Shri M.S.Mahajan, learned Chief
                  Presenting Officer for Respondents.

CORAM   : **JUSTICE A. H. JOSHI, CHAIRMAN.**

RESERVED ON   : **26.06.2019.**

PRONOUNCED ON   : **02.07.2019.**

O R D E R

1.   Heard Smt. Suchita Dhongde learned Advocate for the applicant and Shri M.S.Mahajan learned Chief Presenting Officer for the respondents.

2.   Applicant was serving as Civil Engineering Assistant. He came to be promoted as Junior Engineer and has retired on the said post.

3.   By the impugned order, recovery of Rs.11,42,611/- is being done from the retiral benefits of the applicant.

4.   Admitted facts of the case are as follows:

(a)   Applicant's pay fixation was done in 2006 by order dated 02-08-2006.

(b)   No record is produced to show that the order of fixation of pay dated 02-08-2006 was served on the applicant.

(c)   Applicant was paid various amounts on account of pay from time to time.

(d)   Revised scale of pay paid to the applicant pertains to the period 1995 to 2010.

(e)   It is now contended by the respondents that the applicant was not entitled or legally eligible to receive the revised pay scale and benefits of Assured Career Progression Scheme which are paid to him.

(f)   Applicant has retired from service and the recovery pertains to the period which is far more than 5 years from the date of his retirement.

(g)   Some of the payments are made to him few years prior to retirement due to revised pay. However, due to cascading effect recovery accumulated over 11,00,000/-.

5.   According to the applicant he is nowhere party to the excess payment.

6.   Major excess payment pertains to his period of service after absorption as Civil Engineering Assistant.

7.   According to the applicant, his case is covered by various judgments which are based on judgment of Hon'ble Supreme Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc**. reported in [**AIR 2015 SC 696** and various judgments of this Tribunal.

8.   Applicant has placed reliance on various judgments, namely:

"(1)   Judgment of the Tribunal in O.A.No.285/2016 in the case of **Devidas V. Salgarkar V/s. The State of Maharashtra & Ors**.

(2)   Judgment of the Hon'ble High Court in W.P.No.695/2016 in the case of **Prabhakar s/o. Ramdas More & Ors. V/s. State of Maharashtra & Ors**.

(3)   Judgment of the Tribunal in O.A.No.997/2017 in the case of **Smt. Syeda Ashraf Nadima w/o. Mr. Qazi Moinuddin V/s. State of Maharashtra & Ors**."

(4)   Judgment of the Tribunal in O.A.No.186/2018 in the case of **Shri Nivrutti K. Dhavle V/s. State of Maharashtra & Ors**."

(5)   Judgment of the Hon'ble High Court in W.P.No.3037/2009 in the case of **Panjabrao Himmatrao Patil V/s. State of Maharashtra & Ors**."

9.   Respondents have raised serious contentions regarding entitlement and eligibility of the applicant to receive the said excess amount.

10.   The guidelines which govern the recovery as carved out from **Rafiq Masih's** case are recorded by this Tribunal in O.A.No.697/2017, copy whereof is at paper book page 55 to 61.

Relevant text is contained in paragraph 9 thereof, which read as follows:

> "9. In the result, it transpires that the recovery which is caused is directly hit by the ratio laid down in the judgment of Rafiq Masih's case (supra). In paragraph No.12 of the said judgment the said 6 O.A. No. 697/2017 recovery is permissible in view of clause Nos. (ii), (iii) & (v), which are quoted below for ready reference:-
>
> > "12……
> >
> > (i) ………..
> >
> > (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) ………….
> >
> > (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."

11.   It is thus evident that, applicant's case is squarely covered by the ratio as carved out from the **Rafiq Mahih's** case (supra), relevant text is quoted in foregoing paragraph.

12.   In the result, recovery subject matter will not be just and fair in view of the facts of the case.

13. Question which arises in this case is not as to eligibility but right of the Government to recover it belatedly in view of the principles and ratios laid down in **Rafiq Masih's** case.

14. In the result, on the point of equity and principles of justice O.A. succeeds. O.A. is allowed in terms of prayer clause 9(B), (D) & (F) [paper book page 8 & 9 of O.A.] which read as follows:

> "9(B) The order No.133 of 2018 dated 27.9.2018 issued by the Executive Engineer, Hydrology Project Division re-fixing the pay of the applicant to his disadvantage and consequential order of recovery dated 12.9.2018 be quashed and set aside.
>
> (D) The respondents may direct to fixed the pension of the applicant as per (last pay drawn) Rule 9(38) of The Maharashtra (Pension) Service Rule, 1982.
>
> (F) Direct the respondent authority to proceed the procedure of applicant pension case and disbursed the pensionary benefits to the applicant."

15. In the facts and circumstances of the case, parties are directed to bear their own costs.

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(A. H. JOSHI)
CHAIRMAN

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Place : Aurangabad
Date : 02.07.2019.

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