

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 181 of 2015 (S.B.)**

Ram Madhaorao Halde,  
Aged about 58 years, Occ. Retired  
from service, R/o Shivaji Nagar, Ner,  
Dist. Yavatmal.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Department of Education, Mantralaya,  
Mumbai-32.
- 2) Accountant General (A&E)-II,  
Maharashtra, Nagpur.
- 3) Education Officer (Primary),  
Zilla Parishad, Wardha.

**Respondents.**

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**Shri N.R. Saboo and Smt. K.N. Saboo, Advocates for the applicant.**

**Shri A.M. Khadatkhar, learned P.O. for the respondent nos.1&2**

**Shri P.V. Thakre, learned counsel for respondent no.3.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J)**

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**JUDGMENT**

**(Delivered on this 4<sup>th</sup> day of May,2018)**

Heard Shri N.R. Saboo, learned counsel for the applicant,  
Shri A.M. Khadatkhar, learned P.O. for respondent nos.1&2 and Shri  
P.V. Thakre, learned counsel for respondent no.3.

2. The applicant has claimed direction to respondents to  
release amount of Rs.1,25,000/- towards gratuity which has been

wrongly withheld by the respondents from his retiral benefits. So far his claim as regards revised pension is concerned, it is stated that he has already filed separate proceeding to that effect and therefore payment of arrears of revised pension will be considered in the said proceeding.

3. The applicant was appointed as Junior College Teacher in Zilla Parishad, Yavatmal on 29/07/1980. He was promoted as Block Education Officer (Class-II) vide order dated 01/01/2008 and joined on the post at Nandgaon Khandeshwar on 12/01/2008. His pay was fixed as per 6<sup>th</sup> Pay Commission. The applicant retired on superannuation in July,2014. The Accountant General vide communication dated 13/07/2014 issued the Pension Authority Letter in the name of Education Officer and informed that the amount of Rs. 2,00,000/- from the gratuity be withheld.

4. The applicant filed representations on 02/08/2014, 18/08/2014, 08/09/2014 and 17/09/2014 and requested for release of gratuity amount and finally issued the legal notice also, but for no use and therefore the applicant has filed this O.A.

5. The respondent no.3, the Education Officer (Primary), Zilla Parishad, Wardha has filed reply-affidavit. It is stated that the proposal in respect of pension of the applicant was submitted to the office of respondent no.2 and it was noticed that the applicant's pay

fixation was wrongly done after the promotion of the applicant as a Block Education Officer and therefore the respondent no.2 directed the respondent no.3 to withhold the amount of Rs.2,00,000/- from gratuity is withheld pending confirmation and scrutiny of the qualifying service in respect of increment granted. The respondent no.3 was also directed to furnish the statement regarding overpayment made w.e.f. 01/07/2008. It is stated that after re-calculation it was noticed that the amount of Rs. 1,23,579/- was over paid to the applicant. In order to avoid hardship to the applicant, the respondent no.2 directed the respondent no.3 to release amount of 75,000/- from the withheld gratuity and accordingly the same was released.

6. The respondent no.2 thereafter submitted the correct statement, i.e., revised statement vide communication dated 03/11/2015. Considering the said statement vide communication dated 18/01/2016 the amount of Rs.20,258/- was deposited in the account of applicant as per Annex-R3.3. The applicant also filed O.A.No.108/2015 for revision of his pay fixation and also filed Contempt Petition bearing no.296/2015 against the respondents and those are pending.

7. The respondent no.2, the Accountant General (A&E)-II, Maharashtra, Nagpur submitted that the statement of over payment

was incorrect and miscellaneous and therefore respondent no.3 was directed to prepare correct statement.

8. The respondent no.3 filed additional affidavit on 22/09/2016 and submitted that proper due and draw statement as per pay fixation was prepared and it was found that an amount of Rs.1,04,742/- was calculated towards over payment. The applicant has been paid amount of Rs.20,258/- as per Annex-R-3.8 and the amount of Rs.1,04,742/- has been deposited with the Government. The respondent no.3 has placed on record the receipt at P.B. page no.90 shows that that the applicant received Rs.20,258/- and another receipt i.e. copy of the Challan dated 07/01/2016 at P.B. page no.92 at Annex-R3.7 from which it seems that the amount of Rs.1,04,742/- has been deposited with the Government.

9. From the facts discussing in forgoing paras, it is clear that the so called excess amount was to be recovered from the applicant on account of excess payment made to him due to wrong pay fixation. The so called wrong fixation has been done which comprises of period from 2008 onwards. The applicant has already retired in July,2014 and the so called excess payment is for more than 5 years prior to date of his retirement. Even for argument sake, it is accepted that such excess payment was made to the applicant, the same cannot be recovered in view of the Judgment of the Hon'ble

Apex Court in case of **State of Panjab and others vs. Rafiq Masih (White Washer) [(2015) 4 SCC 334]**. As already stated the applicant has already received amount of Rs. 20,258/- and Rs.75,000/-. The applicant therefore will be entitled to claim the remaining the amount of Rs.1,04,742/- from the respondents since the said amount has been deposited with the respondents/ Government by respondent no.3 vide Challan dated 07/01/2016 at Annex-R3.7, the respondent no.1 is required to pay that amount to the applicant. So far as the claim regarding revised revision of pension and arrears that may be out of such revision is concerned, the applicant has already filed separate O.As. for that purpose. Hence, I pass the following order:-

**ORDER**

The O.A. is partly allowed. The respondent no.1 is directed to pay amount of Rs.1,04,742/- to the applicant. Such amount shall be paid within three months from the date of this order, failing which, the applicant may claim interest by filing representation to that effect as per admissible rate under the Maharashtra Civil Services (Pension) Rules,1982. No order as to costs.

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**

**Dated :- 04/05/2018.**

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