

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 41/2020 (S.B.)**

Shri Sarnath Tukaram Bhadke,  
Aged about 59 years, Occ.: Retired,  
R/o Shirish Apartment, F – 3,  
Above Pooja Computers, In front of S.B.I.,  
Tahsil Ballarpur, District Chandrapur.

**Applicant.**

**Versus**

1. The State of Maharashtra,  
through its Secretary,  
Public Health Department,  
Mantralaya, Mumbai –400 032.
  
2. District Malaria Officer,  
Division Chandrapur,  
District Chandrapur.
  
3. Assistant Accountant Officer,  
Indian Audit & Accounts Department,  
Accountant General (A& E) – II Pension Wing,  
Old Building, Post Box No.114, GPO,  
Civil Lines, Nagpur – 440 001.

**Respondents**

---

---

**Shri A.P.Chaware, Id. Advocate for the applicant.**

**Shri S.A.Sainis, Id. P.O. for the Respondents.**

---

**Coram :- Hon'ble Shri M.A.Lovekar, Member (J).**

---

**JUDGEMENT**

**Judgment is reserved on 23<sup>rd</sup> June, 2023.**

**Judgment is pronounced on 28<sup>th</sup> June, 2023.**

Heard Shri A.P.Chaware, Id. counsel for the applicant and Shri S.A.Sainis, Id. P.O. for the Respondents.

2. The applicant retired as Health Assistant on superannuation. Thereafter, by communication dated 16.10.2019 (A-1) recovery of Rs. 2,16,760/- stated to have been paid in excess, from his D.C.R.G. was ordered. It is the grievance of the applicant that the impugned recovery is bad in view of G.R. dated 19.12.2015 (A-2) and binding precedents.

3. Stand of respondent no. 2 is that excess payment was made to the applicant due to wrong fixation of pay while granting time bound promotion at the time of implementing recommendations of 6<sup>th</sup> pay commission, on 01.01.2006 and the mistake was perpetuated till 01.06.2013 which was pointed out by Pay Verification Unit. The amount to be recovered from the applicant was recalculated at Rs. 1,68,733/- by communication dated 24.12.2019 (A-R-1). Further, stand of respondent

no. 2 is that since the applicant had given an undertaking impugned recovery cannot be faulted.

4. Respondent no. 2 is relying on the undertaking given by the applicant which is at A-R-II. This undertaking was in respect of pay fixation made on 01.01.1996.

5. On the basis of above referred undertaking and following observations in Judgement of the Hon'ble Bombay High Court in W.P. No. 4919/2018 dated 23.07.2019 (A-R-III) respondent no. 2 tried to support the impugned recovery:-

*"5. So, what we have before us is an undertaking given consciously and intentionally by the respondents and the respondents would have to be held bound by this undertaking. That means in the present case, no equity whatsoever has been created in favour of the respondents while making the excess payment and as such there is no question of any hardship visiting the respondents.*

*6. The reason weighing with the Hon'ble Apex Court imposing prohibition against recovery of excess payment in Rafiq Masih (supra) was of hardship resulting from creation of awkward situation because of the mistake committed by the employer*

*and there being no fault whatsoever on the part of the employee. In order to balance the equities created in such a situation, the Hon'ble Apex Court in Rafiq Masih, gave the direction that so far as Class-III and IV employees were concerned, and who were found to be not having very sound economic footing, would have to be exempted from the consequence of recovery of the excess payment, if considerable period of time has passed by in between. But, as stated earlier, even in case of such an employee, there would be no hardship for something which has been accepted by him consciously with an understanding that it could be taken away at any point of time, if mistake is detected. Clarifying the law on the subject, the Hon'ble Apex Court, in its recent judgment rendered in the case of High Court of Punjab and Haryana and others vs. Jagdev Singh reported in 2016 AIR (SCW) 3523, in paragraph 11 it observed thus:*

*"the principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have*

*been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking”*

The applicant, on the other hand, has relied on the Judgement of the Bombay High Court dated 18.07.2017 in W.P. No. 5367/2016 (Ravindra Patil Vs. The State of Maharashtra & 4 Ors.) wherein it is held:-

*“By virtue of the order passed on 12th January 2012, recovery of alleged excess amount paid to the petitioner to the tune of Rs.1,02,554/- has been made out of the amount of gratuity. It is impermissible to direct revision of the pay-scale and recovery of amount allegedly paid in excess of the entitlement to the petitioner, who is Group 'C' employee while he was on the verge of retirement. The principle laid down by the Apex Court in the matter of State Of Punjab & Ors vs Rafiq Masih (White Washer) reported in 2015 (4) SCC 334 squarely applies to the instant matter. In the reported matter, Supreme Court has laid down the guidelines in respect of recovery of the amount from the employee and has serialised the situation whereunder it would be impermissible in law to recover the*

*amount. It is laid down by the Supreme Court that in following circumstances, it would be impermissible for the employer to recover the amount from the employee:*

*(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.*

4. *Considering the facts and circumstances of this case, we are of the opinion that the case of the petitioner is covered by clauses (i), (ii) (iii) and (v) as recorded above in the judgment of State Of Punjab & Ors vs Rafiq Masih (cited supra). The petitioner is Group 'C' employee and at the time of issuance of the order directing recovery, he was due to retire within a period of few months and that the excess amount that has been directed to be recovered, was paid to him during the period in excess of five years prior to the issuance of order of recovery.*

5. *It is contended on behalf of respondents that in the year 2009, the petitioner had given an undertaking to the effect that the excess amount paid to him could be recovered from the monthly salary payable to him.*

6. *It must be noted that the petitioner was paid alleged excess amount from 1986 onwards and the order directing recovery issued for the first time in 2003 was recalled in 2005 and the excess amount allegedly paid to the petitioner, which was directed to be recovered by virtue of order passed in 2003, was also recovered from him in the year 2006. The alleged so called undertaking recorded in the year 2009 has, in fact, no relation with the orders passed in the instant matter regarding re-*

*fixation of pay of the petitioner and the order of recovery, which was recalled in the year 2005 by the respondent. The contentions raised in the affidavit-in-reply are quite misleading and do not reflect the real facts. Reliance is also placed on the judgment delivered by the Supreme Court in the matter of High Court of Punjab and Haryana and ors. Vs. Jagdev Singh, reported in (2016) 14 SCC 267. In the reported matter, there was admittedly undertaking furnished by the Judicial Officer while opting for revised pay-scale that he would refund the excess amount paid and thus, was held bound by the undertaking. The reported matter relates to revision of the pay-scale and the option was exercised by the Judicial Officer in favour of the revised pay-scale proposed by the respondent and there was also undertaking recorded by the employee in favour of the State. In the instant matter, firstly, the distinguishing feature is that the Judicial Officer who had approached, Supreme Court cannot be said to be Group 'C' employee and as such, principle laid down in the matter of High Court of Punjab & Haryana (cited supra) is not applicable in the instant case. The instant case is squarely covered by the judgment in the matter of State of Punjab (cited*



*supra). The decision on which reliance is placed by the respondents is wholly inapplicable.*

*7. It also must be noted that recovery of the amount from the gratuity receivable by the petitioner is also illegal and impermissible."*

Above mentioned rulings relied upon by the applicant squarely apply to the facts of the case. It is not in dispute that the applicant was a Class-III/Group C employee. Hence, the O.A. deserves to be allowed. The O.A. is allowed. The impugned order dated 16.10.2019 (A-1) is quashed and set aside. No order as to costs.

**(Shri M.A.Lovekar)**  
**Member (J)**

**Dated :- 28/06/2023.**  
**aps**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 28/06/2023.  
and pronounced on

Uploaded on : 30/06/2023.