MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 66 / 2022 (S.B.)

Abhijit Pralhadrao Jichkar,
Aged about 50 years, Occ.Service,
R/o H.No.3151,Plot No. 5,
Adivasi Unnati Gruhnirman Sanstha,
Manish Nagar, Nagpur-440 015.

Applicant.

Versus

1) The State of Maharashtra,
Public Works Department,
Mantralaya, Fort, Mumbai-400 032,
Through its Secretary.

2) Senior Accounts Officer,
Office of Accountant General (A & E)-II,
Civil Lines, Nagpur, Maharashtra– 440 001.

3) Nagpur Treasury Office,
Collectorate Compound,
Civil Lines, Nagpur,
Through its Senior Treasury Officers,
Maharashtra – 440 001.

Respondents

Shri S.A.Pathak, ld. Advocate for the applicant.

Shri M.I.Khan, ld. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 08th April, 2022.

Judgment is pronounced on 07thJuly, 2022.

Heard Shri S.A.Pathak, ld. counsel for the applicant and Shri M.I.Khan, ld. P.O. for the Respondents.

2. In this application order dated 25.11.2021 (A-1) and 20.01.2022 (A-8) passed by respondent nos. 2 & 3, respectively proposing to recover from the applicant amount of pension stated to be paid in excess to him, are impugned.

3. Case of the applicant is as follows. The applicant joined the respondent no. 1 department as Assistant Engineer (Grade-II) on 08.12.2000. By order dated 31.12.2012 (A-2) he was permanently absorbed in National Highway Authority of India as Manager (Technical). By order dated 12.02.2015 (A-3) respondent no. 2 fixed his monthly pension at Rs. 12,135/- payable w.e.f. 01.01.2013. On 28.01.2021 respondent no. 2 again passed an identical order (A-4). On 27.07.2021 the respondents deposited, after deduction the amount of T.D.S., an amount of Rs. 22,69,897/- in savings bank account of the applicant towards pension and arrears (A-5). The applicant found that this amount included Dearness Allowance which he was not entitled to get (from his previous employer) since he was getting it from his present employer. After making correspondence respondent no. 3 deducted excess payment of Dearness Allowance – Rs. 11,92,573/- from the account of the applicant on 30.10.2021 (A-7). The applicant was then served with the impugned orders (A-1 & A-8). In the impugned orders it was stated that inadvertently the date of commencement of pension was mentioned as 01.01.2013 instead of 08.12.2020 because of which excess payment was made and it was required to be recovered. The recovery proposed under the impugned orders cannot be effected for the following reasons:-

"*A. Recovery of excess payment is impermissible if the payment is made on account of wrong construction of relevant order by the authority concerned without any misrepresentation by the employee.*

B. There is inordinate and unexplained delay in effecting recovery.

C. The recovery has been effected with retrospective effect.

D. Mistake/error is committed by the authorities concerned.

E. The recovery effected is in the utter disregard of principles of natural justice.

F. Non issuance of notice under Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982.

G. The principles laid down by the Hon'ble Apex Court in reported judgment between State of Punjab and Ors. Vs. Rafiq Masih (White Washer) reported in 2014 (8) SCC 883."

Hence, this application.

4. Reply of respondent no. 2 is at pages 36 to 43. According to this respondent:-

"*The office of the respondent no. 2 had received the pension proposal from the Executive Engineer, National Highway Division No. 14, Nagpur. After receipt of the above proposal, the office of the respondent no. 2 had given admissibility report on 27.05.2015 and thereby mentioned that date of admissible of pensionary benefits to the*

application from 08.12.2020 as per the Rule 67 (d) of the Maharashtra Civil Services Pension Rules, 1982. The above report is also given to the applicant.

The pension proposal was received from PSA vide letter dated 15.01.2015 and only admissibility report (pension benefits may vary based on clarification received from department) was issued on 12.02.2015 indicating pension @ Rs. 12, 135/- w.e.f. 01.01.2013 with a remark that the rule under which, pension is payable as per the Maharashtra Civil Service (Pension) Rules, 1982 may be stated in Form-6.

The pension was again resubmitted by the PSA vide letter dated 27.03.2015 indicating the Rule 67 of the Maharashtra Civil Service (Pension) Rules, 1982 as indicated in the copy of absorption order dated 31.12.2012 issued by the respondent no. 1. Hence, admissibility report was again issued on 27.05.2015, with a copy to the applicant, indicating the date of commencement w.e.f. 08.12.2020 as per the Rule 67 (D) of Maharashtra Civil Service (Pension) Rules, 1982 which, states that 'the pro-rata pension, gratuity etc. admissible in respect of the service rendered under Government would be disbursable either from the earliest date from which the Government servant could have been retired voluntarily under the rules applicable to him or from the date of absorption in the concerned organisation, whichever is later.'

On the basis of the office of the respondent no. 2 issuing admissibility report dated 27.05.2015, the sanction was received from the PSA vide letter dated 27.11.2020 for release of pensionary benefits from 08.12.2020. The office of the

respondent no. 2 while issuing authority of pensionary benefits vide letter dated 28.01.2021 had inadvertently shown the date of commencement as 01.01.2013 instead of 08.12.2020. Hence, the office of the respondent no. 2 immediately issued letter dated 25.11.2021 thereby making necessary correction in the date of commencement of pension, which was inadvertently mentioned as 01.01.2013 instead of 08.12.2020 and requested the Treasury Officer, Nagpur to adjust the excess paid pension till date from the pension and other pensionary dues."

To this reply admissibility report dated 27.05.2015 is attached (A-R-1). It specifically states the date of commencement of pension to be 08.12.2020. In his rejoinder at pages 45 to 57 the applicant has asserted that even if case of the respondents is presumed to be correct, the amount of excess payment would come to Rs. 5,22,617/- and not Rs. 15,99,941/- as mentioned in A-8 dated 20.01.2022. To support this submission the applicant has given a chart in his rejoinder which is follows:-

Date	**Amount deposited**	**Amount refunded/ sought to be refunded**	**Remarks**
27.07.2021	Rs.22,69,897/-	---	Gross amount for a period from 01.01.2013 to 31.05.2021.
30.10.2021	---	Rs. 11,92,573/- out of Rs. 22,69,897/- thus remaining amount left with applicant comes to Rs. 10,77,324/-	Amount of Rs. 11,92,573/- towards D.A. returned by the applicant out of Rs. 22,69,897/- on 30.10.2021.
20.01.2022	---	Rs.15,99,941/-	Alleged excess amount of refund sought by the respondent no. 3.
Total	**Rs.22,69,897/-**	**Rs.27,92,514/-**	**Rs.5,22,617/-** Additional amount sought to be refunded which is not deposited in the account of applicant.

5. Additional reply of respondent no. 2 is at pages 60 to 65. According to the respondent no. 2:-

> "*The applicant has suppressed various material facts in present original application and hence, the present application is hit by rule of suppressio very suggestio falsi and as such is liable to be rejected.*
>
> *Admissibility report is not an authorization but communication of admissible pensionary benefits to the pension sanctioning authority and the pensioner. As such, copy of the admissibility report is not endorsed to the Treasury officer concerned. The pensionary benefits are subsequently authorized on receipt of compliance/documents called for from the PSA, which is always subject to change after receipt of clarification from the PSA. Third Report dated 28.01.2021 mentioned by the applicant is not an admissibility report but authorization of pensionary benefits.*
>
> *Copy of Government order dated 31.12.2012, which clearly states as retirement under Rule 67, hence 2nd admissibility report was issued on 27.05.2015 showing date of commencement of pension as 08.12.2020 intimating provisions of Rule 67 (D) of M.C.S. (Pension) Rules, 1982. As the applicant was to complete 20 years of qualifying service required for voluntary retirement on 07.12.2021, pensionary benefits were admissible from 08.12.2020.*
>
> *On receipt of correction letter dated 25.11.2021 issued by this office, Treasury Officer has correctly asked the pensioner to remit the excess paid pensionary benefits to the*

Government. However, action as regards effecting recovery from pension as per provisions of Rule 134A of M.C.S. (Pension) Rules, 1982 is taken at the level of Treasury Officer/ PSA concerned."

6. Reply of respondent no. 3 is at pages 66 to 74. According to this respondents –

"*The office of the respondents have verified the pension case of the applicant and has found that, the amount of Rs. 15,99,941/- has been issued in excess instead of considering the date of retirement as on 31.12.2012, the payment of Rs. 15,98,063/- has been paid in excess for the period 01.01.2013 to 07.12.2020 of Rs. 15,98,063/- for the period 01.01.2013 to 07.12.2020 and Rs. 1,878/- for the period 01.01.2013 to 06.01.2013 of Rs. 1,878/- comes to Rs. 15,99,941/-, accordingly Senior Accounts Officer has issued the communication to the Treasury Officer, Nagpur on 25.11.2021.*

The approach on the part of the applicant is malafide, he has not approached this Hon'ble Tribunal with clean hands and thus the attitude of the applicant disentitles him for claim or any relief at the hands of this Hon'ble Court. The payment made to the applicant in excess is public money and being a custodian of the public money, the action taken on the part of the respondent is just, legal and proper."

To this reply respondent no. 3 has attached, at A-R-3-4, the following undertaking given by the applicant on 20.02.2021:-

हमीपत्र

मी प्रमाणित करतो की श्री अभिजीत प्रल्हादराव जिचकार पी.पी.ओक्र. ११२१०१०२७५२२६ कॅनरा बॅंक, गांधीनगर, नागपूर बॅंकेचे नांव खाते क्रमांक ०२६५११०००००० भविष्यात कोणतीही शासकीय वसुली व निवृत्ती येतनाची अतिप्रदान रक्कम झाल्यांस निवृत्ती वेतनातून कपात करण्यात माझी हरकत नाही सबब हमीपत्र देत आहे.

7. In additional rejoinder (at pages 80 to 95) the applicant has avert:-

"5. The justification given in para no. 6 of the affidavit submitted by the respondent no. 3 in itself is confusing and not at all justifying as to how an amount of Rs. 15,99,941/- stands recoverable from the applicant when after 1st recovery, with the initiative of the applicant himself, an amount of Rs. 11,92,573/- out of total deposited amount of Rs. 22,69,897/- was already recovered on 30.10.2021 thereby leaving only 10,77,324/- in the account of the applicant. Moreover, since the first payment of Rs. 22,69,897/- was made on 27.07.2021 it is evident that the pension for a period upto June, 2021 has been calculated by the respondent no. 3. Thus, this amount also includes pension for a period from 08.12.2020 to 30.06.2021 which is estimated to be Rs. 2,11,266/- @ Rs. 31,187/- per month for 6 months 24 days. It is amply clear from the submissions of applicant that the amount available in the account of applicant is only Rs. 8,66,058/- (Rs. 10,77,324/- - (minus) Rs. 2,11,266/-). A copy of bank statement for a period from June, 2021 to March, 2022 is enclosed herewith and marked as Annexure No. A-9."

It is further averred:-

"*The provisions of Rule 67(D) of the Maharashtra Civil Services Rules, 1982 deal with the word "disbursable" and not the "date of commencement of pension" which has been used by the respondent no. 2 in its reply for their own convenience. The intention of the legislature is absolutely clear in introducing the aforesaid provision for the purposes of reckoning the date of disbursement only. There is no wording of "commencement of pension" in the entire provision, thus the respondents are completely misinterpreting provisions of Rule 67(D) of the Maharashtra Civil Services Rules, 1982 as per their own convenience and with a view to effect recovery from the applicant under the misinterpretation of the aforesaid rule. "*

To decide this point reference to Rules 66 & 67 of the Maharashtra Civil Services (Pension) Rules, 1982 would be necessary. These Rules read as under:-

"***66. Retirement on completion of 20 years qualifying service***

(1) At any time after a Government servant has completed twenty years qualifying service, he may, by giving notice of [ ] three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of

the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period

(3) [ ]

Provided that the total qualifying service after allowing the increase under this sub-rule , shall not exceed the qualifying service which the Government servant would have had, if he had retired voluntarily at the lowest age limit for voluntary retirement prescribed under sub-rule (5) of rule 10.

(4)(a) [A Government servant referred to in sub-rule (I) may make a] request in writing the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefore;

(b) On receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority, with the concurrence of the Finance Department, may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(5) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(6) The pension and [retirement gratuity] of the Government servant retiring under this rule shall be based on the pay as defined under rules 60 and 61 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(7) This rule shall not apply to a Government servant who-

(a) retires when he is declared surplus

(b) retires from Government service for being absorbed permanently in an Autonomous Body or a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement.

Explanation- For the purpose of this rule the expression "Appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement.

[66A- Addition to qualifying service on voluntary retirement-

(1) The qualifying service as on the date of intended retirement of a Government servant retiring under sub-rule (5) of rule 10, clause (a) of the proviso to sub-rule (1) of rule 65 or, as the case may be, sub-rule (I) of rule 66 shall be increased by a

period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty-three years and it does not take him beyond the date of Superannuation.

(2) The weightage of five years under sub-rule (1) shall not be admissible in cases of those Government servants who are prematurely retired by the Government in the public interest under sub-rule (4) of rule 10 or, as the case may be, clause (b) of the proviso to sub-rule (1) of rule 65].

67. ***Pension on absorption in or under a Corporation, Autonomous Body or a Local Authority***

A permanent Government servant who while on deputation is permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Government or an Autonomous Body or a Local Authority shall, if such absorption is declared by the Government to be in the public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected from the date from which the pro-rata pension, gratuity, etc, would be disbursable as under :-

(a) The pro-rata pension and [retirement gratuity] shall be based on the length of his qualifying service under Government till the date of absorption. The pension will be calculated on the basis of pensionable pay for ten months preceding the date of

absorption and the [retirement gratuity] on the basis of the pay immediately before absorption.

(b) In cases where a Government servant at the time of absorption has less than 10 years service and is not entitled to pension; he will only be eligible for proportionate service gratuity in lieu of pension and to [retirement gratuity] based on length of service.

(c) The amount of pension/gratuity and the [retirement gratuity] would be concurrently worked out and will be intimated to the Government servant as well as to the concerned organization as and when the Government servant is absorbed.

(d) The pro-rata pension, gratuity, etc;, admissible in respect of the service rendered under Government would be disbursable either from the earliest date from which the Government servant could have been retired voluntarily under the rules applicable to him or from the date of absorption in the concerned organization, whichever is later.

(e) Every Government servant will exercise an option, within six months of his absorption for either of the alternatives indicated below:-

(i) receiving the monthly pension and [retirement gratuity] already worked out, under (a) above.

(ii) receiving the [retirement gratuity] and a lump sum amount in lieu of pension worked out with reference to

commutation tables obtaining on the date from which the pro-rata pension, gratuity, etc., would be disbursable.

Where no option is exercised within the prescribed period, the Government servant will automatically be governed by alternative (ii) above. Option once exercised shall be final. The option shall be exercised in writing and communicated by the Government servant concerned to the concerned Undertaking, Department and Audit.

(f)Where a Government servant elects alternative (e) (ii),he shall, in addition to the [retirement gratuity] be granted-

(i) on an application made in this behalf, a lump sum amount not exceeding the commuted value of one-third of his pension as may be admissible to him in accordance with the provisions of Chapter III of the Maharashtra Civil Services (Commutation of Pension) Rules, [1984] and

(ii) terminal benefits equal to the commuted value of the balance amount of pension left after commuting one-third of pension referred to in clause (i) in accordance with provisions of Chapter IV of the Maharashtra Civil Services (Commutation of Pension) Rules, [1984] subject to the condition that the Government servant surrenders his right of drawing two-third of his pension.

(g)Notwithstanding anything contained in (f) above, where any lump sum amount in addition to the [retirement gratuity] had been paid at any time between the period commencing on 28th April 1981 and ending with the commencement of these

rules, to any Government servant who had elected the alternative of receiving the [retirement gratuity] and a lump sum amount in lieu of pension, such payment shall be deemed to have been made in accordance with this clause if the requirements of this rule have been satisfied.

(h)The total gratuity admissible in respect of service rendered under the Government and that under the concerned organization should not exceed the amount that would have been admissible had the Government servant continued in Government service and retired on the same pay which he drew on retirement from the concerned organization.

(i) (i) The benefit of Family Pension, 1964 will be admissible only to the families of those who were/are actually in receipt of pension from the State Government, after their absorption in the organization referred to in this rule. This benefit will not be admissible to the families of those who got only the service gratuity. Family Pensions will, however, also be admissible to the families of those Government servants absorbed in the organizations referred to in this rule, who draw the lump sum amount in lieu of monthly pension on their absorption on the date of its becoming due and thus do not draw any monthly pension on the date of death. Similarly, Family Pension will also be payable to the families of those whose monthly pension or lump sum amount has not become payable and is disbursable from the earliest date of voluntary retirement but the person dies before that date without receiving these benefits.

(ii) Family Pension will be admissible from only one source either from the State Government or the organization referred to in this rule in case such organization has a similar scheme for payment of Family Pension. The beneficiary may be given option to choose either of the two schemes.

(iii) Grant of Family Pension, 1964, will be subject to other conditions specified in rule 116;

(j) Any further liberalization of pension rules decided upon by Government after the permanent absorption of a Government servant in a concerned organization would not be extended to him.

(k) In cases where the Government servant has opted to receive pension as at (e) (i) above but wishes to commute a portion of the pension, such commutation will be regulated in accordance with the Government rules in force at the time of his absorption/voluntary retirement."

8. The applicant has relied on the following Rulings:-

1. **Bhagwan Shukla Vs. Union of India and Ors., AIR 1994 SC 2480.** In this case pay fixation was wrongly made. It was stated that this was due to administrative lapses. By rectifying the mistake excess payment was sought to be recovered after 20 years. It was held that such recovery could not be effected without giving an opportunity of hearing.

2. **T.S.Thiruvengadam Vs. Secretary To Government Of India** (1993) 2 SCC 174. In this case it is held that

under rule 37 of Central Civil Services (Pension) Rules, 1972, a Government Servant who has been permitted to be absorbed in service in a Central Government Public undertaking shall be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits in accordance with the orders of the Government applicable to him. In this case one of the operative features was that the pro rata pension, gratuity, etc. admissible in respect of the service rendered under the Government was disbursable only from the date the Government servant would have normally superannuated had he continued in service.

3. Shyam Babu Verma & Ors. Vs. Union of India & Ors. (1994) 2 SCC 521. In this case higher scale erroneously given was reduced after 11 years and recovery was effected. It was held that it was not the fault of the applicants and hence it would only be just and proper not to recover any excess amount already paid to them.

4. Sahib Ram Vs. State of Haryana and Ors. 1995 Supp (1) SCC 18. In this case excess payment was attributable to wrong construction of relevant order by the authority concerned. There were no misrepresentations by the employee. It was held that no recovery could be effected in these facts.

5. Nand Kishore Sharma & Ors. Vs. State of Bihar & Ors. 1995 Supp (3) SCC 722. In this case pay scale was revised without Government sanction. However, payment was accordingly made as a result of the recommendation of

Anomaly Committee with which the Finance Department had concurred. It was held that under such circumstances excess payment could not be recovered.

6. M.C.Dhingra Vs. Union of India & Ors. (1996) 7 SCC 564. In this case the appellant retired on 01.02.1973. On 31.03.1982 the Government took a decision to tag previous service on temporary basis for computation of pension. It was held that the appellant was also entitled to these benefits though he had retired earlier since the cut off date for giving the benefit was fixed arbitrarily.

7. State of Karnataka & Another Vs. Mangalore University Non-Teaching Employees Association & Ors. (2002) 3 SCC 302. In this case it is held that conditions of service may be altered unilaterally in conformity with legal and constitutional provisions. However, on facts it was held:-

"*Though the above discussion merits the dismissal of the writ petitions and the denial of relief to the respondents, we are of the view that on the special facts of this case, the employees of the University have to be protected against the move to recover the excess payments upto 31.03.1997. When the employees concerned drew the allowances on the basis of financial sanction accorded by the competent authority i.e. the Government and they incurred additional expenditure towards house rent, the employees should not be penalized for no fault of theirs. It would be totally unjust to recover the amounts paid between 01.04.1994 and the date of issuance of GO No. 42 dated 13.02.1996. Even thereafter, it took considerable time to implement the GO. It is only after 05.03.1997 the Government*

acted further to implement the decision taken a year earlier. Final orders regarding recovery were passed on 25.03.1997, as already noticed. The Vice Chancellor of the university also made out a strong case for waiver of recovery up to 31.03.1997. That means, the payments continued up to March 1997 despite the decision taken in principle. In these circumstances, we direct that no recovery shall be effected from any of the university employees who were compelled to take rental accommodation in Mangalore city limits for want of accommodation in the university campus up to 31.03.1997. The amounts paid thereafter can be recovered in instalments. As regards the future entitlement, it is left to the Government to take appropriate decision, as we already indicated above. Subject to the above direction and observation, the appeals are allowed. No costs."

8. Syed Abdul Qadir & Ors. & Vs. State of Bihar & Ors. (2009) 3 SCC 475. In this case it is held:-

"*57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.*

58. *The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the*

hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, ShyamBabuVerma vs. Union of India, Union of India vs. M. Bhaskar, V. Ganga Ram vs. Regional Jt., Director, Col. B.J. Akkara [Retd.] vs. Government of India,PurshottamLal Das & Ors., vs. State of Bihar, Punjab National Bank Vs. Manjeet Singh and Bihar State Electricity Board Vs. BijayBahadur."

9. State of Bihar & Ors. Vs. Pandey Jagdishwar Prasad (2009) 3 SCC 117. In this case, on facts, it was held:-

"*Accordingly, we are in agreement with the Division Bench decision that since the respondent was allowed to work and was paid salary for his work during the period of two years after his actual date of retirement without raising any objection whatsoever, no deduction could be made for that period from the retiral dues of the respondent.* **"**

10. State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. (2015) 4 SCC 334. In this case it is held:-

"*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 hereinabove, 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."

11. **Koyala Udyog Kamgar Sanghatan, Nagpur Vs. Central Mine Planning and Design Institute Ltd. & Ors. 2007 (4) Mh.L.J. 766.** In this case the issue was as follows:-

"*1. The challenge in both these* ***Writ Petitions*** *filed under Article 226 of Constitution of India is to the action of*

Respondents/Employer of effecting the recovery of amount of H.R.A. i.e. house rent allowance allegedly paid in excess to Petitioners/Employees. Said recovery is on the ground that revised provision and formula for payment of H.R.A. evolved as per National Coal Wage Agreement VI, hereinafter referred to as NCWA-VI has been implemented with effect from 1/6/2001 and therefore payment of H.R.A. in accordance with NCWA-V from 1/7/1996 till 31/5/2001 on revised basic salary i.e. as revised by NCWA-VI was illegal and unwarranted. Petitioners have prayed for quashing & setting aside of the order as contained in fax message dated 5/3/2003 ordering its recovery. W. P. 2103/2003 is filed by ten individuals. There is also prayer to refund the amount if recovered with interest @ 18% per annum in W. P. 2190/2003. Petitioner therein is a trade union registered under the provisions of Trade Unions Act, 1926. In both these matters while issuing "Rule", interim relief has been refused. It is admitted position that thereafter Respondents have completed recovery of alleged excess amount of H.R.A. received by Petitioners. It is also admitted position that payment of H.R.A. as revised by NCWAVI was sanctioned to Petitioners on 14/06/2001 with effect from 1/6/2001. New facts were disclosed by Respondents during final hearing & hence, Petitioners filed Civil Application 4090/2007 and 4140/2007 in respective WritPetitions for amendment and in reply thereto, Respondents have pointed out another decision dated 17/5/2004 by which said date "1/6/2001" is replaced by date "1/7/1999". Thus the period for which recovery is in dispute now stands curtailed and the same is from 1/7/1996 to 30/6/1999."

The issue framed as above was answered in the negative and recovery was quashed.

12. **Vishnu Manerikar Vs. State of Goa & Ors. 2012 (4) Mh.L.J. 443.** In this case the amount paid in excess was sought to be recovered after 12 years, and that to, without giving an opportunity of hearing. It was held to be paid.

13. **Arun Ambadasji Chawade Wardha Vs. Chief General Manager, Bharat Shanchar Nigam Ltd. & Ors.in W.P. No. 1662 of 2013.** In this case the Bombay High Court relied on *Syed Abdul Qadir (supra)* and held recovery of excess payment to be impermissible since it was not on account of any misrepresentation or the fault on the part of the petitioner.

14. **Dr. Nivruti S/o Baliram Kalyan Vs. State of Maharashtra & 6 Ors. in W.P. No. 11228 of 2015.** In this case by relying on *Rafiq Masih (supra)* recovery of excess payment on account of wrong fixation was held to be bad.

15. **Ujwala Wd/o Rupchand Thakre (Smt.) Nagpur Vs. Divisional Controller, Maharashtra State Road Transport Corporation, Nagpur & Another 2016 II CLR 607.** In this case, by relying on *Rafiq Masih (supra)* and facts, recovery for overpayment from employee who was not guilty of misrepresentation was held to be unsustainable.

16. **Issak Abbas Hawaldar Vs. The Block Education Officer, Panchayat Samiti, Hatkanangale 2017 SCC Online Bombay 9687 : (2018) 3 BOM CR 197.** In this case the question formulated for determination was as follows:-

"3. The question that arises for consideration in this writ is, "whether overpayment of amount due to wrong fixation of petitioner – teacher's pay scale, based on Sixth Pay report could be recovered after retirement from his terminal benefits?

By relying on Rafiq Masih & Syed Abdul Qadir and by distinguishing Chandi Prasad Uniyal Vs. State of Uttarakhand, reported in (2012) 8 SCC 417, in the light of facts of the case the question was answered to be negative.

17. **Qamrunnisha Mohammed Hashim Vs. The Municipal Corporation of Greater Mumbai & Ors. 2017 SCC Online Bom 9836.** In this case reliance was placed on Rafiq Masih (supra) to hold that recovery of payment made in excess could not be effected.

18. **Smt. Jayshree Trimbak Takalkar Vs. The Chief Executive Officer, Zilla Parishad, Aurangabad & Another 2017 SCC Online Bom 9420.** In this case it is held :-

"13. The recovery by the employers were held to be impermissible in law in situations those have been enumerated in paragraph No.18 of Rafiq Masih's case (Supra). The case of the petitioners squarely falls within clause (i), (ii), (iii) and (v) of para No.18 of the said case.

14. Further in Shyam Babu Verma and Ors. v/s. Union of India reported in (1994) 2 SCC 521, the Hon'ble Supreme Court has held that since the petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them.

15. Even in the case of Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors., (supra) though it has been held that, the recovery can be ordered; but the Apex Court accepted that such recovery is barring few exceptions. It has been observed as follows ;

> *"16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over- payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.*

16. Therefore, it cannot be said that any contrary view was taken by the Apex Court. In paragraph No.14, the Apex Court has taken a note of the directions given in 2009 (3) Supreme Court Cases 475 i.e. Syed Abdul Qadir's case. When the interim order was passed by this Court (Nagpur Bench) in Writ Petition No. 2258 of 1993 and the Government Resolution regarding fixation of pay was issued; the Government has given a further pay scale in pursuance to the said order. Though in the said writ petition it has been held that, the demand of treating Lady Health Visitor (L.H.V.)/ Health Assistant (Female) as equivalent to Nurse Midwife is misconceived and cannot be sustained, and therefore, the orders dated 7th April 1993 and 9th July 1993 rectifying the error committed by the Zilla Parishad earlier were held to be sustainable. However it is to be noted that, no order as regards recovery was passed. Though the Government was aware about granting of further pay scale in view of interim order, no prayer was made in that petition by the Government in respect of recovery. A similar situation arose in the case in Writ Petition No.6919 of 2012 before this Court; wherein the basis for effecting recovery was stated to be a decision rendered by the Division Bench of this Court in Writ Petition No.2750 of 1990 decided on 21-06-2009. In the said case it was observed that, the Division Bench in that proceeding had not directed or in any way suggested to the respondents to take steps for recovering the amount or revise the pay of the employees extended in the year 1984. Therefore, it was held that, the case of the petitioner squarely falls within the exceptions carved out in the matter of Syed Abdul Qadir. Here also the case of the

petitioners is well within the exceptions carved out in the matter of Syed Abdul Qadir.

17. The petitioner's case is based on the equal footing of the other matters which have been cited by the learned counsel for the petitioners. The case cited by the respondents bearing Civil Appeal No.3500 of 2006 by Apex Court in High Court Punjab and Haryana and others Vs. Jagdev Singh, is based on different facts, the petitioner therein was a Class-I employee (Civil Judge, Junior Division) and then was promoted as Additional Civil Judge, therefore definitely he was not within the exceptions. Further though in that case as well as in the present case, an undertaking was given by the petitioners yet the undertaking given by the present petitioners was subject to the legal proposition that has been laid down in Rafiq Masih's case. This was the exact view taken in Writ Petition No.6191 of 2016 by this Court when the petitioner therein was also not found to be a Class -III or Class -IV employee, therefore the view taken in those cases cannot be made applicable to the present case.

18. Taking into consideration the above discussion, definitely the step taken by the respondents for re-fixation of the pay-scale of the petitioners after about 13 years or more without hearing petitioners and thereafter recovery and actually deducting it from the gratuity cannot be upheld. As per the procedure laid down in Rule 134 (a) of the Maharashtra Civil Service (Pension) Rules 1982, opportunity ought to have been given to the petitioners herein, and therefore, now we would be inclined to give an opportunity to the respondents to re-fix

the pay of the petitioners after giving them an opportunity. This is a fit case where the writ jurisdiction of this Court under Article 226 and 227 deserves to be invoked. For the aforesaid reasons writ petitions deserve to be allowed."

19. **Dharmpal Bhimdeo Marchande & 8 Ors. Vs. State of Maharashtra & Ors 2018 SCC Online Bom 1029.** In this case reliance was placed on Rafiq Masih (supra) and case of Jagdev Singh was distinguished by observing as follows:-

"The reliance placed by Shri Dighe on the Judgment of the Hon'ble Apex Court in the case of High Court of Punjab and Haryana Vs. Jagdev Singh (Supra) cannot be made applicable to the present facts of the case. In that case an undertaking was given by the officer in question while opting for the revised pay scale and the Hon'ble Apex Court has held that he was bound by the said undertaking. As far as the present case is concerned, though the respondent would harp that the petitioners have also signed and given undertaking to the effect that if on account of the wrong pay fixation disparity is noticed in the future point of time in pay fixation the same amount in excess would be paid, the same amount would be liable to be recovered from the benefits payable to the petitioner. This undertaking was obtained by all the Government servants in terms of Annexure-II appended to the government resolution dated 29.04.2009 by which the pay revision was recommended in pursuance of the recommendations of the sixth pay commission. However, the said undertaking would not bind the petitioner where the respondents have wrongly applied criteria of eligibility

prescribed in government resolution dated 03.04.2003, which is in fact not applicable to them."

20. **Grace George Pampoorickal Vs. Municipal Corporation of Gr. Mumbai & Ors., 2018 SCC Online Bom 1037.** In this case reliance is placed on Rafiq Masih and Syed Abdul Qadir to hold that recovery of excess payment on account of wrong pay fixation was not permissible.

21. **Union of India & Ors. Vs. Nabilal S. Saheb, 2018 SCC Online Bom 1904.** In this case it is held:-

"*9] Even if the petitioners were to make out some case for reduction of pension from Rs.6750 to Rs.6150, there was absolutely no case made out for ordering recovery of the so called excess payment. The petitioners in quite high handed manner proceeded to recover such amounts from the retiral benefits due and payable to the respondent, notwithstanding the position of law made clear by the Hon'ble Supreme Court in State of Punjab and ors. vs. RafiqMasih (White Washer) and ors. (2015) 4 SCC Such recovery indeed smacks of insensitivity, not to mention illegality. Now that the CAT has held that there was no good ground to even order the reduction of pension, recovery effected by the petitioners can certainly not be sustained. Even though, there was no interim relief in this matter, the petitioners, unconcerned with the advanced age of the respondent, failed to comply with the directions in the impugned judgment and order.*"

22. M.P.Sreedharan Vs. Union of India and Ors., 2018 SCC Online Bom 1949. In this case it is held:-

"*Merely, because the petitioner may have made a representation for grant of such benefit does not lead to inference that the petitioner has played any fraud or misrepresented any facts. There was not a single fact, which could be said to have been misrepresented by the petitioner. The petitioner on the basis of existing executive instructions dealing with the issue of MACPS represented to the appropriate authorities for grant of such benefits from the year 2009. The representation found favour with the respondents and therefore, the respondents awarded such benefit to the petitioner from the year 2009 itself. Merely, because the respondents, at a later point of time realized that such benefit was payable to the petitioner from the year 2012 and not the year 2009, it cannot be said that the respondents have some unqualified right to recover so called alleged excess payments and that too, without even minimum compliance with principles of natural justice and fair play. The issue as to whether the benefit was mistakenly availed by the petitioner from the year 2009 is also, an issue which is quite debatable. However, even if it is assumed that there was some mistake involved in the matter, that by itself, is not sufficient to order recoveries and that too, without minimum compliance with the principles of natural justice and fair play.*"

23. Union of India & Ors. Vs. Ramsing D. Jadhav, 2018 SCC Online Bom 2464. In this case it is held:-

"*9] Finally, we are of the opinion that the recovery sought to be made by the petitioners was contrary to the principles laid down by the Hon'ble Supreme Court in case*

State of Punjab and ors vs. RafiqMasih (White Washer) and ors. - (2015) 4 SCC 334. In this case, the Hon'ble Supreme Court has given instances of hardship which would govern the employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. There is no clarity as to whether the respondent belongs to Class -III or Class-IV service. There is also no clarity as to whether the order of recovery was made when respondent was due to retire within one year, of the order of recovery. However, from the facts in the present case, it is clear that the recovery relates to alleged excess payments made for a period in excess of five years, before the order of recovery was issued. Further, the recovery relates to the case where the respondent was 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. In the present case, the petitioners themselves appointed the respondent to work as IRM. The respondent has actually worked as IRM and the additional payment is paid for discharging such duties as IRM."

24. Mohan Motiramani & Ors. Vs. Union of India & Ors. 2018 SCC Online Bom 2472. In this case it is held:-

"*10] However, insofar as the issue of recovery is concerned, we agree with the contention of learned counsel for the petitioners that this is not a case of over payment or in any case, this is not a matter where the so called over payment is relatable to any fraud or misrepresentation on the part of the petitioners. Taking into consideration the posts held by the*

petitioners, we apply the principles laid down by the Hon'ble Supreme Court in case of State of Punjab and ors vs. RafiqMasih (White Washer) and ors. - (2015) 4 SCC 334 and restrain the respondents from recovering any amounts already paid to the petitioners in pursuance of the seniority position prior to its revision."

25. Government of Maharashtra & Ors. Vs. Shri Vilas N. Patil, 2018 SCC Online Bom 7332. In this case it is held:-

"*5. The record indicates that benefit of TBPS scheme was granted to the respondent way back in the year 1994. At the stage when, the respondent was on the verge of retirement, based upon the tentative objections raised by AGP, some time in the year 2013, it was really not open to the petitioners to conclude that there was some mistake and as a consequence, the respondent had received additional benefit of Rs. 85,545/-. Secondly, the MAT has taken note of cases of other employees placed in identical positions, where, no such correction, so to say, was sought to be effected. Thirdly, the MAT has quite correctly, relied upon the ruling of the Hon'ble Supreme Court in State of Punjab Vs. Rafiq Masih (White Washer), (2015) 4 SCC 334, to hold that it would be extremely iniquitous to permit any recoveries at the stage, where the respondent had already retired from the service or was on the verge of retirement from service. The petitioners have not only violated the principles of natural justice and fair play, but also, their action is contrary to the principles laid down by the Hon'ble Supreme Court in the case of Rafiq Masih (supra).*"

26. Dudhale Ramdas Krushna Vs. Administrative Officer and Another, 2018 SCC Online Bom 14034. In this case order of ad-interim relief was passed in view of 'Rafiq Masih' (supra) prohibiting recovery.

27. Smt. Nilam Shripad Naik Vs. State of Maharashtra and 2 Ors. In this case it is held :-

"*Having regard to the attendant facts, especially the absence of the undertaking qua the particular fixation of pay, in the non-functional pay scale, w.e.f. 04th February, 2006 even the applicability of the proposition (ii), in the case of Rafiq Masih (supra), cannot be eschewed from consideration. Proposition (iii) is also attracted as the excess payment was made from July, 2010 onwards. Thus, the said excess payment continued for more than five years. In the peculiar facts of the case, as the recovery in question operated rather harshly upon the petitioner in the backdrop of the expenses which the petitioner was required to incur for the treatment of her husband, proposition (v) is also attracted.***"**

28. **Devidas Vs. State of Maharashtra & Ors., 2021 SCC Online Bom 313: (2021) 2 Bom CR 856: (2021) 5 Mah LJ 400.** In this case the petitioner was a Class-III employee. Hence, by relying on Clause (i) in the case of Rafiq Masih (supra) recovery was held to be bad.

29. **Thomas Daniel Vs. State of Kerala & Ors. Civil Appeal No. 7115 of 2010.** In this case it was held:-

"*(14) Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation*

or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

(15) Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified."

9. Respondents, on the other hand, have relied on the following rulings:-

1. **High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh, (2016) 14 SCC 267**. In this case principles laid down in Rafiq Masih were considered. It was observed:-

"*11. 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.*"

2. **Walmik S/o Sitaram Sirsath Vs. State of Maharashtra & Ors.** In this case the petitioner had executed undertaking. It was held:-

"*15. The facts in the present case are similar to that of the facts in the case of High Court of Punjab and Haryana and others vs. Jagdev Singh, cited supra and, therefore the ratio*

laid down is squarely applicable. In the present case in hand also the Petitioner was put on notice that any payment found to have been made in excess would be required to be refunded. The Petitioner has furnished an undertaking while opting for the revised pay-scale and therefore he is bound by the said undertaking."

3. **Ananda Vs. State of Maharashtra & Ors., 2021 SCC Online Bom 2549**. In this case it is held:-

"*10. We have a similar case in hand. The petitioner has specifically given an undertaking prior to his retirement that if he has received any amount in excess to what he was legitimately entitled to, the said amount would be repaid or can be recovered. Such undertaking, if ignored, would be reduced to the value of a waste paper. An undertaking has it's own meaning and effect. If an undertaking is not to bind a person issuing it, there would be no sanctity to an undertaking. We cannot accept such an argument canvassed by an employee that an undertaking is a mere formality and should be ignored, lest, we ourselves would be party to neutralising the value of an undertaking.*"

4. **Surjit Kumar Vs. Union of India & Ors. 2020 SCC Online CAT 1868.**In this case it is held:-

"*The Hon"ble Apex Court in the case of HIGH COURT OF PUNJAB & HARYANA & OTHERS VS. JAGDEV SINGH reported in (2016) 14 SCC 267 has held that recovery is permissible. In this case, the court held that "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.". It was also argued that even at earlier point of time granting the applicant financial up-gradation, an undertaking was taken from him. The respondents have pleaded and annexed undertaking dated 7.5.2018 in which that applicant had given in writing to make recovery if any mistake is found later on in fixation of pay and that being so, we do not find any fault in action of respondents, more so when he has retired as a Group B officer."

5. **Mandeep Singh Kohli & Ors. Vs. Union of India & Ors., 2021 (1) Mh.L.J., 370.** In this case it is held:-

"*12. These petitioners have suppressed the fact from this Court that each of them had executed an undertaking. After the respondents exposed the petitioners through their affidavit-in-reply by placing the undertakings on record that the petitioners have tried to cover up by filing a rejoinder. They admit for the first time that they had actually issued undertakings binding themselves to refund the amount. Considering the above, we would first prefer to deal with the issue of suppression of fact and the attempt made by the petitioners to mislead this Court when the first order was passed by this Court on 27-04-2017.*

14. It is, thus, apparent in view of the crystallized law that if an employee tenders an undertaking binding himself to

refund the excess amounts if he is subsequently found dis-entitled, recovery of such amounts cannot be set aside. This judgment has been delivered on 29-07-2016.

19. We find that the petitioners have shrewdly suppressed the information that they have tendered individual undertakings to the respondent Management permitting them to recover the excess amounts from their salaries or retiral benefits. This would indicate that they were prepared for recovery of excess amount even post-retirement as they declared that the Management could recover it even from their retiral benefits. The intent and object of the petitioners in suppressing such material facts was that our decision would have surely turned in favour of the petitioners if there would have been no undertakings on record keeping in view the law laid down in the matters of Syed Abdul Qadir (supra) and Rafiq Masih (supra). If undertakings were tendered by the petitioners, these two judgments, would not have applied to their cases and they would have been squarely covered by the view taken by the Hon'ble Apex Court in the case of Punjab and Haryana High Court and others vs Jagdev Singh (supra). The petitioners, therefore, stood to gain a big advantage by suppressing the material information and this, in our considered view, is an act aimed at misleading us with the intent and object of getting favourable orders from this Court. In this fact situation, the petition deserves to be dismissed considering the law laid down in Kishore Samrite (supra) and Bhaskar Laxman Jadhav and others (supra)."

6. **Hai Mujahid Ekbal Abdul Siddiqui Vs. State of Maharashtra & Ors. 2021 SCC Online Bom 3418(2021) 6 AIR Bom R 820.** In this case it is held:-

"6. It is undisputed that the petitioner is in employment and the employer initiated the action of recovery of excess amounts paid, by the order dated 18.11.2019 when he had almost five years for retirement. So also, the petitioner has conspicuously suppressed the fact of having executed an undertaking in unequivocal terms that he would refund the excess amounts if such excess payments are detected either in the payment of the pay scale or under any head. The Hon'ble Apex Court had dealt with cases of suppression of material facts which are likely to affect the conclusion in a matter, in Bhaskar Laxman Jadhav Vs. Karmveer Kakasaheb Wagh Education Society, (2013) 11 SCC 531 and in the matter of Kishore Samrite Vs. State of Uttar Pradesh, (2013) 2 SCC 398.

9. It is therefore, trite that it is not for a litigant to filter the facts to be narrated to the court. He is duty bound to narrate the entire facts and is expected not to suppress anything from the court. If certain factors which would have a close nexus or bearing on the outcome of the case and are germane to the cause of action are suppressed, such suppression shall tantamount to a litigant attempting to mislead and misrepresent the court for self serving purposes. The Hon'ble Apex Court has, therefore, ruled that such a litigant should be deprived of any relief, even if he may have an arguable case in hand."

7. **Vijay Sambrao Bharati Vs. State of Maharashtra & Ors., 2018 (5) Mh.L.J., 316.** In this case the employee joined Government department as Class-II employee and reached upto class-I post. Only due to order of Superintending Engineer he could get post of Executive Engineer. As per Rules, he could not have been confirmed even on the post of Deputy Engineer and could not have continued to get increments. However, he continued to get increments and got the post of Executive Engineer. It was held that this was not merely a mistake but there was also a clear possibility of mischief and hence re-fixation of pay-scale and recovery of excess payment was permissible.

8. **Z.H.Lamak Vs. Accountant General-II, (A & E) Maharashtra, Nagpur & Ors., 2012 (6) Mh.L.J.,341.** In this case, on the following facts, recovery was held to be neither unjust nor illegal:-

"*Petitioner Lecturer who was placed on the post of Lecturer in 'English' in 1997 was never placed in senior scale and was directly placed in next higher grade i.e. Selection Grade and was continued in the said scale till she reached the age of superannuation on 30.06.1995. The scheme is very clear. The excess amount was not received by the petitioner without noticing it. The fact that she was not fixed in senior scale, could not have escaped her attention. Thus, release of selection grade directly to her in violation of Government Resolution dated 27.02.1989, cannot be attributed only to inadvertence or negligence on the part of the Government Officers. The amount to which the petitioner was not entitled,*

has been received by her and its recovery cannot be said to be either unjust or illegal."

10. In all the rulings relied upon by the applicant as well as the respondents the question as to whether recovery of excess payment was permissible was answered keeping in view the following circumstances:-

1. To which class/grade did the applicant belong?

2. Whether the applicant had retired, or his retirement was less than a year away or he was still in service when the recovery was proposed?

3. At what point of time recovery was proposed? Whether it was proposed without loss of time or there was inordinate delay?

4. Whether the proposed recovery could be termed either iniquitous or harsh?

5. Whether the applicant had resorted to misrepresentation or fraud to secure an unmerited reward?

6. Whether there were circumstances to show that an inference of the applicant having knowledge of payment in excess received by him could be drawn?

7. Whether conduct of the applicant was aboveboard so that he could not be deprived of equitable relief of protection from recovery?

8. If the applicant had given an undertaking that he would refund the amount received in excess, to what extent

his entitlement to equitable relief of protection from recovery was taken away?

9. What would be the effect of suppression of material fact like execution of an undertaking for refunding the amount received in excess?

The aforementioned criteria will have to be applied to the following facts of the case to find out whether the applicant would be entitled to relief of protection from recovery.

1. The applicant served on the establishment of P.W.D. from 08.12.2000 to 30.12.2012.

2. On 31.12.2012 he was absorbed on a permanent basis on the establishment of National Highway Authority of India.

3. The order of his absorption (A-2) clearly spelt out that he was eligible for pensionary benefits as per the provisions of Rules 67 of the Maharashtra Civil Services (Pension) Rules, 1982.

4. A conjoint reading of Rules 66 and 67 of the Maharashtra Civil Services (Pension) Rules, 1982 makes it clear that the pro rata pension admissible in respect of services rendered earlier under the different department was disbursable only from the date the Government servant would have normally superannuated had he continued in service. Considering the fact that the applicant had started his service with P.W.D. on 08.12.2000 he would have superannuated on 08.12.2020 had he continued in service, in view of Rules 66 of the Maharashtra Civil Services (Pension)

Rules, 1982. Therefore, 08.12.2020 was the date from which he became entitled to get pension (from his previous employer).

5. In admissibility report (A-3) prepared by respondent no. 2 it was mentioned that pension would become payable w.e.f. 01.01.2013.

6. On 27.05.2015 admissibility report was prepared by respondent no. 2 (A-R-1). In this report it was clearly mentioned that the applicant was entitled to get pension w.e.f. 08.12.2020. It may be mentioned that till this point of time pension was not disbursed.

7. In pension order dated 28.01.2021 (A-4) the date of commencement of pension was again (wrongly) mentioned to be 01.01.2013.

8. On 20.02.2021 i.e. within less than one month of issuance of pension order dated 28.01.2021, the applicant executed an undertaking (A-R-3-4) that he would refund excess payment of pension, if so made. The applicant suppressed this fact as it was brought on record by respondent no. 3.

9. Amount of arrears of pension calculated on the basis that it was payable w.e.f. 01.01.2013 was credited to the savings bank account of the applicant on 27.07.2021 which came to Rs. 22, 69, 697/- (A-5).

10. Less than four months thereafter respondent no. 2 issued the impugned letter dated 25.11.2021 (A-1) that

excess payment was made on account of wrong fixation of date of commencement of pension i.e. 01.01.2013 instead of 08.12.2020, and it was to be adjusted/ recovered.

11. A-1 was then followed by the impugned communication dated 20.01.2022 (A-8) made to the applicant by respondent no. 3.

11. Facts have been set out in the preceeding paragraphs chronologically. Now, it may be seen whether case of the applicant falls in any of the clauses stipulated in Rafiq Masih (Supra). The applicant is Class-II/Group-B employees. Hence, Clause (i) is not attracted. He had given an undertaking that he would refund the excess amount, if received towards pension, therefore, in view of Jagdev Singh (Supra) Clause (ii) would not be attracted. The applicant executed the undertaking on 20.02.2021. Thereafter, on 27.07.2021 amount of arrears of pension was credited to his savings bank account in lump sum. Order of recovery was issued within four months thereafter. Therefore, Clause (iii) will not be attracted. Cause of action to initiate recovery arose in this case on account of wrong fixation of date of commencement of pension and hence Clause (iv) will not be attracted. In this case arrears of pension were paid on 27.07.2021 and action for recovery was initiated on 25.11.2021. Under such circumstances recovery would be neither iniquitous nor harsh or arbitrary to such an extent as would far outweigh the equitable balance of the employer's right to recovery, so as to attract Clause (v). Apart from this, suppression of undertaking would clearly go against the applicant disentitling him to equitable relief of protection from recovery. For all these reasons the application fails. Hence, the order:-

O R D E R

1. Original Application is dismissed.

2. The respondents, while effecting recovery, shall take into account calculation given by the applicant in this proceeding regarding the net amount to be recovered, rework such amount if necessary and then proceed to recover the same.

3. No order as to costs.

Member (J)

Dated :-07/07/2022.
aps

Later on:-

After pronouncement of the Judgment, ld. Counsel for the applicant Shri Pathak prayed that effect and implementation of this order be kept in abeyance for a period of two weeks from today. Ld. P.O. Shri Khan opposed the prayer. However, I have come to the conclusion that the prayer deserves to be granted. Hence, effect and implementation of this order is kept in abeyance for a period of two weeks from today.

Member (J)

Dated :-07/07/2022.
aps

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

Name of Steno	:	AkhileshParasnath Srivastava.
Court Name	:	Court of Hon'ble Vice Chairman.
Judgment signed on and pronounced on	:	07/07/2022.
Uploaded on	:	08/07/2022.