

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.271 OF 2018

(Subject :- Recovery)

DISTRICT : BEED

Sudhakar S/o. Anantrao Goswami,)
Age:60 Yrs., Occu: Retired from service,)
R/o. Ambejogai, Tq. Ambejogai,)
District Beed.)...**Applicant**

V E R S U S

1. **State of Maharashtra** ,)
Through it's Secretary,)
Higher & Technical)
Education Department,)
Mantralaya, Mumbai-32.)
2. **The Deputy Director (Education),**)
Aurangabad Region,)
Aurangabad.)
3. **The Accountant,**)
Pay Unit, Aurangabad..) **....Respondents.**

Shri A.D. Gadekar, learned Advocate holding for Shri Y.P. Deshmukh, learned Advocate for the Applicant.

Smt. Deepali S. Deshpande, learned Presenting Officer for the Respondents.

CORAM : B.P. Patil, VICE CHAIRMAN

RESERVED ON : 25.07.2019.

PRONOUNCED ON : 30.07.2019.

ORDER

1. The Applicant has claimed refund of amount of Rs.99,488/- from the Respondents which has been recovered from him on account of excess payment made to him because of wrong pay fixation by filing the present Original Application.

2. The Applicant was appointed as an Assistant Teacher on 28.12.1985 in Government D.Ed. College, Neknoor, District-Beed. The post of Assistant Teacher falls under Government education service group 'C' category. The pay scale of Rs.5500-9000 made applicable to the Applicant when he was working as Assistant Teacher. On 25.1.1994, he was transferred to the Zilla Parishad, Beed as Science Supervisor on administrative ground. Accordingly, the Applicant worked as Science Supervisor w.e.f. 25.1.1994 to 14.6.1999. Thereafter, he was again transferred as Assistant Teacher. Accordingly he discharged his duty as Assistant Teacher. After attaining the age of superannuation he stood retired w.e.f. 31.1.2015. When he was on the verge of the retirement, he was served with the letter dated 15.5.2013 and informed that excess payment was made to him due to wrong fixation of pay during the period of 25.1.1994 to 14.6.1999 and recovery of the amount of Rs.99488/- has been ordered. It has

mentioned in the said letter that as per the G.R. dated 5.11.2008, the pay scale applicable to the post of Assistant Teacher was Rs.5500-9000 while the pay scale applicable to the post of Science Supervisor was 5000-8000. It has been mentioned therein that when he was transferred as Science Supervisor, he was entitled to get pay scale of Rs.5000-8000 but pay scale of Rs.5500-9000 was granted to him and therefore, excess payment was made to him. The Applicant was called upon to deposit the amount of Rs.99488/- on the ground that unless he deposits the amount, his pension proposal could not be forwarded to the authorities. Because of the compelling situation he deposited the amount of Rs.92748/-It is his contention that the recovery of the said amount is illegal and therefore, he has approached this Tribunal and claimed refund of the said amount with the Respondents with interest.

3. The Respondent No.2 resisted the contention of the Applicant by filing the affidavit-in-reply. It is contended by him that as per G.R. dated 5.11.2008 issued by School Education and Sport Department, 14 posts of Maharashtra Education service Group -C cadre were allotted different Pay Scales (4500-7000, 5000-8000 and 5500-9000) in the 5th Pay Commission, though the posts were transferable in the same group. By the

said G.R., the problems regarding pay scales, due to transfer has been rectified. It is his contention that the Applicant was getting pay scale of Rs.5500-9000 when he was working as Science Supervisor though the Science Supervisor was entitled to get pay scale of Rs.5000-8000. The account officer Pay Verification Unit noticed the said mistake and excess payment made to the Applicant and therefore, on the basis of objection raised by the Pay Verification Unit, the pay of the Applicant has been revised and recovery has been ordered. It is his contention that the Applicant was not entitled to get pay scale of Rs.5500-9000 when he was working on the post of Science Supervisor and therefore, the excess payment was made. The recovery has been directed as per the said provision and therefore, there is no illegality in the impugned recovery order. Therefore, he supported the impugned order and recovery made from the Applicant.

4. The Respondent No.3 resisted the contention of the Applicant by filing affidavit-in-reply. He has not disputed the fact that the Applicant was appointed on the post of Assistant Teacher in the pay scale of Rs.395-800 as per 3rd pay commission on 9.1.1986. Pay of the Applicant was revised to Rs.1400-2600 w.e.f. 1.1.1986 in view of the recommendation of the 4th pay commission. On 8.6.1994, the Applicant was

transferred as Science Supervisor in the same pay scale of Rs.1400-2600. Pay scale for the post of Science Supervisor and Assistant Teacher were revised w.e.f. 1.1.1996 as per the recommendation of 5th pay commission. Pay scale of Assistant Teacher was revised from Rs.1400-2600 to 5500-9000 and the pay scale of the Science Supervisor was revised from Rs.1400-2600 to 5000-8000 by the Government notification Finance Department dated 10.12.1998. The Applicant was working as Science Supervisor from 8.6.1994 to 14.6.1999. Thereafter, he was transferred on the post of Assistant Supervisor on 15.06.1999. On 1.1.1996, he was working as Science Supervisor. Therefore, he was entitled to get pay scale of Rs.5000-8000 and not for pay scale of Rs.5500-9000. Thereafter, his pay was correctly fixed in the pay scale of Rs. 5000-8000/- by the Respondent No.2 by order dated 29.4.1999. However, later on the pay of the Applicant was fixed in the pay scale of Rs.5500-9000 for which he was not entitled.

5. It is his contention that one is eligible to get the pay of the post on which he is working. Though the post of Assistant Teacher and Science Supervisor are inter-transferable posts their pay scales are difference as per 5th pay commission. The said discrimination in the pay scales of the two posts was removed by

the Government Resolution dated 5.11.2008 and both post were sanctioned the pay scale of Rs.6000-10000 w.e.f. 1.3.2000. However, no pay difference was payable from 1.3.2000 to 1.9.2008.

6. It is his contention that it is the duty of the office of the Applicant to fix the pay of the Applicant and correct the pay scale as per the pay fixation Rules and various Government Resolutions. The office of the Applicant is fully competent to fix the pay and not dependent on the Respondent No.3. The Respondent No.3 is only a verification authority and can verify the service book only when it is submitted to his office from the concerned office. The Respondent No.3 was not responsible for wrong pay fixation or for its recovery. The Respondent is duty bound to verify the service book as per the G.R. and to bring the mistakes in the pay fixation to the notice of the concerned office. When the service book of the Applicant was produced before him, it had noticed the mistake and accordingly brought it to the notice of the Respondent No.2 and the Respondent No.2 accordingly corrected the wrong pay fixation of the Applicant by order dated 15.5.2013 and recovered the overpayment made to the Applicant. There is no illegality in the said order and

therefore, he supported the impugned order directing recovery of the excess payment made to the Applicant.

7. I have heard Shri A.D. Gadekar, learned Advocate holding for Shri Y.P. Deshmukh, learned Advocate for the Applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the Respondents. I have perused the documents on record.

8. Admittedly, the Applicant was appointed as Assistant Teacher in Government D.Ed. College, Neknoor, Dist. Beed on 28.12.1985. Admittedly, the Applicant has been transferred to Zilla Parishad, Beed as a Science Supervisor on 25.1.1994. He worked on the post of Science Supervisor w.e.f. 25.1.1994 to 14.6.1999. Admittedly, as per the 5th pay commission, pay scale of the post of Assistant Teacher was Rs.5500-9000 while pay scale of the post of Science Supervisor was Rs.5000-8000. Admittedly, the post of Assistant Teacher and Science Supervisor are inter-transferable posts. Admittedly, the Applicant had received pay scale of Rs.5500-9000 when he was working as Science Supervisor. Admittedly, discrimination in the pay scale of two posts has been removed by the Government Resolution dated 5.11.2008 and both post have been sanctioned the pay scale of Rs.6000-10000 w.e.f. 1.3.2000. However, no pay

difference was payable from 1.3.2000 to 1.9.2008. Admittedly, because of the wrong pay fixation made by the Respondent No.2, the Applicant received excess payment in the tune of Rs.99,488/- during the period from 25.1.1994 to 14.6.1999, when he was working as Science Supervisor. Admittedly, the said mistaken has been noticed by the Respondent No.3 when the service book of the Applicant was sent to him at the time of retirement of the Applicant for verification. On the basis of objection raised by the Respondent No.3, the Respondent No.2 revised the pay of the Applicant by order dated 15.5.2013 and directed recovery of excess payment made to the Applicant. Admittedly, the Applicant has deposited the amount of Rs.92748/- on 10.12.2014 by Challan in State Bank of India. Admittedly, the Applicant retired on attaining the age of superannuation on 31.1.2015. The Applicant was serving as Assistant Teacher at the time of his retirement and the post of Assistant Teacher falls under group 'C' category.

9. Learned Advocate for the Applicant has submitted that the Applicant was appointed as Assistant Teacher and accordingly he was drawing the salary as per the pay scale permissible to the post of Assistant Teacher. In the year 1994, the Applicant was transferred to Zilla Parishad, Beed on the post

of Science Supervisor on administrative ground. He has submitted that the Applicant had received the pay in the pay scale of Rs.5500-9000 as per the recommendation of the 5th pay commission when he was serving as Science Supervisor w.e.f. 25.1.1994. There was no misrepresentation or fraud practiced by the Applicant on the Respondent No.2 in getting the wrong pay scale and in receiving the excess amount. The pay has been fixed by the Respondent No.2 on his own accord and the Applicant had not played any role in getting the said pay scale. Because of the wrong pay fixation made by the respondent No.2, excess payment has been made to the Applicant. He has submitted that said excess payment of Rs.92748/- has been recovered from the Applicant when the Applicant was on the verge of the retirement. He has submitted that the recovery is impermissible in view of the guidelines given by the Hon'ble Apex Court in a group of cases ***Bearing No. Civil Appeal No.11527/2014 arising out of SLP (C) No.11684 of 2012 & Ors.*** in the case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc. decided on 18.12.2014.** Therefore, he has prayed to allow the Original Application and also prayed to direct the Respondent to refund the amount recovered from him with interest.

10. Learned P.O. for the Respondents has submitted that the pay scale of for the post of Assistant Teacher and Science Supervisor are different. The Assistant Teacher was entitled to get pay scale of Rs.5500-9000/- while the Science Supervisor was entitled to get pay scale of Rs.5000-8000/- as per the 5th pay commission. He has submitted that the Applicant was transferred on the post of Science Supervisor on 25.1.1994. He was entitled to get pay scale of Rs.5000-8000 when he was working as Science Supervisor. But the pay scale of the Applicant has been wrongly fixed in the pay scale of Rs.5500-9000 which was applicable to the post of Assistant Teacher and therefore, the excess payment was made to the Applicant during the period from 25.1.1994 to 14.6.1999. He has submitted that the said mistake has been noticed by the Respondent No.3 at the time of verification of service record of the Applicant and accordingly objection has been raised. He has submitted that on the basis of objection raised by the Respondent No.3, the Respondent No.2 has re-fixed the pay of the Applicant and directed recovery of amount of Rs.99488/- by order dated 15.5.2013. He has submitted that the Applicant has deposited the amount of Rs.92748/- and the recovery has been made as per the Rules and there is no illegality in the impugned recovery

order. Therefore, he has prayed to reject the Original Application.

11. On perusal of record it reveals that the Applicant was appointed as Assistant Teacher which falls under group 'C' posts. He retired from the said post on attaining the age of superannuation on 31.1.2015. The scale for the post of Assistant Teacher was Rs.5500-9000 as per the 5th pay commission and the Applicant was getting the same scale. The Applicant had been transferred to Zilla Parishad, Beed as Science Supervisor and he worked there w.e.f. 25.1.1994 to 14.6.1999. The pay scale for the post of Science Supervisor was Rs.5000-8000 as per the 5th pay commission. Instead of this, the Applicant had received pay scale of Rs.5500-900. Therefore, the excess payment in the tune of Rs.99488/- was made to the Applicant. The said mistake has been committed by the Respondent No.2 while re-fixing the pay of the Applicant and therefore, the excess payment was made to the Applicant. The Applicant never misrepresented the Respondent No.2 in getting the pay scale to which he was not entitled. Not only this, but the Applicant had not played any role in getting the said pay scale. Therefore, the Applicant cannot be blamed for it. The same has been noticed by the Respondent No.3 in the year 2013 and thereafter the recovery

of the excess payment made to the Applicant during the year from 1994 to 1999 has been made. The said amount of Rs.92748/- has been recovered from the Applicant when he was on the verge of retirement. Such type of recovery cannot be made and the said recovery is impermissible in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washet) etc. decided on 18.12.2014.**

12. The Hon'ble Apex Court in case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washet) etc. decided on 18.12.2014** reported in **2014(4) SCC 334** has observed as follows:-

“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 herein above, 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.”

13. On going through the said decision it is crystal clear that case of the Applicant is covered by circumstances (i) to (iii) mentioned in the above said decision. The amount has been recovered from the Applicant though it is impermissible. Therefore, the Applicant is entitled to get refund of said amount. In view of these, the Original Application deserves to be allowed.

14. In view of the aforesaid discussion, the Original Application is allowed. The Respondents are directed to refund the amount of Rs. 92748/- to the Applicant within three months from the date of this order, failing which the amount shall carry interest @ 9% p.a. from the date of the order till realization of the amount. There shall be no order as to costs.

PLACE :- AURANGABAD.
DATE :- 30.07.2019

(B.P. PATIL)
VICE CHAIRMAN