

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO. 317/2015**

Madhav Keshavrao Suryavanshi,  
Aged about 58 years,  
R/o Santosh Nagar,  
Near Z.P. School, Kokanwadi Road,  
Murtizapur, Distt. Akola.

-----**Applicant.**

**Versus**

1. The State of Maharashtra,  
Through its  
Department of Law and Judiciary,  
Mantralaya Mumbai.

2. The Registrar,  
Partnership Firm, Maharashtra  
State, New Administrative Building,  
6<sup>th</sup> Floor, Government Colony,  
Bandra ( East ), Mumbai. -----

**Respondents-**

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1. Shri N.R. Saboo, Advocate for the applicant.
  2. Smt. M.A. Barabde, Presenting Officer for the Respondents.
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**CORAM :** B. Majumdar : Vice Chairman

**DATE :** 18<sup>th</sup> February, 2016

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**ORDER**

The applicant, a retired Asstt. Registrar of Firms, has filed this O.A., as he is aggrieved with an order of recovery from his retiral benefits due to correction in fixation of his pay.

2. The applicant was granted time bound promotion from the pay scale of Asstt. Registrar w.e.f. 22/9/2006 to the pay scale of Dy. Registrar i.e., Rs. 10000-325-15200 . Accordingly, his pay was fixed at Rs.10000-325-15200 w.e.f.1/9/2006 following implementation of the 5th Pay Commission. As per the 6<sup>th</sup> Pay Commission, from 1/9/2006 his pay was fixed in the pay scale of Rs.15600-39100 with grade pay of Rs.5500. His revised pay was calculated vide order dtd. 4/4/2015 which also stated that the excess payment made to him should be recovered from his salary and DCRG . The applicant has challenged this order in the O.A. He retired on 30/5/2015.

3. The applicant submits that after a lapse of 7 years, R/2 found that the original fixation of his pay from 22/9/2006 was done mistakenly and hence the excess payment should be recovered from him. No previous notice was given to him. An amount of Rs.3,201/- has already been recovered before his retirement and the rest of the amount is directed to be recovered from his pensionary benefits. Due to these reasons his pension order has also not been issued.

4. According to the applicant, the respondents could not have ordered any recovery after a lapse of so many years and that too after he had retired and he was in no way responsible for the alleged excess payment made to him.

5. The respondents in their reply submit as follow :-

a) The applicant had completed 12 years of service on 22/9/2006. On that day his pay was Rs.8700/- in the pay scale of Rs.6500-200-10500 . Accordingly, under the prevailing rules his pay was fixed at Rs. 10000/- in the minimum of pay scale of Rs.10000-325-15200 w.e.f.1/9/2006 vide order dtd. 20/9/2008.

- b) The Govt. has implemented the recommendations of the 6<sup>th</sup> Pay Commission w.e.f. 1/1/2006 by issuing G.Rs dtd. 22/4/2009, 24/6/2009 and 31/8/2009, which deal with the procedure to be followed for fixation of pay on grant of time bound promotion on or before 1/1/2006. The applicant's pay was fixed mistakenly in a wrong manner in the pay scale of Rs.15600-39100 + grade pay 5500, instead of Rs.9300-34800 + grade pay 5500 vide order dtd. 22/6/2009.
- c) In view of the above the applicant's pay was required to be fixed afresh and a new order dtd. 4/4/2015 was issued. The pay fixation was approved by the Director of Pay and Accounts as per his letter dtd. 7/5/2015.
- d) The total amount of recovery is calculated as Rs.2,52,823/-.
- e) The applicant on 18/5/2009 had given an undertaking that he will refund any excess payment made as a result of incorrect fixation or discrepancies.

f) The above re-fixation of his pay has approved by the Accountant General on 18/6/2015.

6. Shri N.R. Saboo, the Id. Counsel for the applicant submitted that the applicant was not at all responsible for the initial fixation of his pay on his being granted time bound promotion. He has already retired from service and after a long gap of 7-8 years, the respondents are not justified in ordering the recovery of such a large amount from his meager pensionary benefits. For this purpose he relied on the order of the Supreme Court in **State of Panjab vs Rafiq Masih ( White Washer )** as well as the order of hon'ble the High Court of Bombay Bench at Nagpur dtd. 7/12/2015 in W.P. No. 6238/2015 ( **Vijay Nandlal Rathi vs the Joint Director, Vocational Education and Training and others.** )

7. Smt. M.A. Barabde, the Id. P.O. opposed the O.A. by submitting that the applicant's initial fixation of pay and its subsequent revision are purely due to administrative reasons and not due to any fault on the part of any officials

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dealing with the matter. As soon as the discrepancy come to the notice, the impugned order of correction in pay revision was ordered. For this reason, the applicant cannot be exempted from refunding the excess payment made to him on which he has no legitimate claim.

8. I find that it is undisputed that the applicant's pay on being granted time bound promotion was originally fixed in 2008 which came to be revised subsequently in 2015, resulting into a recovery of Rs.2,52,823/- from his pensionary entitlements. Hon'ble the Supreme Court in **State of Panjab and others vs Rafiq Masih ( White Washer )** [ ( 2015 ) 4 SCC 334], relying on its earlier order in **Syed Abdul Qadir vs State of Bihar** [ (2009)3 SCC 475], **Shyam Babu Verma vs Union of India** [ ( 1994 ) 2 SCC 521], **B.J. Akkara vs Govt. of India** [ ( 2006 ) 11 SCC 709] & **Sahib Ram vs State of Haryana,** [ ( 1995 ) SCC ( L & S )248 summarized the situations where the recovery from employees belonging to Group-C/D would not be permissible

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in law. The relevant para 18 of the judgment is reproduced below :-

*“ 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 in 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 the employees belonging to Class III and Class IV service ( or Group C and Group D Service ).*
  - ( ii ) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
  - ( iii ) Recovery from the employees, when the excess payment ha been made for a period in excess of five years, before the order of recovery is issued.*
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*( 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, a would far outweigh the equitable balance of the employer's right to recover. ”*

9. Hon'ble the High Court of Bombay, Bench at Nagpur in W.P. No. 6238/2015 (*Vijay Nandlal Rathi vs the Joint Director, Vocational Education and Training, Nagpur and others*) relying on *Rafiq Masih* ( supra ) held that recovery of payment from the pensioner who had retired, was not permissible after a lapse of time after his retirement, when he had not secured the amount by fraud or misrepresentation.

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10. In the present case, it is not disputed that the applicant did not indulge in any kind of fraud or unfair means to get his pay fixed in 2007-08. Hence, in terms of the law laid down as above, the respondents cannot recover the excess amount of payment from him. The impugned order of recovery dtd. 4/4/2015 is therefore to be held as bad in law.

11. I accordingly direct that the respondents will not make any further recovery from the applicant and the impugned order dtd. 4/4/2015 stands quashed to that extent. I make it further clear that the applicant's pension and other retiral benefits should not be withheld or affected on account of the impugned order. The O.A. stands disposed of in terms of the above directions with no order as to costs.

sd/-

( B. Majumdar )  
Vice-Chairman.

Skt.