

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 484/2019(S.B.)

Shri Durgadas s/o Motiram Zagare,
Aged about 61 years, Occu.: Retired,
R/o Chikhali Road, Opposite Hanuman
Mandir, Sunderkhed, Buldhana,
Tahsil and District Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-400032.
- 2) The Director General of Police,
State of Maharashtra,
Near Regal Talkies, Culaba, Mumbai.
- 3) Superintendent of Police,
Buldana, Opposite Collector Office,
Buldana, Tahsil and District Buldana.
- 4) Accounts and General A & E (II) Office
Maharashtra, Civil Lines, Nagpur.

Respondents

Shri A.P. Sadavarte, Ld. counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

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

Dated: - 28thJuly 2022.

JUDGMENT

Judgment is reserved on 26nd July, 2022.

Judgment is pronounced on 28th July, 2022.

Heard Shri A.P. Sadavarte, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. Case of the applicant is as follows.

When the applicant was working as A.P.I., on 09.07.2017 he received a communication (Annexure A-1) from respondent no.3 that regarding his pay fixation and retiral benefits respondent no.4 had raised an objection. In this behalf respondent no.3 passed an order dated 23.06.2017 (at page 16) to recover from retiral benefits payable to the applicant an amount of Rs.3,59,958/- in lumpsum. By communication dated 21.07.2017 (Annexure A-2) respondent no.3 informed the applicant as follows-

त्या अनुषंगाने आस्थापना शाखेकडून संदर्भ क्र.५ अन्वये सुधारीत वेतन निश्चिती झालेली असून त्यानुसार आपणाकडे दि.०१/०७/२००८ ते ३०/०६/२०१७ पावेतो अतिप्रदान झालेली वेतन व भत्त्यांची रक्कम रु. ३,५९,९५८/- (अक्षरी रु. तीन लाख एकोणसाठ हजार नऊशे अठ्ठावन्न फक्त) वसुली असल्याबाबत एरिअर्स लिपीक यांनी संदर्भीय पत्र क्र.६ अन्वये माहिती दिली आहे.

आपणांस मृत्यू-नि-सेवानिवृत्ती उपदान रु.२,९९,४७५/- एवढी रक्कम देय आहे. सदरची संपूर्ण रक्कम शासन जमा केल्याशिवाय आपला सेवानिवृत्ती वेतनाचा प्रस्ताव महालेखापाल नागपूर द्वितीय यांना सादर करणे शक्य होणार नाही.

The applicant deposited Rs.60,483/- and 2,451/- (Annexures A-3 & A-4). By communication dated 12.12.2017 (Annexure A-5) the applicant was informed as follows-

उपरोक्त संदर्भ व विषयान्वये सेनि.सफौ/११७० दुर्गादास मोतीराम झगरे नेमणूक उपविपोअ. कार्यालय बुलडाणा हे दिनांक ३१/१०/२०१७ रोजी नियत वयोमानाने सेवानिवृत्त झालेले असून त्यांचे सेवानिवृत्ती वेतन प्रस्ताव मंजुरी करीता महालेखापाल (द्वितीय), नागपूर यांना सादर करण्यात आलेले होते. सदर सेवापटामधील वेतन निश्चितीबाबत आक्षेप घेण्यांत आलेला होता.

तरी संदर्भ क्र.१ व २ सेनि.सफौ/११७० दुर्गादास मोतीराम झगरे यांचेकडून अतिप्रदान रक्कम रु.३,६०,४२९/- (अक्षरी रु.तीन लाख साठ हजार चारशे एकोणतीस फक्त) एकरकमी वसूल करण्यांत यावी. सोबत अतिप्रदानाचे विवरणपत्र तीन प्रतीत जोडले आहे.

The applicant retired on superannuation on 31.10.2017. By communication dated 09.01.2018 (Annexure A-6) the applicant was informed about recovery of Rs.2,451/- and 2,97,495/- towards over payment of pay and allowances. No dues certificate (Annexure A-7) was issued on 14.03.2018. Being aggrieved by the recovery the applicant made a representation dated 17.07.2018 (Annexure A-8) to respondent no.3. By communication dated 18.07.2018 (Annexure A-

9) he was informed by respondent no.3 that recovery was effected as per Rules 132 (2) (3) (b) of the M.C.S. (Pension) Rules, 1982. On 26.11.2018 the applicant submitted a representation (Annexure A-10) to respondent no.2. Still grievance of the applicant remained unredressed. Hence, this application.

3. Reply of respondent no.3 containing following contentions is at pp.27 to 33-

1) The applicant was informed about the objection taken by the respondent no.4 and applicant also accepted that he had got excess pay during his service period from 01.06.2008 to 30.06.2017 and applicant also deposited the difference amount in the Government account without any objection or under protest.

2) As per the provisions of Rule 132 and 134-A of the Maharashtra Civil Services (Pension) Rules, 1982, if in the case of a Government servant, who has retired or has been allowed to retire, it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including service rendered upon re-employment after retirement or any amount is found to be payable by the pensioner during such period and which has not been paid by, or recovered from him, then the excess amount so paid

or the amount so found payable shall be recovered from the amount of pension sanctioned to him.

3) While fixing the increment on revised pay scale of the applicant, increment was wrongly fixed. Due to wrong fixation clarified by the respondent no.4, the office of the respondent no.3 had forwarded pension proposal of the applicant to the respondent no.4, which is applicable to the post of applicant. When service book of the applicant was sent to Pay Verification Unit, it had raised an objection that increment received at the time of 01.06.2008 to 30.06.2017 pay scale has been wrongly granted to the applicant. As per the Rules and regulations, the recovery has been made and therefore there was no need to give personal hearing to the applicant.

4. In support of aforesaid contentions respondent no.3 has placed on record documents with regard to fixation and recovery at pp.34 to 45.

5. Rejoinder of the applicant is at pp.46 to 49. According to the applicant the impugned recovery was opposed to principles of natural justice and settled position of law. Further contention of the applicant is that he had deposited the amount not voluntarily but under protest.

6. While assailing the recovery the applicant has relied on Circular dated 05.01.2018 (at page 52) issued by respondent no.3. It states-

विषय : अतिप्रदान झालेल्या रकमेची वसुली करणेबाबत.

परिपत्रक

राज्यातील पोलीस दलामध्ये पोलीस कर्मचा-यांना पो.ना./पो.हवा/मपो.उनि या पदावरील पदोन्नती, कालबद्ध पदोन्नती, अगावू वेतनवाढ, मानीव दिनांक इत्यादी दिल्यानंतर वेतन निश्चिती करण्यात येते. त्यात वेतन पडताळणी प्रकरणी आक्षेप नोंदविल्यास त्याची सुधारीत वेतन निश्चिती करण्यात येते, सुधारीत वेतन निश्चिती केल्यानंतर अतिप्रदान झालेली रक्कम ही सदरहू कर्मचारी सेवेत असतांना किंवा सेवानिवृत्त झाल्यानंतर त्याचेकडून वसुल करण्यात येते.

या संदर्भात काही पोलीस कर्मचारी मा.उच्च न्यायालय, मा.प्रशासकीय न्यायाधिकरण (मॅट) येथे याचिका दाखल करतात. तसेच शासनास सुध्दा याबाबत मार्गदर्शन होणेस विनंती करावे लागते. मा.उच्च न्यायालय, खंडपीठ औरंगाबाद येथील रिट याचिका नंबर ६९५/२०१६ मध्ये दिलेल्या निर्णयानुसार तसेच शासनाची सुध्दा विधी व न्याय विभागाचे अभिप्रायात नमुद केल्यानुसार, मा.सर्वोच्च न्यायालयाने **Appellate Jurisdiction Civil Appeal No.11527/2014 (Arising out of S.P.L. (C) No.11684/2012) (State of Punjab & Others etc. – Appellant – vs- RafiqueMasih (White Washer) etc.respondents)**च्यान्याय निर्णयातील परि-१२ (I to V) मध्ये दिलेल्या आदेशानुसार झालेल्या रकमेची वसुली करता येणार नसल्याचे कळविलेले आहे. तरी सर्व घटक प्रमुखांनी त्यानुसार आवश्यक ती कार्यवाही करावी.

7. The applicant has also relied on judgments dated 16.09.2019 delivered by this Tribunal in O.A.Nos.934/2017 and 836/2016. In these cases recovery made without following the procedure under Rule 134-A of the M.C.S. (Pension) Rules, 1982 was held to be bad but liberty was given to the respondents to recover the amount after following the procedure under Rule 134-A.

8. The applicant has also relied on the judgment dated 18.07.2017 delivered by the **Hon'ble Bombay High Court in W.P.No.5367/2016.**

In this case it is observed and held-

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.

8. For the reasons recorded above, the writ petition deserves to be allowed and same is accordingly allowed.

9. Respondents are directed to refund the amount of Rs.1,02,554/- recovered from the gratuity amount paid to the petitioner, together with interest at the rate of 10% per annum from the date of recovery till realisation, as expeditiously as possible, preferably within six months from today.

9. The applicant has also relied on the judgment dated 12.02.2018 delivered in W.P.No.695/2016 by the Bombay High Court in which

recovery was held to be bad by relying *inter-alia* on the judgment in W.P.No.5367 of 2016 (supra).

10. The applicant has also relied on the judgment dated 12.01.2022 of **Hon'ble Bombay High Court in W.P.No.1192 of 2021**. In this case it is held-

9. In our opinion, the decision in Rafiq Masih (supra) rendered by a Bench of 2 (two) Hon'ble Judges has carved out exceptions where recovery would be impermissible. This, however, sounds somewhat of a discordant note with what was laid down by another Bench of 2 (two) Hon'ble Judges in the decision reported in (2012) 8 SCC 417 (Chandi Prasad Uniyal Vs. State of Uttrakhand), since affirmed by a bench of 3 (three) Hon'ble judges in the decision reported in (2014) 8 SCC 883 [State of Punjab & Others Vs. Rafiq Masih (White Washer)], while hearing a reference as whether Chandi Prasad Uniyal (supra) conflicts with the views expressed in the decisions reported in (1994) 2 SCC 521 (Shyam Babu Verma Vs. Union of India) and 1995 Supp (1) SCC 18 (Sahib Ram Vs. State of Haryana). However, Rafiq Masih (supra) being the last decision on the point, we feel bound by what is expressed in paragraph 18 extracted supra.

10. It is not in dispute that the petitioner retired from the service of this Court while holding a Class III post. Clause (I) of paragraph 18 of the decision in Rafiq Masih (supra) does hold that recoveries from

retiral benefits of Class III employees would be impermissible. Mr.Kulkarni is right in his submission that clause (i) of paragraph 18 is immediately attracted, on facts and in the circumstances of the present case. Mr.Kulkarni is, however, not right in referring to clause (iii) of paragraph 18 barring recovery of excess payment which has been made for a period in excess of five years, before the order of recovery is issued. This is because there has been no one-time excess payment in favour of the petitioner prior to five years of the issuance of the order of recovery but excess payment in his favour had continued, month by month, till the order of recovery was issued on May 28, 2019. The petitioner, being in receipt of excess payment till that date, clause (iii) would not apply. Nonetheless, in addition to clause (i), clause (v) of paragraph 18 of the decision in Rafiq Masih (supra) holding that, 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 as extent, as would far outweigh the equitable balance of the employer's right to recover, seems to be attracted here. The petitioner has pleaded in the Writ Petition that he had to incur substantial expenditure for a surgery that his spouse had undergone and that he is in some sort of financial hardship.

11. Having regard to the difficulties that the petitioner is likely to face during the retired life, if the order of recovery of Rs.3,60,580/- is not interdicted and he is refunded such amount, we are inclined to so interdict and direct refund with interest for the ends of justice. This Writ Petition, therefore, succeeds. The respondents are directed to refund to the petitioner Rs.3,60,580/- with interest @ 6% p.a. from the date recovery was made till such time the refund is made in terms of this order, within eight weeks.

11. Learned P.O., on the other hand has relied on the following judgments-

(1) Judgment dated 23.07.2019 of **Bombay High Court in W.P.No.4919 of 2018**. In this case the employee had given an undertaking for recovery of amount received in excess. It was held-

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.

(2) Judgment dated 01.04.2022 of this Tribunal in O.A.No.1023 of 2019. In this case recovery was held to be legal and valid *inter-alia* by relying on the judgment delivered in W.P.No.4919 of 2018 (supra).

(3) **Walmik s/o Sitaram Sirsath versus The State of Maharashtra and others 2018 SCC OnLine Bom 197.**

16. The facts in the present case are similar to that of the facts in the case of High Court of Punjab and Haryana v. Jagdeo 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.

(4) **Mandip sing Kohali and Others versus Union of India and others 2021 (1) Mh.L.J. page 370.**In this case the applicant was held to be not entitled to equitable relief of protection from recovery because he had suppressed the undertaking given by him authorising his employer to recover amount paid in excess.

12. Facts of the case in hand have been narrated above. I have also referred to the Rulings relied upon by the applicant as well as the respondents.

13. The respondents have placed on record copy of the undertaking given by the applicant to the Treasury Officer when he was to receive retiral benefits. This undertaking reads-

मी श्री.Retd. ASI/1170 Durgadas Motiram Jhagre

प्रमाणित करतो की उपरोक्त दिलेली माहिती सत्य आहे. नियमानुसार विहित केलेले वार्षिक हयातीचा दाखला देण्यासंबंधीच्या अटी मला मान्य आहेत. तसेच मला काही रक्कम अतिप्रदान केली गेली तर सदरची रक्कम मी आणि माझे वारस उत्तराधिकारी यांनी शासनास परत करण्याचे दायित्व पत्करले आहे.

14. In the judgment delivered by this Tribunal in O.A.Nos.934/2017 and 836/2016 *inter alia* Rule 134-A of the M.C.S. (Pension) Rules, 1982 was considered. This Rule reads as under-

“ 134- A Recovery and adjustment of excess amount paid – If in the case of a Government servant, who has retired or has been allowed to retire, it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service rendered upon re-employment after retirement or any amount is found to be payable by the pensioner during such period and which has not been paid by or recovered from him, then the excess amount so paid or the amount so found payable shall

be recovered from the amount of pension sanctioned to him;

Provided that the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him;

Provided further that the amount found due may be recovered from the pensioner in instalments so that the amount of pension is not reduced below the minimum fixed by Government.”

15. In the instant case the recovery effected cannot be sustained because procedure under Rule 134-A was not followed. By applying the guidelines laid down in the above referred rulings to the facts and circumstances of this case following order deserves to be passed. Hence, the order.

ORDER

The application is allowed in the following terms-

The impugned recovery is held and declared to be bad. The respondents shall refund the amount so recovered to the applicant within three months from the date of this order. The respondents, if they propose to recover the amount said to have been paid in excess to the applicant, shall follow the procedure under Rule 134-A of the M.C.S. (Pension) Rules,

1982, and then proceed further in accordance with law. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated - 28/07/2022

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 28/07/2022.
and pronounced on
Uploaded on : 28/07/2022.