

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

**ORIGINAL APPLICATION NO.789 OF 2017
WITH
ORIGINAL APPLICATION NO.790 OF 2017
WITH
ORIGINAL APPLICATION NO.792 OF 2017
(Subject :- Recovery)**

ORIGINAL APPLICATION NO.789 OF 2017

DISTRICT : Aurangabad

Shri Tejrao s/o Pandurang Wagh)
Age:60 Years, Occu: Pensioner,)
R/o: Plot No.42, Auronodaya Colony,)
Behind Datta Mandir, Beed-Bye Pass,)
Aurangabad, Tq. & Dist. Aurangabad.) **...Applicant**

V E R S U S

1. **The State of Maharashtra**)
Through its Principal Secretary,)
School Education Department,)
Mantralaya, Mumbai-32.)
2. **The Accountant General (A & E)-II**)
Maharashtra Nagpur,)
Post Box No. Nagpur.)
3. **The Divisional Deputy Director**)
Of Education, Aurangabad Division,)
Aurangabad.)
4. **The Principal,**)
Government Public School,)
Aurangabad, Tq. & Dist. Aurangabad.)
5. **The Accounts Officer,**)
Pay Verification (Squad),)
Aurangabad, Tq. Dist. Aurangabad.) **...Respondents**

WITH
ORIGINAL APPLICATION NO.790 OF 2017

DISTRICT : Aurangabad

Shri Gulab s/o Shankarrao Khandare)
Age:59 Years, Occ: Pensioner,)
R/o: House No.228 (MIG) Shardha Colony,)
Behind Vasantdada School, N-2,)
CIDCO, Aurangabad,)
Tq. & Dist. Aurangabad.)...**Applicant**

V E R S U S

1. **The State of Maharashtra**)
Through its Principal Secretary,)
School Education Department,)
Mantralaya, Mumbai-32.)
2. **The Divisional Deputy Director**)
Of Education, Aurangabad Division,)
Aurangabad.)
3. **The Principal,**)
Government D.Ed. College,)
Aurangabad,Tq. & Dist. Aurangabad.)
4. **The Accounts Officer,**)
Pay Verification (Squad),)
Aurangabad, Tq. Dist. Aurangabad.)...**Respondents**

WITH
ORIGINAL APPLICATION NO.792 OF 2017

DISTRICT : Aurangabad

Syed Abdul Wahid s/o Sayed Abdul Hakim)
Age:60 Years, Occ: Pensioner,)
R/o: House No.3-10-128/4,)
Vrandhivan Colony,)
Kacheri Road, Old Jalna,)
Tq. & Dist. Jalna.)...**Applicant**

V E R S U S

1. **The State of Maharashtra**)
Through its Principal Secretary,)
School Education Department,)
Mantralaya, Mumbai-32.)
2. **The Divisional Deputy Director**)
Of Education, Aurangabad Division,)
Aurangabad.)
3. **The Principal,**)
Government D.Ed. College (Women),)
Aurangabad,Tq. & Dist. Aurangabad.) **...Respondents**

Shri P.B. Salunke, learned Advocate holding for Shri V.G. Salgare, learned Advocate for the Applicants in all these O.As.

Shri N.U. Yadav, learned Presenting Officer for the Respondents in all these O.As.

CORAM : B.P. Patil, Member (J)

Date : 06.02.2019.

ORAL ORDER

1. The Applicants have challenged the impugned orders issued by the Respondent Nos.1 & 2 directing recovery of excess amount paid to the Applicants due to wrong fixation of pay and prayed to quash and set aside the impugned orders. They have also prayed to direct the Respondents to refund the amount recovered from their pensionary benefits.

2. Shri Tejrao s/o Pandurang Wagh (Applicant in O.A.No.789/2017) was serving as Assistant Teacher in Government Public School, Aurangabad under Respondent No.4.

He retired from the said post on 31.08.2013 on attaining the age of superannuation. It is contention of the Applicant that he was initially appointed as Supervisor in the office of Adult Education, District Jalna in the pay scale of Rs.335-680 by order dated 20.12.1982 and thereafter was absorbed on the post of Assistant Project Officer on 17.12.1989 in the same office. Again he was absorbed on the post of Assistant Teacher in Government Public School, Aurangabad. The Applicant was awarded the time bound promotion in the pay scale of Rs.5000-8000 w.e.f. 01.01.1996 and thereafter, revised pay scale of Rs.5500-9000 was granted to him. The Respondent No.5 raised the objection that the Applicant was not entitled for the pay scale of Rs.5500-9000 and he was entitled to get pay scale of Rs.5000-8000. On that basis, the Respondent No.4 cancelled the earlier pay fixation order in the pay scale of Rs.5500-9000 and refixed the pay of the Applicant in the pay scale of Rs.5000-8000 as per 5th pay commission w.e.f.01.01.1996. In the 6th pay commission, the Applicant was awarded the pay band of Rs.9300-34800 with the grade pay of Rs.4400/- and Rs.4800/-. It is contention of the Applicant that because of the wrong fixation made by the Respondents, recovery of amount of Rs.1,40,256/- has been directed and it has been recovered from his retiral benefits. It is

contention of the Applicant the impugned order of recovery and recovery made by the Respondents from his pensionary benefits are illegal and therefore, he challenged the impugned order by filing present Original Application and also prayed to direct the Respondents to refund the amount recovered from his pensionary benefits.

3. Shri Gulab s/o Shankarrao Khandare (the Applicant in O.A.No.790/2017) was serving as Assistant Teacher in Government D.Ed. College, Aurangabad under Respondent No.3. He retired from the said post on 31.05.2016 on attaining the age of superannuation. It is contention of the Applicant that he was initially appointed on the post of Supervisor in the office of Adult Education, District-Aurangabad in the pay scale of Rs.335-680 by order dated 30.3.1985. Thereafter, he was absorbed on the post of Assistant Teacher in Government Public School by order dated 22.08.1991 in the pay scale of Rs.5500-9000 and after completion of 12 years' service, he was awarded time bound promotion in the pay scale of Rs.6500-10500 from 01.08.2003 by order dated 12.04.2004 issued by the Respondent No.2. As per recommendation of 6th pay commission, pay band of Rs.9300-34800/- with grade pay of Rs.4800/- was awarded to the Applicant.

4. It is contention of the Applicant that the Respondent No.4 took the objection for granting pay scale of Rs.5500-9000 w.e.f. 01.01.1996 to him and therefore, the Respondent No.2 instructed the Respondent No.3 to re-fix his pay. Accordingly, the Respondent No.3 re-fixed his pay by order dated 26.08.2014 and awarded pay scale of Rs.5000-8000 to him. Because of the re-fixation, the Respondents directed recovery of amount of Rs.66,828/- from the Applicant.

5. It is contention of the Applicant that after completion of 24 years' service, he was awarded pay scale in the pay band of Rs.15600-39100 with the grade pay of Rs.5400/- from 04.09.2015. The said pay has also been revised by the Respondent No.3 and his pay has been re-fixed. It is contention of the Applicant that the impugned order directing recovery from his pensionary benefits is illegal. The same has been recovered from the Applicant, after his retirement from his pensionary benefits. Therefore, he has filed the Original Applicant No.790/2017 challenging the impugned order and prayed to quash and set aside the said order and direct the Respondents to refund the amount recovered from him.

6. Shri Syed Abdul Wahid s/o Sayed Abdul Hakim (Applicant in O.A.No.792 of 2017) was serving as Assistant Teacher in Government D.Ed. College, Aurangabad under Respondent No.3. He retired from the said post on 30.09.2015 on attaining age of superannuation. It is contention of the Applicant that he was initially appointed as Supervisor in the office of Adult Education, District Parbhani in the pay scale of Rs.335-680 by order dated 29.01.1980. Thereafter, he was absorbed on the post of Programme Assistant on 17.12.1989 in the office of Adult Education Department, Jalna. At that time, he was granted pay scale of Rs.1400-2600. Thereafter, he was posted as Assistant Teacher in District Institute of Education and Training, Parbhani on 31.05.2005. On 30.05.2009, he was transferred to D.I.E.T. Jalna. Thereafter, he was transferred to Government D.Ed. College (Women) Aurangabad and he retired from the said post w.e.f. 30.09.2015 on attaining age of superannuation.

7. It is contention of the Applicant that after completion of 12 years' service on the post of Programme Assistant, he was awarded pay scale of Rs.6500-10000 by order dated 10.03.2004 w.e.f. 17.12.2001. Thereafter, he was awarded pay scale in the senior grade of Rs.7500-12000 by order dated 17.4.2009 passed

by the Principal D.I.E.T., Parbhani. His pay was fixed in the pay scale of Rs.5000-8000 by the Principal, Government D.Ed. College (Women), Aurangabad. Thereafter, he received annual increment w.e.f. 01.02.1990 instated of 01.12.1990 as he was absorbed on the post of Programme Assistant on 22.12.1979. As per the recommendation of 6th pay commission, he was awarded the pay scale in the pay band of Rs.9300-34,800 with the grade pay of Rs.4600/- by the Respondent No.3. At the time of retirement, the Respondents noticed that his pay has been wrongly fixed and therefore they refixed the pay of the Applicant and directed the Applicant to pay amount of Rs.1,50,152/- which was paid to him though he was not entitled to it. It is contention of the Applicant that on the basis of the said order the recovery has been made from him when he was on the verge of the retirement. Therefore, the said recovery is not permissible.

8. It is contention of the Applicants in all the Original Applications that the impugned orders issued by the Respondents for recovery of the excess amount paid to them is illegal and in violation of guidelines given by the Hon'ble Apex Court in case of **State of Punjab Vs. Rafid Masih, (White Washer), 2015 in Civil Appeal No.11527/2014 decided on 18.12.2014** as well as other judgments of Hon'ble Apex Court. It

is their contention that the Applicants had not played any role in getting the excess amount and the is fault is on the part of the Respondents while awarding wrong pay scale to the Applicants and therefore, the recovery directed against them is impermissible and illegal. It is their contention that the Respondents had recovered the amount from them illegally and therefore, they prayed to quash and set aside the impugned orders by allowing the Original Applications and also prayed to direct the Respondents to refund the amount recovered from the Applicants from their pensionary benefits.

9. The Respondents have filed their affidavit-in-reply and resisted the contentions of the Applicants on the ground that the Applicants were awarded wrong pay band and the said mistake has been noticed by Pay Verification Unit, Aurangabad when the service books of the Applicants had been sent to Pay Verification Unit at the time of their retirement. It is their contention that the Applicants were not entitled to get pay scale which was given to them. The said mistake has been corrected by the Respondents by refixing pay scale of the Applicants. It is their contention that because of the wrong fixation of pay of the Applicants, excess payments was made to them. It is their contention that the excess amount of salary has been paid to the

Applicants, though they were not entitled to get it. Therefore, the Respondents have directed to recover the said amount from the Applicants. It is their contention that at the time of pay fixation, the Applicants had given undertakings and thereby gave consent to recover the excess payment made to them in case of wrong fixation.

10. It is their contention that since the Applicants had deposited the excess amount paid to them as per the undertaking given by them, the said amount can not be refunded. It is their contention that there is no illegality in the impugned orders. It is their contention that the excess amount of pay has been recovered from the Applicants from their pensionary benefits and the said recovery has been made before the judgment of Hon'ble Apex Court in case of **State of Punjab Vs. Rafid Masih, (White Washer), 2015 in Civil Appeal No.11527/2014 decided on 18.12.2014**. Therefore, the said judgment is not useful to the Applicant in getting the refund of the amount recovered from them on account of excess payment made to them. Therefore, they prayed to dismiss the Original Applications.

11. I have heard Shri P.B. Salunke, learned Advocate holding for Shri V.G. Salgare, learned Advocate for the Applicants

in all these O.As. and Shri N.U. Yadav, learned Presenting Officer for the Respondents in all these O.As. I have perused the documents on record.

12. Admittedly, Shri Tejrao s/o Pandurang Wagh (Applicant in O.A.No.789/2017) was initially appointed on the post of Supervisor in the office of Adult Education, District Jalna and thereafter absorbed on the post of Assistant Project Officer in the same office. He was again absorbed on the post of Assistant Teacher and posted in Government Public School, Aurangabad. He retired from the said post w.e.f. 31.08.2013. Admittedly, the Respondents issued the order refixing the pay of the Applicant at the time of his retirement. The Respondents directed to recover amount of Rs.1,40,256/- from his pensionary benefits on the ground that excess payment has been made to the Applicant because of the wrong fixation of his pay. Accordingly, the amount of Rs.1,40,256/- has been recovered from the pensionary benefits of the Applicant.

13. Admittedly, Shri Gulab s/o Shankarrao Khandare (the Applicant in O.A.No.790/2017) was initially appointed on the post of Supervisor in the office of Adult Education, District- Aurangabad by order dated 30.3.1985. Thereafter, he was absorbed on the post of Assistant Teacher in Government Public

School by order dated 22.08.1991. He retired on 31.05.2016 from the said post. Admittedly, pay of the Applicant has been wrongly fixed at the time of granting Time Bound Promotion. Because of the wrong fixation, excess payment has been made to him. The Respondents realized the said mistake when the Applicant was on the verge of the retirement and thereafter they re-fixed the pay of the Applicant and directed recovery of the excess amount paid to the Applicant from the pensionary benefits of the Applicant. Admittedly, the said amount has been recovered from the pensionary benefits of the Applicant.

14. Admittedly, Shri Syed Abdul Wahid s/o Sayed Abdul Hakim (Applicant in O.A.No.792 of 2017) was initially appointed as Supervisor in the office of Adult Education, District Parbhani by order dated 29.01.1980. Thereafter, he was absorbed on the post of Programme Assistant on 17.12.1989 in the office of Adult Education Department, Jalna. At that time, he was granted pay scale of Rs.1400-2600. Thereafter, he was posted as Assistant Teacher in District Institute of Education and Training, Parbhani on 31.05.2005. On 30.05.2009, he was transferred to D.I.E.T. Jalna. Thereafter, he was transferred to Government D.Ed. College (Women) Aurangabad. He retired w.e.f. 30.09.2015 from

the said post. His pay has been wrongly fixed by the Respondents when he was serving as Programme Assistant. The said mistake has been noticed by the Pay Verification Unit at the time of verification of the service record of the Applicant at the time of his retirement. Thereafter Respondents took corrective measures and refixed the pay of the Applicant. At that time it was found that excess amount has been paid to the Applicant because of the wrong fixation of pay and therefore, they directed recovery of the said amount from the Applicant by issuing the impugned order. Accordingly, the said amount has been recovered from the Applicant from the pensionary benefits of the Applicant.

15. Learned Advocate for the Applicants has submitted that the Applicants were serving as Assistant Teacher at the time of their retirement and they were group 'C' employees. He has submitted that the wrong pay scale has been awarded to the Applicants by the Respondents and the Applicants had not played any role in getting such pay scale. He has submitted that the Applicants had never prayed to the Respondents for giving the said pay scales to them. Because of the wrong fixation made by the Respondents, the excess amount has been paid to the Applicants. He has submitted that the said recovery has been

made from the pensionary benefits of the Applicants after their retirement and therefore, the said order issued by the Respondents directing recovery of the excess amount paid to the Applicants and recovery made by the Respondents from their pensionary benefit is illegal.

16. He has submitted that the Hon'ble Apex Court has held that such type of recovery is impermissible. In support of his submission he has placed reliance on the judgment of **Hon'ble Apex Court in case of Syed Abdul Qadir & Ors Vs. State of Bihar & Ors. decided on 16.12.2008.** In paragraph Nos.27 and 28 of the said judgment, it has been observed as under:-

27. 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. 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, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.

28. Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.”

He has also placed reliance on the judgment of the **Hon'ble the Apex Court in the case of State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc. reported in [AIR 2015 SC 696]**. In paragraph 12 of the said judgment, it has been observed as under:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery,

where 13 O.A.No.435/2018 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, summarize 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 the 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 employees, would be 14 O.A.No.435/2018 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

Learned Advocate for the Applicants has submitted that the cases of the Applicants are squarely covered by the principle laid down by Hon'ble Apex Court in the above cited decisions.

17. Learned Advocate for the Applicant has submitted that the amount has been recovered from the Applicants from their pensionary benefits illegally by the Respondents and therefore, they are entitled to get the refund of the said amount. He has further submitted that the impugned orders are illegal

and therefore he prayed to quash and set aside the impugned orders and direct the Respondents to refund the amount to the Applicant.

18. Learned P.O. for the Respondents has submitted that the Applicants have received the excess payment of pay because of the wrong pay fixation made by the Respondents. He has submitted that the Applicants were not entitled to get pay scale which was granted to them earlier but the said pay scale was granted to them mistakenly. The said mistake has been noted by the Pay Verification Unit when the service records of Applicants had been forwarded to it at the time of their retirement. On the basis of objection raised by the Pay Verification Unit, the pay of the Applicants had been re-fixed and the recovery of the excess amount has been made. He has submitted that the Applicants have given undertaking at the time of their earlier pay fixation and undertook to refund the amount, if any, paid to them in excess of their entitlement. He has further submitted that as the Applicants had given undertaking, the Respondents have right to recover the said amount from the Applicants. He has submitted that the Respondents have rightly passed the impugned orders and directed to recover the excess amount paid to the Applicant.

There is no illegality in the impugned orders. Therefore, he prayed to dismiss the Original Applications.

19. Learned P.O. for the Respondents has further submitted that the recovery of the excess amount paid to the Applicant had been made in the year 2013. The Hon'ble Apex Court has decided the matter in case of State of **Punjab Vs. Rafiq Masih, 2015 SCW 501 in Civil Appeal No.11527/2014 on 18.12.2014**. Therefore, the principles laid down in the said decision will not be applicable to the present matter. The Applicants can not take benefit of principles laid down by the Hon'ble Apex Court in the above cited case.

20. Learned P.O. for the Respondents has placed reliance on the judgment of Hon'ble Apex Court in case of **High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh, decided on 29.7.2016**. In paragraph nos. 9 to 11 of the said judgment, it has been observed as under:-

“9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly

on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc. this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.” (emphasis supplied).

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.

It has been held in that case that in case the government servant had given undertaking to recover excess amount, if any, paid to him then in that case he is bound by such undertaking.

21. Learned P.O. for the Respondents has submitted that since the Applicants had given undertaking, they are bound by the said undertaking and therefore, Respondents are entitled to recover the same. The Applicants are therefore, not entitled to get refund of the said amount.

22. On perusal of the record, it reveals that the Respondents had wrongly awarded pay scale to the Applicants though they were not entitled. On the basis of wrong fixation made by Respondents, the excess payment has been paid to the Applicants. The Applicants had no knowledge about the said facts till the Pay Verification Unit raised objection in that regard. When the pay Verification Unit raised the objection that the wrong pay scale has been granted to the Applicants, the Respondents have refixed the pay of the Applicants and directed to recover the excess amount paid to them. The recovery has been ordered when the Applicants were on the verge of the retirement. The excess amount has been recovered from the pensionary benefits of the Applicant. The period of recovery was more than 5 years prior to their retirement.

23. The Applicants were serving as Assistant Teachers in Group 'C' category. The Applicants had not played any role in

getting wrong pay scale to which they were not entitled. The excess amount has been paid to them because of the wrong fixation made by the Respondents. There was no any representation on the part of the Applicant in getting excess amount. Therefore, the Applicant can not be held responsible for the same. The Applicants have no knowledge that the amount paid to them was more than their entitlement. The Applicants cannot be blamed for the excess payment made to them. Therefore, the said recovery is not permissible in view of the principle laid down by Hon'ble Apex Court in ***Syed Abdul Qadir & Ors Vs. State of Bihar & Ors. decided on 16.12.2008 and in case of State of Punjab Vs. Rafiq Masih, 2015 SCW 501 in Civil Appeal No.11527/2014 decided on 18.12.2014.***

24. The Respondents have come with a case that the Applicants had given undertaking when their earlier pay was fixed and therefore, they are bound by the undertakings given by them. The excess amount paid to them has been recovered by impugned order on the basis of undertakings given by the Applicants. But the Respondents have not produced the undertakings given by the Applicants on that regard. In the absence of documents of undertaking, it can not be said that the Applicants had undertaken to refund the excess amount, if any,

paid to them to which they were not entitled. Therefore, in the absence of undertakings, it can not be said that the recovery of excess amount, paid to the Applicants has been recovered on the basis of their undertaking. Therefore, I do not find any substance in the submission advanced by the learned P.O. in that regard.

25. Considering above said facts, in my view, the cases of the Applicants are squarely covered by the principles laid down in the judgment of Hon'ble Apex Court in case of ***Syed Abdul Qadir & Ors Vs. State of Bihar & Ors. decided on 16.12.2008*** and in case of ***State of Punjab Vs. Rafiq Masih, 2015 SCW 501 in Civil Appeal No.11527/2014 decided on 18.12.2014***. The said recovery is impermissible as the amount has been recovered from the pensionary benefits of the Applicant after their retirement and therefore, impugned orders directing the recovery of excess amount from the pensionary benefits of the Applicants are illegal. Hence, the same deserves to be quashed and set aside by allowing the Original Applications.

26. The excess amount of Rs.1,40,256/- paid to Shri Tejrao s/o Pandurang Wagh (Applicant in O.A.No.789/2017), amount of Rs. 66,828/- paid to Shri Gulab s/o Shankarrao

Khandare (the Applicant in O.A.No.790/2017) and amount of Rs.1,50,152/- paid to Shri Syed Abdul Wahid s/o Sayed Abdul Hakim (Applicant in O.A.No.792 of 2017) had been recovered from their pensionary benefits. The said recovery has been made by the Respondents illegally in violation of the guidelines given by the Hon'ble Apex Court in the above cited decisions. Therefore, the Applicants are entitled to get refund of the same.

27. In view of the discussion in foregoing paragraphs, Original Application Nos.789, 790 and 792 of 2017 are hereby allowed and impugned orders directing recovery of excess amount from the Applicants are hereby quashed and set aside. The Respondents are directed to refund the amount recovered from the pensionary benefits of the Applicants to them within three months from the date of this order failing which, the amount shall carry interest @ 9% per annum from the date of order till its realization. There shall be no order as to costs.

Place:- Aurangabad

Date :- 06.02.2019

Sas. O.A.No.789,790 & 792/2017.Recovery.BP

(B.P. Patil)

Member (J)