

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 811/2015**

Babulal s/o Dashrath Meshram,  
Aged 63 years, Occu. retired,  
resident of Plot no.397,  
Kukdey Layout, Nagpur-27.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Social Welfare Department, Mantralaya,  
Mumbai-32.
- 2) The Regional Deputy Commissioner,  
Social Welfare Department, Nagpur.
- 3) The Assistant Commissioner,  
Social Welfare Department,  
Samajik Nyaya Bhavan,  
Sevagram Road, Wardha.

**Respondents**

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S/Shri S.M. Pande, U. N.Palandurkar Advocates for the Applicant.

Smt. M.A.Barabde, P.O. for respondents.

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**Coram** :- Hon'ble Shri B. Majumdar, Vice-Chairman.

**Dated** :- 13<sup>th</sup> April, 2016.

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**ORDER** -

The O.A. is heard finally and decided at the admission stage with consent of ld. counsel for parties.

2. The applicant, a retired Warden (Group-C) in the Social Welfare Department, has filed this O.A. as he is aggrieved that

a recovery of excess payment has been made from the subsistence allowance payable to him.

3. The applicant was placed under suspension on 31-8-2009. Pending outcome of the D.E. against him he was reinstated on 30-10-2009. On 31-3-2011 he retired on superannuation subject to certain conditions. On 14-10-2013 he was inflicted with a punishment of 5% deduction from his pension. On 16-7-2015 the Regional Dy. Commissioner of Social Welfare (R/2) issued an order sanctioning payment of Rs.31,420/- towards arrears of his subsistence allowance for the period of suspension. On 21-8-2015 the applicant, according to the respondents, was paid an extra instalment (6<sup>th</sup>) of Rs.28,357/- towards arrears on account of pay revision as per the 6<sup>th</sup> Pay Commission which was not due to him. On 10-9-2015 the Assistant Commissioner of Social Welfare (R/3) issued an order of recovery of the above payment from the applicant. On 11-9-2015 an amount of Rs. 3,073/- out of the arrears of subsistence allowances was credited to his account.

4. The applicant submits that the recovery has taken place after more than four years of his retirement. Hon'ble the Supreme Court in State of Punjab & Ors. Vs. Rafiq Masih (White Washer) [(2015) 4 SCC 334] had held that when an excess payment

has been made to a Govt. employee belonging to Group-C / D for which he was not responsible, no recovery should be made to avoid hardship to the employee. Thus the respondents could not have made the recovery from his meagre retiral benefits.

5. The respondent no.3, the Assistant Commissioner of Social Welfare, in his reply in affidavit submits that the applicant was paid an excess instalment of arrears of pay revision as per 6<sup>th</sup> Pay Commission and this was required to be recovered from him. The recovery was done after the communication in that regard was sent to applicant on 10-12-2014 to which he did not respond.

6. Shri S.M. Pande, Id. Counsel for the applicant, mainly relied on Rafiq Masih to submit that recovery from a Group-C employee like that applicant, that too after more than four years of his retirement, was not justified as it amounts to causing undue financial hardship when he has to survive on his meagre pension.

7. Smt. M.A. Barabde, Id. P.O. for the respondents opposed the O.A. by submitting that the applicant does not dispute that an excess payment as per 6<sup>th</sup> Pay Commission revision was made to him. Besides, there was gap of less than one month between the actual payment of the instalment and its recovery. Thus the applicant cannot claim that any serious financial hardship has been

caused to him due to recovery and hence the Judgment in Rafiq Masih does not apply to him.

8. I find that according to the respondents, an excess payment (6<sup>th</sup> instalment of arrears of 6<sup>th</sup> Pay revision, amounting to Rs. 28,347/- was paid to the applicant on 21-8-2015. This amount was thereafter recovered from the applicant while paying the arrears of subsistence allowance on 11-9-2015 by remitting the balance amount of Rs.3,073/- to his bank account. The applicant does not dispute that this 6<sup>th</sup> instalment was paid in excess of his entitlement. Even though the recovery took place more than four years after his retirement, it cannot be said that there was any significant lapse of time between the wrong payment of the 6<sup>th</sup> instalment of pay revision and its recovery. Hence, it cannot be said that the applicant has been subjected to any serious hardship on account of the recovery. In Rafiq Masih the Hon'ble Supreme Court had held as follows –

*“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 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 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 ”.*

9. In the present case we find that the recovery had taken place within a period less than one month of ~~his~~ payment and thus it was unlikely to have caused any real hardship to the applicant. Hence in my view the circumstances enumerated in Rafiq Masih as above do not apply to the applicant.

10. The O.A. is therefore without any merit and stands rejected.

sd/-

(D. Vijay Kumar)  
Vice-Chairman.