

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

**ORIGINAL APPLICATION NO.970 OF 2018
WITH
ORIGINAL APPLICATION NO.971 OF 2018
(Subject :- Recovery)**

ORIGINAL APPLICATION NO.970 OF 2018

DISTRICT : JALNA

Shri Ramdas Gaibi Palve,)
Age-59 Years, Occ- Retired,)
R/o. Plot no.173, Shripadnagar,)
Near Honaji Nagar, Jatwada Road,)
Harsul, Aurangabad.)...**Applicant**

V E R S U S

1. **The State of Maharashtra,**)
Through: The Secretary)
Home Department,)
Mantralaya, Mumbai- 32.)
(Copy to be served on C.P.O. MAT,)
Aurangabad))
2. **The Commandant,**)
State Reserve Police Force Group No.3,)
Jalna.)
3. **The Account Officer,**)
Pay Verification Unit, Aurangabad.) **...Respondents**

WITH

ORIGINAL APPLICATION NO.971 OF 2018

DISTRICT : AURANGABAD

Shri Bhaurao Pandurang Gophane,)
Age-62 Years, Occ- Retired,)
R/o. C-87, N-7, CIDCO, Aurangabad.)...**Applicant**

V E R S U S

1. **The State of Maharashtra,**)
Through: The Secretary)
Home Department,)
Mantralaya, Mumbai- 32.)
2. **The Commissioner of Police,**)
Aurangabad.)
3. **The Account Officer,**)
Pay Verification Unit, Aurangabad.) **...Respondents**

Shri K.B. Jadhav, learned Advocate for the Applicant in both the O.As.

Shri V.R. Bhumkar, learned Presenting Officer for the Respondents in O.A.No.970/2018.

Shri N.U. Yadav, learned Presenting Officer for the Respondents in O.A.No.971/2018.

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

RESERVED ON : 24.04.2019.

PRONOUNCED ON : 11.06.2019.

ORDER

1. The Applicants have challenged the order issued by the Respondents directing recovery of excess amount paid to them due to fixation of wrong pay and also prayed to refund the amount recovered from them by filing the present Original Applications.

2. The facts and issues involved in both the matters are similar and identical regarding the fixation of wrong pay. Therefore, I am deciding both the Original Applications by common order.

3. Applicant Shri Ramdas Gaibi Palve (in O.A.No.970/2018) was initially appointed as Constable on 26.09.1983. On 1.09.2000, he was promoted on the post of Head Constable. On 03.04.2013, he was again promoted as Assistant Sub-Inspector. On 31.03.2016, he came to be retired from the service on attaining the age of superannuation. At the time of his retirement while preparing the pension case of the Applicant, the Respondent No.3 raised objection regarding the pay fixation/scale of the Applicant. Therefore the case of the

Applicant was allotted to the Respondent No.2 for re-fixation of pay scale. The Respondent No.2 had re-fixed the pay of the Applicant by order dated 16.09.2015 w.e.f. 1.1.1996 to 1.7.2015 and directed to recover the excess payment made to the Applicant due to wrong fixation of pay. The Respondent No.2 has directed to recover the amount of Rs.96,417/- from the Applicant. The pension papers were submitted to the Accountant General, Nagpur for sanction. The A.G., Nagpur sanctioned the pension case of the Applicant on 29.12.2015 and directed to recover the excess amount of Rs.96,417/- from the DCRG amount of the Applicant.

4. The Applicant requested to the Respondent No.2 orally not to recover the amount from his retiral benefits as the recovery from the retiral benefits is not permissible. But the Respondent informed him that the re-fixation and recovery has been done as per the direction given by the Respondent No.3 and accordingly the Respondent No.2 recovered the amount of Rs.96,417/- from the DCRG amount of the Applicant.

5. Applicant, Shri Bhaurao Pandurang Gophane (in O.A.No.971/2018) was initially appointed as a Constable in the year, 1975. He was promoted on the post of Head Constable in the year, 1988. On 30.3.2000, he was promoted on the post of the Assistant Sub-Inspector. He retired from the service on 31.5.2014 on attaining the age of superannuation. It is his contention that the post of A.S.I. is group 'C' post. At the time of retirement, the Respondent No.2 prepared his pension case and thereafter forwarded to the Respondent No.3. The Respondent No.3 raised objection regarding pay scale granted to the Applicant. On the basis of objection raised by the Respondent No.3, the Respondent No.2 re-fixed the pay of the Applicant by order dated 19.9.2013 w.e.f. 1.10.1998 to 1.7.2013 and directed to recover the amount of Rs.91,918/- paid to the Applicant due to wrong fixation of pay. The pension case was submitted to the Accountant General, Nagpur for sanction. The Accountant General sanctioned pension case of the Applicant and directed to recover the amount of Rs.91,918/- from the DCRG amount of the Applicant. The Applicant orally requested the Respondent No.2 not to recover the amount from his pensionary benefits as the recovery from the retiral benefits is

not permissible. But the Respondent No.2 had not considered the request of the Applicant and recovered the amount of Rs.91,918/- from the DCRG amount of the Applicant.

6. It is contention of both the Applicants that they belong to group 'C' employees. The wrong pay fixation has been made by the Respondent No.2 and they had not played any role in getting excess pay. It is their contention that due to mistake on the part of the Respondent No.2, they received excess payment. It is their contention that the recovery from the pensionary benefit is not permissible in view of the guidelines given by the Hon'ble Apex Court in case of ***State of Punjab & Ors. Vs. Rafiq Mahis, in Civil Appeal No.11527/2014 decided on 18.12.2014.*** Therefore, they prayed to quash and set aside the impugned order directing recovery and prayed to direct the Respondent No.2 to refund the amount illegally recovered from them from their pensionary benefits.

7. The Respondent Nos.1 and 2 in O.A.No.970 of 2018 have resisted the contention of the Applicant by filing their affidavit-in-reply. They have not disputed the fact regarding appointment, promotion and retirement of the Applicant. It is

their contention that the Respondent No.2 had fixed the pay of the Applicant on the post of Head Constable (Armed) by office order dated 30.12.2000. While preparing pension case of the Applicant, the Respondent No.3 i.e. The Accounts Officer, Pay Verification Unit, Aurangabad raised objection regarding pay fixation of the Applicant from 1.1.1996. Accordingly, the Respondent No.2 re-fixed the pay of the Applicant by order dated 16.9.2015 and directed recovery of amount of Rs.96,417/- paid to the Applicant due to wrong fixation of pay. It is their contention that the Applicant retired on 31.3.2016 on attaining the age of superannuation. Pension papers were prepared accordingly and submitted to the Accountant General, Nagpur for sanction. The Accountant General, Nagpur had sanctioned the pension case of the Applicant on 29.12.2015 and amount of Rs.96,417/- was shown excess amount in pay and allowances paid to the Applicant and it was to be recovered from the DCRG amount of the Applicant. It is their contention that the Applicant was informed about the re-fixation of pay on 08.11.2015. The Applicant put his signature on it. It is their contention that the amount of Rs.96,417/- has been recovered as per direction of A.G. Nagpur from the DCRG amount of the Applicant when he

was in service and at that time the Applicant had not raised any objection in that regard. It is their contention that there is no illegality in re-fixation of the pay of the Applicant and recovery of the excess amount paid to the Applicant and therefore they prayed to reject Original Application.

8. The Respondent No.2 in O.A.No.971/2018 has filed his affidavit-in-reply and resisted contention of the Applicant. It is his contention that the Applicant was aware of the fact that excess amount has been paid to him. He was liable to pay excess amount as per the rule and the Applicant was informed accordingly by order dated 31.03.1999 and 01.06.2009 by the Respondent No.2. Not only this but he was informed prior to his retirement on 31.3.1999, 01.06.2009 and 28.04.2005. He never raised grievance in that regard. The Applicant retired on 31.05.2014 and thereafter he raised the objection on 28.4.2015. It is his contention that the guidelines given by the Hon'ble Apex Court in case of **State of Punjab Vs. Rafiq Masih, decided on 18.12.2014** are not applicable in the case. The said judgment came to be passed after retirement of the Applicant. It is his contention that the recovery has been made as per the rules and

therefore, there is no illegality in the impugned recovery order and therefore, he prayed to reject the Original Application.

9. I have heard Shri K.B. Jadhav, learned Advocate for the Applicant in both the cases, Shri V.R. Bhumkar, learned Presenting Officer for the Respondent in O.A.No.970/2018 and Shri N.U. Yadav, learned Presenting Officer for the Respondents in O.A.No.971/2018.

10. Admittedly, Shri Ramdas Gaibi Palve (Applicant in O.A.No.970/2018) was initially appointed as Constable on 26.9.1983. Thereafter, he was promoted on the post of Head Constable on 1.9.2000. He was again promoted on the post of Assistant Sub-Inspector on 3.4.2013. He retired from the service on 31.3.2016. There is no dispute about the fact that at the time of his retirement his pay has been re-fixed as per the direction given by the Respondent No.3 and at the time of verification of pension papers of the Applicant it was noticed by the Respondent No.3 that excess payment of Rs.96,417/- was made to him due to wrong fixation of pay. The said amount has been recovered from the DCRG amount of the Applicant after his retirement.

11. Shri Bhaurao Pandurang Gophane (Applicant in O.A.No.971/2018) was initially appointed as Constable in the year 1975. He was promoted as Head Constable in the year 1988 and thereafter, he was again promoted on the post of Assistant Sub-Inspector on 30.3.2000. He retired from the service on 31.5.2014 on attaining the age of superannuation. Admittedly, his pay has been wrongly fixed by the Respondent No.2 and the said mistake has been noticed by the Respondent No.3 at the time his retirement. The said amount has been recovered from the Applicant from his DCRG amount. The Applicant retired from the post of ASI. The post of ASI is class 'C' post. The amount has been recovered from pensionary benefits of the Applicant.

12. Learned Advocate for the Applicants has submitted that the Applicants were serving on the group 'C' post at the time of their retirement. The recovery of excess amount on account of wrong fixation has been directed at the time when the Applicants were on the verge of the retirement. He has submitted that there was no misrepresentation or fraud practiced by the Applicants on the Respondents in getting fixed the wrong pay scale and in receiving the excess amount. On the contrary, their pay has

been fixed by the Respondent No.2 on his own accord. The mistake committed by the Respondent No.2 was noticed by the Respondent No.3 while verifying pension papers of the Applicants and accordingly, the Respondent No.2 corrected the said mistake and directed to recover the excess amount paid to the Applicants in the tune of Rs.96417/- and 91918/- respectively.

13. He has submitted that the said amount has been recovered from the DCRG amount of both the Applicants. He has urged that the said act of the Respondent is illegal and such type of recovery is impermissible in view of the guidelines given by the Hon'ble Apex Court. In support of his submission he placed reliance of the judgment of Hon'ble Apex Court in case of ***State of Punjab & Ors. Vs. Rafiq Mahis, in Civil Appeal No.11527/2014 decided on 18.12.2014.***

14. Learned Advocate for the Applicant has submitted that the similar issue in case of similarly situated persons has been dealt with and decided by this Tribunal in **O.A.No.43/2016 in case of Babasaheb Kondiba Mankar Vs. The State of Maharashtra & Ors. decided on 13.04.2016, in O.A.No.503/2016 in case of Baburao Murlidhar Ghaywat Vs.**

The State of Maharashtra & Ors. decided on 21.10.2016, in O.A.No.157/2017 in case of Dadasaheb S/o Pandurang Satdive Vs. The State of Maharashtra & Ors. decided on 03.01.2018, in O.A.No.433/2017 in case of Shri Baswantsing D. Rajput Vs. The State of Maharashtra & Ors. decided on 07.11.2017, in O.A.No.884/2016 in case of Shri Lahu V. Gajdhane Vs. The State of Maharashtra & Ors. decided on 07.11.2017, in O.A.No.285/2016 in case of Shri Devidas V. Salgarkar Vs. The State of Maharashtra & Ors. decided on 07.11.2017 and in O.A.No.109/2017 in case of Ms. U.S. Salunkhe Vs. The State of Maharashtra & Ors. decided on 23.11.2017.

15. He has submitted that the cases of the Applicants are squarely covered by above said decisions and therefore, he prayed to allow the Original Applications and to quash and set aside the impugned order to the extent of directing recovery from pensionary benefits of the Applicants and to direct the Respondent No.2 to refund the amount recovered from the Applicants.

16. Learned P.O. for the Respondents has submitted that the Applicants received the excess amount due to wrong fixation of the pay. He has submitted that the Applicants were not entitled to get the pay which was granted to him. They were aware that they were getting more pay. The said mistake has been noticed by the Respondent No.3 at the time of verification of pension papers of the Applicants. Thereafter, the Respondent No.2 re-fixed pay of the Applicants and accordingly recovery has been ordered and the said amount has been recovered from the DCRG amount of the Applicant. There is no illegality in the impugned order. Therefore, he justified the impugned order and prayed to reject the Original Application.

17. He has submitted that the principles laid down in judgment passed by the Hon'ble Apex Court in case of ***State of Punjab & Ors. Vs. Rafiq Mahis, in Civil Appeal No.11527/2014 decided on 18.12.2014*** are not applicable in the preset cases as the Applicants retired before the decision of the Apex Court in the above said case.

18. I have gone through the documents on record. On going through the record it reveals that both the Applicants

retired as ASI i.e. Group 'C' post. The pay of the Applicants has been fixed by the Respondent No.2 wrongly long back. None of the Applicants practiced fraud on Respondent No.2 in getting excess pay. Moreover, they never misrepresented the Respondent No.2 in getting wrong pay. Therefore, the Applicants cannot be blamed for it. None of the Applicants has given undertaking to the Respondent No.2 to deposit the excess amount paid to him if it was disclosed that it was wrongly fixed. The mistake committed by the Respondent No.2 has been noticed by the Respondent No.3 when the Applicants were on the verge of retirement. Therefore, pay has been re-fixed by the Respondent No.2 on the basis of objection raised by the Respondent No.3 and that is too at the time of their retirement. Accordingly, amount of Rs.96,417/- and 91,918/- had been recovered from both the Applicants from their DCRG amount when the Applicants were on the verge of the retirement and after retirement. Such type of recovery is not permissible in view of the guidelines given by the Hon'ble Apex Court in the case of ***State of Punjab & Ors. Vs. Rafiq Mahis, in Civil Appeal No.11527/2014 decided on 18.12.2014.*** Therefore, recovery made from the Applicants from their pensionary benefits is illegal. The Hon'ble Apex Court

has mentioned circumstances in which the recovery is impermissible while deciding the case of **State of Punjab & Ors. Vs. Rafiq Mahis**. The Hon'ble Apex Court 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.”

19. The present cases of the Applicants are also squarely covered by the guidelines given by the Hon'ble Apex Court in

above cited case. The recovery made from the pensionary benefits of the Applicant when they are on the verge of retirement or after their retirement is illegal and impermissible. Therefore, the impugned orders directing the recovery from pensionary benefits of the Applicants due to wrong fixation of pay are illegal. Therefore, the same requires to be quashed and set aside by allowing the Original Applications. In both the cases excess amount of Rs.96,417/- and 91,918/- has been recovered from the DCRG amount payable to the Applicants. The said recovery is illegal and therefore, the Applicants are entitled to get refund of the said amount.

20. In view of the discussion in the foregoing paragraphs, the Original Application No.970/2018 and 971/2018 are allowed. The impugned order date 16.9.2015 issued by the Respondent No.2 in O.A.No.970/2017 and order dated 19.9.2013 issued by the Respondent No.2 in O.A.No.971/2018 directing recovery of the excess amount paid to the Applicants are quashed and set aside. The Respondents are directed to refund the amount of Rs.96,417/- to the Applicant Shri Ramdas G. Palve in O.A.No.970/2018 and amount of Rs.91,918/- to the Applicant Shri Bhaurao P. Gophane in O.A.No.971/2018 within a period

of three months from the date of this order, failing which, the amount shall carry interest @8.5% p.a. from the date of the order. There shall be no order as to costs.

(B.P. PATIL)
VICE CHAIRMAN

Place:- Aurangabad

Date :- 11.06.2019

Sas. O.A.Nos.970 &971/2018.Recover. BPP.