

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 162 of 2016

Dr. Virendraprasad Rajendraprasad Shrivastav,
Aged- 60 years, Occ.-Taluka Health Officer, Mahagaon,
District Yeotmal.(now retired voluntarily) R/o Saisadan,
Z.P. Colony, Umerkhed, District Yeotmal.

Applicant.

Versus

- 1) The State of Maharashtra,
Through Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
- 2) Director of Health Services,
Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T., Mumbai.
- 3) Deputy Director of Health Services,
Akola Circle, Akola.
- 4) The Chief Executive Officer,
Zilla Parishad, Yeotmal.
- 5) The District Health Officer,
Zilla Parishad, Yeotmal.
- 6) The Accountant General (A & E)
Civil Lines, Nagpur.

Respondents

Shri J.S.Deshmukh, Advocate for the applicant.

Smt. S.V.Kolhe, Id. P.O. for the respondents no. 1 to 3 & 6.

Shri D.M.Kale for R-4 & 5.

WITH
ORIGINAL APPLICATION No. 163 of 2016

Dr. Pralhad Devidasrao Deshmukh,
Aged-59 years, Occ. -Taluka Health Officer, Umerkhed,
District Yeotmal, (now retired voluntarily), R/o Umerkhed,
District Yeotmal.

Applicant.

Versus

- 1) The State of Maharashtra,
Through Secretary
Public Health Department,
Mantralaya, Mumbai-32.
- 2) Director of Health Services,
Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T. Mumbai.
- 3) Deputy Director of Health Services,
Akola Circle, Akola.
- 4) The Chief Executive Officer,
Zilla Parishad, Yeotmal.
- 5) The District Health Officer,
Zilla Parishad, Yeotmal.
- 6) The Accountant General (A & E),
Civil Lines, Nagpur

Respondents

Shri J.S.Deshmukh, Advocate for the applicant.

Smt. S.V.Kolhe, Id. P.O. for the respondents no. 1 to 3 & 6.

Shri D.M.Kale for R-4 & 5.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

COMMON JUDGEMENT

(Delivered on 15th June, 2017)

Heard Shri J.S.Deshmukh, Id. counsel for the applicants and Smt. S.V.Kolhe, Id. P.O. for the respondents (in O.A.Nos. 162 & 163 of 2016) no. 1 to 3 & 6. Shri D.M.Kale, Id. counsel for the respondents no. 4 & 5.

2. Both the applicants are Medical Officers and have retired on superannuation. The applicant in O.A. 162/2016, Dr. Virendraprasad Rejendraprasad Shrivastav has retired voluntarily with effect from 10/10/2014 whereas the applicant in O.A. 163/2016 Dr. Pralhad Devidasrao Deshmukh got retired on superannuation on 30/05/2015.

3. After their retirement, the applicant Dr. Shrivastav was served with a notice dated 08/02/2016 whereby recovery of Rs. 5,16,075/- was initiated against him. The applicant Dr. Deshmukh was also served with recovery notice dated 08/02/2016 whereby he was asked to pay Rs. 3, 35, 348/-. Both these recovery notices have been challenged by the applicants by filing separate O.A.s.

4. In both the O.A.s the respondents have resisted the claim by filing separate affidavit. The material affidavit is filed on behalf of R-4 & 5 separately in both the O.A.s.

5. The respondents admitted that the applicants are Group-B, Medical officers and stood retired. It is stated that when the re-fixation was done after retirement, it was noticed that the applicants have been paid Rs. 15,600 – 39,100/- with grade pay of Rs.5400/- instead of pay scale Rs. 9300-34,800/- with grade pay of Rs.4600/- and therefore, because of the wrong pay fixation, excess amount was paid and the same is being recovered.

6. The Id. counsel for the applicants submit that the cases of both the applicants are covered by the Judgment delivered by the Apex Court in the case of **State of Punjab and Ors etc. Vs. Rafiq Masih (White Washer), etc. Reported in group of cases Civil Appeal No.11527/2014 arising out of SLP (C) No.11684/2012 & Ors.** The Id. counsel has also placed reliance on the Judgment delivered by this Tribunal at Nagpur bench in O.A. No. 108, 176 and 197 of 2016 and O.A. No. 108/2016 dated 13th December, 2016 and also Judgment in O.A. No. 1102/2015 in the case of **Syed Maqbol Hashmi Vs. State of Maharashtra and Ors.** delivered on dated 14/06/2016 and Judgment delivered by this Tribunal at Aurangabad bench in O.A. 711/2016 in the case of **Omprakash Dhondiram Mane Vs. State of Maharashtra & Ors.** delivered on 20/12/2016.

7. Admittedly, in the present case, both the applicants have retired and the recovery is being done after their retirement. Their pay

was re-fixed. The applicants were not responsible for getting wrong pay and therefore, the so called excess payment has been paid due to wrong pay fixation from time to time and the said fixation covers a long period.

8. In the case of **State of Punjab and Ors.etc. V/s Rafiq Masih (White Washer)** as referred (*cited supra*), the Hon'ble High Court has observed as under :-

“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, 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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

9. The Id. P.O. submits that the case of **State of Punjab and Ors.etc. V/s Rafiq Masih (White Washer)** is not applicable to Group-B employees, but this aspect has been considered by this Tribunal in O.A. No. 1102/2015 decided on 14/06/2016 in the case of **Syed Maqbol Hashmi Vs. State of Maharashtra and Ors.** as *(cited supra)*

10. Considering the aforesaid aspects, I am satisfied that the cases of both the applicants is covers by aforesaid different pronouncements of this Tribunal and also by the Judgment delivered

by the Hon'ble High Court, Bench at Aurangabad in the Writ Petition No. 11228/2015 in the case of **Dr. Nivruti S/o Baliram Kalyan Vs. State of Maharashtra and Ors.** (copy of which is placed on record at Annexure, A-9). Since both the applicants have already got retired, the recovery for so call excess amount paid to them cannot be made in view of the directions given by the Hon'ble Apex Court in case of **State of Punjab and Ors etc. Vs. Rafiq Masih** as referred to above. Hence the following order :-

ORDER

- 1) O.A. 162/2016 and 163/2016 are allowed with no order as to cost.
- 2) The impugned order of recovery of Rs. 5,16,075/- dated 08/02/2016 issued by R-5 in O.A. 162/2016 and the impugned order of recovery dated 08/02/2016 for Rs. 3,35,348/- issued by R-5 in O.A.163/2016 are quashed and set aside.
- 3) The respondents are directed not to recover the amount claimed by them. If the amount, if any, is recovered from the respective applicants, the same shall be refunded to them within two months from the date of this order.

4) No order as to costs.

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(J.D. Kulkarni)
Vice-Chairman (J).