

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.638 OF 2018
WITH
ORIGINAL APPLICATION NO.702 OF 2018**

DISTRICT : PUNE

ORIGINAL APPLICATION NO.638 OF 2018

Shri Vikas Purushottam Atre.)
Age : 60 Yrs., Occu.: Retired, R/at)
3/A-1, Flat No.8, Mrudung Building,)
Nadabramha Society, Warje, Pune 52.)...**Applicant**

Versus

1. The Addl. Chief Secretary.)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Director General of Police.)
M.S, Old Vidhan Bhavan, Coloba,)
Mumbai 1.)
3. The Commissioner of Police, Pune.)
4. The Accountant General-I, Maharashtra,)
101, Maharshi Karve Road, Mumbai 21.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.702 OF 2018

Shri Pravin Narhari More.)
Age : 62 Yrs., Occu.: Retired, R/at B-501,)

Samrat Sovereign, Malwadi, Hadapsar,)
Pune – 411 028.)...Applicant

Versus

1. The Addl. Chief Secretary.)
Home Department & 3 Ors.)...Respondents

Mr. V.V. Joshi, Advocate for Applicants.

Ms. N.G. Gohad, Presenting Officer for Respondents in O.A.No.638/2018.

Mr. A.J. Chougule, Presenting Officer for Respondents in O.A.702/2018.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 09.01.2019

JUDGMENT

1. In both the Original Applications, the common issue of recovery of excess payment made to the Applicants and its recovery from their retiral dues is involved, and therefore, they are being decided by this common order.

2. Briefly stated facts giving rise to O.A.No.638 of 2018 are as follows :

The Applicant stands retired on 31.07.2015 from the post of Assistant Sub-Inspector (Group 'C'). After retirement, his pension papers were processed to release pensionary benefits. In verification, it was transpired that, some excess payment was made towards Pay and Allowances during the period from 01.01.1986 to 01.07.2014. Accordingly, the Respondent No.3 issued order for recovery of Rs.92,812/- by order dated 15.05.2015. The Applicant contends that the deduction of Rs.92,812/- from the gratuity recovered invoking Rule 134(A) of

Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "Rules of 1982") is illegal as well as in contravention of Judgment of Hon'ble Supreme Court. Despite issuance of notice of Advocate, the Respondents failed to refund Rs.92,812/-. Hence, the Applicant has approached this Tribunal invoking jurisdiction under Section 19 of the Administrative Tribunals Act, 1985.

3. The Respondent Nos.1 to 3 resisted the application by filing Affidavit-in-reply (Page Nos.52 to 57 of Paper Book) *inter-alia* denying that the recovery of Rs.92,812/- from the gratuity of the Applicant is illegal. In this respect, the Respondents contend that during the period from 01.10.1986 to 01.07.2014, the excess payment was found made to the Applicant while fixation of pay, and therefore, it has been rightly deducted from his gratuity under Rule 134(A) of "Rules of 1982".

4. Admittedly, this O.A. was filed along with application for condonation of delay and it was allowed by this Tribunal. Therefore, now, the question of limitation does not survive.

5. Briefly stated facts giving rise to O.A.No.702 of 2018 are as follows :

The Applicant stands retired on 30.11.2013 from the post of P.S.I. After his retirement, pension papers were processed. During verification, it was transpired that, sum of Rs.5,01,587/- was paid in excess during the period from January, 1986 to November, 2013. The Applicant, therefore, made representation on 04.07.2014 for re-verification. After re-verification, sum of Rs.3,59,172/- was found paid in excess in the period from April, 1998 to 30.11.2013. Therefore, the Office of Accountant General issued direction on 12.01.2015 for recovery of excess amount from the gratuity and monthly pension. Accordingly, Rs.2,23,872/- was deducted under Rule 134(A) of "Rules of 1982" and remaining amount was recovered from monthly pension from February, 2015 to September, 2017. As such, the total amount of Rs.3,59,170/-

was recovered from the Applicant after his retirement from the retiral benefits as well as monthly pension. The Applicant assailed this action and sought direction for refund of the said amount with interest.

6. The Respondents have filed Affidavit-in-reply (Page Nos.62 to 68) denying the Applicant's allegation that the recovery is unsustainable in law. Admittedly, initially, Rs.5,01,587/- was found paid in excess but in re-verification, the amount came down to 3,59,172/-. It was found that the said excess amount was paid from April, 1998 to November, 2013. Therefore, it was rightly recovered from the gratuity and monthly pension invoking Rule 134(A) of "Rules of 1982". The Respondents further contend that the application is not within limitation and deserves to be dismissed on merit as well as on the point of limitation.

7. Heard Shri V.V. Joshi, learned Advocate for the Applicant, Ms. N.G. Gohad, learned Presenting Officer for Respondents in O.A.No.638 of 2018 and Shri A.J. Chougule, learned Presenting Officer for Respondents in O.A.702 of 2018.

8. Admittedly, in both these O.As, the excess amount was found paid during the tenure of service which was detected after retirement, and therefore, recovered invoking Rule 134(A) of "Rules of 1982". The learned Advocate for the Applicant in this behalf sought to place reliance on the Judgment of Hon'ble Supreme Court in ***Civil Appeal No.11527/2014 (State of Punjab and others Vs. Rafiq Masih (White Washer))***, decided on 18th December, 2014 wherein the Hon'ble Apex Court had summarized situation wherein recovery from the employee would be impermissible in law.

9. Per contra, the learned Presenting Officer sought to contend that the recovery is permissible under Rule 134(A) of "Rules of 1982". The learned P.O. also sought to place reliance on the Judgments of Hon'ble Supreme Court in ***Civil Appeal No.9873 (U.T. Chandigarh & Ors. Vs. Gurcharan Singh & Anr.)***, decided

on 01.11.2013 and in Civil Appeal No.3500 of 2006 (High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh) decided on 29.07.2016.

10. In so far as limitation is concerned, as stated above in O.A.No.638/2018, the O.A. was registered after condonation of delay.

11. Now, turning to O.A.No.702 of 2018, the learned Advocate for the Applicant rightly contended that the cause of action was continuous one in view of illegal recovery from gratuity as well as from monthly pension. In this behalf, he referred to letter issued by Treasury dated 25.06.2018 (Page No.28 of P.B.) wherein it is stated that Rs.2,23,872/- has been recovered from gratuity and remaining amount has been also recovered from monthly pension of February, 2015 to September, 2017. As such, after recovery of Rs.2,23,872/- in one stroke from the gratuity, the remaining amount was recovered from monthly pension upto September, 2017. Thus, it is a case of continuous cause of action and recovery was completed in September, 2017. Thus, the course of action accrued in September, 2017. Whereas, the O.A. has been filed on 30.07.2018. This being the position, the submission advanced by the learned P.O. that the application is time barred is misconceived and deserves to be rejected.

12. Now, it comes the aspect of entitlement of the Applicant for the refund of amount admittedly recovered from the Applicants after their retirement. In this behalf, the law is well settled in view of mandatory precedent of Hon'ble Supreme Court in **Rafiq Masih's** case (cited supra). At this juncture, it would be apposite to reproduce Para No.12 of the Judgment, which reads 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, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law.

- (i) *Recovery from employees belong to Class-III and Class-IV services (or Group 'C' and Group 'D' services).*
- (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.*

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."

13. In so far as **U.P. Chandigarh's** case (cited supra) referred by the learned P.O. is concerned, the said decision was delivered on 01.01.2013. Whereas **Rafiq Masih's** case wherein the Hon'ble Supreme Court had taken a review of its earlier Judgment and finally summarizes the law on 18.12.2014. It is not the case of Respondents that the Applicant has played any fraud in getting excess payment. The excess payment was made by the Department and nothing adverse is attributable to the Applicant. The mistake of excess payment was noticed after retirement only. As such, **Rafiq Masih's** case being subsequent, has to be followed as a binding precedent and holds the field.

14. As regard, **Jagdev Singh's** case (cited supra), in that case, the recovery was sought from the Officer in the cadre of Civil Judge, Junior Division (Group 'A') and in fact situation, it was found that the Applicant therein had given Undertaking to refund the excess amount, if found paid either by adjustment or against future dues. The said Undertaking was furnished to the Government at the time of fixation of pay scale. It is in this context, the Hon'ble Supreme Court held that the recovery is permissible. Whereas in the present case, the Applicants are Group 'C' employees and there is no such pleading of any Undertaking. This

being the position, with due respect, the Judgment in **Jagdev Singh's** case is of little assistance to the learned P.O.

15. The learned Advocate for the Applicant further placed reliance on the Judgment of Hon'ble High Court in **Writ Petition No.1010/2015 (Grace George Pampoorickal Vs. Municipal Corporation of Gr. Mumbai and Ors.) decided on 20.04.2018** wherein placing reliance on the Judgment of Hon'ble Apex Court in **Rafiq Masih's** case, the recovery after retirement of the employee is held not permissible in law and accordingly, the order of recovery has been quashed. Suffice to say, the issue of recovery from retirement benefits, if the case falls within the parameters laid down by Hon'ble Apex Court in **Rafiq Masih's** case (cited supra) is not permissible in law. Both the cases in hand fall within Clauses (1) and (3) of Para 12 of the Judgment in **Rafiq Masih's** case.

16. The Respondents sought to contend that the recovery justified under Rule 134(A) of "Rules of 1982" which permits the Government to recover excess amount paid to the Government servant during the period of his service. However, proviso to Rule 134(A) is material, which mandates that the Government shall give reasonable opportunity to the pensioner to show cause as to why the excess amount should not be recovered from him. In the present case, there is no such material on record to show that any such show cause notice was issued to the Applicant. Secondly, the question of recovery itself is unsustainable in law in view of Judgment in **Rafiq Masih's** case.

17. The necessary corollary of aforesaid discussion leads me to sum-up that both the Original Applications are deserve to be allowed. The action of recovery on the part of Respondents is unsustainable in law. Hence, the following order.

ORDER**O.A.No.638 of 2018 :**

- (A) The Original Application No.638 of 2018 is allowed.
- (B) The Respondents are directed to refund the amount of Rs.92,812/- within two months from today, failing which, amount shall carry interest at the rate of 9% p.a. till the actual payment.
- (C) No order as to costs.

O.A.No.702 of 2018 :

- (A) The Original Application No.702 of 2018 is allowed.
- (B) The Respondents are directed to refund the amount of Rs.3,59,172/- within two months from today, failing which, amount shall carry interest at the rate of 9% p.a. till the actual payment.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 09.01.2019

Dictation taken by :

S.K. Wamanse.