

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 255 OF 2019
(Subject – Recovery)**

DISTRICT : AURANGABAD

Subhash S/o Devrao Thale,)
Age : 62 Years, Occu : Pensioner,)
R/o : House No. 25, Madhuraj)
Co-op. Housing Society, 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.)... **RESPONDENTS**

APPEARANCE : Shri V.G. Salgare, Counsel for Applicant.
: Shri D.M. Hange, Presenting Officer for
respondents.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

DATE : **02.04.2024.**

ORAL - ORDER

Heard Shri V.G. Salgare, learned counsel appearing for the applicant and Shri D.M. Hange, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application is disposed of with the consent of both the sides at the admission stage itself.

3. By filing the present Original Application, the applicant is seeking directions to the respondent Nos. 3 & 4 to refund the amount of Rs. 2,42,493/- deducted as excess payment from retirement gratuity of the applicant by the respondent No. 4 in view of the ratio laid down by the Hon'ble Apex Court in case of State of Punjab Vs. Rafiq Masih in Civil Appeal No. 11527/2014.

4. Brief facts as stated by the applicant giving rise to this Original Application are as follows :-

(i) The applicant was initially appointed to the post of Supervisor in the Adult Education Office, District Beed in the scale of Rs. 335-680 by order dated 06.10.1979. Subsequently on 17.12.1989, he was absorbed on the post of Assistant Project Officer in the office of Adult Education Latur. Thereafter, the

applicant worked on the post of Project Officer, Education Office (C.S.) Aurangabad and again absorbed on the post of Assistant Teacher under respondent No.4 i.e. the Government Public School, Aurangabad.

(ii) It is the case of the applicant that initially he was awarded the pay scale of Rs. 6700-10500 and subsequently revised the pay scale of Rs. 7500-12000 in 5th Pay Commission from 01.03.2000 and accordingly pay fixation in the said pay scale was granted by the Education Officer (CE) Jalna to the applicant by order dated 12.03.2009. Thereafter he was absorbed under the respondent No.4 i.e. Government Public School. The applicant was awarded the pay band of Rs. 9300-34800 with grade pay of Rs. 4800/-. The last pay drawn by the applicant was of Rs. 21960/- and his pensionable pay was fixed as 21,726/-.

(iii) It is the further case of the applicant that while working on the post of Assistant Teacher he retired on attaining the age of superannuation on 31.01.2014. After his retirement he received the order dated 04.02.2014 issued by the respondent No.4 i.e. Principal, Government Public School stating therein that the excess amount of Rs. 2,42,493/- has been paid to the applicant due to wrong pay fixation and accordingly the respondent No.2

deducted the said excess amount paid to the applicant from his gratuity while releasing of pensionary benefits to the applicant. Hence, the present Original Application.

5. Learned counsel for the applicant further submits that the applicant came to be retired as a Class-III employee and the said amount has been recovered from his gratuity after his retirement. Learned counsel for the applicant submits that the said excess amount has been paid to the applicant during the period from 01.03.2000 to 01.09.2008, which exceeds the period of five years. Learned counsel submits that the ratio laid down by the Hon'ble Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No. 11527/2014 (Arising out of SLP (C) No. 11684/2012), dated 18.12.2014**, is squarely applicable to the facts and circumstances of the present case.

6. Learned counsel for the applicant submits that the applicant is not anyway responsible for the mistake committed by the competent authority in respect of wrongful grant of pay scales and salary. The applicant has not misled the authority in any manner. Learned counsel submits that the present Original Application deserves to be allowed.

7. Learned Presenting Officer on the basis of the affidavit in reply filed on behalf of respondent Nos. 1, 3 & 4 submits that while granting new pay scale to the employees, the employees have to give an undertaking in term of clause No. 15.6 of the Circular dated 29.04.2009 to the effect that if there would be any wrong fixation and if there would be any excess payment made to the employee due to wrong fixation, he / she would be liable to repay the same to the Government. Copy of the said Circular is marked as Annexure R-1. Learned P.O. further submits that due to wrong pay fixation as clarified by the Pay Verification Unit (Squad), Aurangabad, the Account Officer has pointed out the excess amount paid to the applicant to the tune of Rs. 2,42,493/-. The said amount has been recovered from retirement gratuity of the applicant on account of full grant of senior grade of Rs. 5500-9000 instead of Rs. 5000-8000 as per Government Circular issued by the Finance Department dated 29.04.2009 and as per the undertaking given by the applicant on 10.05.2009. Learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed.

8. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent No.2 submits that the recovery

is proposed in No Dues Certificate issued by the respondent No.4 and accordingly, the respondent No.2 has issued a Gratuity Payment Order on 19.03.2014 incorporating the condition subject to recovery of Rs. 2,42,2014/-towards overpayment of pay and allowances made by respondent No.4. Learned P.O. further submits that the respondent No.2 received the pension proposal of the applicant by respondent No.4 on 10.02.2014 vide letter dated 05.02.2014 along with Form No.7 and in the said form column No.2 (b) stipulating the amount of Rs. 2,42,493/- being the overpayment of pay and allowances. It is further submitted that the respondent No.4 has also forwarded the No Dues Certificate wherein the said amount is shown to be recovered towards the overpayment of pay and allowances. Thus on the basis of said pension proposal, the respondent No.2 put a caution in the G.P.O. Authority for recovery of Rs. 2,42,493/- from gratuity payment. The action taken by the respondent No.2 is as per the proposal submitted by the Pension Sanctioning Authority/Respondent No.4. The respondent No.2 has no role to play in respect of the grievances of the applicant.

9. The applicant was retired on 31.01.2014 while working on Class-III post. The same also not denied by the respondent authorities. It also appears that the said amount

towards the excess payment has been recovered from the applicant after his retirement from his gratuity amount. The said amount has been paid to the applicant during the period from 01.03.2000 to 01.09.2008 i.e. almost for 8 years.

10. In view of the ratio laid down by the Hon'ble Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc., (2015) 4 Supreme Court Cases 334**, the recovery from class-III and class-IV employees after their retirement is impermissible on certain conditions. The Hon'ble Apex Court in para No. 18 has made the following observations :-

“18. 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."

The case of the applicant is fully covered under the clause Nos. (i), (ii) and (iii) of the above judgment of the Hon'ble Apex Court.

11. It appears that the said amount has been recovered from the gratuity amount of the applicant, which appears to be paid to the applicant in excess during the period from 01.03.2000 to 01.09.2008 towards the salary and allowances. The applicant is neither at fault, nor he has misled the authorities in any manner for his pay fixation. Thus, the ratio laid down by the Hon'ble Apex Court, more particularly condition Nos. (i) to (iii) are squarely applicable to the facts and circumstances of the present case. In view of the same, the recovery as against the applicant is impermissible.

12. It further appears that the respondent authorities have taken Vachanpatra/undertaking from the applicant on 10.05.2009 after issuance of Government Circular dated 29.04.2009 as the applicant was bound to give an undertaking to

refund the amount to the Government, if paid in excess. However, the same has been taken after two months of pay fixation order dated 12.03.2009 and not at the time of pay fixation. The pay fixation has done in the year 2009 and after the retirement of the applicant by order dated 04.02.2014 the recovery is sought from retirement gratuity of the applicant. The Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 14296/2023 (Gautam Sakharam Mairale Vs. State of Maharashtra and Ors.)** and along with connected matters, in the identical facts and circumstances in respect of the similarly situated employees in para Nos. 5 and 6 has made the following observations :-

*"5. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it is in these circumstances that an undertaking has been extracted. The learned Advocate representing the Zilla Parishad as well as the learned A.G.Ps., submit that, once an undertaking is executed, the case of the Petitioners would be covered by the law laid down by the Hon'ble Supreme Court in the case of **High Court of Punjab and Haryana and others vs. Jagdev Singh, 2016 AIR (SCW) 3523**. Reliance is placed on the judgment delivered by this Court on 1.9.2021, in **Writ Petition No. 13262 of 2018 filed by Ananda Vikram Baviskar Vs. State of Maharashtra and others**.*

6. We have referred to the law laid down by the Hon'ble Supreme Court in **High Court of Punjab and Haryana and others vs. Jagdev Singh (supra)**. The record reveals that no undertaking was taken from these Petitioners when the pay scales were revised. An undertaking from some of them was taken at the stroke of their retirement. An undertaking has to be taken from the candidate when the revised pay scale is made applicable to him and the payment of such pay scale commences. At the stroke of superannuation of the said employee, asking him to tender an undertaking, practically amounts to an afterthought on the part of the employer and a mode of compelling the candidate to execute an undertaking since they are apprehensive that their retiral benefits would not be released until such undertaking is executed. Such an undertaking will not have the same sanctity as that of an undertaking executed when the payment of revised pay scale had commenced. We, therefore, respectfully conclude that the view taken **in High Court of Punjab and Haryana and others vs. Jagdev Singh (supra)** would not be applicable to the case of these Petitioners, more so since the recovery is initiated after their superannuation.”

13. The pay fixation (wrong pay fixation as per the claim of the applicant) was done on 12.03.2009 and at that time admittedly no undertaking has been given by the applicant. It was taken some two months thereafter. In view of the observations made by the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad, such an undertaking will not have the same sanctity as that of an undertaking executed when the payment of revised pay scale had commenced.

14. In view of the discussions in foregoing paragraphs, the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

- (i) The Original Application No. 255/2019 is hereby allowed.
- (ii) The respondent Nos. 3 & 4 are hereby directed to refund the amount of Rs. 2,42,493/- to the applicant within a period of three months from the date of this order .
- (iii) In the circumstances, there shall be no order as to costs.
- (iv) The Original Application is accordingly disposed of.

PLACE : Aurangabad.

DATE : 02.04.2024

(Justice V.K. Jadhav)

Member (J)

SAS S.B. O.A. No. 255 of 2019VKJ RecoveryS