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**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**O.A.NO. 936/2016 WITH O.A.NO. 05/2017 WITH O.A.
NO. 06/2017 WITH O.A.NO. 72/2017 WITH O.A.NO.
73/2017**

**01. ORIGINAL APPLICATION NO. 936 OF 2016
DISTRICT: - LATUR**

Tuljaram S/o. Shekaba Mane,
Age : 58 years, Occu: Retired Govt.
Servant, R/o. Sharda Nagar,
Ambajogai Road, Latur,
Dist. Latur.

.. APPLICANT.

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Education Department,
Mantrlaya, Mumbai.
- 2) The Deputy Director of Education,
Latur Division, Latur.
- 3) The Education Officer [Continuing
Education], Zilla Parishad, Latur,
District Latur.
- 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad.

.. RESPONDENTS.

W I T H

02. ORIGINAL APPLICATION NO. 05 OF 2017

DISTRICT: LATUR

Bhanudas S/o. Raghunath Pund,

05

Age 61 years, Occu: Retired Govt. Servant, R/o. Kulswamini Nagar, Infront of S.P. Quarters, Barshi Road, Latur, Dist. Latur.

.. APPLICANT.

VERSUS

- 1) The State of Maharashtra, Through its Secretary, Education Department, Mantrlaya, Mumbai.
- 2) The Deputy Director of Education, Latur Division, Latur.
- 3) The Education Officer [Continuing Education], Zilla Parishad, Latur, District Latur.
- 4) The Accounts Officer, Pay Verification Unit, Aurangabad.

.. RESPONDENTS.

WITH

03. ORIGINAL APPLICATION NO. 06 OF 2017

DISTRICT: LATUR

Zargar Abdul Salim Ahmed,
Abdul Hafiz, Age 59 years,
Occu: Retired Govt. Servant,
R/o. Khairnagar, Hindusthan Colony,
Udgir, Tq. Udgir Dist. Latur.

.. APPLICANT.

VERSUS

- 1) The State of Maharashtra, Through its Secretary, Education Department, Mantralaya, Mumbai.

* connected in view of order dt. 28/9/12 in speaking to the minutes in O.A. NO. 5/12.

PH Subhedar
Registrar
28/9/12



- 2) The Deputy Director of Education,
Latur Division, Latur.
- 3) Government Junior College of
Education, Udgir,
Dist. Latur.
- 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad.

.. RESPONDENTS.

W I T H

04. ORIGINAL APPLICATION NO. 72 OF 2017

DISTRICT: OSMANABAD.

Sitaram S/o. Thavrao Rathod,
Age 62 years, Occu: Retired Govt.
Servant, R/o. Saraswat Colony,
Ambajogai, Dist. Beed.

.. APPLICANT.

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Latur Division, Latur.
- 3) The Education Officer [Continuing
Education], Zilla Parishad, Osmanabad,
District Osmanabad.
- 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad.

.. RESPONDENTS.

W I T H**05. ORIGINAL APPLICATION NO. 73 OF 2017****DISTRICT: OSMANABAD.**

Gorakh S/o. Pandurangrao Tikone,
Age 60 years, Occu: Retired Govt.
Servant, R/o. Ramnagar, Laxmi Colony,
Osmanabad.


.. APPLICANT.**V E R S U S**

- 1) The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Latur Division, Latur.
- 3) The Education Officer [Continuing
Education], Zilla Parishad, Osmanabad,
District Osmanabad.
- 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad.

.. RESPONDENTS.

APPEARANCE : Shri A.D. Gadekar – learned Advocate
for the applicants in all these cases.

: S/shri V.R. Bhumkar, D.R. Patil,
M.P. Gude & Mrs. Deepali S. Deshpande
learned Presenting Officers for the
respective respondents in respective
matters.



: Smt Yogita Kshirsagar (Thorat) –
learned Advocate for respondent No. 3
in O.A. No. 05/2017.

CORAM : **HON'BLE SHRI J.D. KULKARNI,**
VICE CHAIRMAN (J)

DATE : **16TH AUGUST, 2017.**

COMMON ORDER

1. Heard Shri A.D. Gadekar – learned Advocate for the applicants in all these cases, S/shri V.R. Bhumkar, D.R. Patil, M.P. Gude & Mrs. Deepali S. Deshpande learned Presenting Officers for the respective respondents in respective matters and Smt Yogita Kshirsagar (Thorat) – learned Advocate for respondent No. 3 in O.A. No. 05/2017.

2. The applicants in these Original Applications except Original Application No. 06/2017 were serving as Assistant Project Officers; whereas the applicant in O.A. No. 06/2017 was serving as an Assistant Teacher. All these applicants have got retired on attaining the age of superannuation. Vide various orders stated in the respective OAs, the respondents have recovered the amount from the gratuity of the applicants on the ground that the same was paid in excess in view of the



revision of the pay of the applicants. The applicants have submitted that the recovery of the amount from their retiral benefits is against the judgment delivered by the Hon'ble Apex Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** reported in a group of cases **Civil Appeal No.11527/2014 arising out of SLP (C) No.11684 of 2012 & Ors.** The applicants are, therefore, claiming that the excess amount recovered from their retiral benefit be refunded to them.

3. The details of the recovery of each of the applicants and other details such as name of the applicants, their posts, date of order of recovery, amount recovered, date of revised pay and date of superannuation etc. are given in the details as under: -

Sr. No	O.A. No.	Name of Applicant	Post	Date of order of recovery	Amount recovered (Rs.)	Date of order of revised pay	Date of superannuation
1	936/2016	Shri T.S. Mane	Asstt. Project Officer	29.6.2016	1,77,810/-	4.2.2016	31.5.2016
2	05/2017	Shri B.R. Pund	Asstt. Project Officer	July, 2013	1,35,381/-	Annex. A4	30.6.2013
3	06/2017	Shri Zargar	Asstt. Teacher	23.8.2016	1,01,064/-	7.5.2016	31.12.2015

		Abdul					
4	72/2017	Shri S.T. Rathod	Asstt. Project Officer	23.12.2013	89,169/-	14.1.201 3	30.4.2013
5	73/2017	Shri G.P. Tikone	Asstt. Project Officer	March, 2013	1,92,065/ -	30.3.201 3	28.2.2014

4. In O.A. Nos. 936/2016 and 72/2017 separate affidavits in replies have been filed by respondent Nos. 2, 3 & 4; whereas in O.A. No. 73/2017 affidavit in reply has been filed by respondent Nos. 1 & 2 jointly and separate affidavit in reply has been filed by respondent No. 3. In O.A. No. 06/2017 affidavit in reply has been filed by respondent Nos. 3 & 4 separately; whereas in O.A. No. 936/2016 affidavit in reply has been filed by respondent Nos. 2 & 4 separately. The respondents had tried to justify the order of recovery. The sum and substance of the defence taken by the respondents is that the pay scale of the applicants was wrongly fixed and when it came to know the same was wrongly fixed, it was decided to revise the pay scale. The pay scale is accordingly revised and the excess amount has been recovered.

5. Learned Advocate for the applicant has placed reliance on the judgment delivered by the Aurangabad Bench of this

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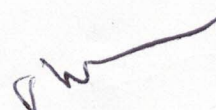
Tribunal in O.A. Nos. 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299 & 300 ALL OF 2016 on 14.09.2016.

In the similar circumstances of the facts, this Tribunal was pleased to direct the respondents to refund the excess amount recovered from the respective applicants after their retirement on superannuation.

6. In the judgment referred as above dated 14.09.2016 passed by this Tribunal, this Tribunal referred to the judgment delivered by the Hon'ble Apex Court in the case of ***State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.*** In paragraph Nos. 7 & 8 it has been observed by this Tribunal as under: -

"7. The Hon'ble Apex Court in the aforesaid case has considered various aspects as regards recovery of the amount from the employees. Hon'ble the Apex Court in para 12 of the said judgment 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.

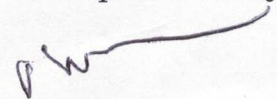
(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employees, would be iniquitous or harsh or arbitrary to such an



extent, as would far outweigh the equitable balance of the employer's right to recover."

8. Perusal of the various impugned orders clearly show that, the pay scale of the applicants were revised vide various pay fixation orders and the period covered under such order is from 1989 or so till passing of such orders. All the pay fixation orders have been passed after the retirement of the applicants. There is no dispute that the applicants are Group "C" employees and have retired long back and there is nothing on the record to show that the applicants were responsible for such wrong pay fixation. In fact, the applicants have played no role in such wrong pay fixation and therefore, the order of recovery of excess amount is absolutely illegal in view of the judgment delivered by the Hon'ble Apex Court as cited supra."

7. Learned Presenting Officer submits that since the amount has already been recovered, no hardship will be caused to the applicants and the applicants have already given undertaking that if an excess amount paid to them on account of wrong pay fixation be recovered from them. In my opinion merely because the amount has been recovered that itself does not mean that the applicants will not be put to hardship. It is material to note that the applicants are Class-III officers and since such huge amount is recovered from their pensionary



benefits, they will put irreparable loss and they will be put to great hardship.

8. Perusal of the order of recovery clearly shows that the amount has been paid to the applicants during the period from 18.09.1998 to 31.08.2008 and the same is being recovered vide various orders passed in the year 2016. Admittedly, the applicants were not responsible for getting their pay wrongly fixed. Considering all these circumstances I am satisfied that the case of each of the applicants is covered by the directions given by the Hon'ble Apex Court in the case of ***State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.*** as already referred to above. Hence, I pass the following order: -

ORDER

- (i) O.A.NOs. 936/2016, 05/2017, 06/2017, 72/2017 & 73/2017 are allowed.
- (ii) Respondents are directed to refund the amount recovered from the applicants deducted as excess payment from their retiral benefits.



(iii) The said amount shall be refunded to the applicants within a period of three months from the date of this order.

(iv) There shall be no order as to costs.


VICE CHAIRMAN (J)

16-08-18

O.A.NO.936/2016& group - (SB)-HDD-2017-recovery

**FARAD CONTINUATION SHEET
IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
AURANGABAD BENCH, AURANGABAD**

O.A. No. 5/2017

(For speaking to minutes)

(Shri Bhanudas R. Pund V/s. State of Maharashtra & Ors.)

OFFICE ORDER

TRIBUNAL'S ORDERS

CORAM : J.D. KULKARNI, VICE CHAIRMAN (J)

DATE : 22.09.2017.

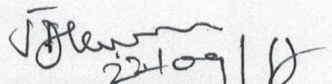
ORAL ORDER:-

1. Heard Shri A.D. Gadekar, learned Advocate for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for respondents.
2. The matter was mentioned by the learned Advocate Shri A.D. Gadekar. He submits that in the title clause of O.A. No. 5/2017, the address of Respondent No. 3 has wrongly been typed and it shall be the "Education Officer (Continuing Education), Zilla Parishad, Nanded, Dist. Nanded" instead of "Education Officer (Continuing Education), Zilla Parishad, Latur, Dist. Latur". Therefore, he requested that the same may be corrected. He further submits that the corrected copy of order be supplied to him.
3. Learned P.O. has no objection for the said correction.



4. In view thereof, the word "Latur" be replaced in both places in place of word "Nanded" in the address of respondent No. 3 in O.A. No. 5/2017.

5. The Registrar of this Tribunal, Bench at Aurangabad is directed to correct the order accordingly and supply the corrected copies to both the parties. Both the parties shall approach the Registrar accordingly for correction.


22/09/17
VICE CHAIRMAN (J)

KPB ORAL ORDER 22.09.2017 (SB) JDK

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**FARAD CONTINUATION SHEET
IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
AURANGABAD BENCH, AURANGABAD**

O.A. NO. 05/2017

(Bhanudas R. Pund Vs. The State of Mah.&Ors.)

OFFICE ORDER

TRIBUNAL'S ORDERS

CORAM : JUSTICE M.T. JOSHI, V.C.

(This matter is placed before the Single Bench due to non-availability of Division Bench.)


DATE : 28.09.2017.

**ORDER ON APPLICATION DTD. 28.9.2017
FOR SPEAKING TO MINUTES**

Heard Shri A.D. Gadekar, learned Advocate for the applicant and Smt. Sanjivani Deshmukh. Ghate, learned Presenting Officer for the respondents.

2. The present application for speaking to minutes is moved by the learned Advocate for the applicant for some correction in the title clause of judgment dtd. 16.8.2017 delivered in O.A. no. 5/2017 & Ors.

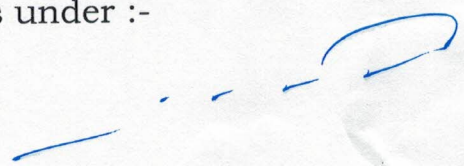
3. The learned Advocate for the applicant submits that in the title clause of judgment dtd. 16.8.2017 in O.A. no. 5/2017 the address of res. no. 3 is mentioned as "The Education Officer (Continuing Education), Zilla Parishad, Latur,



Dist. Latur” instead of **“The Education Officer
(Continuing Education), Zilla Parishad,
Nanded, Dist. Nanded”**.

4. He further submits that by the earlier order dtd. 22.9.2017 passed on the application for speaking to minutes dtd. 22.9.2019, in advertently in para 4 of the said order, the Tribunal has mentioned that the address of res. no. 3 in the title clause of the O.A. no. 5/2017 be corrected as ‘Latur’ instead of ‘Nanded’. In view of the said direction, the Registrar of the Tribunal has carried out the necessary correction in the title clause of the O.A. no. 5/2017. In fact the said correction was required to be carried out in the title clause of the judgment only.

5. In the circumstances, the Registrar of the Tribunal is now directed to correct the title clause of judgment dtd. 16.8.2017 of O.A. no. 5/2017 and title clause of O.A. no. 5/2017 itself as under :-



**“Res. no. 3 - The Education Officer
(Continuing Education), Zilla Parishad,
Nanded, Dist. Nanded”.**

6. Accordingly the speaking to minutes application stands disposed of.



VICE CHAIRMAN.

ARJ ORAL ORDERS 28.9.2017