

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1278 OF 2022

DISTRICT : MUMBAI

Shri Prakash Shivram Salvi,)
Age 59 years, Retired Deputy Superintendent of Police,)
Lotus, Building No.14, Flat No.1706, Gawand Baug,)
Pokharan Road No.2, Thane West, Thane)..Applicant

Versus

1. The State of Maharashtra,)
Through its Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai)
2. The Director General of Police,)
S.B.S. Marg, Colaba, Mumbai)
3. Principal Accountant General (A&E),)
101, Maharshi Karve Road, Pratishtha Bhavan,)
2nd Floor, Churchgate, Mumbai 400020)
4. Director of Accounts & Treasuries,)
(Pay Verification Unit), Thakarsi House, 3rd Floor))
Shoorji Vallabhdas Marg, Near Foreign Post,)
Ballard Pier, Mumbai 400001)
5. Additional Director General of Police,)
Protection of Civil Rights, 4th floor,)
Old Custom House, Mumbai)..Respondents

Ms. Samrudhi Salvi – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 1st March, 2024

PRONOUNCED ON: 14th March, 2024

J U D G M E N T

1. The applicant who retired from the post of Deputy Superintendent of Police on 31.5.2021 has challenged the show cause notice dated 20.9.2022 as well as order dated 31.12.2021 whereby his pay is revised and recovery is sought.

2. The applicant was appointed as Police Sub-Inspector on 2.7.1989. He came to be promoted to the post of Assistant Police Inspector, Police Inspector and Deputy Superintendent of Police as per his seniority in that cadre. He retired on superannuation w.e.f. 31.5.2021. Pursuant to an audit objection raised by the Pay Verification Unit the Additional Director General of Police (PCR) issued order dated 31.12.2021 and corrigendum dated 14.9.2022 refixing the pay of the applicant w.e.f. 8.2.2001. On the basis of order dated 31.12.2021 the applicant was informed that an amount of Rs.3,05,690/- had been paid in excess to the applicant between the period from 8.2.2001 and 31.5.2021 and instructed the applicant to deposit the said amount. The applicant vide his application dated 15.2.2022 informed the respondents that the amount of overpayment should be adjusted against Rs.4,20,000/- due to him for DCRG. On the same day the applicant gave another application to the office that the amount of overpayment should not be recovered from him on the basis of the judgment of the Hon'ble Supreme Court in **State of Punjab & Ors. Vs.**

Rafiq Masih (White Washer), AIR 2015 SC 696 : 2015 AIR SCW 501 : 2015(4) SCC 334. The applicant had also given an undertaking as required as per Rule 6(2(3) of the notification dated 30.1.2019 issued by the Finance Department wherein he said that if any overpayment is made he shall adjust from the amount due to him. The respondents issued a show cause notice to the applicant for the purpose as required under Rule 134-A of the MCS (Pension) Rules, 1982 as to why the overpayment should not be recovered from the pension of the applicant. The applicant gave reply to the show cause notice vide his application dated 7.10.2022.

3. Ld. Advocate for the applicant points out that the respondents have withheld an amount of Rs.4,20,000/- from his retiral benefits for recovery of excess payment of Rs.3,05,690/- without any explanation and without issuing him any show cause notice. She relied on the settled legal position enumerated by the Hon'ble Supreme Court in the case of Rafiq Masih (supra) wherein it was held that no recovery can be made from employees in situation summarized therein and the applicant is squarely covered by the ratio of this judgment. Ld. Advocate for the applicant further states that he had informed the respondents that no excess payment had been made to the applicant and it clearly shows that his pay was fixed at Rs.7,500/- and was given effect from 8.9.2001. Therefore the contention of the respondents that the applicant had been paid excess amount from 8.9.2001 is incorrect and without any basis.

4. Per contra Ld. PO refutes the contentions of the Ld. Advocate for the applicant and refers to the affidavit in reply dated 24.3.2023 filed by Kalpana Kisan Lokhande, Dy. Assistant to Director General of Police, MS, Mumbai. It was pointed out that on the basis of audit objections raised by the Pay Verification Unit (PVU) when the service book was sent for verification after retirement of the applicant the Additional Director General of Police had issued order dated 31.12.2021 and corrigendum

dated 14.9.2022 thereby refixing the pay of the applicant w.e.f. 8.2.2001. On the basis of the order dated 31.12.2021 the amount due was calculated to be Rs.3,05,690/- and the respondents informed the applicant to deposit the same on 10.2.2022. The applicant vide his application dated 15.2.2022 informed them that amount of overpayment as mentioned above should be adjusted against Rs.4,20,000/- due to him for DCRG. On the same date the applicant gave another application stating that the amount should not be recovered from him on the basis of judgment of the Hon'ble Supreme Court in Rafiq Masih (supra).

5. Ld. PO pointed out that the applicant has given undertaking as required as per Rule 6(2)(3) of the notification dated 30.1.2019 issued by the Finance Department. In this undertaking he has stated that if any overpayment is made then he shall adjust it from the amount due to him. He further pointed out that it was incorrect to state that no notice was given to him. He states that show cause notice was given to the applicant as required under Rule 134-A of the MCS (Pension) Rules, 1982 as to why the aforesaid overpayment should not be recovered from the pension. The applicant had given reply to the show cause notice vide application dated 7.10.2022. He relied on the following judgments:

(a) Civil Appeal No.300 of 2006 High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh decided on 29.7.2016 by the Hon'ble Supreme Court of India.

(b) W.P. No.4616 of 2016 Smt. Jayshree Trimbak Takalkar Vs. The Chief Executive Officer, ZP, Aurangbad & Anr. decided on 22.2.2017 by the Hon'ble Bombay High Court, Bench at Aurangabad.

(c) W.P. No.4919 of 2018 State of Maharashtra & Ors. Vs. Suresh Chandra Dharamchand Jain & Ors. decided on 23.7.2019 by the Hon'ble Bombay High Court, Bench at Nagpur.

6. Considered the submissions of both the sides. The matter relates to recovery and adjustment of excess amount paid to the applicant. It is an undisputed fact that excess amount was paid to the applicant. It is necessary to look at Rule 134-A of the MCS (Pension) Rules, 1982, which reads as under:

“134-A. Recovery and adjustment of excess amount paid – If in the case of a Government servant, who has retired or has been allowed to retire, it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including] Service rendered upon re-employment after retirement or any amount is found to be payable by the pensioner during such period and which has not been paid by , or recovered from him, then the excess amount so paid or the amount so found payable shall be recovered from the amount of pension sanctioned to him:

Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him:

Provided further that, the amount found due may be recovered from the pensioner in installment so that the amount of pension is not reduced below the minimum fixed by Government.”

7. I have gone through the decision referred to by the Ld. Advocate for the applicant. I have no dispute regarding the settled legal principles laid down in the above cited judgment cited by the Ld. Advocate for the

applicant. Facts of the said case are different than the facts in the present case. Therefore, principles laid down in the above referred decisions are not attracted in the present case. Therefore, said decision is not much useful to the applicant in the instant case.

8. Further more it is to be noted that in this case the rules of natural justice are followed and show cause notice was issued to the applicant. Reliance of Ld. Advocate for the applicant on *Rafiq Masih* (supra) is not applicable to the present applicant because he retired as Deputy Superintendent of Police whereas the judgment in *Rafiq Masih* (supra) is only applicable to the case of employees belonging to Class III and IV or Group C and D. It is also to be further noted that the applicant has given undertaking stating that any excess payment if made would be refunded. Considering all these facts, I do not find any illegality in the impugned show cause notice dated 20.9.2022 and the order dated 31.12.2021. Hence, no interference is required and there is no merit in this case.

9. In view of the discussion in the foregoing paragraphs, OA stands dismissed with no order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
14.3.2024

Dictation taken by: S.G. Jawalkar.