IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.793 OF 2017

DISTRICT : MUMBAI

Shri Daulatrao Dattatreya Pawar,)
Age 59 years, Retired Govt. Service,)
R/a 408, Shri Santosh Mata CHS,)
Behind Santoshi Mata Mandir, LBS Road,)
Mulund (W), Mumbai 400 080)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary,)
Home Department, Mantralaya, Mumbai 32)

2. Principal,)
Police Training Centre, At Post Khandala,)
Tal. Mavval, District Pune)

3. The Treasury Officer,)
Ground Floor, Lekhakosh Bhavan,)
Collector Office Compound, SBI Treasury)
Branch, Camp, Pune 411001)

4. Accounts Officer,)
Pay Verification Unit,)
Ground Floor, Lekhakosh Bhavan,)

Collector Office Compound, SBI Treasury)
Branch, Camp, Pune 411001)

5. Accountant General (A&E)-I,)
101, Maharshi Karve Road, Mumbai 400020)..Respondents

Shri C.T. Chandratre – Advocate for the Applicant
Shri K.B. Bhise – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Member (A)
RESERVED ON : 19th July, 2018
PRONOUNCED ON: 23rd July, 2018

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

Brief facts of the case:

2. On retirement from Air Force after 15 years of service the Applicant joined as Police Sub Inspector on 15.9.1993. In the course of time he got his promotion as Assistant Police Inspector and Police Inspector and retired on 31.5.2017. On 24.11.2016 (page 18) the Pay Verification Unit while verifying his pay at the time of his retirement observed that the excess amount should be recovered. The same was reiterated on 3.3.2017 which stated that his pay scale of Rs.1400-2300 done on 15.9.1993 while reappointing has been done wrongly. On 6.3.2017 the Accounts Officer mentioned that the pay scale granted to him in the fixation of pay scale of Rs.1400-2300 is wrong and the excess amount should be recovered. On 6.3.2017 the Accounts Officer directed to recover the amount and make

an entry in the service book. The Ld. Advocate for the Applicant in his pleadings at para 6.6 page 4 states as under:

> *"6.6 Applicant states that when he had joined in the year 1993 his pay was fixed at Rs.1560/- as stated above. This was done as per Rule No.162(b) of Pension Rules. Thereafter by passage of time the pay scale of the Applicant were revised as per the 5th Pay and 6th Pay Commission's report. During this period it was obligatory on the part of Respondent No.2 and 4 to verify the pay of the Applicant as per those RP Rules. Applicant states that, when he was about to retire he noticed that his pay has not been verified which is a precondition for sanctioning the pension. Applicant therefore by letter dated 30.11.2015 requested Respondent No.2 to get his pay verified by the Respondent No.4."*
>
> (Quoted from page 4 of OA)

3. The learned Advocate for the Applicant has challenged the impugned orders issued on 17.7.2017 (Exhibit A page 11) and on 27.7.2017 (Exhibit A-2 page 13). He states that excess amount of Rs.6,14,337/- paid to the Applicant should be recovered. According to the Applicant the amount was recovered from the Applicant from Gratuity and Leave Encashment. The Applicant was a Group A officer at the time of retirement, though he was appointed as a Group B officer.

4. The Ld. Advocate for the Applicant has challenged the impugned orders on following grounds:

> *"6.14 (b) Applicant states that, it was possible for the Respondent No.2 and 4 to detect the above mistake (without admitting that) at the very earlier stage i.e. in the year 1999 when the pay scales of the Government servants were revised as per 5th Pay Commission w.e.f. 1.1.1996. The office of the Respondent No.4 is created for the purpose of verification of pay only and they failed in their duties i.e. to complete the verification of the fixation of pay within the time laid*

down by the Govt. Had such verification would have been carried out in the year 1999 itself the amount could not have accumulated to such large extent. It is, therefore, inequitable on the part of the Respondents to recover the alleged excess amount from the retiral benefits of the Applicant.

(c) Applicant states that the maximum period of his service has been spent on Class III posts. By passage of time though the status was upgraded however duties and responsibilities were remained same. The Applicant was getting meager pay and allowances. The amount of pension is also meager in which it is very difficult for the Applicant and his family to survive when the cost of living is rapidly increasing and the medical expenses due to their old age are also increasing. Therefore by considering this fact it is iniquitous to recover the amount from the retiral benefits of the Applicant.

(d) Applicant further states that, on 31.5.2017 he is retired from the service. Therefore, it is necessary to restrain the Respondents from recovering the amount as per the law laid down by the Hon'ble Supreme Court in Civil Appeal No.11527 of 2014 decided on 18.12.2014 (The State of Punjab Vs. Rafiq Masih (White Washer). Applicant states that the parameters laid down in this judgment are not to be observed in isolation but has to be read collectively. Therefore, the retirement of the Applicant from Class I or Class II post would not exclude the Applicant from law laid down in the Rafiq Masih case.

(e) Applicant states that the alleged excess payment is not based upon any representation of the Applicant or any fraud played by him. On the other hand the Applicant was not having any knowledge that he was getting the excess payment. When his pay was fixed while entering into the service he had never furnished any undertaking. In such circumstances and by considering the time span from 1993 to 2017 where it was possible for the Respondents to verify the pay and that too under the well defined instructions, the Respondents are now estopped from recovering the amount. Therefore, it is necessary to quash and set aside the order dated 27.7.2017 and like orders."

(Quoted from page 7-8 of OA)

5. Shri C.T. Chandratre, learned Advocate for the Applicant refers to the judgment of Hon'ble Supreme Court in Civil Appeal No.11527 of 2014 State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc. decided on 18.12.2014. Para 11 of the said judgment reads as follows:

> *"11. .....*
> *Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time.*
>
> *However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.*
>
> *The same was sought to be recovered in 1984, i.e., after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper.*
>
> *We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e., Class-III and Class-IV – sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would*

also breach the mandate contained in Article 14 of the Constitution of India.

It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement).”

6. Ld. Advocate for the Applicant refers to the judgment of the Hon’ble Supreme Court in Rafiq Masih (supra) and states that even though the Applicant belongs to Group A category his retirement should be considered as a homogenous class and should not be discriminated.

7. Ld. Advocate for the Applicant relies on para 12 of judgment of the Hon’ble Supreme Court in Rafiq Masih (supra) which reads 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, summarise 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 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 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."

8. Relying on the above judgment of the Hon'ble Supreme Court in Rafiq Masih (supra), the Ld. Advocate for the Applicant contends that Group A officer is not debarred from consideration for prohibiting his recoveries. He mentions that the impugned order is open to judicial scrutiny. He, therefore, contends that the OA should be allowed.

9. The Ld. Advocate for the Applicant contends that the judgment of the Hon'ble Supreme Court in Civil Appeal No.3500 of 2006 High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh decided on 29.7.2016 should not be applied in the present case as the recovery was made at a short span of time.

10. The learned Advocate for the Applicant also relies on the judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.3077 of 2016 Laxmikant Gurunathrao Kulkarni Vs. The State of Maharashtra & Ors. decided on 28.4.2016 in which recovery was stayed of the Medical Officer.

11. Shri K.B. Bhise, learned Presenting Officer for the Respondents states that the Applicant was Group A officer at the time of his retirement.

The Applicant had given undertaking dated 29.5.2009 (page 5 of the compilation) at the time of his pay fixation which reads as under:

> *"I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise."*

12. According to the Ld. PO judgment of the Hon'ble Supreme Court in Rafiq Masih (supra) relied by the Ld. Advocate for the Applicant is not relevant as the Applicant belongs to Group A category. He, therefore, refers to para 11 of the said judgment which reads as under:

> "11. .....
> *We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e., Class-III and Class-IV – sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India."*

13. He, therefore, contends that this judgment is not relevant as far as Applicant's case is concerned.

14. Ld. PO refers to para 10 and 11 of the judgment of the Hon'ble Supreme Court in Civil Appeal No.3500 of 2006 High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh decided on 29.7.2016 which reads as under:

> *"10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc. this Court held that while it is not possible to postulate all*

situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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 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 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." (emphasis supplied).*

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

15. Ld. PO therefore contends that recovery is admissible and the principles of estoppel would be applicable in view of the undertaking given by the Applicant.

16. While refuting the contentions of the Ld. PO, the Ld. Advocate for the Applicant relies on the judgment of this Hon'ble Tribunal in OA No.1004 of 2015 & Ors. Shri Shrirang L. Devare & Ors. Vs. The State of Maharashtra & Ors. decided on 18.9.2017 and states that the undertaking furnished by the Applicant cannot be counted as recovery pertains to period from 1994 to 2017. The undertaking was given in 2009. The undertaking is only relevant for fixation of pay of revised pay therefore it is not applicable here.

17. Ld. Advocate for the Applicant states that Grade Pay of the Applicant is Rs.5000/- and contends that this Hon'ble Tribunal at Nagpur Bench has given similar relief in the case of Group B officers in OA No.162 of 2016 Dr. Virendraprasad Rajendraprasad Shrivastav Vs. The State of Maharashtra & Ors. decided on 15.6.2017. The relevant para 5 is quoted below:

> *"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.15600-39100 with grade pay of Rs.5400/- instead of pay scale Rs.9300-34800 with grade pay of Rs.4600/- and therefore because of the wrong pay fixation, excess amount was paid and the same is being recovered."*

18. Issues for consideration:

(a) Whether the deduction in retirement benefits of the Applicant can be considered as recovery or adjusting payments made to him against his retirement benefits?

(b) Whether this adjustment is iniquitous in the context of the judgment of the Hon'ble Supreme Court?

Discussion and findings:

19. The Applicant is Group 'A' officer and has maximum retirement benefits admissible to the Government servants. As per the version in para 6.6 of the OA the Applicant was aware that he would be retiring in the year 2017 but his pay has not been verified till 2015. He, therefore, made a representation on 30.11.2015 to get his pay verified as pay verification was essential to get the pensionary benefits. On each occasion viz. 5th Pay Commission as well as 6th Pay Commission benefits the Applicant had furnished undertaking that if there is any excess amount paid to him the same may be adjusted from his salary and other benefits. The Applicant cannot take a plea that failure to verify his pay fixation from 1999 onwards has deprived him all the benefits which were due to him.

20. Perusal of the record indicates that as the verification did not completed till 2016, the Applicant was beneficiary of the excess payment on continuous basis. Whatever financial benefits were due to him have already been enjoyed by him. The amount which has been now deducted from his gratuity and leave encashment is only adjustment of the excess amount already enjoyed by him over a period of more than 18 years. The amount was never due to him and it is not a recovery of fine imposed on him or from an amount which was due to him. His contention that he was ignorant about excess payment and, therefore, the same should not be deducted at the time of his retirement cannot be considered valid as he has already received the amount entitled to and still benefitted from the same.

21. The Hon'ble Supreme Court in the case of Rafiq Masih (supra) has observed that:

"11. .....
recovery from employees belonging to the lower rungs (i.e., Class-III and Class-IV – sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them."

The judgment further concluded by observing:

*"12. .....
Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise 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)."

22. The Hon'ble Supreme Court has deliberately left the Government servants belonging to Group 'A' and 'B' from mentioning as they are recipients of higher financial benefits particularly after the revision of pay commissions.

23. The facts mentioned in the judgment of the Hon'ble Bombay High Court at Aurangabad Bench in Writ Petition No.3077 of 2016 Laxmikant Gurunathrao Kulkarni (supra) and the judgment of this Tribunal at Nagpur Bench in OA No.162 of 2016 Dr. Virendraprasad Rajendraprasad Shrivastav (supra), are different and therefore not relevant.

24. As argued by the Ld. PO in the present case the Applicant was placed on notice at the time of granting of each pay commission benefits that any payment found to have been made in excess would be required to be refunded. Accordingly, the officer had furnished necessary

undertaking knowing clearly well that the same would be subject to scrutiny by the competent officers. As a responsible officer it would be inappropriate for the Applicant to say that he provided this undertaking in a routine manner.

25. I, therefore, come to the conclusion that the payment already received in excess over a period of time by the Applicant has been correctly adjusted against his retirement benefits including gratuity and leave encashment. This cannot be termed as recovery.

26. As underlined by the Hon'ble Supreme Court in the judgment cited above, this adjustment of excess payment cannot be, therefore, termed as iniquitous.

27. I, therefore, do not find any merit in the OA and the same is dismissed without costs.

Sd/-
(P.N. Dixit)
Member (A)
23.7.2018

Dictation taken by: S.G. Jawalkar.

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