

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**REVIEW APPLICATION NO.08 OF 2017  
IN  
ORIGINAL APPLICATION NO.342 OF 2016**

1. The Joint Director of Vocational Education & Training, Regional Office, 49, Kherwadi, Mumbai – 51. )  
)... **Applicant**  
(Ori. Respondent 2)
2. The Principal, Industrial Training Institute, Sane Guruji Marg, Mumbai-11. )  
)... **Applicant**  
(Ori. Respondent 1)

**Versus**

1. Shri Prakash Laxman Hotkar. )  
Age : 61 years, Occ. Retired as Group )  
Instructor, R/at. F-301, Jaimala Apts., )  
Dhananjay Nagar, Nile-More-Gaon, Nala )  
Sopara (W), Dist.Palghar. )... **Respondent**  
(Ori. Applicant)
2. The Accountant General, Maharashtra-1 )  
Pratistha Bhawan, M.K. Marg, )  
Mumbai-20. )... **Ori. Respondent 3**
3. The Additional Treasury Office (Pension) )  
Palghar, O/at Ground Floor, Surya )  
Colony, Bidco Road, Palghar (W). )... **Ori. Respondent 4**
4. The State of Maharashtra, through )  
Principal Secretary, Higher & Technical )  
Education Department, Mantralaya, )  
Mumbai - 32. )... **Ori. Respondent 5**

  
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**Mr. N.K. Rajpurohit, Chief Presenting Officer for Applicants (Ori. Respondent Nos. 1 & 2).**

**Mr. B.A. Bandiwadekar, Advocate for Respondent (Ori. Applicant).**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 28.06.2017**

### **JUDGMENT**

1. This application for review under Section 22(3)(f) of the Administrative Tribunals Act, 1985 (Act hereinafter) read with Rule 18 of the Maharashtra Administrative Tribunals (Procedure) Rules, 1988 read with Section 114 read with order 47 of the Code of Civil Procedure (CPC) seeks the review of my order in the **Original Application (OA) No.342/2016 (Shri Prakash L. Hotkar Vs. The Principal, Industrial Training Institute, Mumbai and 4 others, dated 9.3.2017)** mainly to the extent of effectively allowing the review applicants to make a revision in the matter of pay fixation of the present Respondent – being the original Applicant who has already retired.

2. I have perused the record and proceedings hereof as well as of the disposed of OA and heard Mr. N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) for



the Applicants (Ori. Respondents) and Mr. B.A. Bandiwadekar, the learned Advocate for the Respondent (Ori. Applicant). The Applicant – Joint Director of Vocational Education and Training is the Original Respondent No.2 while the 2<sup>nd</sup> Applicant – Principal, Industrial Training Institute is the original Respondent No.1. The original Respondents 3, 4 and 5 have been impleaded as Respondents 2, 3 and 4 while the original Applicant is the 1<sup>st</sup> Respondent hereto.

3. The perusal of the Judgment in the OA, a copy of which is annexed at Exh. 'RA-1' (Page 6 onwards hereto) would show that the original Applicant was a retired Group Instructor of ITI and he had disputed the downward revision of his gratuity to the extent of Rs.21,285/-, commutation of pension with the extent of Rs.25,917/- and pension from November, 2012 to October, 2016 to the extent of Rs.45,673/-. It was recorded in that Judgment that, for all practical purposes, the original Applicant wanted the status quo ante to be restored such as it stood pursuant to the order of 14.9.1999. In Para 3 of the said Judgment in the OA, the details were set out as to how his pay scales were fixed and as to how after completing 12 years of service as Group Instructor, he was granted 2 tier promotion and his pay scale was fixed at Rs.6500-10500



w.e.f. 12.10.1997 while the order dated 14.9.1999. The pay fixation was at Rs.7300/- in accordance with the G.R. of 8.3.1999 issued by the Finance Department. Under the 6<sup>th</sup> Pay Commission, he was fixed at Rs.9300-34800 and a Grade Pay of Rs.4600/- was also given to him. It was observed in Para 5 by me that I emphasized on that aspect of the matter because as would be pointed out in that Judgment, the dispute related to the Grade Pay which for all practical purposes gave rise to the said OA. It was then recorded in Para 6 as to how, the Applicant agitated the claim for Grade Pay of Rs.5200 instead of Rs.4600 by virtue of the G.R. of 5.7.2010 of the Finance Department. It was then mentioned as to how, initially the Government took the stand that the post of the Applicant was an isolated one and no promotional avenues were available, but later on, that stand was changed and it was belatedly realized by the Respondents that, his post was not an isolated one. I considered the case of the review Applicants that the original Applicant was not eligible to being promoted and effectively rejected it. In Para 7, it was observed in effect that the original Applicant being the present 1<sup>st</sup> Respondent failed to rebut the case of the review Applicant about the initial fixation having been made by mistake. It was, therefore, a clear case of the fixation by mistake.



4. On 31.10.2012, the original Applicant retired on superannuation. In the light of the above circumstances, in Para 8 of the Judgment in the OA, I discussed Rules 26, 27 and 131 of the Maharashtra Civil Services (Pension) Rules, 1982 (Pension Rules). For all practical purposes, Rules 26 and 27 did not apply. However, Rule 131 was applicable which was reproduced in Para 9 and the discussions in Paras 10 and 11 was in respect thereof. For the sake of facility, Paras 9, 10 and 11 of the Judgment of the OA may be reproduced hereinbelow.

“9. However, as far as the Rule 131 is concerned, I think there is substance in the case of the Applicant. For ready reference, the said provision deserves to be fully reproduced.

**“Rule 131. Revision of pension after authorization**

(1) Subject to the provision of rules 26 and 27, pension once authorized after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently.

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Finance Department if the clerical error is detected after a period of two years from the date of authorization of pension.

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(2) For the purpose of sub-rule (1), the retired Government servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

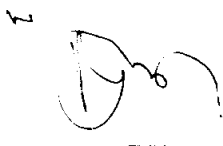
(3) In case the Government servant fails to comply with the notice, the Head of Office shall, by order in writing direct that such excess payment, shall be adjusted in installments by short payments of pension in future, in one or more installments as the Head Office may direct.

**10.** The bare perusal of the Rule 131 of the Pension Rule would make it clear that in the first place there shall not be any revision of pension to the disadvantage of the Government servants and if it were to be so then it has to be upon detection of the fact that it was a clerical error. I can safely proceed on the basis that non clerical errors which here we are concerned with cannot be revised to the disadvantage of the Pensioner. Further the proviso lays down that there shall not be any revision of pension to the disadvantage of the pensioner without concurrence of the Finance Department but again the words "if clerical error.....of pension" would make it clear that the Rule emphasizes the fact that only clerical error can be made subject to the downward revision and that too within the framework of Rule 131 of the Pension Rules. Here still further, revision has been made after a period of two years from the date to

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authorization of pension which would become clear from the fact that the Applicant retired on 31.10.2012 and the impugned pay revision leading up to effecting the revision of pension was made as late as in September, 2015.

**11.** Proceedings further in analyzing the Rule 131 of the Pension Rule, Rule 131 (2) envisages service of a notice that too by the Head of the Office asking the said pensioner to refund the excess payment within a period of two months from the date of receipt of that notice and only in the event he failed to do so recourse could be had to sub-rule 131 of the Pension Rules. In this O.A., I am not concerned with what is open even now for the Respondents to do and I would, therefore, express no view thereupon but then in the set of facts in this O.A., compliance with Rule 131 of the Pension Rules was a must and I must repeat that here it is not a case of clerical error. Therefore, allowing all latitude to the Respondents their impugned action cannot be sustained and that would be so by reason of the fact that by the time impugned action was taken not only had the Applicant retired on superannuation but a period of more than two years had also elapsed and, therefore, even if there may or may not be any amount of substance otherwise in the case of the Respondents, I think they will have no real cause against the Applicant.”

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5. It is pertinent, therefore, to note that in the matters governed by the Rules framed under proviso to Article 309 of the Constitution of India, the contingency such as this one was taken care of by Rule 131 of the Pension Rules. It is, therefore, equally clear that post retirement of the Applicant, any interference with the Applicant's pension which would be the direct outcome of any revision now made, would have to be strictly within its ambit and analyzing the said Rule, I have clearly held in the OA that the impugned action of the review Applicant was unsustainable because there was no clerical mistake therein. If this is the net result of the said Rule, then regardless of whether, it is palatable to the review Applicants or not, by virtue of the legal position, it does govern all concerned including the review Applicants and even the judicial fora.

6. In the context of the above discussion, I may now turn to this Review Application wherein it has been mentioned and rightly so, that in the Judgment in the OA, I relied upon the Judgment of the Hon'ble Supreme Court in **Civil Appeal No.11527/2014 arising out of SLP (C) No.11684/2012 (State of Punjab and others Vs. Rafiq Masih (White Washer) etc., dated 18.12.2014.** I discussed that particular Judgment in Para 12 of the





Judgment in the OA. Para 12 from the unreported Judgment in **Rafiq Masih's** case was reproduced by me which I can do here as well.

**“12.** It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments mistakenly been made by the employer, in excess of their entitlements. 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 :

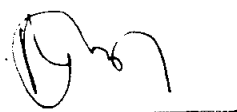
(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retired 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.

It would become very clear from I and II of the above principles laid down by the Hon'ble Supreme Court that there should be no recovery from the Applicant herein."

7. The learned C.P.O. did not much dispute the fact that, by virtue of **Rafiq Masih's** case, the actual recovery of the excess payment cannot be made but his submission was that **Rafiq Masih** is no authority for the proposition that even a mistake cannot be corrected. For that proposition, he also relied upon a Judgment of the Hon'ble Supreme Court in **Appeal (Civil) 5865/2007 (Union of India and another Vs. Narendra Singh, dated 13.12.2007)** and the Judgment of the Hon'ble High Court of **Punjab and Haryana in Tej Singh Vs. State of Punjab (2003) 133 PLR 492.** The sum and substance of the learned CPO's contention was that, a mistake after-all is a mistake and therefore, that can always be allowed to be corrected.

8. As to the above contention of the learned CPO, I find that the present matter is squarely governed by the provisions of the Pension Rules and within the purview of Rule 131, only a clerical mistake can be allowed to be



corrected in case the concerned Government employee had already retired. The Rules in consideration in the 2 Judgments cited hereinabove were entirely different. Therefore, if the Rules have laid down the exhaustive list of the mistakes that can be corrected, I do not think, it is open to me to add thereto or subtract therefrom anything.

9. The learned CPO relied upon a Judgment in the matter of **Civil Appeal No.3500 of 2006 (High Court of Punjab and Haryana and others Vs. Jagdev Singh, dated 29<sup>th</sup> July, 2016)**. That was a matter where a compulsorily retired Civil Judge disputed the move of the Government to revise his pay scale. Their Lordships held that in as much as he had given an undertaking, he would not be allowed to resile therefrom and the Government's move could not be impeached. Now, if the learned CPO sought to rely upon **Jagdev Singh** for the proposition that, here also, the Applicant had given an undertaking and hence, he cannot be allowed to question any action pursuant thereto, I do not think, I can quite agree with him. In the Judgment in the OA, I have discussed the undertaking aspect of the matter. At that time, the original Respondents did not cite **Jagdev Singh's** case. I held that as between the so called undertaking and the Judgment of the Hon'ble Supreme Court in **Rafiq Masih**, the binding authority will be that of



the Hon'ble Supreme Court. Further, the Applicant was a Group 'C' employee unlike **Jagdev Singh** who was a Group 'A' employee. Even in **Jagdev Singh**, in Para 10, Their Lordships discussed **Rafiq Masih's** case and reproduced therefrom Para 12 which I have already reproduced above. It is very clear from the observations in **Jagdev Singh** in Para 11 that the mandate of **Jagdev Singh** would be applicable in the matter of recovery from retired employees or those who were to retire within one year from the order of recovery. It was in that sense that, the issue of undertaking assumed significance. I must repeat that in **Jagdev Singh**, the concerned Officer was a Group 'A' employee while here, the original Applicant was a Group 'C' employee. In **Jagdev Singh**, there was no Rule like Rule 131 of the Pension Rules here which prescribed the limit for exercising the powers therein in the matter of revision of pay scale, etc.

10. It must have been observed that, I have discussed this Review Application almost as if it were an OA. Going by the statutory confines of the provisions with regard to review set out at the threshold, it is quite clear that, in the first place, let me mention it clearly, there is no apparent mistake in the Judgment in the OA. There is at least no mistake that would be rectified in review



jurisdiction. Review jurisdiction has to be exercised in accordance with the statute prescribing the same and in my opinion, the present application does not survive the legal test. It is very pertinent to note that, in the OA, there is not even a tangential reference to Rule 131 of the Pension Rules. I would, therefore, conclude by holding that this RA is devoid of substance and is accordingly dismissed. The order in the OA had not been stayed. However, for the sake of facility, I grant time of four weeks from today to comply therewith, failing which the stipulation of interest as set out in Para 15 of the Judgment in the OA would come into force. No order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**28.06.2017**

Mumbai

Date : 28.06.2017

Dictation taken by :

S.K. Wamanse.

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