

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 234 OF 2012

DISTRICT: NANDED

Yadav s/o Dhondabarao Lodhe,
Age: 58 years, Occu: Service,
(as Civil Engineering Assistant,
Irrigation Section No. 4, Nivgha,
Taluka Hadgaon), R/o : Mauli Niwas,
Ayodhya Nagar, Tamsa Road,
Hadgaon, District Nanded.

.. APPLICANT

V E R S U S

- 1) The State of Maharashtra,
(Copy to be served on C.P.O.
MAT, Bench at Aurangabad.
- 2) The Superintending Engineer,
Vigilance Squad, Aurangabad
Zone, (Water Resources Division),
Aurangabad.
- 3) The Superintending Engineer,
Nanded Irrigation Circle,
Nanded.
- 4) The Executive Engineer,
Upper Penganga Project,
Division No. 1, Nanded.
- 5) The Accounts Officer,
Pay Verification Unit,
Aurangabad.

.. RESPONDENTS

APPEARANCE : Shri Y.P. Deshmukh, learned Advocate
for the applicant.

: Shri N.U. Yadav, learned Presenting
Officer for the Respondent no. 1 & 2.

: Shri S.D. Dhongde, learned Advocate for
Respondent nos. 3 & 4.

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

J U D G M E N T

(DELIVERED ON 11th NOVEMBER, 2016)

1. The applicant, Shri Yadav Dhondabarao Lodhe, has filed this Original Application for the following reliefs:-

“A. This Original Application may kindly be allowed thereby holding and declaring that the action of Resps. No. 2 and 4 of re-fixation applicant's pay pursuant to the objection raised by the Resp. no. 5 on 27.05.2011 is patently bad and illegal.

B. This Original Application may kindly be allowed thereby quashing & setting aside the impugned orders dated 7.10.2011 and 16.01.2012 (Annexs. K-1 & K-5) issued by Resp. No. 4.”

2. The applicant entered service of Government as Technical Assistant on 22.6.1983. On 1.11.2000, the Superintending Engineer and Administrator, CADA, Aurangabad extended the benefit of first time bound promotion to the applicant in the pay scale of Rs. 4000-6000 w.e.f. 22.6.2000. The applicant was absorbed as Civil Engineering

Assistant (CEA) on 31.01.2005. The applicant got retired on superannuation on 31.03.2012. Prior to that, on 15.07.2006, a proposal was submitted to the respondent no. 3 by respondent no. 4 to grant of benefit of time bound promotion to the applicant and the proposed pay scale to be extended to the applicant by Rs. 5500-9000 to the next promotional post of Junior Engineer. Accordingly, the said benefit was extended on 20.10.2006.

3. According to the applicant, the action of extending higher pay scale/time bound promotion to the applicant was taken by the respondents not because of any misrepresentation or fraud or even any fault on the part of the applicant. The various actions of the respondents were endorsed by the competent authority and, therefore, the respondents' action now re-fixing the pay scale of applicant is illegal.

4. The respondent no. 5 raised an objection to the action of respondent no. 3 taken vide order dated 29.03.2007 and without giving any intimation to the applicant, the respondents went ahead and straightway issued order for cancelling the benefit to the applicant, whereby his pay was fixed not only that the respondents also directed to recover an

amount of Rs. 637216/- on the ground that it was paid in excess and are now recovering the said amount and hence, this Original Application.

5. The respondent no. 3 i.e. Gulam Mahebob Quadri, Sub Divisional Engineer, Vigilance Unit Circle, Aurangabad Region, Irrigation Department, Aurangabad, has filed affidavit in reply and submitted that the action taken by the respondent no. 3 is as per the Maharashtra Civil Services (Pay) Rules, 1981 and particularly as per Rule 11 (1). The fixation of the pay scale is also subject to verification of pay verification unit and also subject to condition of recovery of overpayment and therefore, action taken by the respondents is legal.

6. The Respondent Nos. 3 and 4 have filed affidavit in reply and tried to justify the action of respondents. According to them, the applicant joined service on the establishment of Superintending Engineer, Command Area Development Authorities (CADA) in the pay scale of Rs. 260-495. On 1.1.1986, pay scale was revised in view of the 5th Pay Commission as Rs. 950-1540. It was thereafter, revised at Rs. 3200-4900 as per 6th Pay Commission. On completion of 12 years service, the applicant was granted pay scale of Rs. 4000-

6000 w.e.f. 22.6.2000. The applicant denied to accept the said pay scales. He was then taken as Engineering Assistant in the pay scale of Rs. 4000-6000 from 31.01.2005, then benefit was given to him of first assured promotional pay scale, subject to verification by Pay Verification Unit and it was stated that if Pay Verification Unit raises any objection, recovery will be made. From 22.6.1995, the said pay scale was granted subject to the condition of verification by the Pay Verification Unit. Thereafter, as per order passed by Circle Office, dated 29.1.2007 and as per 6th Pay Commission, the pay scale of Rs. 5500-9000 was paid to the applicant. All the times undertakings were given by the applicant that he will pay amount, if paid in excess.

7. According to the respondents, since the applicant was going to retire on 31.03.2012, his service book was send to the Pay Verification Unit. The said Pay Verification Unit has raised objection and as per said objection, the pay was revised. There was no mala-fide on the part of the respondents in refusing the pay.

8. The respondent no. 5 i.e. Anil Trimbakrao Vangujare, Accounts Officer, Aurangabad has also filed affidavit

in reply and justified the pay verification. It is stated in paragraph no. 6 of the affidavit in reply as under:-

“6. In reply to the contents of para no. 7 of the application, I say and submit that, the Pay scale for the promotional post as per promotion channel is granted to the employee who fulfills the terms and condition and completes 12 years of service on same post as per G.R. dtd. 08.06.1995 of the Administrative department. In the present case there is promotion only for C.E.A. as J.E. Therefore, the applicant is eligible for pay scale of J.E. only from the date of appointment as C.E.A. or is eligible for the pay scale of J.E. as per G.R. dated 08.06.1995. However, the applicant is granted the benefit of the pay scale of J.E. after taking into consideration 12 years service as Technical Assistant. The promotional post for technical assistant is not J.E. and therefore, the pay scale of J.E. is not payable. As per the G.R. dated 21.03.2010, the post of Technical Assistant is cancelled and the promotion of J.E. is given to C.E.A. posts only. Copy of the G.R. dated 21.03.2010 is annexed herewith and marked as “ANNEXURE-R-1”. The Pay Verification Unit has accordingly recorded the objections as per rules. The department has certified the rectified pay scale.

Every employee has given an Undertaking to repay the excess payment made, if found at the time of implementation of the pay Commission on account of wrong pay fixation or discrepancy in pay fixation,

that they shall repay the same from the amount to be paid in future or in other manner. The employee is bound by the said undertaking.”

9. The applicant filed rejoinder affidavit and states that the re-fixation and recovery is illegal. The applicant referred one circular issued by the respondent no. 1, whereby it has been stated that any recovery in respect of time bound promotion/Assured Progress Scheme has already extended on the basis of letter dated 19.10.2001 shall not be effected.

10. Heard Shri Y.P. Deshmukh, learned counsel for the applicant, Shri N.U. Yadav, learned Presenting Officer for respondent nos. 1 & 2 and Shri S.D. Dhongde, learned counsel for respondent nos. 3 & 4. I have also perused the affidavits, affidavit in replied, rejoinder affidavit and various documents placed on record by the respective parties.

11. The only material point to be considered in this case is whether the re-fixation of the applicant is legal and proper and if yes, whether the respondents' action of recovery to excess amount paid is legal?

12. The applicant is coming with a case that his re-fixation is illegal. However, it is nowhere stated, as to how the re-fixation is illegal. If the entire pleadings is seen as such, it seems that it is the case of the applicant that in whatever pay scales were granted to him from time to time by the respondent authorities, he had no role to play such re-fixation. Even for argument sake, it is accepted that the applicant has not played role in his pay fixation from time to time that itself will not mean that the action of the respondents is illegal.

13. It seems from the reply affidavit filed by the respondent nos. 3 and 4 that the applicant was granted pay scales from time to time and was also given benefit of time bound promotional scale and every time the applicant has given undertaking that he will pay the excess amount if found to be paid in excess due to wrong pay fixation.

14. Rule 11 of the Maharashtra Civil Service (Pay) Rules, 1981, gives ample power to the respondent authorities to fix the pay of the employees and also to recover the excess amount, if paid. The respondent authority has to take undertaking from the employee to that effect and accordingly, the applicant seems to have given undertakings from time to time. However, it is

clear from the facts on record that there is nothing on record to show that the applicant has ever contributed for getting wrong pay or has taken part in proper pay fixation.

15. The pay has been fixed when the pension papers were send to the Pay Fixation Unit as the applicant was to retire on superannuation and therefore, the entire case was reopen only at the time of consideration of case of pension of the applicant and therefore, the applicant was not in any manner responsible for getting wrong pay fixation.

16. As already stated, the respondent no. 5 has justified the proper pay fixation of the applicant in paragraph no. 6 of the reply affidavit, which is already reproduced earlier. There is no reason to agree with the said contention in the reply affidavit filed by the respondent no. 5. The respondent no. 5 is authorized to verify the pay fixation made from time to time as per Rule 11. Such re-fixation was made and even recovery of excess amount can be made, if the undertaking is taken. The applicant could not place on record any cogent evidence to any illegality to show that the action of re-fixation of the applicant is illegal in any manner and therefore, the re-fixation of the pay scale of the applicant as per the direction of the pay unit cannot

be said to be illegal and said cannot be interfered by this Tribunal, since there is no substantive evidence to interfere. The question therefore, remains as to whether the recovery of the excess amount can be made from the applicant?

17. The learned counsel for the applicant placed reliance on judgment delivered by the Hon'ble Apex Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc in Civil Appeal No. 11527 of 2014 (Arising out of SLP (C) No. 11684 of 2012.** The Hon'ble Apex Court has considered all the pros and cons of the cases where the recovery of the amount is being made after retirement of the employees. The said employees were private respondents in the case before the Hon'ble Apex Court. The Hon'ble Apex Court in paragraph nos. 2 and 3 has observed as under:-

“2. All the private respondents in the present bunch of cases, were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in

consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay-scales; or for having been granted allowances, for which the concerned employee was not authorized. The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due.

3. *Another essential factual component in this bunch of cases is, that the respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent-employees, is totally ruled out. It would therefore not be incorrect to record, that the private respondents, were as innocent as their employers, in the wrongful determination of their inflated emoluments.”*

18. As already stated, in the present case, there is nothing on record to show that the applicant was in any manner responsible for getting the revised pay scale from time to time except the fact that he was given undertaking that he will pay excess amount.

19. The learned Presenting Officer has placed reliance on judgment delivered by the Supreme Court of Indian in the case of **High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh** in **Civil Appeal No. 3500 of 2006**. He is relying on paragraph nos. 11 and 12 of the said judgment, which reads as under:-

“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.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable installments.

We direct that the recovery be made in equated monthly installments spread over a period of two years. ”

20. In the present case, even though, the applicant has given undertaking that he will repay the excess amount, it is material to note that the applicant has agreed so when the employee and his pay scale was being verified for the first time at the time of his retirement. His alleged recovery pertains to the period from the date of appointment of the applicant till his retirement i.e. from 1983 onwards. The Hon'ble Supreme Court, in the case of ***State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No. 11527 of 2014 (arising out of SLP (C) No. 11684 of 2012)*** has 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, 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.*
- (ii) *Recovery from retired 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."*

21. In view of the aforesaid discussions, there is a substance in the claim of the applicant that excess amount shall not be recovered from him but there is no substance that pay was not properly fixed and verified. Hence, following order:-

ORDER

1. The Original Application is partly allowed.
2. The action of re-fixation of applicant's pay pursuant to the objection raised by the respondent no. 5 on 27.05.2011 is held legal. Consequently, the impugned orders dated 7.10.2011 and 16.01.2012 issued by the respondent no. 4 except to the extent of recovery of excess amount are also held legal.
3. The respondents however, are directed not to recover the excess amount paid to the applicant in view of the order dated 16.01.2012 as per Exhibit K-5 passed by the Executive Engineer, Upper Penganga Project Division No. 1, Nanded.

There shall be no order as to costs.

(J.D. KULKARNI)
MEMBER (J)