

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 376 OF 2017
(Subject – Recovery)**

DISTRICT: AURANGABAD

Shri Punaji s/o Mahadu Shinde,)
Age: 61 years, Occu. :Retired,)
R/o Ganneshwadi,)
Tq. & Dist. Hingoli.) **.. APPLICANT**

V E R S U S

1) **The State of Maharashtra,**)
Through its Secretary,)
Animal Husbandry Department,)
Mantralaya, Mumbai-32.)

2) **Accountant General,**)
(Accounts & Entitlements)-I)
Pension Wing Old Building,)
Civil Lines, Nagpur- 440 001.)

3) **District Deputy Commissioner**)
Of Animal Husbandry,)
Hingoli, Tq. & Dist. Hingoli.) **.. RESPONDENTS**

APPEARANCE : Shri R.O. Awsarmol, Advocate for the Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate, Presenting
Officer for the Respondents.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)

DATE : 13.08.2018.

O R A L - O R D E R

1. Heard Shri R.O. Awasarmol, learned Advocate for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for respondents.

2. The applicant has challenged the order dated 22.02.2017 issued by the respondent No. 3 directing to recover an amount of Rs. 1,39,462/- from his pensionary benefits by filing the present Original Application and prayed to quash and set aside the said order.

3. The applicant was initially appointed as Attendant in the office of Regional Deputy Director of Animal Husbandry, Aurangabad on 31.01.1981. Thereafter he was directed to work as Parichar and he was posted at Adharbhoot Village Sub Centre, Dongarshelki, Tq. Udgir, Dist. Latur. He came to be retired on 30.11.2016 on attaining the age of superannuation. Thereafter, respondent No. 3 has processed the pension papers of the applicant and sent to the respondent No. 2. By the letter dated 13.12.2016, the respondent No. 2 returned the proposal to the respondent No. 3 stating that the pay of the applicant has been wrongly fixed and therefore, the proposal was sent back to the respondent No. 3 for necessary correction. On the basis of said communication received from the respondent No. 2, the respondent No. 3 revised the pay of the applicant and issued the communication dated 22.02.2017 to recover an amount of Rs. 1,39,462/- towards the interest on the house building loan advance and excess payment made to him on account of wrong fixation of pay. It is contention of the applicant that he was not at

fault and there was no mistake on his part in getting the excess payment made to him. Not only this, but he had not practiced any fraud on the respondents in getting that amount. It is his contention that the order passed by the respondent No. 3 dated 22.02.2017 directing recovery against him is illegal. Therefore, he filed the W.P. No. 5789/2017 before the Hon'ble High Court of Judicature Bombay Bench at Aurangabad challenging the said order, but the said W.P. came to be disposed of 27.04.2017 on the ground that the applicant has to avail the alternative remedy. Therefore, the applicant approached this Tribunal by filing the present O.A. and challenged the impugned order dated 22.02.2017 issued by the respondent No. 3.

4. The respondent No. 2 has filed his affidavit in reply and resisted the contentions of the applicant. It is contended by him that the Controller and Auditor General of India discharges his duties through field officers, i.e. Accountants General Offices in accordance with the provisions of Article 149 of the Constitution of India read with the Comptroller and Auditor General (Duties, Power & Conditions of Service) Act, 1971. The role of the respondents in respect of pension cases is limited to scrutiny of proposals received from Heads of Offices of Government of Maharashtra/Pension Sanctioning Authorities in respect of persons who retired from various State Government

offices situated in Vidarbha and Marathwada regions, with reference to the rules in Maharashtra Civil Services (Pension) Rules, 1982 and the Government Resolutions issued from time to time and subsequently authorization of pensionary benefits, if found admissible. The respondent office does not act on its own volition, but authorizes pensionary benefits only on receipt of proper pension papers duly attested by the Head of Office/ Pension Sanctioning Authority of the State Government. The respondent is not in a position to authorize pensionary benefits, if either the proposal is not received from the Head of the Office/ Pension Sanctioning Authority in the prescribed format with requisite documents or if it is found not conforming to any of the provisions of the M.C.S. (Pension) Rules, 1982 and other Government Resolutions issued from time to time.

5. It is further contention of the respondent No. 2 that the applicant was retired on superannuation on 30.11.2016. The pension proposal of the applicant was received in his office on 17.11.2016 from Pension Sanctioning Authority i.e. the District Dy. Commissioner of Animal Husbandry, Hingoli, but the same was returned by the respondent office on 13.12.2016 for review, pointing out the anomaly in pay fixation done by department with reference to Finance Department G.R. dated 01.09.2015. Thereafter, pension proposal was again resubmitted by the

Pension Sanctioning Authority/District Dy. Commissioner of Animal Husbandry, Hingoli vide its letter dated 22.02.2017 received to his office on 08.03.2017 intimating the overpayment of pay and allowances of Rs. 76243/- with a direction to recover the same from his gratuity amount. Thereafter, pensionary benefits were released to the applicant by the respondent by issuing authority of Pension, Gratuity and Commutation on 03.04.2017. As per the information submitted by the department, his office inserted caution to recover total amount of Government dues amounting to Rs. 1,39,462/- from gratuity amount of the applicant, which included the overpayment of pay and allowances of Rs. 76,243/- and interest of HBA/MCA of Rs. 63,219/-. Accordingly, answering respondent stipulated the condition of recovery of Rs. 139462/- in the Gratuity payment order authorized on 03.04.2017 as per the directions of the Respondent No. 3 and pension Sanctioning Authority and as per the Rule 134 of the Maharashtra Civil Services (Pension) Rules, 1982. It is contended by it that the action taken by the respondent No. 3 in view of the provisions of the M.C.S. (Pension) Rules, 1982 and there is no illegality in it. Therefore, he prayed to dismiss the present O.A.

6. The respondent Nos. 1 and 3 filed their affidavit in reply and resisted the contentions of the applicant. It is their

contention that the amount of Rs. 1,39,462/- had to be recovered from the applicant towards interest of house building advance and towards overpayment of pay and allowances. It is their contention that the respondent No. 3 has issued impugned order dated 22.02.2017 directing recovery amounting to Rs. 1,39,462/- including sum of Rs. 63219/- towards interest on HBA, Rs. 62085/- towards overpayment of pay and allowances and Rs. 14,158/- on the basis of Finance Department G.R. dated 01.09.2015. It is their contention that there is no illegality in the said order and therefore, they prayed to reject the present O.A.

7. Admittedly, the applicant was appointed as Attendant in the office of Regional Deputy Director of Animal Husbandry, Aurangabad on 31.01.1981. On attaining the age of superannuation on 30.11.2016, he was retired from the office of respondent No. 3 as 'Parichar'. Admittedly, the pension papers of the applicant have been submitted by the respondent No. 3 to respondent No. 2 on his superannuation. After scrutiny of it, the respondent No. 2 raised objection regarding wrong fixation of pay of the applicant in view of the G.R. dated 01.09.2015 and returned the pension papers of the applicant to the respondent No. 3 by letter dated 13.12.2016 for revising the pay of the applicant and to resubmit the pension papers after revision. On the basis of said letter dated 13.12.2016, the respondent No. 2

revised the pay of the applicant as per the G.R. dated 01.09.2015 and fixed his pay accordingly and submitted pension proposal of the applicant afresh. During the pay fixation, it was noticed by the respondent No. 2 that the excess payment of Rs. 76,243/- towards payment of pay and allowances has been made to the applicant, out of which, amount of Rs. 62,085/- was towards excess payment of pay and allowances and Rs. 14,158/- was towards recovery of excess payment of wrong fixation of pay as per the G.R. dated 01.09.2015. He found that the amount of Rs. 63,219/- toward interest has not been paid by the applicant towards House Building Advance and therefore, while submitting the pension papers afresh, the respondent No. 2 requested the respondent No. 3 to direct the total recovery of an amount of Rs. 1,39,462/- from the pensionary benefits of the applicant. The respondent No. 2 issued authority regarding payment of gratuity, subject to recovery of the said amount.

8. During the course of hearing, learned Advocate for the applicant has submitted that the applicant had no grievance regarding the amount of Rs. 63,219/- recovered towards the interest on the house building advance and the applicant is not pressing his claim in that regard. He has submitted that the applicant's grievance is regarding recovery of Rs. 76,243/-

towards the excess payment made to him due to wrong fixation of pay and allowances.

9. He has submitted that the applicant has no role in getting the excess payment of the pay and allowances. There was mistake on the part of the respondent No. 3 in fixing his pay as per the G.R. dated 01.09.2015 and therefore, excess payment was made to the applicant. He has submitted that as per the directions of the respondent No. 2, the respondent No. 3 re-fixed his pay and prepared the statement showing due, drawn and difference of increment given to the applicant on the basis of G.R. dated 01.09.2015. He has submitted that the said statement shows that the amount of Rs. 14,158/- has been paid to the applicant as an excess payment on account of wrong fixation of pay on the basis of G.R. dated 01.09.2015. He has submitted that the respondents have not explained on which basis the amount of Rs. 62,085/- has been recovered from him. He has further submitted that total amount of Rs. 76,243/- has been recovered from the applicant and the said recovery is against the guidelines issued by the Hon'ble Apex Court in a group of cases **Civil Appeal No.11527/2014 arising out of SLP (C) No.11684 of 2012 & ors.** in the matter of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.**

10. He has submitted that the applicant was serving as 'Parichar', which is Group-D (Class-IV) post. The said amount has been paid to the applicant since the year 2010 and the amount to be recovered is for a period in excess of five years before the order. He has submitted that the applicant was retired on 30.11.2015 and the said amount has been recovered from the pensionary benefits of the applicant. He has submitted that in view of the principles laid down by the Hon'ble Apex Court the said recovery cannot be made and the same is not permissible legally. Therefore, he prayed to allow the present Original Application and prayed to direct the respondents to refund the said amount.

11. He has further submitted that in case of the similarly situated persons, the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad has decided the similar issue and directed to refund the amount recovered from the petitioner therein. In support of his submission, he has placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **W.P. No. 1941 of 2016** in case of **Sumangala d/o Meghashyam Palsikar Vs. The State of Maharashtra and Ors. decided on 09.02.2017.**

12. Learned Presenting Officer has submitted that the amount of Rs. 76,243/- has been recovered from the gratuity amount of the applicant towards the excess payment of pay and allowances, as well as, recovery towards excess payment due to wrong fixation of pay. She has submitted that out of the said amount, the amount of Rs. 62,085/- has been recovered towards excess payment made to the applicant and the amount of Rs. 14,158/- has been recovered towards wrong fixation of pay as per the G.R. dated 01.09.2015. She has submitted that there is no illegality in the impugned order and the amount of excess payment made to the applicant has been recovered. Therefore, she supported the action taken by the respondents and prayed to reject the present O.A.

13. On perusal of the record, it reveals that the pay of the applicant has been wrongly fixed by the respondent No. 3 since the July 2010 and therefore, the excess payment of Rs. 14,158/- has been made to him. The said mistake has been noticed by the respondent No. 3, when the respondent No. 2 informed him by letter dated 13.12.2016. Therefore, the pay of the applicant has been revised by the respondent No. 2 accordingly in view of the G.R. dated 01.09.2015. Statement of due, drawn and difference shows that because of wrong fixation an excess payment of Rs. 14,158/- has been paid to the applicant. There is nothing on

record regarding the excess payment of Rs. 63,219/- made to the applicant. The respondent No. 2 has not clarified about it. Not a single document has been produced by the respondent No. 2 to show that the said amount has been paid to the applicant because of the wrong pay fixation to which the applicant was not entitled. Therefore, in the absence of sufficient documentary evidence it cannot be said that the said amount has been paid to the applicant towards excess payment of pay and allowances due to wrong fixation of pay. However, the said amount has been recovered by the respondents from the amount of gratuity of the applicant. Total amount of Rs. 76,243/- has been recovered by the respondents from the applicant towards excess payment of pay and allowances. Admittedly, the applicant was serving as Parichar, which is Group-D (Class-IV) post. The said amount has been recovered after retirement of the applicant. The said amount has been recovered from the applicant towards the excess payment made to him for the period in excess of five years. Therefore, such recovery is impermissible in view of the guidelines given by the Hon'ble Apex Court in a group of cases **Civil Appeal No.11527/2014 arising out of SLP (C) No.11684 of 2012 & ors.** in the matter of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** The Hon'ble Apex Court has mentioned circumstances in which the recovery by the employer

would be impermissible in law. It has been observed by the Hon'ble Apex Court as follows:-

“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.”

I have no dispute about the settled legal principles laid down therein. Principles laid down in the said decision are most

appropriately applicable in the instant case. In the present case, the applicant was not at fault in getting the excess payment. The mistake was committed by the respondent No. 2, while fixing the pay of the applicant. No fraud has been practiced by the applicant in fixation of pay and getting the excess payment. Therefore, he cannot be blamed for it. The said fault was not attributed to the applicant. Therefore, in view of the guidelines given by the Hon'ble Apex Court in **Civil Appeal No.11527/2014 arising out of SLP (C) No.11684 of 2012 & ors.** in the matter of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.**, the recovery of amount of Rs. 76,243/- from the pensionary benefits of the applicant is impermissible. Therefore, the communication dated 22.02.2017 directing the recovery of the said amount from the applicant is not legal and proper. Hence, the same requires to be quashed and set aside by allowing the present O.A.

14. In view of the above facts and circumstances, the O.A. is allowed. The impugned order dated 22.02.2017 directing the recovery of amount of Rs. 76,243/- towards excess payment made to the applicant on account of wrong fixation of pay is quashed and set aside. The respondents are directed to refund the amount of Rs.76,243/- to the applicant, if recovered, within two months from the date of this order. Failing which the respondents are

liable to pay the interest @ 12% p.a. on the said amount from the date of this order.

There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 13.08.2018.

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. No. 376 of 2017 BPP 2018 Recovery