

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 809 OF 2016

DISTRICT: AURANGABAD

Shri Vishnu S/o Umasing Jadhav,
Age: 60 years, Occu. : Pensioner,
R/o Kailas Nagar, Near Shriram Mandir,
Galli No. 5, Aurangabad,
Tq. & Dist. Aurangabad.

.. **APPLICANT**

V E R S U S

- 1) The Superintendent of State Excise,
Ahmednagar, Dist. Ahmednagar.
- 2) The Treasury Officer,
Treasury Office, Aurangabad.
- 3) The Accountant General (A& E)-II,
Nagpur, Maharashtra,
Civil Lines, Nagpur.

(Copies to be served on C.P.O.
In M.A.T. at Aurangabad)

.. **RESPONDENTS**

APPEARANCE : Shri D.T. Devane, learned Advocate
for the Applicant.

: Smt. Priya R. Bharaswadkar, learned
Presenting Officer for the Respondents.

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

ORDER**(Delivered on this 27th day of February, 2017.)**

1. The applicant has prayed for quashing the order of respondent no. 2 to recover the amount from his monthly pension and sought direction to respondent no. 2 to disburse monthly pension @ Rs. 7495/- as sanctioned by the respondent no. 3, by filing present O.A.

2. The applicant was selected for the post of Constable in the State Excise Department and he was appointed accordingly as Constable on 24.07.1975. Thereafter, he was promoted to the post of Assistant Sub-Inspector in the year 2011 and then he was promoted as Sub-Inspector, Excise in the year 2011. He retired on 21.05.2014 on superannuation. After retirement, his pension proposal was forwarded to the Accountant General, Nagpur i.e. the respondent no. 3. After considering the proposal, pension was sanctioned @ Rs. 7495/- per month. It has also granted pensionary benefits vide letter dated 23.06.2014. As per the sanction order, he was getting pension since, June 2014 from the office of respondent no. 2. He was also getting D.A. on the pension amount as per the prevailing rate.

3. On 3.10.2016, the applicant approached to the bank for withdrawal of his pension for the month of September, 2016 and at that time he noticed that less amount of pension had been credited in his pension account. On enquiry, he learnt that the respondent no. 2 started recovery from his pension account towards excess amount of pension paid to him. Therefore, he made representations to the respondent no. 2 on 4.10.2016 and 13.10.2016, but they continued to recover the said amount and therefore, the applicant has filed present Original Application and prayed that directions be given to the respondent no. 2 not to recover the amount from his monthly pension and also to direct the respondent no. 2 to disburse the monthly pension @ Rs. 7495/- per month along with admissible D.A.

4. The respondents filed their affidavit in reply and admitted that the Accountant General, Nagpur had sanctioned pension at the rate of Rs. 7495/- per month to the applicant after his retirement. In the computer mode for payment of pension, they required to feed information such as name of pensioner, amount, date of retirement etc in the system. After verification of pension paper of the applicant, they found that no information has been filled against the column 8 Grade Pay in P.P.O. of the applicant and therefore, concerned Clerk has calculated D.A. as

per rate of 5th Pay Commission and filled information in the computer. Accordingly, D.A. has been paid to the applicant since 1.6.2014. Due to said mistake committed by the concerned Clerk, excess payment of D.A. amount has been made to the applicant since, 1.6.2014. The applicant has given undertaking as required under Rules on 6.8.2014 authorizing them to recover the excess amount, if any paid to him. In the month of September, 2016 the mistake committed by the concerned Clerk has been noticed by the respondent no. 2 and therefore, they started recovery of all excess amount paid to the applicant by monthly installment of Rs. 3000/-. At the time of his retirement the applicant was getting gross salary of Rs. 29700/-. Because of the mistake committed by the concerned Clerk by applying D.A. under 5th Pay Commission, the applicant was receiving pension of Rs. 20612/- per month. The applicant was aware about the fact that he was getting excess pension amount but he kept mum and utilized public money, which was not due to him. The mistake occurred due to lack of information in respect of amount of Grade Pay in the P.P.O. The applicant was not entitled to get the D.A. under 5th Pay Commission and therefore, he received excess payment to which he was not legally entitled and therefore, the recovery has been started. The action taken by respondents is legal one.

Therefore, the Applicant is not entitled to get relief as sought by him.

5. Heard Shri D.T. Devane, learned Advocate for the applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the Respondents. I have also perused the affidavit, affidavit in replies and various documents placed on record by the respective parties.

6. Learned Advocate for the applicant submitted that there was no misrepresentation or fraud practiced by the applicant on the respondents while getting excess amount of pension. The applicant was receiving pension amount, which was calculated by respondent no. 2. The mistake was on the part of the respondent no. 2 and therefore, excess amount of pension made to him cannot be recovered. He has submitted that the respondent no. 2 has not given opportunity to explain the facts before order of recovery has been made therefore, it is against the principles of natural justice. Therefore, respondents are not entitled to recover the said amount.

7. Learned Advocate for the applicant has 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) & others*** wherein the Hon'ble Apex Court has observed in paragraph no. 12 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, 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."

8. Learned Presenting Officer submitted that the applicant was aware about the fact that he was getting gross salary of Rs. 29700/- at the time of his retirement. He was also aware of the fact that he will not get pension of Rs. 20612/- after retirement. In spite of that he kept mum and accepted excess payment made to him and therefore, the present case does not fall within the clauses' mentioned in the paragraph no. 12 of the above cited judgment in case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** He has submitted that the principle laid down in the above cited decision is attracted to case wherein benefit has been given to the employees mistakenly. He has argued that it is a case of applying incorrect rate of D.A. by the concerned Clerk of respondent 2 and therefore, excess

amount paid to the applicant can be recovered. He has further submitted that the respondent no. 3 has considered the fact that the applicant is a retired employee and therefore, it started recovery of the amount by easy monthly installment of Rs. 3000/-. Therefore, he has supported the action taken by respondent no. 2.

9. The only material point to be considered in this case is whether the recovery started by the respondent no. 2 from the pension amount is legal and proper and whether the applicant's case is covered by the judgment delivered in the case of State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.?

10. On perusal of the documents it is crystal clear that the Accountant General, Nagpur sanctioned pension of Rs. 7495/- per month to the applicant and P.P.O. has been sent by the A.G., Nagpur accordingly. The respondent no. 2 paid pension according to information in P.P.O. While feeding the information in the computerized system the information in respect of D.A., the respondent no. 2 calculated the D.A. in

view of the 5th Pay Commission, as there was no information in the column against Grade Pay in the P.P.O. Consequently, the excess amount of D.A. has been paid to the applicant. The applicant was having knowledge that he was getting pension amount in excess of his entitlement because rate of D.A. on pension has been calculated as per 5th Pay Commission. At the time of retirement the applicant was getting gross salary of Rs. 29700/- while he was receiving pension of Rs. 20612/- on his retirement. These facts are sufficient to show that the excess payment made by the respondent no. 2 is not because of the wrong fixation of pay or pension but it is because wrong application of D.A. rate. As soon as the respondent no. 2 noticed the said fact, it started to recover the amount, but in installment of Rs. 3000/- per month. The applicant is entitled to pension of Rs. 7495/- per month along with admissible D.A. But he received excessive amount of pension as wrong rate of D.A. had been applied and therefore, the order of recovery of excess amount passed by respondents cannot be said to be illegal. In view of these facts, the present case is not falling under the circumstances mentioned in paragraph no. 12 of the

judgment of Hon'ble Apex Court in case of State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. Therefore, principles laid down in the said case are not attracted in the instant case. Consequently, the relief as sought by the applicant cannot be granted. There is no merit in the O.A. and consequently the same deserves to be dismissed. In view thereof, I pass following order:-

ORDER

The Original Application stands dismissed with no order as to costs.

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. No. 809 of 2016 BPP 2017 Police Patil