

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD****COMMON ORDER IN ORIGINAL APPLICATION NOS. 786, 787**
AND 788 ALL OF 2016
(Subject – Recovery)**1. ORIGINAL APPLICATION NO. 786 OF 2016.****DISTRICT: NANDED**

Shri Subhash Vaijinath Bongulwar,)
 Age: 60 years, Occu. : Retired Govt.)
 Servant, r/o ND-32, No. 24/1,)
 Onkar Nagar, Hudco, New Nanded,)
 Dist. Nanded.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
 Through its Secretary,)
 Education Department,)
 Mantralaya, Mumbai- 32.)
- 2) **The Deputy Director of**)
Education,)
 Latur Division, Latur.)
- 3) **The Education Officer,**)
 Continuing Education, Zilla)
 Panrishad, Nanded,)
 District Nanded.)
- 4) **The Account Officer,**)
 Pay Verification Unit,)
 Aurangabad.) .. **RESPONDENTS**

W I T H**2. ORIGINAL APPLICATION NO. 787 OF 2016.****DISTRICT: NANDED**

Shri Vishwanath Fakirji Jondhale,)
 Age: 62 years, Occu. : Retired Govt.)
 Servant, r/o H. No. ND-31, Hudco,)
 New Nanded, Dist. Nanded.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Secretary,)
Education Department,)
Mantralaya, Mumbai- 32.)
- 2) **The Deputy Director of**)
Education,)
Latur Division, Latur.)
- 3) **The Principal,**)
Government Jr. College of)
Education, Hadgaon,)
District Nanded.)
- 4) **The Account Officer,**)
Pay Verification Unit,)
Aurangabad.)

.. RESPONDENTS**W I T H****3. ORIGINAL APPLICATION NO. 788 OF 2016.****DISTRICT: NANDED**

Shri Madhav Kerbarao Patil,)
Age: 59 years, Occu. : Retired Govt.)
Servant, r/o C/o Shri V.F. Jondhale,)
H. No. ND-31, Hudco, New Nanded,)
Dist. Nanded.)

.. APPLICANT**V E R S U S**

- 1) **The State of Maharashtra,**)
Through its Secretary,)
Education Department,)
Mantralaya, Mumbai- 32.)
- 2) **The Deputy Director of**)
Education,)
Latur Division, Latur.)
- 3) **The Principal,**)
Government Jr. College of)
Education, Hadgaon,)
District Nanded.)

- 4) **The Account Officer,**)
Pay Verification Unit,)
Aurangabad.) **.. RESPONDENTS**

APPEARANCE : Shri A.D. Gadekar, learned Advocate for the
Applicants in all these O.As.

: Shri S.K. Shirse, Presenting Officer for the
Respondents in all these O.As.

: Smt. Yogita S. (Thorat) Kshirsagar, learned
Advocate for respondent No. 3 in O.A. No.
786/2016 (**Absent**).

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

C O M M O N O R D E R

(Delivered on this 19th day of January, 2018.)

1. I am disposing of all these Original Applications by a common order as the facts and issues involved in all the matters are similar and identical.

2. The applicants have claimed refund of the amount recovered from their retirement benefits on account of excess payment made to them due to wrong pay fixation by filing the present Original Applications.

3. The applicant in O.A. No. 786/2016 viz. Shri Subhash Vaijinath Bongulwar has passed B.A. B.Ed. examination and he was initially appointed on the post of Literacy Project Officer in Adult Education Department in the pay scale of Rs. 335-680 by order dated 7/8.2.1979. Thereafter, the said post was converted as Supervisor in the same pay scale.

4. The applicant in O.A. No. 787/2016 viz. Shri Vishwanath Fakirji Jondhale has passed M.A. B.Ed. examination and he was initially appointed on the post of Supervisor in Adult Education Department in the pay scale of Rs. 335-680 by order dated 22.12.1982.

5. The applicant in O.A. No. 788/2016 viz. Shri Madhav Kerbarao Patil has passed M.A. B.Ed. examination and initially appointed on the post of Supervisor in Adult Education Department in the pay scale of Rs. 335-680 by order dated 15.01.1983.

6. All the applicants were absorbed in the Adult Education Department on the post of Assistant Project Officer by order dated 17.12.1989. The pay scale of Rs. 6500-10500 was granted to the applicants in the 5th Pay Commission. After completion of 12 years' service on the post of Assistant Project Officer/Asst. Teacher, the respondent No. 2 i.e. the Deputy Director of Education, Latur granted time bound promotion to them by order dated 22.04.2004 in respect of applicants in O.A. Nos. 787 of 2016 and 788 of 2016 and by order dated 27.12.2004 in respect of applicant in O.A. No. 786/2016. Thereafter, in the 6th Pay Commission, the pay scale of Rs. 9300-34800 and Grade Pay of Rs. 5400/- was granted to them. The Aurangabad Division had been bifurcated and new Latur Division had been created and

the post of Director of Education, Lature came in existence and the services of the applicants have been transferred to Latur Division from Aurangabad under the control of respondent No. 3 and they were appointed as Assistant Teachers which is equivalent to the post of Assistant Project Officer. Both the posts are of equal status and identical and inter transferable. The applicants were working there till their retirement. At the time of their retirement, the objection has been raised by the respondent No. 4 regarding fixation of pay of Rs. 5500-9000 granted to them on completion of 12 years of service. Therefore, the said pay has been cancelled and their pay has been revised accordingly. On the basis of revised pay fixation, recovery of an amount of Rs. 97,459/-, 1,58,801/- and 1,04,160/- had been directed against the applicants on the basis of excess payment was made to them on account of wrong pay fixation. Accordingly, the said amount has been recovered from their pensionary benefits.

7. It is contention of the applicants that they are Group-C employees and the recovery has been made from their pensionary benefits at the time of their retirement. The said recovery is illegal and impermissible in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) Etc. in Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)**

on 18.12.2014. Therefore, they have prayed to refund the amount recovered from the pensionary benefits on account of excess payment made to them due to wrong pay fixation by filing the present Original Applications.

8. The respondent Nos. 2, 3 and 4 have filed their affidavits in reply and resisted the contentions of the applicants. They have not disputed the fact that the applicants were serving on the post of Assistant Project Officer and they had been retired on their superannuation. It is their contention that the pay scale of the said post i.e. Assistant Project Officer was Rs. 5000-8000 in view of the G.R. dated 10.12.1998 and at the time of verification of the pension papers of the applicants, the Pay Verification Unit noticed that the pay scale of Rs. 5500-9000 had been wrongly granted to the applicants, though they were entitled to get pay scale of Rs. 5000-8000. Therefore, the pay has been revised accordingly and on the basis of revised pay scale, the excess amount paid to them due to wrong pay fixation had been recovered. It is their contention that there was no illegality in the recovery order issued by the respondents. It is their contention that the applicants have given undertaking while receiving the pay that they will deposit the excess amount, if any paid to them due to wrong fixation of pay. Therefore, the recovery, made by the

respondents from the applicants is legal. On these grounds they prayed to reject the present Original Applications.

9. I have heard Shri A.D. Gadekar, learned Advocate for the applicants in all these O.As. and Shri S.K. Shirse, learned Presenting Officer for the respondents in all these O.As. Smt. Yogita S. (Thorat) Kshirsagar, learned Advocate for respondent No. 3 in O.A. No. 786/2016 (**Absent**). I have perused the documents placed on record by both the parties.

10. Learned Advocate for the applicants has submitted that at the time of granting time bound promotion, the pay of the applicants has been fixed in the pay scale of Rs. 5500-9000 and accordingly, the payment has been made to them till their retirement. He has submitted that the pay fixation has been made by the respondents on their own accord and there was no misrepresentation on the part of the applicants, while fixing the pay. He has submitted that the mistake has been noticed by the Pay Verification Unit regarding wrong pay scale granted to the applicants at the time of verification of the pension papers and therefore, their pay has been revised and the recovery has been made from pensionary benefits of the applicant. He has submitted that the applicants had not played any role in fixing the wrong pay scale granted to them and therefore, the recovery cannot be made from them, when they were on the verge of retirement or

after retirement from their pensionary benefits. He has submitted that the applicants were serving as Assistant Teacher at the time of their retirement and the said post is Group-C post and therefore, the recovery cannot be made from the employees who were belonging to Group-C category. He has submitted that the respondents had not followed the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) Etc. in Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** on 18.12.2014.

11. He has further submitted that the similarly situated persons have filed O.As. bearing O.A. No. 936/2016 with O.A. No. 05/2017 with O.A. No. 06/2017 with O.A. No. 72/2017 with O.A. No. 73/2017 in case of Tuljaram Shekaba Mane Vs. State of Maharashtra and Ors. before this Tribunal and all these O.As. were decided by this Tribunal on 16.08.2017. This Tribunal has quashed the order of recovery of amount paid to the applicants on account of wrong pay fixation of pay and directed respondents to refund the amount. He has further submitted that this Tribunal has decided the similar issue in case of Jalindhar Gorakhnath Ubale Vs. The Regional Dairy Development Officer & Ors. in O.A. No. 176/2017 on 31.08.2017, as well as, in O.A. No. 884/2016 in case of Lahu V. Gajdhane Vs. The State of Maharashtra and Ors. on 07.11.2017 and granted reliefs to the applicants, who were

similarly situated persons. He has submitted that in view of the guidelines given by the Hon'ble Apex Court, as well as, decisions of this Tribunal in various cases, it is just and proper to direct the respondents to refund the amount recovered from the pensionary benefits of the applicants by allowing the present Original Applications.

12. Learned Presenting Officer has submitted that the applicants have received excess amount due to wrong pay fixation to which they were not entitled and the said mistake has been noticed by the respondents when the Pay Verification Unit verified the pension papers of the applicants and raised objection in that regard. Therefore, the said mistake has been corrected by the respondents by revising the pay scale of the applicants. He has submitted that since the applicants received excess amount due to wrong pay fixation, the same has been recovered by the respondents by issuing the orders in that regard. He has submitted that the applicants had submitted their undertaking to deposit the amount, if any paid to them wrongly while receiving the payment. The recovery made by the respondents from the applicants is on the basis of said undertaking. Therefore, there is no illegality in the recovery orders and therefore, he prayed to reject the present Original Applications.

13. I have gone through the documents on record. On perusing the same, it reveals that the excess payment has been made to the applicants because of the wrong fixation of pay scale. After granting time bound promotion, their pay was fixed at Rs. 5500-9000 to which they were not entitled. In fact they were entitled to get pay in the pay scale of Rs. 5000-8000. There was no misrepresentation or fraud practiced by the applicants while getting the said pay scale. The said pay scale has been granted to the applicants due to fixation of pay scale made by the respondents on their own accord. The applicants had not played any role in getting the wrong pay fixation and getting the excess amount of pay on the basis of wrong fixation of pay. Therefore, the applicants cannot be blamed for the excess payment made to them. All the applicants were serving as an Assistant Teacher i.e. Group 'C' employee at the time of their retirement. The mistake regarding wrong fixation of pay has been noticed by the Pay Verification Unit at the time of verification of the pension papers of the applicants and therefore, their pay has been revised and the recovery order directing recovery has been issued by the respondents at the time of their retirement. The excess payment made to them has been recovered from their pensionary benefits. The amount recovered from them was for a period in excess of five years before the order of recovery is issued.

14. The Hon'ble Apex Court has laid down certain guidelines in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) Etc. in Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** on 18.12.2014, which are 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.”

15. In view of the guidelines given by the Hon'ble Apex Court, the recovery made from the applicants, when they were on the verge of retirement is not permissible. Not only this, but the recovery is in respect of amount paid to them for a period in excess of five years before the order of recovery was made. Therefore, on that count also, the recovery is impermissible. The applicants are Group-C employees and therefore, the said recovery cannot be made from them in view of the guidelines given by the Hon'ble Apex Court. The respondents had not considered all these aspects while making recovery of the amount from the pensionary benefits of the applicants. Therefore, the recovery made by the respondents from the applicants is illegal.

16. Similar issue has been decided by this Tribunal in various cases and copies of which has been produced by the applicants on record and in all these decisions, this Tribunal has held that such recovery cannot be made as it is illegal and therefore, directed the respondents in those cases to refund the amount. The present cases are squarely covered by the principles laid down in those judgments. In these circumstances, in my opinion, the recovery made by the respondents from the applicants towards the excess payment made to the applicants on account of wrong pay fixation is illegal. Therefore, it is just and proper to direct the respondents to refund

the said amount to the applicants by allowing the present Original Applications.

17. Considering the above said discussions in foregoing paragraphs, the recovery of the excess amount paid to the applicants on account of wrong pay fixation is against the guidelines laid down by the Honble Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) Etc. in Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** on 18.12.2014 and therefore, it is just and proper to direct the respondents to refund the amount to the applicants. Hence, I pass following order:-

ORDER

1. O.A. Nos. 786, 787 & 788 all of 2016 are allowed.
2. The respondents are directed to refund the amount of Rs. 97,459/-, 1,58,801/- & 1,04,160/- to the applicants in O.A. Nos. 786/2016, 787/2016 & 788/2016 respectively within three months from the date of this order, failing which, the amount shall carry interest @ 9% p.a. from the date of the order.

There shall be no order as to costs.

**(B.P. PATIL)
MEMBER (J)**

PLACE : AURANGABAD.

DATE : 19.01.2018.

KPB/S.B. O.A. No. 786 & Ors of 2016 BPP 2018 Recovery