

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.176/2017

DISTRICT: - PARBHANI

Jalindhar S/o. Gorakhnath Ubale,
Age : 58 years, Occu. : Retired,
R/o. Vasmal Road, Parbhani,
Tq. & Dist. Parbhani.

...APPLICANT

V E R S U S

- 1) The Regional Dairy Development Officer,
Aurangabad Region, Aurangabad.
- 2) The Deputy Regional Dairy
Development Officer, Beed,
Tq. & Dist. Beed.
- 3) The Center Head,
Government Dairy Refrigeration Center,
Pathri, Tq. Pathri, Dist. Parbhani.
- 4) The Pay Verification Unit,
Aurangabad, Dis. Aurangabad.
- 5) The Accountant General,
Nagpur, Dist. Nagpur.

...RESPONDENTS

APPEARANCE :Shri K.G.Salunke learned Advocate for
the Applicant.

:Smt. Deepali Deshpande, learned
Presenting Officer for the respondents.

CORAM : Shri B. P. Patil, Member (J)

DATE : 31st August, 2017

J U D G M E N T
[Delivered on 31st day of August 2017]

The applicant has challenged the orders dated 08-02-2017 and 18-02-2017 passed by the respondent no.2 The Deputy Regional Dairy Development Officer, Beed, Tq. & Dist. Beed directing recovery of Rs.4,98,652/- (Rs. Four lakh ninety eight thousand six hundred and fifty two only), from the pensionary benefits of the applicant and also sought direction to the respondents to release his pensionary benefits and grant of regular pension by filing the present O.A.

2. The applicant has passed SSC examination. He was initially appointed as Sampler in Class-IV cadre on the establishment of respondent no.3. His entire service tenure was up to the mark. He has not received any show cause notice during his entire service and no departmental enquiry was initiated against him. On completion of 12 years' service, he was given appropriate pay scale as per the guidelines and in view of the G.Rs. He retired on

...3

superannuation on 31-08-2016. He submitted required documents to the respondents after retirement for grant of pensionary benefits but it had not been released to him. He made representation to the respondent no.3 on 03-10-2016 to release pensionary benefits.

3. He received communication dated 08-02-2017 from the respondent no.2 directing recovery of amount of Rs.4,98,652/- from his pensionary benefits on the ground that respondent no.4 has raised objection regarding his pay scale on 11-04-2012 and the excess amount paid to him may be recovered from his pensionary benefits. It is his further contention that on 18-02-2017, respondent no.2 again issued another order and directed the office to recover amount of Rs.4,98,652/- from his pensionary benefits. It is contention of the applicant that both the orders issued by the respondent no.2 are illegal and the recovery directed is against the provisions of law and several verdicts given by Hon'ble the Apex Court.

4. It is his further contention that he never claimed any type of benefit. He had not misled the authorities for grant of any monetary benefit. Financial benefits have been given

to him by the respondent authorities as per G.Rs. and they were at fault. Therefore, they cannot recover alleged excess amount of payment made to him in view of the decision of Hon'ble the Apex Court. It is his contention that no opportunity of hearing was given to him before passing impugned orders, and therefore, the orders passed by the respondent no.2 are against the principles of natural justice. Therefore, he prayed to quash impugned orders dated 08-02-2017 and 18-02-2017 passed by the respondent no.2 thereby directing recovery of amount of Rs.4,98,652/- from his pensionary benefits by filing the present O.A.

5. Respondents filed their affidavit in reply and contended that the applicant was initially appointed as Peon in the pay scale of Rs.200-280 in Class-IV cadre on 21-03-1985. On 01-11-1985, he was appointed in the same pay scale of Rs.200-280 on the post of Sampler. On 01-01-1986, as per 4th Pay Commissioner, pay scale of the applicant was revised to Rs.750-940. On 01-01-1996, as per 5th Pay Commission his pay scale came to be revised to Rs.2250-3200. On completion of 12 years' service, the

applicant was granted benefit of time bound promotion Scheme and his pay scale was raised from Rs.2550-3200 to Rs.2610-4000 w.e.f. 21-03-1997. The applicant continued to receive pay in the correct pay scale up to 06-02-2008. On 06-02-2008, the pay of the applicant was revised by the office order no.229 in the wrong pay scale of Rs.3050-4590 w.e.f. 21-03-1997, for which the applicant was not entitled.

6. It is the contention of the respondents that when the service book of the applicant was submitted for verification to the office of respondent no.4, said mistake was brought to the notice of the respondents i.e. office of the applicant by objection dated 11-04-2012 and explanation was called for. However, office of the applicant instead of correcting wrong pay scale of the applicant again re-fixed pay of the applicant in wrong pay scale of Rs.950-1400 w.e.f. 01-01-1986 by order dated 01-02-2014. As a result of wrong pay fixation overpayment of Rs.4,98,652/- was made to the applicant. It is their contention that service book of the applicant was submitted to the Pay Verification Unit. Objection dated 11-04-2012 was brought to the notice of

the office of the applicant and the Pay Verification Unit requested the respondent no.2 to re-fix pay of the applicant in correct pay scale to which the applicant was entitled.

7. It is contention of the respondents that in the Dairy Development Department there are two separate posts of Sampler in two different pay scales. It is their contention the applicant was promoted from the post of Peon, and therefore, lower pay scale of Sampler was applicable to him but he has been given wrong pay scale. It is their contention that since excess payment was made to the applicant in view of the wrong pay fixation of the applicant from 1986, an amount of Rs.4,98,652/- has to be recovered from him. Therefore, impugned orders have been issued by respondent no.2 as per the directions of the Pay Verification Unit. There is no illegality in the impugned orders, and therefore, they prayed to reject the O.A.

8. I have heard Shri K.G.Salunke learned Advocate for the Applicant and Smt. Deepali Deshpande, learned Presenting Officer for the respondents and perused documents produced on record by the parties.

9. Most of the facts in the case are admitted to either of the parties. Admittedly, applicant was initially appointed as Peon on the establishment of respondent no.2 in the pay scale of Rs.200-280 on 21-03-1985. Thereafter, he was appointed in the same pay scale of Rs.200-280 on the post of Sampler on 01-11-1985. Thereafter, 4th Pay Commission was made applicable w.e.f. 01-01-1986, and accordingly, pay scale of the applicant was revised to Rs.750-940. Admittedly, 5th Pay Commission was made applicable to the applicant w.e.f. 01-01-1996 and his pay was re-fixed to Rs.2550-3200. The applicant received the benefit of time bound promotion scheme on completion of 12 years of service, and accordingly, his pay scale was raised from 2550-3200 to 2650-4000 w.e.f. 21-03-1997. There is no dispute about the fact that his pay has been re-fixed again on 06-02-2008 in the pay scale of Rs.3050-4590 w.e.f. 21-03-1997. Admittedly, respondent no.4 raised objection regarding pay fixation of the applicant by its objection dated 11-04-2012 and directed the respondents to correct the pay scale wrongly given to the applicant and to re-fix his pay. Instead of correcting wrong pay fixation of the applicant respondent nos.2 again wrongly re-fixed pay of the

applicant in the scale of Rs.950-1400 w.e.f. 01-01-1986 by its order dated 01-02-2014. Admittedly, due to the wrong fixation of the pay since the year 1986, the applicant received overpayment of Rs.4,98,652/-. Admittedly, said overpayment was made to the applicant because of the wrong pay fixation made by the respondent no.2. Admittedly, the applicant never misrepresented the respondents in fixing his pay. He never applied for fixation of his pay scale. It was the respondent no.2 who committed the mistake in fixing the pay scale of the applicant, and therefore, overpayment was made to him. In spite of direction given by the respondent no.4, to the respondent no.2 to correct pay scale of the applicant in the year 2012, his pay scale has not been corrected.

10. Learned Advocate for the applicant has submitted the applicant has retired on 31-08-2016 but his retirement benefits have not been given to him in spite of several representations made by him. He has submitted that respondent no.2 by orders dated 08-02-2017 and 18-02-2017 directed to recover an amount of Rs.4,98,652/- from his pensionary benefits on the ground that excess

payment was made to him on account of wrong fixation of his pay. He has argued that recovery in respect of pay given to the applicant since 1986 has been directed. He has submitted that the applicant was serving in Class-III post on the date of retirement, and therefore, said recovery is not permissible. In support of his submission he has placed reliance on the judgment delivered by the Hon'ble Apex Court in **Civil Appeal No.11527/2014 arising out of SLP (C) No.11684 of 2012 & ors. (State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** reported in [AIR 2015 SC 696]. In paragraph 12 of the said judgment, it has been 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, 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."

11. Learned Advocate for the applicant has also placed reliance on the judgment delivered by this Tribunal in **O.A.No.826/2015** in the case of **Abdul Basit s/o. Abdul Hamid Shattari V/s. State of Maharashtra & Ors.**

decided on 21-11-2016. He has submitted that the recovery has been made from the applicant illegally, and therefore, it is just and proper to quash the impugned orders and direct the respondents to refund amount recovered from his pensionary benefits and also direct them to process his pension papers and to sanction it within stipulated time.

12. Learned Advocate for the applicant has also placed reliance on the cases of Lata Gajanan Wankhede decided by the Hon'ble High Court of Judicature of Bombay Bench at Nagpur on 01-07-2016 in Writ Petition No.2648/2016.

13. Learned P.O. has submitted that the recovery of amount of Rs.4,98,652/- has been directed against the applicant as pay scale of the applicant has been fixed wrongly since beginning. She has submitted that there are two types of posts of Sampler in the Dairy Development Department and those posts have separate pay scales. She has attracted my attention to charts/tables given by respondent no.4, which are at paper book page 46 and 47. She has submitted that the applicant was appointed on the post of Peon initially in the pay scale of Rs.200-280 and he

was absorbed on the same pay scale in the post of Sampler, therefore, table no.2 as mentioned on page 47 of paper book is applicable to the applicant. She has submitted that by G.R. dated 11-04-2000, pay scale of Sampler working in the pay scale of Rs.750-940 was revised to Rs.3050-4590 and this pay scale was applicable to the Sampler to whom the table no.1 mentioned in page 46 is applicable. The applicant was not entitled to get said pay scale but the said scale has been wrongly made applicable to him, and therefore, excess payment was made to him. She has argued that the Pay Verification Unit noticed the said mistake, and therefore, it requested respondent no.2 to correct pay scale of the applicant accordingly in the year 2012 but the respondent no.2 had not taken corrective measures. Instead of taking corrective measures, it has again committed mistake and it had wrongly given pay scale to the applicant. She has submitted that at the time of retirement of the applicant, papers had been sent to Pay Verification Unit and at that time again directions were given by Pay Verification Unit to the respondent no.2 to correct mistake and on the basis of said objection raised by respondent no.4, respondent no.2 issued impugned orders.

She has submitted that the applicant was entitled to get higher pay scale in view of the table no.1 shown on the page 46 of the paper book but he was getting pay scale which was not applicable to him, and therefore, excess payment was made to him. She has submitted that the respondent no.2 has corrected the said mistake and directed to recover the amount from the pensionary benefits of the applicant which is legal, and therefore, she prayed to reject the O.A.

14. There is no dispute about the fact that the applicant was initially appointed as Peon, and thereafter, he was absorbed on the post of Sampler in the pay scale of Rs.200-280. Admittedly, there are 2 different posts of Sampler in the Dairy Development Department having two different pay scales. The pay scales are mentioned in paper book page no.46 and 47. Table No.2 mentioned at page 47 is applicable to the applicant but in the year 1986 while applying recommendations of 4th Pay Commission pay scale of Rs.775-940 mentioned in table no.1 has been wrongly made applicable to the applicant though he was not entitled for the same. Not only this, but the said mistake has been carried further while fixing his pay on the basis of

recommendations of 5th Pay Commission on 01-01-1996. The Pay Verification Unit had had pointed out said mistake and raised objection and requested respondent no.2 to correct the mistake but the respondent no.2 instead of making correction in the pay scale of the applicant again re-fixed pay of the applicant and wrong pay scale of Rs.950-1400 w.e.f. 01-01-1986 was given by order dated 01-02-2014. The applicant received overpayment of Rs.4,98,652/- because of wrong pay fixation made by respondent no.2. Respondent no.2, thereafter, made correct pay fixation of the applicant by order dated 09-02-2014, which is at paper book page 34 to 36. Said re-fixation of the pay scale of the applicant seems to be correct. The applicant has not challenged the same. Therefore, same can be taken into consideration while fixing his pension, and therefore, there is no need to enter in that arena.

15. Only grievance of the applicant is regarding recovery of excess amount of pay made to him. It is submitted on behalf of the applicant that as the applicant being Class-III i.e. Group-C employee, the recovery cannot be ordered

against him and that too for the amount paid to him since the year 1986, in view of the guidelines given by the Hon'ble the Apex Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** reported in [AIR 2015 SC 696]. Admittedly, the excess payment was made to the applicant because of wrong pay fixation made by the respondent no.2. The applicant never misled the respondent no.2 for fixation of the pay. Moreover, he never made representation for fixation of his pay scale. No role has been attributed to the applicant in fixing the said pay. Excess payment was made to the applicant because of mistake committed by the respondents. The applicant is not guilty of furnishing any incorrect information which led respondent no.2 to commit mistake of making higher pay scale applicable to him. No fraud was committed by the applicant in getting higher pay scale. Therefore, recovery of the excess payment made to the applicant is not permissible and legal in view of the guidelines given by Hon'ble the Apex Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** as referred above. Not only this but no opportunity of hearing was given to the applicant before issuing the impugned

orders dated 08-02-2017 and 18-02-2017. Therefore, in my view the impugned order directing recovery of excess payment made to the applicant who is Class III i.e. Group-C employee is not legal and it is impermissible.

16. Considering the facts in the present case, in my view the principle and guidelines laid down in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** are squarely applicable to the instant case. Therefore, the amount of excess payment made to the applicant because of wrong pay fixation made by the respondents, cannot be recovered. The recovery directed by respondent no.2 against the applicant is not legal and proper. Hence, orders dated 08-02-2017 and 18-02-2017 passed by respondent no.2 require to be quashed and set aside by allowing the O.A. Therefore, I proceed to pass following order:

ORDER

- (i) O.A. is allowed.
- (ii) Orders dated 08-02-2017 and 18-02-2017 passed by respondent no.2 directing recovery of amount of Rs.4,98,652/- from the pensionary benefits of the applicant are hereby quashed and set aside.

(iii) Recovery, if any, done from the pensionary benefits of the applicant, be refunded to the applicant within 4 weeks from the date of the order.

(iv) Respondents shall release pension and pensionary benefits to the applicant as admissible to him as per rules within 4 weeks from the date of the order.

(v) No order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 31-08-2017.