

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.182/2018

DISTRICT: - JALNA

Vitthal Bansilal Jadhav,
Age : 59 years, Occu. : Pensioner,
R/o. Plot No.37, Sonal Nagar,
Railway Station, Jalna,
Tq. & Dist. Jalna.

...APPLICANT

V E R S U S

- 1) Inspector General of Registration
and Stamps, Government of Maharashtra,
New Administrative Building,
Ground Floor, Opp. Council Hall,
Pune 411 001.
 - 2) The Deputy Inspector General of Registration
And Stamps, Aurangabad Division,
Aurangabad.
 - 3) The District Registrar and Collector of Stamps,
Parbhani, Tq. & Dist. Parbhani.
 - 4) The Joint Registrar Class-II,
Hingoli, Tq. & Dist. Hingoli.
- ...RESPONDENTS

APPEARANCE :Shri P.B.Salunke Advocate holding for
Shri V.G.Salgare Advocate for the
applicant.

Smt. Sanjivani Ghate Presenting Officer
for the respondents.

CORAM : B. P. Patil, Vice Chairman

Delivered on : 30-07-2019

ORAL ORDER

1. By filing the present O.A., the applicant has sought direction against the respondents to refund an amount of Rs.58,557/- (Rs. Fifty Eight Thousand Five Hundred and Fifty Seven only) recovered from him by the impugned order dated 07-04-2018 towards excess payment made to him due to wrong pay fixation.

2. The applicant was initially appointed as Junior Clerk in the office of Sub Registrar, Bhokardan, Tq. Bhokardan, Dist. Jalna. Accordingly, he joined on the said post on 04-12-1985. He worked at different places at Jalna, Ambad etc. on the post of Junior Clerk up to 27-12-2002. On 28-12-2002, he was promoted on the post of Senior Clerk in the office of Joint District Registrar, Dhule. Thereafter, he served on the said post at different places. He served in the office of Deputy Inspector General of Registration and Stamp, Aurangabad Division, Aurangabad and in the office of Inspector General of Registration and Stamps, Government of Maharashtra, Pune. On 11-06-2007, he was promoted on the post of Sub Registrar, Grade-I, (Class-III) Kaij, Tq. Kaij, Dist. Beed.

Thereafter, he has served on the said post at Shirur Kasar, Tq. Shirur Kasar, Dist. Beed and at Georai, Tq. Georai, Dist. Beed. In the month of June, 2016, he was promoted on the post of Joint District Registrar, Class-II, Hingoli. He worked on the said post from 07-06-2016 to 31-05-2017. He retired from service on attaining age of superannuation on 31-05-2017.

3. After his retirement, his service record was submitted to Pay Verification Unit. At that time, Pay Verification Unit raised some queries in respect of the pay fixation of the applicant while he was working on the post of Class-III. On the basis of objections raised by the Pay Verification Unit, respondent no.3 revised his pay and ordered recovery of an amount of Rs.58,557/- from the applicant as excess payment has been made to him due to wrong pay fixation. Accordingly, the respondent no.3 instructed the applicant by letter dated 07-04-2017 to deposit the said amount with the Government and to submit copy of the same to the respondent no.3. The applicant has deposited the said amount of Rs.58,557/- with the Government by challan and informed the respondent no.3 accordingly. Thereafter, his pension papers have been processed. It is his

contention that there was no misrepresentation on his part while getting excess pay. Therefore, he could not be held responsible for the said excess payment. It is contended by the applicant that when the excess payment was made to him, he was holding Group-C post, and therefore, recovery of excess amount made from him is illegal and against the guidelines given by the Hon'ble Supreme Court in the case of **State of Punjab V/s. Rafiq Masih** decided on 18-12-2014 and reported in [**AIR 2015 SC 696**]. Therefore, he has approached the Tribunal by filing the present O.A. and prayed to direct the respondents to refund the amount of Rs.58,557/- recovered from him on account of excess payment made to him due to wrong pay fixation.

4. Respondent nos.1 to 4 have resisted the contentions of the applicants by filing their affidavit in reply. They have not disputed the fact regarding the initial appointment of the applicant as Junior Clerk and promotion on the post of Senior Clerk, Grade-I Sub Registrar Class-I and Joint Sub Registrar, Class-II. It is their contention that the applicant was promoted on the post of Grade-I Sub Registrar Class-I from 27-08-2007 to 06-06-2016. He was also promoted as Joint Sub Registrar Class II, Hingoli from 07-06-2016 to

31-05-2017. He worked on the said post till his retirement. It is their contention that during the verification of Pay fixation as per the recommendations of the 6th Pay Commission, it was noticed by Pay Verification Unit that salary and allowances of the applicant are paid excessively. The amount of Rs.58,557/- has been paid in excess of his eligibility and entitlement. Therefore, recovery is made from the applicant.

5. It is their further contention that as per the objection raised by Pay Verification Unit, respondent no.3 working as Drawing and Disbursing Officer issued notice to the applicant and requested to remit an amount of Rs.58,557/- to the Government as the said amount has been paid to him in excess of his entitlement. The applicant has admitted the said fact and deposited the amount with the Government by challan dated 05-05-2017. It is their contention that the excess amount has been paid to the applicant due to wrong pay fixation though he was not entitled to it and therefore recovery has been made from him. Therefore, respondents have justified the impugned order and action of recovery of excess amount from the

applicant. On these grounds they have prayed to reject the O.A.

6. I have heard Shri P.B.Salunke learned Advocate holding for Shri V.G.Salgare learned Advocate for the applicant and Smt. Sanjivani Ghate Presenting Officer for the respondents. I have perused the documents placed on record by both sides.

7. Admittedly, the applicant was initially appointed as Junior Clerk in the office of Sub Registrar, Bhokardan, Tq. Bhokardan, Dist. Jalna by order dated 26-11-1985 and accordingly he joined the post on 04-12-1985. Thereafter, he was promoted on the post of Senior Clerk on 28-12-2002. By order dated 11-06-2007, he was promoted on the post of Sub Registrar, Grade-I, (Class-III) Kaij, Tq. Kaij, Dist. Beed. In the month of June, 2016, he was promoted on the post of Joint District Registrar, Class-II, Hingoli. He worked on the said post from 07-06-2016 to 31-05-2017 i.e. till his retirement. He retired from service on attaining age of superannuation on 31-05-2017.

8. At the time of preparation of his pension papers, service record of the applicant was referred to Pay

Verification Unit. At the time of verification of the record, the Pay Verification Unit noted that excess payment has been made to the applicant due to wrong pay fixation. During the verification, it was disclosed that excess payment has been made to the applicant due to wrong pay fixation from period commencing from 01-01-2016 to 01-01-2017. On the basis of objection raised by Pay Verification Unit, respondent no.3 passed the order and directed the applicant to deposit the amount of Rs.58,557/-. Accordingly, the applicant deposited the said amount to the Government through challan.

9. Admittedly, the applicant was serving on the post of Sub Registrar, Grade-I, (Class-III) Kaij, Tq. Kaij, Dist. Beed from 11-06-2007. Thereafter, he was promoted on the post of Joint District Registrar, Class-II, Hingoli in the month of June, 2016.

10. Learned Advocate for the applicant has argued that the post of Sub Registrar, Grade-I, (Class-III) comes under Group-C category. During that period, excess payment of Rs.58,557/- has been made to the applicant due to wrong pay fixation made by the respondents. He has submitted that the applicant has played no role in getting excess

payment or getting wrong pay scale. The mistake was committed on the part of the respondents, and therefore, the applicant cannot be held responsible for such excess payment.

11. Learned Advocate for the applicant has submitted that the said recovery has been made by respondent no.3 illegally and in violation of the guidelines given by the Hon'ble Supreme Court in the case of **State of Punjab V/s. Rafiq Masih** decided on 18-12-2014 reported in [**AIR 2015 SC 696**]. In paragraph 12 of the said judgment, it has been observed by the Hon'ble Apex Court 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."

12. He has further submitted that the case of the applicant is squarely covered by the above principles laid down by the Hon'ble Supreme Court. Therefore, the applicant is entitled to get refund of amount of Rs.58,557/-, which was recovered from the applicant illegally. Therefore, the applicant has prayed to allow the O.A. and refund an amount of Rs.58,557/-.

13. Learned Advocate for the applicant has also placed reliance on the judgment of this Tribunal passed in O.A.Nos.23, 24, 25, 26, 73, 116, 128 and 156 all of 2016 in case of **A.N.More and Ors. V/s. State of Maharashtra & Ors.** decided on 02-09-2016. He has submitted that the present case is also covered by the said decision. Therefore, he has prayed to allow the O.A.

14. Learned P.O. has submitted that the applicant was serving on the post of Sub Registrar Grade-I, which is a Group-B post from 27-08-2007 to 06-06-2016. He was promoted on the post of Joint Sub Registrar, Class-II, which is a Group-B post on 07-06-2016. He worked on the said post from 07-06-2016 to 31-05-2017 i.e. till his retirement. She has submitted that excess payment has been made to the applicant during the period from 01-01-2016 to 01-01-2017 due to wrong pay fixation. Said mistake has been noticed by the Pay Verification Unit when the service record of the applicant was sent for verification at the time of his retirement. On the basis of objection raised by the Pay Verification Unit, the impugned order has been passed by the respondent no.3 and he directed the applicant to deposit an amount of Rs.58,557/- paid to him in excess of his entitlement due to wrong pay fixation. She has submitted that during the said period, the applicant was serving on Group-B post. Therefore, the applicant cannot claim benefit of the decision of the Hon'ble Supreme Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** reported in **[AIR 2015 SC 696]**.

15. Learned P.O. has further submitted that till his retirement, the applicant was serving on Group-B post and therefore the principles laid down in the abovesaid decision of the Hon'ble Supreme Court are not attracted in the present case. She has submitted that the Hon'ble Supreme Court has given direction in order to balance the equities created in such a situation so far as Class-III and Class-IV employees are concerned and who were found to be not having very sound economic footing and would have to be exempted from the consequence of recovery of the excess payment, if considerable period of time has passed by in between. Therefore, said principles are not applicable in the present case as the applicant was belonging to Class-II category at the time of his retirement.

16. In support of her submissions, learned P.O. has also placed reliance on the judgment of Hon'ble High Court of Judicature of Bombay Bench at Nagpur on the case of **State of Maharashtra & Ors. V/s. Sureshchandra s/o. Dharamchand Jain & Ors.** in Writ Petition No.4919/2018 decided on 23-07-2019, wherein it is observed as follows:

“6. The reason weighing with the Hon'ble Apex Court imposing prohibition against recovery of

excess payment in Rafiq Masih (supra) was of hardship resulting from creation of awkward situation because of the mistake committed by the employer and there being no fault whatsoever on the part of the employee. In order to balance the equities created in such a situation, the Hon'ble Apex Court in Rafiq Masih, gave the direction that so far as Class III and IV employees were concerned, and who were found to be not having very sound economic footing, would have to be exempted from the consequence of recovery of the excess payment, if considerable period of time has passed by in between.”

17. She has submitted that in view of the said settled legal principle, the applicant cannot take benefits of the guidelines given in **Rafia Masih's** case as his case is not covered under the situation mentioned therein. She has submitted that the impugned order of recovery has been made as per the rules. Therefore, she has prayed to reject the O.A.

18. On perusal of record, it reveals that the applicant was promoted on the post of Grade- I Sub Registrar Class-I Group-B Non-gazetted. He worked on the said post during the period from 27-08-2007 to 06-06-2016. Thereafter, he was promoted on the post of Joint Sub Registrar, Class-II,

Hingoli on 07-06-2016. He worked on the said post from 07-06-2016 to 31-05-2017. The applicant was holding Group-B post during the said period and he retired from the said post. Excess payment of Rs.58,557/- was made to the applicant due to wrong pay fixation during the period from 01-01-2016 to 01-01-2017. Said fact has been noticed by the Pay Verification Unit when the service record of the applicant was sent for verification at the time of his retirement. The Pay Verification Unit noted the said mistake and raised the objection in that regard. On the basis of the objection raised by the Pay Verification Unit, the pay of the applicant was revised and recovery of an amount of excess payment of Rs.58,557/- was ordered. Accordingly, the respondent no.3 instructed the applicant by letter dated 07-04-2017 to deposit the said amount with the Government and to submit copy of the same to the respondent no.3. The applicant has deposited the said amount of Rs.58,557/- with the Government by challan on 05-05-2017 and informed the respondent no.3 accordingly.

19. It is evident from the documents on record that the excess payment has been made to the applicant when he was serving on the post of Grade-I Sub Registrar Class-I

and Joint Sub Registrar Class-II. Both the posts held by him were Class-II i.e. Group-B posts. The amount has been recovered from the applicant when he retired from the post of Class-II. Therefore, the principles laid down by the Hon'ble Supreme Court in the case of **State of Punjab V/s. Rafiq Masih** decided on 18-12-2014 and reported in [**AIR 2015 SC 696**] are not attracted in the present case. The case of the applicant is not covered by the guidelines given by the Hon'ble Supreme Court in **Rafiq Mashi's** case. Therefore, the applicant cannot take benefit of the said decision. Consequently, he is not entitled to get refund of the said amount of Rs.58,557/-.

20. The decision referred to by the learned P.O. in case of **State of Maharashtra & Ors. V/s. Sureshchandra s/o. Dharamchand Jain & Ors.** in Writ Petition No.4919/2018 decided on 23-07-2019 is most appropriately applicable in the present case. In the said decision it has been specifically mentioned that in order to balance the equities created in such a situation so far as Class-III and Class-IV employees are concerned and who were found to be not having very sound economic footing would have to be exempted from the consequence of recovery of the excess

payment, if considerable period of time has passed by in between. Therefore, the said principles laid down by the Hon'ble Supreme Court in **Rafiq Masih's** are not applicable in the present case as the applicant was employee belonging to Group-B category at the time of his retirement. Consequently, the applicant is not entitled to get refund of the said amount of Rs.58,557/-.

21. The respondent no.3 has rightly recovered the said amount paid in excess to the applicant. Therefore, no interference in the said order is called for. Amount of Rs.58,557/- has already been recovered from the applicant. Therefore, no question of giving direction the respondents to refund the same as prayed by the applicant arises. There is no merit in the O.A. Consequently, the O.A. deserves to be dismissed.

22. In view of the discussion in the foregoing paragraphs, O.A. stands dismissed without any order as to costs.

(B. P. PATIL)
VICE CHAIRMAN

Place : Aurangabad
Date : 30-07-2019.