

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.435/2018

DISTRICT: - AURANGABAD

Prakash s/o Vasudev Ramekar,
Age : 59 years, Occu. : Nil (Pensioner),
R/o. Flat No.9, 2nd Floor,
Swanand Gruhkul,
Nageshwarwadi, Aurangabad.

...APPLICANT

V E R S U S

- 1) The Civil Surgeon,
Parbhani.
- 2) The Treasury Officer,
Parbhani.
- 3) The Senior Treasury Officer,
Aurangabad.
- 4) The Accountant General (A & E),
M.S., Nagpur.

...RESPONDENTS

APPEARANCE : Shri A.S.Deshmukh Advocate for the
Applicant.

: Shri M.P.Gude Presenting Officer for the
respondents.

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

DATE : 12th December, 2018

J U D G M E N T
[Delivered on 12th day of December, 2018]

1. The applicant has challenged the order issued by the respondents directing recovery of amount of Rs.2,50,920/- (Rs. Two lakh fifty thousand nine hundred and twenty only) from the pensionary benefits and recovery of the same made from his pensionary benefits by filing the present O.A. He has also prayed to to quash the impugned order and to direct the respondents to refund the said amount.

2. The applicant had entered in the service of Government of Maharashtra on 07-10-1986 on the post of Blood Bank Technician in the Health Department. He retired on 31-01-2018 on attaining age of superannuation. At the time of retirement, he was working under the respondent no.1 Civil Surgeon Parbhani. The post of Blood Bank Technician is Group-C/Grade-3 post of the State Services.

3. One and half months prior to his retirement i.e. on 16-12-2017, respondent no.1 issued order of re-fixation of his pay w.e.f. 07-10-1998 but the said order has not been served on the applicant, and therefore, he was not aware

about it. After retirement, he came to know that an amount of Rs.2,50,920/- has been recovered from his pensionary benefits. Therefore, he had filed an application under Right to Information with respondent no.1 and collected the necessary information and at that time it was disclosed to him that the said amount has been recovered from him because of re-fixation of his salary and as excess payment has been paid to him due to wrong fixation of pay. Respondent no.1 issued order dated 16-12-2017 on the basis of objection raised by Pay Verification Unit, Aurangabad dated 12-04-2017. After re-fixation of the pay respondent no.1 sent pension papers of the applicant to the Accountant General, Nagpur (A.G.). The A.G. issued Pension Payment Order and directed to recover the said amount from his pensionary benefits, and therefore, an amount of Rs.2,50,920/- has been recovered from the amount of Death cum Retirement Gratuity (DCRG) and Gratuity amount payable to the applicant.

4. It is his further contention that he was not responsible for the wrong pay fixation made by the respondents and the act of wrong pay fixation was done by the respondents on their own accord. Therefore, he cannot

be blamed for the same. It is his contention that the order of the respondents directing recovery of amount of Rs.2,50,920/- from his pensionary benefits is illegal, arbitrary and against the guidelines issued 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], and therefore, it requires to be quashed and set aside. Therefore, he has prayed to quash the impugned order directing recovery of the amount of Rs.2,50,920/- from his pensionary benefits and also prayed to direct the respondents to refund the said amount to him by filing the present O.A.

5. Respondent no.1 has filed affidavit in reply and resisted the contentions of the applicant. He has not disputed the fact that the applicant was serving as Blood Bank Technician at the time of retirement on Group-C post. It is contended by him that Pay Verification Unit at Aurangabad raised objection regarding pay fixation of the applicant, and therefore, office of the respondents re-fixed the pay of the applicant by order dated 28-06-2017 and submitted to Pay Verification Unit. Thereafter, Pay Verification Unit verified the same on condition that the

excess payment should be recovered from the applicant. The office of the respondents, thereafter, issued order of re-fixation of pay of the applicant on 16-12-2017 and served the copy of the same on the applicant. The applicant was aware about the same. The entry of the said order has been taken in the original service book of the applicant. On the basis of the said order, an amount of Rs.2,50,920/- has been recovered from the pensionary benefits of the applicant. It is contended by the respondent that there is no illegality in the impugned order and he supported the same.

6. Respondent no.2 has filed his affidavit in reply and contended that the amount of Rs.2,50,920/- had been recovered by him on 30-03-2018 as the A.G. Nagpur directed him to recover the said amount on account of excess payment made to him. Therefore, he has prayed to reject the O.A.

7. Respondent no.3 has also filed affidavit in reply and resisted contentions on the ground that the applicant retired from the office of District Civil Surgeon, Parbhani on 31-01-2018. The applicant's Pension Payment order and

Commuted pension order had been issued to the drawing pensioner authority in the name of Treasury Officer, Aurangabad by the A.G. Nagpur and also directed to recover an amount of Rs.2,50,920/- from the gratuity of the applicant. The office of the Civil Surgeon, Parbhani recovered an amount of Rs.2,50,920/- from the gratuity of the applicant vide letter dated 05-04-2018. Therefore, he prayed to reject the O.A.

8. Respondent no.4 has resisted the contentions of the applicant by filing its affidavit in reply. It has contended that the Comptroller & Auditor General of India discharges his duties through field offices, 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, and Conditions of Service) Act, 1971. Accordingly, the role of this respondent in respect of pension cases is limited to scrutiny of proposals received from Heads of offices of Govt. 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 M.C.S. (Pension) Rules, 1982 and

other Government Resolutions issued from time to time and subsequently authorization of pensionary benefits, if found admissible. It is contended that 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 the Office/Pension Sanctioning Authority of the State Government. This 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 the 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.

9. It is further contention of the respondent no.4 that pension proposal of the applicant was received in its office from respondent no.1 along with Form No.7 showing that amount of Rs.2,50,920/- was paid to the applicant towards overpayment of pay and allowances and leave salary etc. The applicant has also forwarded pension proposal through website enclosing therewith the Form i.e. Section A (to be filled in by the applicant). Applicant gave undertaking to

the effect that the said amount mentioned in the column no.14 be recovered from his pensionary benefits. On the basis of said contention the respondent had put a caution in the GPO Authority to recover an amount of Rs.2,50,920/-. There is no illegality in the same. On these grounds he has prayed for dismissal of O.A.

10. I have heard Shri A.S.Deshmukh Advocate for the Applicant and Shri M.P.Gude Presenting Officer for the respondents. Perused the documents placed on record by both sides.

11. Admittedly, the applicant was appointed as Blood Bank Technician and joined his duties on 07-10-1986 with Health Department. On attaining age of superannuation, he retired on 31-01-2018 from the office of Civil Surgeon, Parbhani. Admittedly, before his retirement his service record has been forwarded to Pay Verification Unit, Aurangabad by the respondent no.1 and at that time Pay Verification Unit noticed that pay of the applicant has been wrongly fixed w.e.f. 07-10-1998, and therefore, he raised objection and directed to respondent no.1 to re-fix his pay. Accordingly, respondent revised his pay by passing order

and directed recovery of an amount of Rs.2,50,920/- from the pensionary benefits of the applicant. After pay verification the proposal regarding sanction of pension has been forwarded by the respondent no.1 to the respondent no.4 A.G. On the basis of the said proposal, A.G. Nagpur granted pension to the applicant and directed to recover an amount of Rs.2,50,920/- from his pensionary benefits and accordingly the said amount has been recovered from the pensionary benefits of the applicant. There is no dispute about the fact that the applicant was serving on the post of Blood Bank Technician which is a Group-C post. Admittedly, entire amount of Rs.2,50,920/- has been recovered from the applicant from his pensionary benefits after his retirement.

12. Learned Advocate for the applicant has submitted that the applicant was serving as Blood Bank Technician i.e. Group-C post. He retired on 31-01-2018 and after his retirement, an amount of Rs.2,50,920/- has been recovered from his pensionary benefits. He has submitted that the said recovery has been made on account of excess payment made to the applicant due to wrong pay fixation from 07-10-1998. He has submitted that pay has been

wrongly fixed by the respondents for which the applicant cannot be held responsible as the applicant has not played any role in it. He has submitted that in view of the guidelines issued by 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**], such recovery is impermissible. Therefore, he has prayed to quash the impugned order directing recovery and sought direction to the respondents to refund the said amount by allowing the O.A.

13. Learned P.O. has submitted that the order of recovery has been passed by the respondent no.1 in view of the objection raised by the Pay Verification Unit, Aurangabad while scrutinizing service record of the applicant before his retirement. Respondent no.1 passed order re-fixing pay of the applicant and directed to recover an amount of Rs.2,50,920/- paid to the applicant on account of excess payment made to him due to wrong pay fixation. He has submitted that on the basis of proposal sent by the respondent no.1, respondent no.4 A.G. Nagpur has sanctioned pension of the applicant and directed to recover the said amount from his pensionary benefits and

accordingly the respondent no.1 has recovered the said amount from the pensionary benefits of the applicant. He has submitted that excess payment was received by the applicant and therefore the said amount has been recovered. Therefore, he has justified the action of respondent no.1 in that regard and prayed to reject the O.A.

14. On perusal of record, it reveals that the applicant was appointed on the post of Blood Bank Technician on 07-10-1986 which is a Group-C post. He retired on the said post w.e.f. 31-01-2018. The pay of the applicant has been fixed wrongly by the respondents w.e.f. 07-10-1998, and therefore, the excess payment has been made to the applicant in the tune of Rs.2,50,920/- The mistake has been committed by the respondents while fixing pay of the applicant has been noticed by the Pay Verification Unit, Aurangabad when service record of the applicant has been sent to the said Unit by the respondent no.1 before retirement of the applicant. On the basis of objection raised by the Pay Verification Unit, respondent no.1 corrected and re-fixed the pay of the applicant and directed recovery of an amount of Rs.2,50,920/- from the applicant

from his pensionary benefits. On the basis of pension proposal sent by respondent no.1, respondent no.4 issued Pension Payment Order and directed the recovery of an amount of Rs.2,50,920/- from the pensionary benefits of the applicant. In pursuance of the said order the amount has been recovered from the pensionary benefits of the applicant i.e. from DCRG and Gratuity amount.

15. The record shows that no role was attributed to the applicant in fixing the pay and getting excess amount. The mistake was committed on the part of the respondent no.1 while fixing the pay and therefore the applicant cannot be blamed for the same. The amount has been recovered from the pensionary benefits of the applicant after his retirement which is not permissible in view of the principle laid down by 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**]. 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."

16. The case of the applicant is squarely covered by Clauses (i) to (iii), therefore, the order of the respondents directing recovery of Rs.2,50,920/- from the pensionary benefits of the applicant after his retirement and recovery made from the applicant is illegal. Therefore, order of recovery of the amount issued by the respondent requires to be quashed and set aside.

17. The amount has already been recovered from the pensionary benefits of the applicant though it was not permissible. Therefore, the said recovery is illegal and bad in law. Hence, the said amount requires to be refunded to the applicant by allowing the O.A.

18. In view of the above discussion in the foregoing paragraphs, O.A. stands allowed. Impugned order dated directing recovery of amount of Rs.2,50,920/- issued by the respondent no.1 is illegal and deserve to be quashed and set aside by allowing the present O.A. Consequently, O.A. stands allowed. The impugned order directing recovery of amount of Rs.2,50,920/- is hereby quashed and set aside.

Respondents are directed to refund the amount of Rs.2,50,920/- to the applicant within 3 months from the date of this order failing which, the amount shall carry interest @ 9% per annum from the date of order till its realization. There shall be no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 12-12-2018.

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