

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.536/2017

DISTRICT: AURANGABAD

Harichandra s/o. Namdeo Sapkal,
Age : 59 years, Occu. : Retired,
R/o. Mayur Park Harsool, Plot No.1,
Survey No.190, Oppo. Devgiri Bank,
Aurangabad.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Department of General Administration,
Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,
Commissioner Office,
Aurangabad.
- 3) The Chief Accountant Officer-II,
Office of the Accountant General,
(Account & Entitlement)-1,
Pension Wing, Old Building,
GPO, Civil Lines, Nagpur-440001.
- 4) The District Collector,
District Collector Office,
Aurangabad.
- 5) The Tahasildar,
Tahasil Office, Soyagaon,
Tq. Soyagaon, Dist. Aurangabad.
- 6) The Treasury Officer,
Treasury Office,
Aurangabad.

...RESPONDENTS

APPEARANCE :Shri S.N.Lute, Advocate for the Applicant.
:Smt. Deepali Deshpande, Presenting
Officer for the respondents.

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

DATE : 3rd April, 2018

O R D E R
[Delivered on 3rd day of April, 2018]

By filing the present O.A., the applicant has prayed to direct the respondents to release regular pension and pensionary benefits to him. The applicant has further prayed to direct the respondent no.1 to refund the amount of Rs.1,12,860/- (Rs. One lakh twelve thousand eight hundred and sixty only) recovered from him on account of excess payment made to him because of wrong pay fixation and also prayed to direct the respondents to accept the nomination of his wife, namely, Mamta Harichandra Sapkal for family pension.

2. The applicant was initially appointed as Talathi on 02-02-1981. Thereafter, he was promoted as Circle Officer in the month of May, 1992. On 09-09-2004, he was promoted as Naib Tahsildar and since then he was on that post till his retirement. Applicant served at several places as Naib Tahsildar. He was kept in charge of the post of Tahsildar at some of the places. He has retired from the service w.e.f. 30-04-2016. It is contention of the applicant

that he was due for promotion as per his seniority but the respondents had not promoted him on that post though he had made several representations.

3. After retirement from the service on 30-04-2016, the applicant made application to respondent no.5 on 11-04-2016 to grant pension and pensionary benefits. Respondents prepared his pension papers and submitted those to respondent no.3 on 12-09-2016 but the office of the respondent no.3 had not considered the same. He, therefore, made application to the respondent no.4 on 24-11-2016. Thereafter, respondent no.5 submitted papers of the applicant to the respondent no.3 but that had also not been considered by the respondents. Thereafter, respondent no.3 sent letter to the respondent no.5 on 19-01-2017 and directed to resubmit proposal for pension of the applicant for want of correctness in the papers. Thereafter, respondent no.5 complied with the objections and submitted pension papers of the applicant on 15-03-2017 to the respondent no.3. The explanation of the applicant had been given wherein he has submitted that he married with his first wife Lilabai on 02-05-1982 and the applicant has two sons, namely, Laxmikant born

on 21-07-1984 and Rahul born on 01-01-1987 from his first wife. He has clarified that his first wife was suffering from disease, and therefore, he married Mamta on 18-04-1996 with the consent of his first wife. He has made it clear that his first wife died on 11-04-2002 due to illness. Thereafter, respondent no.3 sent communication to the applicant on 25-04-2017 stating that second marriage of the applicant is void, and therefore, she is not eligible for family pension. Respondent no.3 directed respondent no.5 by its letter dated 25-04-2017 to deduct an amount of Rs.1,12,860/- from the gratuity amount as the excess payment was made to the applicant towards pay and allowances. Accordingly, respondents recovered an amount of Rs.1,12,860/- from the gratuity amount of Rs.3,44,520/-. Thereafter also the respondent no.3 has sent communication to the respondent no.6 on 25-04-2017 and directed to pay pension and pensionary benefits to the applicant but the respondents had not paid said amount to the applicant. Therefore, the applicant approached this Tribunal and prayed to issue direction to the respondents to sanction regular pension to him and also prayed for direction to the respondents to stay recovery of amount of

Rs.1,12,860/- and also to accept the nomination of the wife of the applicant namely Mamta for the family pension.

4. Respondent no.3 has filed affidavit in reply, so also respondent nos.4 and 6 have filed their common affidavit in reply and resisted the contentions of the applicant. They have not denied the contentions of the applicant as regards service of the applicant, promotion and date of his retirement on attaining age of superannuation. It is their contention that on retirement of the applicant, respondent no.5 sent pension papers of the applicant to respondent no.3 as sanctioning authority vide letter dated 20-12-2016. On scrutiny of the said papers, it has been disclosed that there was some shortcoming in the proposal, and therefore, it was requested to comply with the objections and also to clarify as to marital status of the applicant as he had entered into second marriage during the subsistence of the first marriage. Therefore, the proposal was returned back on 23-01-2017.

5. It is contention of the respondents that in response to the letter of Tahsildar, Soygaon dated 15-03-2017, pensionary benefits were released to the applicant on 25-04-2017 directing to recover an amount of

Rs.1,12,860/- as the said amount has been paid to the applicant in excess because of wrong pay fixation. In view of the provisions of Rule 134 of the Maharashtra Civil Services (Pension) Rules, 1982, there was a clause in G.P.O. authority to recover the said amount. Respondent no.5 called report regarding services of the applicant during the period 07-09-2010 and 13-06-2013 from the office of Tahsildar, Fulambri, Dist. Aurangabad but the said report had not been received to respondent no.5 inspite of repeated requests made by it. The Collector, Aurangabad stopped enquiry initiated against the applicant by his letter dated 25-10-2017. After compliance made by the applicant, pension papers were sent to the A.G. After sanctioning pension by the A.G., respondent no.6 released disbursed pension and pensionary benefits to the applicant.

6. It is contention of the respondent no.3 A.G. that it discharges its duty 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 passed by the Parliament in 1971. The role of this respondent in pension cases is limited to the extent of scrutiny of proposal received from

the concerned Head of the Office of Government of Maharashtra/Pension Sanctioning Authorities in respect of employees who retired from various State Government offices situated in Vidarbha and Marathwada regions with reference to rules of M.C.S. (Pension) Rules, 1982 and G.Rs. issued by the Government from time to time and to issue authorization of pensionary benefits, if found admissible. It authorizes pension benefits based on proper pension papers duly attested by the Head of the Office/Pension Sanctioning Authorities of the State Government. Respondent is not in a position to authorize pensionary benefits if the proposal is not received from the Head Office in the prescribed format with requisite documents or if it is not found in conformity with any provisions of Maharashtra Civil Service (Pension) Rules, 1982.

7. It is further contended by the A.G. that proposal for release of pensionary benefits to the applicant was forwarded by the respondent no.5 vide letter dated 20-12-2016. On scrutiny of the papers, it was revealed that there were some lacunae in the proposal as regards No Enquiry Certificate/ No Dues Certificate from the concerned pension sanctioning authority. A.G. requested to

respondent no.5 to comply with the objections and also requested to intimate the correct marital status of the applicant as he contracted second marriage during the subsistence of the first marriage. Therefore, proposal was returned to respondent no.5 by letter dated 23-01-2017. Thereafter, in response to the letter dated 15-03-2017 received from Tahslidar, Soygaon, pensionary benefits were released vide order dated 25-04-2017. It is contended by it that while scrutinizing the pension proposal, it was noticed from the service book that there was overpayment of pay and allowances to the applicant. Therefore, recovery of amount of Rs.1,12,860/- had been ordered. Since the excess payment was made to the applicant during the course of his employment, it is recoverable during the course of his service or even after retirement from the pensionary benefits of the person as per Rule 134A of Maharashtra Civil Services (Pension) Rules, 1982, and therefore, respondents took necessary action accordingly.

8. It is contention of the respondent No.3 that applicant performed second marriage during the subsistence of the first marriage, which is against the provisions of Hindu Marriage Act, 1955 and the same is null and void. As per

the G.R. dated 03-11-2008 second marriage solemnized during the subsistence of the first marriage is not only null and void but the children born out of such wedlock are also not eligible for family pension. It is contended by it that his first wife died on 11-04-2002. The second wife of the applicant, namely, Mamta is not entitled to get family pension as she is not legally wedded wife of the applicant. Therefore, the respondent has prayed to reject the O.A.

9. Heard Shri S.N.Lute, Advocate for the Applicant and Smt. Deepali Deshpande, Presenting Officer for the respondents. Perused documents placed on record by the parties.

10. Admittedly, the applicant was appointed on the post of Talathi on 02-02-1981. He was promoted as Circle Officer in the month of May, 1992. Thereafter, he was promoted on the post of Naib Tahsildar on 09-09-2004 and since then he was working as Naib Tahsildar till his retirement i.e. till 30-04-2016. Admittedly, the applicant married to one Lilabai Harichandra Sapkal and she was his first wife. He has two children, namely, Laxmikant and Rahul born out of his legal wedlock with Lilabai. Lilabai was suffering from disease and she was ill. Admittedly, the

applicant had performed second marriage with a lady namely Mamta on 18-04-1996 during the subsistence of his first marriage. Admittedly, his first wife Lilabai died on 11-04-2002. There is no dispute about the fact that the applicant submitted pension papers after his retirement i.e. after 30-04-2016 and mentioned name of Mamta, his second wife for the purpose of family pension. Admittedly, respondent no.3 rejected the nomination of Mamta on the ground that the nomination of Mamta for family pension is not legal one as the applicant performed second marriage with Mamta during the subsistence of his first marriage, and therefore, marriage is void in view of the provisions of Hindu Marriage Act as well as in view of the provisions of G.R. dated 03-11-2008.

11. Initially, the applicant has prayed for issuance of directions to the respondents to grant pension and pensionary benefits but during the pendency of the O.A., the pensionary benefits had been released to the applicant and he is getting regular pension. Prayer clause 8(C) had been already satisfied. Learned Advocate for the applicant has stated that he is not pressing the said prayer since it has been satisfied.

12. Learned Advocate for the applicant has submitted that the respondents recovered an amount of Rs.1,12,860/- on account of overpayment made to him due to wrong pay fixation. He has submitted that the applicant was initially serving as Talathi and then he was promoted as Circle Officer in the year 1992, and thereafter, in the year 2004, he was promoted as Naib Tahsildar. He has submitted that when the applicant was serving as Talathi and Circle Officer, he was Group-C employee, and therefore, respondents are not entitled to recover amount paid to the applicant on account of wrong pay fixation as he belonged to Group-C at that time. He has further submitted that, the fixation of pay has been made by the respondents on their own accord and the mistake had been occurred on the part of the respondents while fixing his pay. The applicant was not responsible for the wrong fixation of his pay, and therefore, recovery cannot be made from him. He has submitted that the applicant has not practiced fraud or made misrepresentation with the respondents for fixation of wrong pay, and therefore, the applicant is not liable to pay excess amount paid to him. He has submitted that the amount of Rs.1,12,860/- had been recovered from the

retiral benefits of the applicant, which is illegal and against the principles and guidelines issued by the Hon'ble the Supreme Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.**, and therefore, he prayed to direct the respondents to refund an amount of Rs.1,12,860/- by allowing the O.A.

13. Learned P.O. has submitted that pay of the applicant has been wrongly fixed since beginning and the said mistake has been noticed at the time of preparation of his pension papers, and therefore, his pay has been re-fixed and consequently, recovery has been ordered. He has submitted that the applicant was serving as Naib Tahsildar, which is a Group-B post, since his promotion w.e.f. 09-09-2004. He retired as Group-B officer, and therefore, 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], is not attracted in this case. Therefore, the learned P.O. has prayed to reject the claim of the applicant in that regard.

14. I have gone through the documents placed on record by the parties. Applicant was promoted on the post of Naib

Tahsildar w.e.f. 09-09-2004. Admittedly, the post of Naib Tahsildar is a Group-B post. At the time of retirement, he was serving on the said post. He received the excess payment due to wrong fixation of pay. Therefore, recovery of Rs.1,12,860/- has been order and the said amount has been recovered from the pensionary benefits of the applicant.

15. I have gone through the decision of Hon'ble the Apex Court referred to by the learned Advocate for the applicant in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** reported in [AIR 2015 SC 696]. Hon'ble the Apex Court has given guidelines as to in which cases recovery cannot be made. While issuing said directions, it has been observed that said recovery cannot be made from the pensionary benefits of Group-C and Group-D employees, who are on the verge of retirement. The applicant received major portion of excess payment when he was serving as Naib Tahsildar, which is a Group-B post. At the time of retirement, he was serving as Group-B officer. Therefore, in my view, principle laid down by the Hon'ble the Apex Court in the abovesaid case is not attracted in the present case, and therefore, applicant

cannot take benefit of the said decision. Respondents have rightly recovered an amount of Rs.1,12,860/- from the applicant, which was paid to him due to wrong pay fixation. Therefore, there is no need to interfere with the impugned order of recovery of Rs.1,12,860/-. Therefore, the applicant is not entitled get refund of the said amount.

16. Learned Advocate for the applicant has submitted that the respondent no.3 has wrongly rejected nomination submitted by him in the name of his second wife for family pension. He has submitted that one Lilabai was first wife of the applicant. She was suffering from disease, and therefore, the applicant had performed second marriage with Mamta on 18-04-1996 with consent of his first wife Lilabai. He has submitted that Lilabai had given written consent to the applicant for second marriage on a stamp paper of Rs.10/-, and thereafter, agreement has been executed by the applicant in her favour. He has submitted that as marriage of the applicant with Mamta had been performed with consent of his earlier wife Lilabai and as there was no dispute about his second marriage, second wife has got status of legally wedded wife. He has submitted that applicant has two children born out of his

legal wedlock with Mamta. He has further submitted that first wife of the applicant Lilabai died on 11-04-2002 and since then his second wife Mamta is residing with him as his legally wedded wife. He has submitted that the applicant has made clear all these facts before A.G. by giving his clarification/explanation but the A.G. has not considered the same and rejected nomination papers submitted by the applicant on the ground that marriage of the applicant with Mamta is void and Mamta does not acquire status of legally wedded wife. He has submitted that A.G. has wrongly rejected nomination papers submitted in the name of his second wife. Therefore, he prayed to allow O.A. and prayed to issue direction to the respondents to accept the nomination submitted by the applicant in the name of his second wife Mamta for family pension.

17. Learned P.O. has submitted the applicant performed second marriage with Mamta on 18-04-1996 during the subsistence of his first marriage with Lilabai. The second marriage of the applicant with Mamta is null and void, and therefore, Mamta cannot acquire status of legally wedded wife. She has submitted that the documents produced by

the applicant i.e. agreement and consent deed are not legal, and hence, the same cannot be considered. She has further argued that A.G. has rightly rejected the nomination papers submitted by the applicant in the name of Mamta on the ground that Mamta is not legally wedded wife. There is no illegality in the said order. Therefore, she has supported order of the A.G. in that regard.

18. On perusal of the documents on record, it reveals that the applicant performed marriage with Lilabai on 02-05-1982. They have two sons, namely, Laxmikant and Rahul born out of their legal wedlock. During subsistence of marriage with Lilabai, applicant performed second marriage with Mamta on 18-04-1996 on the ground that Lilabai was suffering from disease. The applicant produced two documents i.e. agreement executed by him in favour of Lilabai and another document showing that Lilabai had given consent to the marriage of the applicant with Mamta but those documents are not legal and same have no evidentiary value. Therefore, said documents cannot be considered to be legal and valid.

19. Applicant performed second marriage with Mamta on 18-04-1996 during the existence of first marriage with

Lilabai. Lilabai was alive when the applicant performed second marriage. Marital relationship with Lilabai was in existence, and therefore, marriage performed by the applicant with Mamta on 18-04-1996 is not legal one and it is void. Therefore, Mamta cannot acquire status of legally wedded wife since the marriage is null and void. No doubt, Lilabai had died on 11-04-2002 due to illness and Mamta started residing with the applicant as his wife but she never acquired status of wife as their marriage is void. The applicant was aware about this fact as he was serving as Naib Tahsildar. He was aware of the legal provisions. He was also aware of the fact that Mamta can never acquire status of legal wife. In spite of that, he had submitted nomination papers in the name of Mamta stating that he performed the marriage with her with the consent of his wife Lilabai. Respondent no.3 has rightly considered the documents on record and has rightly held that Mamta will not acquire status of wife as the marriage of the applicant with Mamta during the subsistence of his first marriage is void, and therefore, it has not accepted the nomination papers in the name of second wife Mamta for family pension. Reasons recorded by the respondent no.3 while rejecting the nomination papers in the name of Mamta for

family pension are sound and proper. Therefore, in my view, there is no illegality in the order passed by the respondent no.3 rejecting nomination papers submitted by the applicant in the name of Mamta for family pension.

20. In view of the above facts and circumstances of the case, no interference is called for in the said order. Consequently, direction as sought by the applicant cannot be issued to the respondents. Since there is no merit in the O.A., it deserves to be dismissed. Resultantly O.A. stands dismissed with no order as to costs.

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad
Date : 03-04-2018.