

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.573/2018  
WITH  
ORIGINAL APPLICATION NO.719/2018**

**DISTRICT: - AURANGABAD**

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**ORIGINAL APPLICATION NO.573/2018**

Bhagwan Shamrao Mokale,  
Age : 59 years, Occu. : Pensioner,  
R/o. Sangarash Apartment,  
Plot No.1, Flat No.1, Near Saraswati Nagar,  
Sahas Housing Society, Garkheda,  
Tq. & Dist. Aurangabad.

...APPLICANT

**V E R S U S**

- 1) The State of Maharashtra,  
Through its Principal Secretary,  
School Education Department,  
Mantralaya, Mumbai-32.
- 2) The Divisional Deputy Director of Education,  
Aurangabad Division, Aurangabad.
- 3) The Education Officer (C.E.),  
Zilla Parishad, Aurangabad,  
Tq. & Dist. Aurangabad.
- 4) The Account Officer,  
Pay Verification (Squad),  
Aurangabad,  
Tq. & Dist. Aurangabad.

...RESPONDENTS

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**ORIGINAL APPLICATION NO.719/2018**

Niwruttee s/o Kerba Suradkar,  
Age : 60 years, Occu. : Pensioner,  
R/o. Sy. No.199/1, Takshasilla Nagar,  
Jatwada Road, Aurangabad,  
Tq. & Dist. Aurangabad.

...APPLICANT

**V E R S U S**

- 1) The State of Maharashtra,  
Through its Principal Secretary,  
School Education Department,  
Mantralaya, Mumbai-32.
- 2) The Divisional Deputy Director of Education,  
Aurangabad Division, Aurangabad.
- 3) The Education Officer (C.E.),  
Zilla Parishad, Aurangabad,  
Tq. & Dist. Aurangabad.
- 4) The Account Officer,  
Pay Verification (Squad),  
Aurangabad,  
Tq. & Dist. Aurangabad. ...RESPONDENTS

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APPEARANCE :Shri P.B.Salunke Advocate holding for  
Shri V.G.Salgare Advocate for the  
applicants in both cases.

Shri N.U.Yadav Presenting Officer for  
respondents in O.A.No.573/2018.

Smt. Sanjivani Ghate Presenting Officer  
for respondents in O.A.No.719/2018.

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CORAM : B. P. Patil, Vice Chairman

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Reserved on : 13-06-2019  
Pronounced on : 19-06-2019

**COMMON ORDER**

1. Facts and issues involved in the O.As. are similar and identical hence I am going to decide both the O.As. by common order.

2. The applicants have approached this Tribunal with a request to direct the respondents to refund amount recovered from their retirement benefits in the tune of Rs.2,16,154/- and Rs.1,84,025/- respectively, on account of excess payment made to them due to wrong fixation of pay by filing the present O.As.

3. Bhagwan Shamrao Mokale, the applicant in O.A.No.573/2018 was initially appointed as Supervisor in Adult Education Office, District Parbhani in the pay scale of Rs.335-680 by order dated 31-03-1968. Subsequently, he was regularized in the service. In view of the recommendations of the 4<sup>th</sup> Pay Commission, scale of Rs.1200-2040 for the post of Supervisor was granted to the applicant from 08-04-1998. The pay scale was revised as per the recommendations of the 5<sup>th</sup> Pay Commission and pay scale of Rs.4500-7000 was granted to the applicant. Thereafter, he was granted pay scale of Rs.5000-8000 instead of 4500-8000 as same was revised by order dated 24-02-2005 passed by respondent no.2 Deputy Director of Education. On 26-06-2008 his pay was revised and again he was granted senior pay scale of Rs.5500-9000.

4. On 12-10-2009 he was granted revised senior scale of Rs.6000-10000. Second benefit under Assured Career Progression Scheme was granted to the applicant along with other similarly situated employees on 01-10-2006 and he was awarded pay band of Rs.9300-34800 and the Grade Pay of Rs.4800 by the order dated 29-10-2015.

5. On attaining age of superannuation applicant was retired on 31-07-2017. At the time of preparation of pension papers his service record was sent to respondent no.4 for pay verification. At that time, it was noticed that pay scale of Rs.5500-900 was wrongly awarded to the applicant instead of awarding pay scale of Rs.5000-8000. On the basis of objection raised by respondent no.4, respondent no.3 Education Officer (CE), Z.P. Aurangabad revised his pay and fixed in the pay scale of Rs.5500-9000 and directed recovery of excess amount of Rs.2,12,674/- and Rs.3,480/- paid to the applicant during the period 01-04-1998 to 31-03-2017. Total amount of Rs.2,16,154/- was recovered from the amount of Gratuity of the applicant after his retirement.

6. It is contention of the applicant that he was serving as Supervisor in Group-C post at the time of his retirement.

He had not played any role in getting pay scale of Rs.5500-9000. Said pay scale was granted by the respondent no.2 on his own accord and no misrepresentation has been made by him in getting the pay scale. Excess amount paid to him has been recovered from the pensionary benefits which is not permissible in view of the direction 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**].

7. It is further contention of the applicant that this Tribunal has decided several O.As. in case of similarly situated persons and directed the respondents in those cases to refund the amount recovered from those employees on the basis of principles laid down by the Hon'ble Apex Court in **Rafiq Masih** case. It is contended by the applicant that his case is squarely covered by the principles laid down by the Hon'ble Supreme Court. Therefore, he has approached this Tribunal with a request to quash and set aside the recovery order and refund the amount recovered from the applicant by allowing the present O.A.

8. Niwruttee s/o. Kerba Suradkar, applicant in O.A.No.719/2018 was initially appointed as Supervisor in

Adult Education Office, District Parbhani in the pay scale of Rs.335-680 by order dated 30-03-1985. Subsequently, he was regularized in the service. His pay scale had been revised from time to time as per the recommendations of different Pay Commissions. In view of recommendations of 4<sup>th</sup> Pay Commission he was getting pay scale of Rs.1200-2040. Thereafter, senior scale of Rs.1400-2600 was granted to him. From 01-01-1996, the applicant was getting senior pay scale of Rs.4500-7000. He was again granted senior pay scale of Rs.5000-8000 after completion of 12 years on the basis of order dated 24-02-2005. On 06-06-2008, the respondent no.2 awarded revised pay scale of Rs.5500-9000 in senior grade to the applicant. On attaining age of superannuation, the applicant retired from service on 31-01-2014.

9. On 11-08-2014, respondent no.2 issued letter informing all Education Officers (CE) that the applicant and other similarly situated employees had been awarded pay scale of Rs.5500-9000 though they had not passed departmental examination and they were not entitled to it as per the objections raised by the Pay Verification Unit. Therefore, the respondents directed to recover excess

amount paid to the applicant and others. Respondent no.3 then issued letter to Accountant General, Nagpur for deduction of excess payment of Rs.1,84,025/- from the amount of Gratuity of the applicant. Accordingly, respondent no.3 recovered the amount from the Gratuity amount of the applicant by order dated 25-09-2014. It is contention of the applicant that said recovery is impermissible in view of the guidelines given by the Hon'ble Apex Court in the case of **State of Punjab V/s. Rafiq Masih** decided on 18-12-2014 reported in [**AIR 2015 SC 696**].

10. It is his contention that this Tribunal has passed several orders in several cases of similarly situated persons and directed to refund the amount illegally recovered from the pensionary benefits of those employees. It is his contention that amount has been illegally recovered by the respondents after his retirement. It is his contention that he is a Group-C employee, and therefore, such recovery is not permissible. Therefore, he has prayed to direct the respondents to refund the amount illegally recovered from his pensionary benefits by allowing the present the O.A.

11. Respondent no.2 in O.A.No.573/2018 has not disputed the fact regarding appointment of applicant Bhagwan Shamrao Mokale as Supervisor and granting pay scales from time to time as per the recommendations of the Pay Commissions. He has also admitted the fact that the applicant has retired after attaining age of superannuation. It is his contention that at the time of retirement his service book was sent to respondent no.4 for verification. At that time respondent no.4 raised objection that pay scale of Rs.5500-9000 was wrongly granted to the applicant though he was not entitled to the same. Therefore, pay scale of the applicant was revised and fixed in the pay scale of Rs.5000-8000. It is his contention that excess payment of Rs.2,16,154/- was made to the applicant because of the wrong pay fixation, and therefore, said amount has been recovered from his pensionary benefits. It is his contention that the Government issued Circular dated 29-04-2009 and directed to take undertaking from the employees to the effect that if wrong pay fixation is done and excess payment is made due to wrong fixation of pay, in that case, the employees will be liable to refund the said excess amount to the Government. Accordingly, the applicant furnished his



undertaking with the respondents. On the basis of said undertaking, applicant is liable to pay excess amount paid to him. It is his contention that on the basis of said undertaking amount has been recovered from the applicant. Therefore, principles laid down by the Hon'ble Supreme Court in case of **State of Punjab V/s. Rafiq Masih** decided on 18-12-2014 reported in [AIR 2015 SC 696] is not attracted in this case. It is his contention that case of the applicant is covered by the judgment of the Hon'ble Supreme Court passed in **Writ Petition No.3500/2006 in case of High Court of Punjab & Haryana V/s. Jagdev Singh** decided on 29-07-2016. It is his contention that there is no illegality in the recovery of amount from the applicant, and therefore, he has prayed to reject the O.A.

12. Respondent nos.1 and 2 in O.A.No.719/2018 have resisted the contention of the applicant by filing their affidavit in reply. They have not disputed the fact of appointment of the applicant and pay scales granted to him, and revision of pay scale from time to time as per the recommendations of the Pay Commissions. They have not disputed that pay scale of Rs.5500-9000 was granted to the

applicant and payment has been made to the applicant accordingly. It is their contention that at the time of retirement, service record of the applicant was sent to Pay Verification Unit, Aurangabad and the Pay Verification Unit raised objection regarding wrong pay fixation of the applicant in the scale of Rs.5500-9000 though he was not entitled to get it. On the basis of said objection respondent no.2 revised pay of the applicant and re-fixed in the pay scale of Rs.5000-8000 instead of 5500-9000. It is his contention that excess payment of Rs.1,84,025/- has been made to the applicant due to wrong pay fixation, and therefore, same has been recovered from the applicant as per his undertaking in view of the Circular dated 29-04-2009. It is his contention that the case of the applicant is covered by the judgment of the Hon'ble Supreme Court passed in **Writ Petition No.3500/2006 in case of High Court of Punjab & Haryana V/s. Jagdev Singh** decided on 29-07-2016. It is their contention that the amount has been recovered legally, and therefore, they have prayed to reject the O.A.

13. Respondent no.4 i.e. the Pay Verification Unit, Aurangabad has filed affidavit in reply in both the O.As.

and resisted the contentions of the applicants. It has contended that the applicants were appointed in the pay scale of Rs. 1200-2040 as per the recommendations of the 4<sup>th</sup> Pay Commission. Their pay was revised in the pay scale of Rs.4000-6000 as per the 5<sup>th</sup> Pay Commission with effect from 01-01-1996. Thereafter, time bound promotion was granted to them and their pay scale was revised to Rs.5000-8000. Thereafter, again pay scale of the applicants was revised to Rs.5500-9000 by order passed by the respondents. It is his contention that the applicants were not entitled to get pay scale of Rs.5500-9000 under the time bound promotion scheme. Therefore, his office raised objection and on the basis of objection, respondents revised the pay scale of the applicants and directed to recover amount of Rs.2,16,154/- and Rs.1,84,025/- respectively from the applicants. It is his contention that wrong pay scale was awarded to the applicants though they were not entitled and therefore, excess payment was made to them. It is his contention that recovery orders and recovery made from the applicants are legal. Therefore, respondent has prayed to reject the O.A.

14. I have heard Shri P.B.Salunke learned Advocate holding for Shri V.G.Salgare learned Advocate for the applicants in both cases, Shri N.U.Yadav Presenting Officer for respondents in O.A.No.573/2018 and Smt. Sanjivani Ghate Presenting Officer for respondents in O.A.No.719/2018. Perused the documents placed on record by both sides.

15. Admittedly, both applicants were initially appointed as Supervisor in the office of Adult Education Office, District Parbhani in the pay scale of Rs.335-680. Thereafter, they have been regularized in the service. Admittedly, their pay has been fixed and revised from time to time as per the recommendations of Pay Commissions. They were awarded pay scale of Rs.5500-9000 in senior scale though they were not entitled to get the said pay scale. Because of the said wrong pay fixation, excess payment has been made to them. Wrong fixation of pay was noticed by respondent no.4 at the time of verification of the service record of the applicants at the time of their retirement. Respondent no.4 raised objection in that regard and on that basis the respondent no.2 revised pay scale of the applicants and revised their pay by withdrawing pay

scale of Rs.5500-9000 and awarded pay scale of Rs.5000-8000. Admittedly, excess payment was made to the applicants because of wrong pay fixation of Rs.2,16,154/- and Rs.1,84,025/- had been recovered from the applicants from their pensionary benefits after their retirement.

16. Learned Advocate for the applicant has submitted that the applicants were serving as Supervisor at the time of retirement and the post of Supervisor is Group-C post. He has submitted that the applicants were granted pay scale of Rs.5500-9000 by the respondents wrongly and because of the wrong pay fixation the excess amount has been paid to them. He has submitted that none of the applicants misled the respondents and no fraud was practiced by them on the respondents in getting the pay scales. Wrong pay scale was granted to them because of the mistake committed by the respondents, and therefore, applicants cannot be blamed. He has argued that the amounts have been recovered from the pensionary benefits of the applicants. Such action of recovery of the said amount from the pensionary benefits is impermissible in law in view of the guidelines given by the Hon'ble Apex Court in the case of **State of Punjab V/s. Rafiq Masih**

decided on 18-12-2014 reported in [**AIR 2015 SC 696**]. Therefore, he has prayed to direct the respondents to refund excess amount recovered from the applicants' pensionary benefits.

17. Learned Advocate for the applicant has also placed reliance on the judgments of this Tribunal in O.A.No.884/2016 in case of **Lahu Vishwanath Gajdhane V/s. State of Maharashtra & Ors. decided on 07-11-2017** and in case of **Bhikaji s/o Dhondiba Gadekar V/s. State of Maharashtra & Ors.** in O.A.No.791/2017. He has submitted that cases of the applicants are squarely covered by the abovesaid judgment of the Hon'ble Supreme Court, and therefore, he has prayed to allow the O.A. He has also relied on the judgment of Hon'ble Bombay High Court Bench at Aurangabad in Writ Petition No.5367/2016 in case of **Ravindra Ramchandra Patil V/s. State of Maharashtra & Ors.** decided on 18-07-2017.

18. Learned P.Os. have submitted that the excess payment was made to the applicants because of the wrong pay fixation. They has submitted that while receiving the amount as per the pay fixation made by the respondents, the applicants had submitted their undertaking in view of

the Circular dated 29-04-2009 and undertook to repay the excess payment, if any, made to them due to wrong fixation of pay. They have submitted that the applicant Bhagwan Shamrao Mokale has submitted undertaking on 11-08-2008 while another applicant Niwruttee s/o Kerba Suradkar submitted his undertaking on 30-07-2008.

19. Learned P.Os. have submitted that on the basis of undertaking given by the applicants the amounts have been recovered from their pensionary benefits. They have submitted that the cases of the applicants are covered by the principles laid down by the Hon'ble Supreme Court in **Writ Petition No.3500/2006 in case of High Court of Punjab & Haryana V/s. Jagdev Singh** decided on 29-07-2016. They have further submitted that similar issue has been dealt with and decided by the Tribunal in O.A.No.43/2017 in case of **Nanasaheb Sandu Patil V/s. State of Maharashtra & Ors.** wherein it has been held that case of that applicant is not governed by the judgment of the Hon'ble Supreme Court in the case of **State of Punjab V/s. Rafiq Masih.** Learned P.Os. have submitted that considering the facts in the present cases, O.As. deserve to

be dismissed. Therefore, they have prayed to dismiss the O.As.

20. On perusal of record, it is crystal clear that wrong pay in the pay scale of Rs.5500-9000 was granted to the applicants. None of the applicants misled the respondents in getting the said pay scale. Not only this but no fraud has been practiced by the applicants in getting the said pay scale. Because of the mistake of the respondents wrong pay scale was granted to the applicant, and therefore, applicants cannot be blamed for it. On the basis of wrong pay fixation of the applicants excess payment was made to them and they received their pay accordingly till their retirement. The mistake regarding wrong pay fixation has been noticed by respondent no.4 Pay Verification Unit, Aurangabad at the time of verification of the service records of the applicants and therefore Accounts Officer raised objection. On the basis of objection raised by the respondent no.4, respondents revised pay of the applicants and directed recovery of excess payment made to the applicants. Accordingly, amounts of Rs.2,16,154/- and Rs.1,84,025/- had been recovered from the applicants from their pensionary benefits after their retirement.



21. I have gone through the decisions referred by the learned Advocate for the applicants. Such type of recovery is not permissible in view of the guidelines given by the Hon'ble 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] on which the applicants have placed reliance. 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."*

22. By keeping in mind abovesaid settled legal principles laid down by the Hon'ble Supreme Court, I have to consider the facts in this case. Admittedly, both applicants are Group-C employees. Excess amount has been paid to them due to wrong pay fixation. Respondents have not disputed the fact that applicants have not played fraud for getting excess payment or in getting wrong pay scale. Amounts have been recovered after their retirement from their retiral benefits.

23. In view of the above facts and circumstances, applicants' cases are squarely covered by the principles laid down by the Hon'ble Apex Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** Therefore, recovery made from the pensionary benefits of the applicants is impermissible in law.

24. So far as the undertaking given by the applicants is concerned, it is material to note here that backdated undertaking had been obtained by the respondents on the basis of Circular dated 29-04-2009 which is evident from the form of undertaking given by the applicants. On the top of said undertaking date of G.R./Circular has been mentioned. From that it is crystal clear that said undertaking had been obtained subsequently mentioning back date. Therefore, much weightage cannot be given to such documents. Therefore, I do not find substance in the arguments advanced in that regard by the learned P.Os.

25. It is also material to note here that excess payment has been made to the applicants till their retirement. Said amounts have been recovered from the applicants in the year 2017 and 2018 respectively. The recovery of excess amount has been made from the applicants after their retirement. Therefore, on that ground also, the recovery is not permissible in view of the principles laid down by the Hon'ble Apex Court.

26. In view of the abovesaid facts, recovery of excess payment from the applicants' gratuity and retiral benefits is illegal. Said amounts have been recovered illegally from the

pensionary benefits of the applicants. Therefore, the applicants are entitled to get refund of the said amounts.

27. In view of the discussion in the foregoing paragraphs, the O.As. deserve to be allowed. Hence, O.A.No.573/2018 and O.A.No.719/2018 are allowed. Respondents are directed to refund amount of Rs.2,16,154/- to Bhagwan Shamrao Mokale (applicant in O.A.No.573/2018) and Rs.1,84,025/- to Niwruttee Kerba Suradkar (applicant in O.A.No.719/2018) within 3 months from the date of this order; failing which amounts shall carry interest @ 8.5% per annum till realization of the amounts. There shall be no order as to costs.

**(B. P. PATIL)**  
**VICE CHAIRMAN**

**Place : Aurangabad**  
**Date : 19-06-2019.**