

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.698/2016

DISTRICT: - JALGAON

Shriram Madhav Patil,
Age : 58 years, Occu. : Service (Retired),
R/o. 29, Saubhagya Nagar,
Old Savda Road, Raver,
Tq. Raver, Dist. Jalgaon.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through the Principal Secretary,
Water Resource Department,
Mantralaya, Mumbai.
- 2) The Superintending Engineer and
Administrator, Command Area Development
Authority, Girna Bhavan,
Opp. Akashwani, Jalgaon.
- 3) The Executive Engineer,
Jalgaon Irrigation Division, Jalgaon,
Dist. Jalgaon.
- 4) The Accountant General,
101, Maharshi Karve Road,
Mumbai, Maharashtra State.

...RESPONDENTS

APPEARANCE :Shri A.D.Sugdare Advocate for Applicant.

:Shri N.U.Yadav Presenting Officer for
respondents.

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

DATE : 12th June, 2018

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

1. The applicant has challenged the orders dated 01-08-2016 and 31-05-2016 passed by the respondent no.2 directing recovery of excess amount of Rs.13,25,449/- (Rs. Thirteen lac twenty five thousand four hundred and forty nine only) on account of excess payment made to him due to wrong pay fixation and also prayed to release the pensionary benefits to him.

2. The applicant joined services as Technical Assistant in the office of Executive Engineer, Hatnur Dam Division, Jalgaon in the year 1982. Thereafter, he came to be absorbed on CRT Establishment of respondent no.3 w.e.f. 20-09-1985 in view of the order dated 22-04-1994 issued by the Irrigation Department, Maharashtra State, Mumbai. Thereafter, post of Technical Assistant was abolished and a new cadre of Civil Engineering Assistant (CEA) has been created by order dated 21-05-1994 issued by the respondent no.2. Accordingly, the applicant came to be

absorbed as Civil Engineering Assistant in the office of respondent no.3.

3. The applicant was appointed as Technical Assistant on 16-02-1982. He was brought on CRTE on 20-09-1985, therefore, he became eligible for grant of time bound promotion on 01-10-1994. Therefore, respondent no.2 considered his case and granted time bound promotion by order dated 29-08-1998. On completion of 24 years' service, he was given benefits under Assured Career Progression Scheme 2001 w.e.f. 01-10-2006 by order No.225 of 2011. It is his contention that time bound promotion benefit under Assured Career Progression Scheme had been given to him as per Government policy and not on his request. The applicant received benefits accordingly since long back.

4. The applicant has retired on 31-03-2016 on attaining age of superannuation and his pension papers were prepared and sent to A.G., Mumbai for approval and sanction but those were returned back with a remark that the applicant was eligible for grant of first benefit of Assured Career Progression Scheme on 20-09-1997 and second benefit on 20-09-2009. Thereafter, respondent no.2

prepared revised pay fixation and decided that the applicant is eligible for first benefit on 21-09-1997 on completion of 12 years continuous service on the post of Civil Engineering Assistant and not from the date of his appointment on CRTE on 20-09-1985 and also held that he is not eligible for second benefit. It is contention of the applicant that respondent no.2 has turned down the objection of the A.G. who has held the applicant eligible for first benefit w.e.f. 20-09-1997 and second benefit from 20-09-2009. It is contention of the applicant that respondent no.2 has granted benefits of time bound promotion to all the employees who retired on superannuation on the post of Civil Engineering Assistant by taking into account their services since the date of appointment on CRTE and their proposal has been approved by the A.G. and the pension was granted to them but the respondents refused to grant such benefits to the applicant.

5. It is contention of the applicant that, thereafter, the respondent no.2 has decided to recover amount of Rs.13,25,449/- from the applicant which has been paid to him on account of wrong pay fixation and accordingly

issued letter dated 01-08-2016. It is contention of the applicant that the excess amount to be recovered from the applicant pertains to the year 1994 therefore such recovery cannot be made after lapse of a long period. Said recovery is in contravention of the guidelines issued 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**]. Therefore, said recovery is illegal. Respondents have not given pensionary benefits to the applicant, and therefore, the applicant has filed the present O.A. and prayed to direct respondents to extend pensionary benefits to him and to quash and set aside the impugned order directing recovery of amount of Rs.13,25,449/- from pensionary benefits of the applicant.

6. Respondent nos.1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant was appointed on the post of Civil Engineering Assistant on 21-05-1994. The applicant was not eligible for time bound promotion on 01-10-1994. He was eligible for first time bound promotion under the Scheme on 21-05-2006 after completion of 12

years' service in the cadre of Civil Engineering Assistant. He would be entitled to get second benefit under the scheme after further 12 years continuous service from 21-05-2006 and accordingly, he will be eligible for second benefit on 21-05-2018 but before that the applicant retired on superannuation on 31-03-2016. Therefore, he is not eligible for second benefit under Assured Career Progression Scheme. It is contention of the respondents that the applicant has misguided the respondents and he took benefit of first and second time bound promotion w.e.f. 29-08-1998 and 01-10-2006 though he was aware that he was not eligible to receive the said benefits. It is their contention that after receiving the letter from the respondent no.4, respondent no.3 enquired into the matter and after scrutiny of the record, he found that the applicant had received the benefits though he was not eligible, and therefore, excess payment of Rs.13,25,449/- has been made to the applicant. Therefore, he passed the impugned order directing the recovery of the said amount from the applicant. It is their contention that the impugned order issued by the respondent no.3 is in accordance with the guidelines given by the Government and there is no illegality. Therefore, they prayed to reject the O.A.

7. I have heard Shri A.D.Sugdare learned Advocate for the Applicant and Shri N.U.Yadav, learned Presenting Officer for the respondents and perused documents produced on record by the parties.

8. Admittedly, the applicant has joined as Technical Assistant in the office of Executive Engineer, Hatnur Dam Division, Jalgaon vide order no.58 of 1982. Thereafter, he came to be absorbed on CRTE with respondent no.3 w.e.f. 20-09-1985 vide order dated 22-04-1994. In the year 1994 post of Technical Assistant was abolished and new cadre of CEA was created by the order dated 21-05-1994 issued by the respondent no.2 and accordingly, applicant came to be absorbed in the post of Civil Engineering Assistant. Admittedly, by the order dated 29-08-1998, the benefit of time bound promotion was given to the applicant since he has completed 12 years' service, and thereafter, on completion of 24 years' service second benefit under Assured Career Progression Scheme has been given to him by order no.225 of 2011 w.e.f. 01-10-2006. Admittedly, the applicant retired upon attaining age of superannuation on 31-03-2016. Admittedly, respondent no.4 A.G. Mumbai raised objection while scrutinizing pension papers of the

applicant and returned back the papers to the respondent no.2 with remarks that applicant was eligible for grant of first ACP on 20-09-1997 and second ACP from 20-09-2009. On return of the pension papers, respondent no.3 verified it and revised the pay of the applicant and held that the applicant was entitled to get first benefit under the scheme w.e.f. 21-05-2006 and second benefit will be due from 21-05-2018 but as the applicant has retired on 31-03-2016, he is not entitled to get second benefit. Accordingly, respondent no.3 directed recovery of amount of Rs.13,25,449/- paid to the applicant due to wrong fixation of pay.

9. Learned Advocate for the applicant has submitted that the benefits of time bound promotion and Assured Career Progression Scheme were given to the applicant by the respondents and applicant has not made any misrepresentation for grant of the same. Said benefits have been extended to him as per the policy of the Government. The amount has been paid to him long back in the year 1994 and onwards. He has submitted that said recovery has been directed after retirement of the applicant and it was for a period in excess of 5 years. He has further

submitted that the applicant has retired as Civil Engineering Assistant, Group-C employee. Therefore, recovery as directed by the respondents 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].

10. Learned Advocate for the applicant has further submitted that similar issue was involved in respect of similarly situated persons in the case of **Writ Petition No.10982/2014, Shankar s/o Narsing Dange V/s. State of Maharashtra & Ors.** before the Hon'ble Bombay High Court Bench at Aurangabad. Hon'ble High Court on 01-07-2015 has held that the said recovery is not permissible. He has also attracted my attention towards the judgment of the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in **Writ Petition No.1054/2012** in case of **Dr. Vinayak Narayanrao Dasare & Ors. V/s. State of Maharashtra & Ors.** with a group of Writ Petitions decided on 01-10-2013.

11. Learned Advocate for the applicant has further submitted that this Tribunal had also decided similar issue in case of similarly situated person in **O.A.No.664/2015** in

the case of **Bhagwat s/o Trimbak Chaudhari V/s. State of Maharashtra & Ors.** on 09-08-2016 and held that such recovery is impermissible 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.** He has submitted that considering the facts of the present case also recovery as directed by the respondents cannot be made on the ground that such recovery has been ordered after retirement of the applicant and the recovery is for a period of more than 5 years prior to his retirement and the applicant is a Group-C employee. He has submitted that in view of these facts it is just to allow the O.A. and quash and set aside the order/s directing recovery of amount of Rs.13,25,449/-.

12. Learned P.O. has submitted that the applicant was absorbed in the cadre of Civil Engineering Assistant w.e.f. 21-05-1994. Therefore, he is entitled to get first time bound promotion on completion of 12 years' service on the post of Civil engineering Assistant, and therefore, he is entitled to get first time bound promotion w.e.f. 21-05-2006 but the said benefits have been extended wrongly to the applicant. He has further submitted that second benefit

under Assured Career Progression Scheme has also been wrongly extended to the applicant. Therefore, recovery has been directed as per the objection raised by the A.G. He has submitted that Finance Department, Government of Maharashtra by letter dated 18-02-2017 informed that the G.R. dated 07-10-2016 is not applicable to the Civil Engineering Assistant/Technical Assistant etc., and therefore, the applicant is not eligible to claim the benefits of time bound promotion, second benefit under Assured Career Progression Scheme on the ground of earlier service. He has submitted that respondent no.3 has rightly directed the recovery of Rs.13,25,449/- from the applicant as the excess payment has been made to the applicant on account of wrong fixation of pay. He has submitted that the applicant had not made attempt to repay the said amount deliberately, and therefore, the applicant is liable to pay said amount. On this ground, he has prayed to reject the O.A.

13. On perusal of record, it reveals that the first time bound promotion and second benefit of Assured Career Progression Scheme have been granted to the applicant in view of the policy of the Government by the respondents.

The applicant had not misrepresented respondents for extending the said benefits to him. Said benefits have been extended to the applicant by the respondents on their own accord, and therefore, the applicant cannot be blamed for it. Said amount has been paid to the applicant because of the wrong pay fixation made by the respondent on account of time bound promotion and benefit given under Assured Career Progression Scheme by the respondents. No fault can be attributed to the applicant in getting the said amount. Moreover, said mistake has been noticed by the respondent no.4 A.G. when the pension papers were sent to it. On the basis of objection raised by the respondent no.4, respondent no.3 revised pay of the applicant and directed recovery after retirement of the applicant on superannuation w.e.f. 31-03-2016.

14. The applicant retired as Civil Engineering Assistant, Group-C employee. Recovery is with regard to excess payment of amount made to the applicant from the year 1994 onwards. Said recovery is not permissible in view of the guidelines issued by Hon'ble the 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 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."

15. The principle laid down in the above said decision is most appropriately applicable in the instant case as recovery of the amount from the applicant has been directed after his retirement and the same is not permissible. Moreover, said amount has been paid to the applicant by the respondents because of their own fault though the applicant was not entitled to the same. Therefore, the said recovery cannot be made from the applicant. The applicant is a Group-C employee, and therefore, in view of the guidelines given by the Hon'ble the Apex Court the said recovery is impermissible.

16. Hon'ble High of Judicature of Bombay Bench at Aurangabad has also relied on the judgment of Hon'ble the Apex Court while deciding Writ Petition No.10982/2014 on 01-07-2015 and the recovery order passed against the

petitioner. Said principle is also applicable in the instant case. Not only this but this Tribunal in O.A.No.664/2015 in the case of Bhagwat s/o Trimbak Chaudhari V/s. State of Maharashtra & Ors. decided on 09-08-2016 has also held that such type of recovery cannot be made. Said decisions of Hon'ble Apex Court, Hon'ble High Court of Judicature of Bombay Bench at Aurangabad and this Tribunal are binding on this Tribunal.

17. Considering the decisions of the Tribunal, Hon'ble Bombay High Court Bench at Aurangabad and Hon'ble the Apex Court, recovery directed against the applicant is impermissible, and therefore, impugned order dated 01-08-2016 issued by the respondent no.2 is not legal. Therefore, same requires to be quashed and set aside.

18. It is material to note here that during the pendency of the O.A., respondent no.3 has stated on oath that pension papers of the applicant have been processed and pensionary benefits will be extended to the applicant accordingly. Therefore, there is no need to enter in that arena.

19. In view of the above discussion, orders dated 31-05-2016 and 01-08-2016 directing recovery of amount of Rs.13,25,449/- issued by the respondent no.2 are illegal and deserve to be quashed and set aside by allowing the present O.A. Consequently, O.A. stands allowed. Impugned orders dated 31-05-2016 and 01-08-2016 directing recovery of amount of Rs.13,25,449/- are hereby quashed and set aside. Respondents are directed to refund the amount to the applicant, if any, recovered from him, within 3 months from the date of this order failing which, the amount shall carry interest @ 8% per annum from the date of order. There shall be no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 12-06-2018.