

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.751/2015**

**DISTRICT : AURANGABAD**

Jaykumar Bhikarchand Mahatole,  
Age : 59 years, Occ. Pharmacist (Retired),  
R/o. House No.4-6-48, Rudra,  
Opp. Suresh Oil Shop, Patra Market,  
Jafargate, Aurangabad.

...APPLICANT

**V E R S U S**

1) The State of Maharashtra,  
Through : CPO, MAT, Aurangabad.

2) The Director,  
Directorate of Medical Education and Research,  
St. Georges Hospital Compound,  
Mumbai.

3) The Dean,  
Government Medical Hospital,  
Aurangabad.

4) The Accounts Officer,  
Pay Verification Unit,  
Aurangabad.

...RESPONDENTS

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APPEARANCE :Shri A.D.Sugdare learned Advocate for the  
applicant.

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

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CORAM: HON'BLE SHRI J.D.KULKARNI, MEMBER (J)

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**J U D G M E N T**  
**(DELIVERED ON 24<sup>th</sup> NOVEMBER, 2016)**

Applicant Jaykumar Bhikarchand Mahatole was appointed as Pharmacist in the office of the respondent no.3 on 23-03-1984. Vide order dated 30-04-2011 issued by the respondent no.3 first time bound promotion was granted to the applicant on 24-03-1996 as per Government Resolution dated 8<sup>th</sup> June, 1995. On 04-10-2012, second time bound promotion was granted to the applicant on completion of 24 years' service on the post of Pharmacist in view of G.R. dated 20-07-2001 as per Assured Progression Scheme by letter dated 04-10-2012. He was given pay scale in pay band of Rs.9300-34800/- with grade pay of Rs.4800/-. On 18-09-2015, respondent no.3 issued an order and directed to recover excess amount paid to the applicant due to wrong pay fixation on account of time bound promotion and Assured Career Progression Scheme from his retiral benefits i.e. gratuity amount. On 01-09-2015, the applicant filed representation and brought to the notice the respondent no.3 that his pay fixation on account of time bound promotion and career progression scheme was correctly done. According to the applicant, in view of the judgment delivered by Hon'ble the Apex Court in the matter of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.**,

recovery of excess amount paid to an employee is illegal and hence this O.A.

2. Applicant has claimed that pay fixation done earlier on 30-04-2011 and 04-10-2012 is correct and that there is no error, and therefore, the same should not have been revised by the respondent no.3 vide letter dated 18-09-2015. Applicant has also claimed direction to respondent no.3 to forward his pension papers to A.G. Nagpur and direct respondent no.3 not to recover the so-called excess amount from the applicant.

3. Respondent nos.1 to 3 tried to justify the order of recovery and the pay fixation. It is stated that the pay fixation was done on the basis of objection taken by the Pay Verification Unit. It was, therefore, found necessary by the applicant to join Pay Verification Unit as party respondent no.4. Accounts Officer, Pay Verification Unit, Aurangabad was joined as party respondent no.4.

4. Respondent no.4 filed affidavit in reply and justified the pay fixation of the applicant. According to respondent no.4, pay was wrongly fixed while granting revised Assured Progression Scheme benefit to the applicant on 04-10-2012. At that time, Grade Pay @ 4800 was given instead of Rs.4300/-. This mistake was corrected by respondent no.3 by his order dated 18-09-2015 and was

granted the grade pay of Rs.4300/-. One wrong increment was given on 01-03-1996 which resulted in wrong pay fixation. Various objections are taken by respondent no.4 and the same have been justified in reply affidavit filed by respondent no.4.

5. Heard Shri A.D.Sugdare, learned Advocate for the applicant and Shri M.P.Gude learned Presenting Officer for the respondents. Perused memo of O.A., affidavits in reply as well as various documents placed on record by the parties.

6. From the arguments put forth on behalf of the applicant as well as the respondents, two material points will have to be considered in this case; (1) whether the pay fixation done in view of the objection taken by the Pay Verification Unit is legal, and (2) whether the order of recovery of so-called excess amount paid to the applicant is legal.

7. Shri A.D.Sugdare learned Advocate for the applicant submitted that the applicant was initially appointed as a Compounder on 23-03-1984 in the pay scale of Rs.290-540. Said post was converted as Pharmacist in 1996. Pay was, therefore, revised in the pay scale of Rs.1350-2200 as per 4<sup>th</sup> Pay Commission and first time bound promotion was granted in the selection grade on 24-03-1996. Pay scale was revised as 5200-

20200. He submitted that the pay fixation done vide order dated 30-04-2011 was correct and the applicant has received the amount as per correct pay scale and he got retired on 30-09-2015. He further submitted that no objection was taken when the applicant's pay was raised.

8. Learned Advocate for the applicant invited my attention to the reply affidavit of respondent no.4 wherein it is stated that the Pay Verification Unit did not verify the pay after 01-07-2006 and it was the duty of the office to fix correct pay of the employee. It is, therefore, stated that the applicant is not responsible for wrong pay fixation and in fact, the pay fixation was correct.

9. I have perused reply affidavit filed by respondents. Respondent no.4 is expert and competent authority to deal with the pay verification matters. It is duty of the respondent no.4 to verify as to whether the pay fixation has been done properly from time to time. Respondent no.4 has stated in paragraph no.5 to 7 of the reply affidavit as under (page nos.31-34):

*"5. With reference to paragraph No 6(c) of the Original Application it is submitted that The applicant was working as pharmacist. After completion of 12 years of service on the post pharmacist, he was granted the benefit of Time bound Promotion Scheme w.e.f. 24.03.1996 and*

his pay scale 4500-7000 (as per 5<sup>th</sup> Pay commission) was raised and he was granted the pay scale of Senior Pharmacist 5000-8000 (as per 5<sup>th</sup> Pay commission). This Pay scale was revised in the 6<sup>th</sup> pay commission from 01.01.2006 and his pay was fixed in the pay band 9300-34800 and the grade pay Rs.4200/- which is correct and was verified by pay verification unit on 25.01.2016.

6. With reference to paragraph No 6(d) of the Original Application it is submitted that As per the Maharashtra Civil Services (Revised Pay) Rules 2009 (6<sup>th</sup> Pay commission) the revise pay structure of the promotion channel of the Pharmacist working in the Medical Education and Drugs Department is as below

Sr. No.	Designation	Pay scale as per 5 <sup>th</sup> Pay commission	Revised Pay scale as per 6 <sup>th</sup> Pay commission	
			Pay Band	Grade Pay
104	Selection Grade Pharmacist	5500-9000	9300-34800	4300
118	Senior Pharmacist	5000-8000	9300-34800	4200
165	Pharmacist	4500-7000	5200-20200	2800

**(The Copy is annexed hereto and marked as R-1)**

The Applicant worked on the post of pharmacist for the entire span of his service. After completion of 12 years of service he was granted the benefit of Time Bound Promotion Scheme and his pay scale was raised from 4500-7000 (Sr.No.165) to 5000-7000 (Sr.No.118). The applicant agreed and accepted this benefit. After

completion of 24 years of service the applicant was eligible to get the pay scale of Selection Grade Pharmacist (Sr.No.104) in the Assured Career Progression Scheme. The Respondent No.3 by his order dated 04.10.2012 granted the benefit of Revised Assured Progression Scheme to the applicant by his order dated 04.10.2012 but wrongly given the grade pay of Rs. 4800/- instead of Rs.4300/-. This mistake was corrected by respondent no 3 by his order dated 18.09.2015 and was granted the grade pay of Rs. 4300/-.

7. With reference to paragraph No 6 (e) of the Original Application it is submitted that The applicant was granted 5<sup>th</sup> pay commission by respondent no.3 and his pay was fixed in the revised pay scale of 4500-7000 on 01.01.1996 on Rs.5250/-. **(the copy of the Annexure-I dated 06 April 1999 prepared by respondent no 3 is annexed hereto and marked as R-2)** The applicant's regular date of increment was on 1<sup>st</sup> December but the respondent no 3 made mistake and granted increment on 01.03.1996. When the service book of the applicant was submitted for verification, the pay verification unit brought this to the notice of respondent no.3 by its objection slip dated 18.12.2003 **(the copy is annexed hereto and marked as R-3)** quoting, "After pay fixation on 01.01.1996, How the next increment can be granted on 01.03.1996". The applicant was

*eligible for the regular increment on 01.12.1996. but prior that he was granted the benefit of Time Bound Promotion Scheme on 24.03.1996 and his pay was re fixed in the pay scale of 5000-8000. So the one wrong increment given on 01.03.1996 resulted in the wrong pay fixation and the overpayment. The applicants pay was wrongly fixed by his office on 06.04.1999 which was not got verified by pay verification unit immediately. When the service book of the applicant was submitted for verification on 18.12.2003 and even after the pay verification unit brought the mistake to the notice of the office of the applicant it was not rectified in time and again the service book was submitted on 12.09.2014 (i.e. after 11 years) without correcting the mistakes. So Pay verification Unit by its objection slip dated 18.12.2014 **(the copy is annexed hereto and marked as R-4)** sought following explanation from the office of the applicant as below*

- 1) "Refer to this office objection no.6 dated 18.12.03, as maintained in that, after doing the Pay fixation on 01.01.1996, How an increment is granted on 01.03.96, Please Explain"*
- 2) "Please verify again and take the note of the overpayment if any due to revised Pay fixation"*
- 3) "Which is the promotional post for the post of Pharmacist ? Attach R.R. (Recruitment Rules)".*



*And as the Director of Medical Education and Research, Mumbai made it clear by his letter dated 30.04.2011 **(The copy is annexed hereto and marked as R-5)** issued particularly in the case of applicant that Senior Pharmacist is the promotional post for the post of Pharmacist and as the mistake of granting wrong increment on 01.03.96 was corrected by the office of the applicant by its order dated 18.12.2015 and when the service book was submitted for pay verification, The Pay Verification Unit on 25.01.2016 verified the status of pay as on 01.01.2006 and up to 01.07.2006.*

***(reproduced as verbatim from page no.31-34 of the paper book of the O.A. )”***

10. From the aforesaid reply affidavit of the respondent no.4 it is clear that the respondent no.4 has properly explained as to how the pay was wrongly fixed from time to time, and therefore, at the time of verification of pension cases, it was the duty of respondent no.4 to direct correction in the pay scale. I absolutely find no reason to doubt the objection taken by respondent no.4, and therefore, as against this there is nothing on the record to show that there was no malice on the part of the respondents to re-fix the pay of the applicant. Applicant could not place on record any illegality for such re-fixation of pay, and therefore, I do not find any

reason to interfere in the re-fixation of the pay as directed by the expert authority i.e. Pay Verification Unit.

11. So far as the recovery of excess amount is concerned, it seems that the applicant has played no role in grant of various pay scales from time to time or for grant of benefit of assured progress schemes. Therefore, for whatever wrong pay fixation alleged to have been done, applicant cannot be held responsible as no active role has been played by the applicant for such alleged wrong pay fixation.

12. Learned Advocate for the applicant has placed reliance on the judgment delivered by the Hon'ble Apex Court in group of cases **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.** In paragraph 12 of the said judgment, it has been observed 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."*

13. In view of the above, it is clear that since the case of the applicant falls within the direction given by the Supreme Court as

referred above, recovery of the excess amount cannot be ordered. Said recovery has already been stayed in view of this Tribunal's order dated 24-11-2015. Hence, I pass following order:

**ORDER**

- (a) Original Application is partly allowed.
- (b) Applicant's prayer for declaration that pay fixation done earlier on 30-04-2011 and 04-10-2012 is correct and that there is no error in it, and further that the respondent no.3 ought not to have revised the pay scale vide impugned letter dated 18-09-2015, is rejected.
- (c) Respondent no.3, is however, directed not to recover excess amount from the applicant on re-fixation of the pay, in view of the direction of the Hon'ble the Apex Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.**
- (d) There shall be no order as to costs.

**MEMBER (J)**