

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.784/2016

DISTRICT: - NANDED

Shaikh Mehboob Yakubsab
Age : 60 years, Occu. : Pensioner,
R/o. Pethwadja, Tq. Kandhar,
Dist. Nanded.

...APPLICANT

VERSUS

- 1) Superintendent of Police,
Nanded District, Nanded.
- 2) Accounts Officer,
Pay Assessment Unit,
Aurangabad.
- 3) Treasury Officer,
Treasury Office, Nanded.

...RESPONDENTS

APPEARANCE :Shri Girish N. Kulkarni learned Advocate
for the Applicant.

:Shri N.U.Yadav, learned Presenting Officer
for the respondents.

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

DATE : 14th December, 2017

ORAL ORDER
[Delivered on 14th December, 2017]

The applicant has prayed to direct the respondents to refund an amount of Rs.1,97,123/- (Rs. One lac ninety seven thousand one hundred and twenty three only) recovered from him on account of excess payment of salary made to him due to wrong pay fixation by filing the present O.A.

2. The applicant was initially appointed as Muster Attendant with Zilla Parishad, Nanded in the year 1977. Thereafter, he has been brought on consolidated pay as per decision of the Government. In the year 1995, the applicant has been absorbed on the post Sweeper in the Government Medical College, Nanded. Thereafter, he was absorbed in Group C post as per his educational qualification with respondent no.1 on 15-04-1997. He served accordingly with respondent no.3 and retired on superannuation on 30-04-2016. During his service tenure his pay has been fixed by the respondent no.1 from time to time, and accordingly, the salary has been paid to him. In the month of May, 2016 respondent no.1 issued order and directed him to deposit amount of Rs.1,97,123/- as the

excess payment has been made to him due to wrong fixation of pay. Accordingly, respondents have recovered the said amount from the applicant from his pensionary benefits. It is contention of the applicant that, because of the mistake on the part of the respondents, wrong pay has been fixed and payment had been made to him and for that he was not responsible. Therefore, he made representation with respondent no.1 on 19-06-2016 with a request to refund amount recovered from him. It is his contention that the recovery made from him is illegal, and therefore, he approached this Tribunal and prayed to issue directions to the respondents to refund an amount of Rs.1,97,123/- recovered from him.

3. Respondents have filed their affidavits in reply and rejected contentions of the applicant. They have not disputed the fact that the applicant was initially appointed as Muster Assistant, and thereafter, he was absorbed in Government service and appointed on the post of Sweeper in the pay scale of Rs.750-940 on 15-04-1997 in the Government Medical College, Nanded. It is their contention that as per the provisions of Planning Department Government Resolution dated 21-04-1999, services of the

applicant on the post of Muster Assistant under the Employment Guarantee Scheme (EGS) prior to his appointment on the post of Sweeper were not a Government service. The applicant was drawing pay of Rs.846/- prior to his appointment in Government service. His pay was protected and it was fixed @ Rs.846/- on his initial appointment on the post of Sweeper in the pay scale of Rs.750-940. It is their contention that Muster Assistants working on EGS were not granted benefits of 5th Pay Commission and last pay of the applicant prior to his appointment on the post of Sweeper was Rs.846/-. As per recommendations of the 5th Pay Commission, pay scale of the applicant was revised from 750-940 to 2550-3200 w.e.f. his initial appointment in the government service i.e. from 15-04-1997. The applicant was eligible to draw pay of Rs.2550 on 15-04-1997 but the Government Medical College, Nanded granted him benefits of 1st time bound promotion scheme on 01-10-2000 prior to his completion of 12 years' service on the post of Sweeper and his pay was fixed @ Rs.3040/- in the higher pay scale of Rs.2610-4000 though he was eligible for the same. Because of this, his pay has been wrongly fixed again on 01-01-2006 as per the recommendations of 6th Pay Commission.

4. The applicant was promoted as Junior Clerk on 01-10-2008 and he was granted pay scale of Rs.3050-4590 as per 5th Pay Commission and his pay was fixed @ Rs.3725/-. As per recommendations of 6th Pay Commission the applicant was granted the pay scale of Rs.4440-7440 but he was wrongly granted grade pay of Rs.1600/- instead of Rs.1300/- for which he was not entitled. His pay has been wrongly fixed on 01-01-2006 on the basis of earlier pay scale as on 31-12-2005, which was also wrong. Because of the wrong pay fixation, excess amount of Rs.1,97,123/- has been paid to the applicant. The mistake committed in fixing the pay of the applicant has been corrected by the respondent no.1 by the order dated 23-11-2015, and accordingly, overpayment made to the applicant has been recovered. It is contention of the respondent no.2 that there was no mistake on the part of the respondent no.2 in that regard. It is their contention that excess amount has been paid to the applicant because of the wrong fixation of the pay scale, and therefore, it has been recovered. There is no illegality in recovering the said amount. Therefore, they prayed to reject the O.A.

5. I have heard Shri Girish N. Kulkarni 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.

6. Admittedly, the applicant was initially working as Muster Assistant with Zilla Parishad, Nanded since the year 1997 on EGS. The applicant and other employees under the scheme were absorbed in Government service in the year 1997. Initially, the applicant was working in Government Medical, College, Nanded, and thereafter, he was absorbed in the services of respondent no.1 w.e.f. 15-04-1997. Admittedly, pay of the applicant has been fixed on his absorption in the Government service on the post of Sweeper initially by the office of the Government Medical College, Nanded.

7. There is no dispute about the fact that thereafter his pay has been fixed as per the recommendations of the 5th Pay Commission, and thereafter, 1st benefit under the time bound promotion scheme has been given to him. There is no dispute about the fact that thereafter benefit of recommendation of 6th Pay Commission has also been given to the applicant. Admittedly, office of Government Medical

College, Nanded has wrongly fixed his pay initially and wrongly granted 1st benefit of time bound promotion scheme from 2000 before he completed 12 years' service in the post of Sweeper. Nobody noticed the said mistake, and therefore, overpayment has been made to the applicant. Mistake committed in fixing the pay has been noticed at the time of his retirement when service record was verified by Pay Verification Unit. Accordingly, his pay has been fixed by the respondent no.1 by order dated 23-01-2015 and applicant was directed to deposit amount of Rs.1,97,123/- towards excess payment made to him since the year 1997.

8. Admittedly, the applicant has deposited an amount of Rs.99,768/- in cash with the respondent no.2 on 30-08-2016 and balance amount of Rs.97,355/- had been recovered from his gratuity amount. Admittedly, the overpayment has been made to the applicant because of the wrong pay fixation made by the office of the Government Medical College as well as the office of respondent no.2. There was no misrepresentation on the part of the applicant in getting the excess payment.

9. Learned Advocate for the applicant has submitted that excess amount of Rs.1,97,123/- has been recovered

from the applicant on the ground that excess payment has been made to him due to wrong pay fixation. He has submitted that the applicant is not responsible for the said mistake and he never made misrepresentation to the authorities for getting excess payment towards pay and allowances. He has submitted that the applicant had retired as Junior Clerk and he was a Group-C employee, and the amount paid to him since the year 1997 had been recovered by the respondent no.2 at the time of his retirement. He has submitted that the applicant has retired on 30-04-2016. He has submitted that recovery of the excess payment made from the applicant who is a Class-C employee is not permissible in view of the guidelines given by Hon'ble the Apex Court in the case of 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/(2015) 4 SCC 334**]. 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."

10. He has submitted that this Tribunal has decided cases of similarly situated persons involving similar issue and directed the concerned authorities to refund the excess amount recovered from the employees who were retired from service and who are on the verge of retirement. In support of his submission, he has placed reliance on the judgment of the Tribunal passed in a group of O.A.Nos.272/2013, 273/2013, 274/2013 and 275/2013 in the case of **Laxman Dattatray Savale & Ors. V/s. the Dean, Government Medical College, Nanded & Ors.** decided on 26-04-2016. He has submitted that in view of the said fact, it is just and proper to allow the O.A. direct the respondents to refund amount of Rs.1,97,123/- recovered from the applicant.

11. Learned P.O. has submitted that there is no illegality in the order issued by the respondents. He has submitted that mistake has been committed by the office of the Government Medical College, Nanded where the applicant was initially serving. His pay has been wrongly fixed by the office of Government Medical College, Nanded when the

applicant was absorbed on the post of Sweeper initially, and thereafter, he was transferred on the establishment of respondent no.1 Superintendent of Police, Nanded District, Nanded. On the basis of wrong pay scale granted to the applicant, respondent no.1 continued to pay salary, and thereafter, the benefits as per the recommendations of the 5th Pay Commission and 6th Pay Commission were given to the applicant from time to time. He has submitted that the applicant received excess pay though he was not entitled and the said mistake has been noticed by the respondent no.2 when the service record was sent to the pay verification unit for verification, and therefore, respondent no.1 has passed order dated 20-12-2015 and directed the applicant to deposit the excess amount paid to him due to wrong fixation of his pay. Accordingly, the amount has been recovered from the applicant. He has submitted that the applicant received the said amount as he was entitled to, and therefore, the order under challenge is illegal, and therefore, he prayed to reject the O.A.

12. Admittedly, excess amount has been paid to the applicant on account of wrong pay fixation since the year 1997. There was no misrepresentation or fraud practiced

by the applicant while getting excess amount of pay. Excess payment has been made to the applicant because of the mistake of the respondents as well as the office of the Government Medical College, Nanded while fixing the pay of the applicant. Applicant has no role in getting excess payment. It has happened due to mistake of the respondents, and therefore, the applicant cannot be blamed for the same. Hardship has been caused to the applicant because of the recovery made by the respondents towards excess payment made to him and that too after his retirement. Therefore, recovery made by the respondents from the applicant is not permissible.

13. I have gone through the decision of the Hon'ble the Supreme Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** Guidelines given in the said decision are most appropriately applicable in the instant case. The applicant is an employee belonging to Group-C services, therefore, said recovery is not permissible. Not only this but the recovery has been made after retirement of the applicant and thereafter same is also not permissible. Therefore, in these circumstances, in my opinion, it is just to allow the O.A. and to direct the

respondents to refund the amount of Rs.1,97,123/- recovered from the applicant.

14. In view of the above discussion, O.A. is allowed. Respondent no.1 is directed to refund an amount of Rs.1,97,123/- to the applicant within 3 months from the date of this order, failing which amount shall carry interest @ 9% p.a. from the date of the order. There shall be no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 14-12-2017.