

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.927/2017**

**DISTRICT: - AURANGABAD**

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Shaikh Nijam Shaikh Nanhumiya,  
Age : 59 years, Occu. : Retired,  
R/o. Vihamandwa, Tq. Paithan,  
Dist. Aurangabad.

...APPLICANT

**V E R S U S**

- 1) The State of Maharashtra,  
The Secretary,  
Irrigation (Jalsampada) Department,  
Mantralaya, Mumbai-32.
- 2) The Chief Engineer & Chief Administrator,  
(Jalsampada Division),  
Command Area Development Authority,  
Aurangabad.
- 3) The Superintending Engineer & Administrator,  
Command Area Development Authority,  
Aurangabad.
- 4) The Executive Engineer,  
Jayakwadi Irrigation Division,  
Nathnagar (North) Paithan,  
Dist. Aurangabad.
- 5) The Accountant General-II,  
Nagpur.
- 6) The Account Officer,  
Pay Verification Unit,  
Aurangabad.
- 7) Hajrabee @ Nurbee Sk. Nijam,  
Age : 49 years, Occu: Household,  
R/o. Vihamandwa, Tq. Paithan,  
Dist. Aurangabad.

...RESPONDENTS  
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APPEARANCE :Shri Kakasaheb B. Jadhav learned  
Advocate for the applicant.

Shri S.K.Shirse learned Presenting  
Officer for respondent nos.1 to 6.

Shri G.J.Pahilwan learned Advocate for  
respondent no.7.

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

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DATE : 9<sup>th</sup> April, 2019.  
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**ORAL ORDER**

1. Learned Advocate for the applicant submits that the reliefs claimed by the applicant in prayer clause "X] C) & E)" have been satisfied, therefore, the applicant does not want to proceed with the said reliefs. Likewise applicant is not pressing prayer clause "X] D)" and he is pressing prayer clause "X] B)" only.

2. The applicant has challenged the order dated 17-03-2017 (05-06-2017) passed by the respondent no.4 directing recovery of an amount of Rs.16,605/- (Rs. Sixteen Thousand Six Hundred and Five Only) and prayed to quash and set aside the said order and also prayed to direct the

respondents to refund the amount of Rs.16,605/- recovered from him, by filing the present O.A.

3. Applicant was initially appointed on 21-07-1979 as Labourer on Class-IV post on daily wages. Thereafter, he was taken on Regular Temporary Establishment on 21-07-1984. The applicant was transferred at various places from time to time. On 31-01-2016, the applicant retired from the service on attaining age of superannuation.

4. At the time of retirement of the applicant, respondent no.4 prepared pension papers of the applicant and submitted to respondent no.5 on 30-03-2016. At that time, respondent no.4 revised pay of the applicant and submitted it to the respondent no.5 Accountant General, Nagpur for sanction on 03-04-2016. While revising pay of the applicant, respondent no.4 stated that excess payment of Rs.16,605/- is made to the applicant due to wrong fixation of pay. Respondent no.4 has passed the order dated 17-03-2017 (05-06-2017) directing recovery of the said amount from the pensionary benefits of the applicant. Respondent no.4 has mentioned in the order that the said amount has been paid to the applicant towards excess payment of pay for the period 01-01-2016 to 31-01-2016.

On the basis of proposal sent by respondent no.4, respondent no.5 sanctioned pension of the applicant and recovered an amount of Rs.16,605/- from the pensionary benefits of the applicant.

5. Meanwhile, respondent no.7 filed application dated 11-01-2016 with the respondent no.4 and requested to pay pensionary benefits to her as she is legally wedded wife of the applicant and also requested to enter her name as nominee. Thereafter, respondent no.7 has filed a Civil Suit bearing R.C.S. No.147/2016 before C.J.S.D., Aurangabad seeking direction to respondent no.4 to enter her name in the pension papers as nominee of the applicant. Her application for interim order was rejected by the C.J.S.D., Aurangabad on 10-02-2017 holding that the respondent no.7 has no right to seek the directions to enter her name in the pension case of the applicant. It is further observed that the C.J.S.D. has no jurisdiction to decide the matter. Respondent no.7 preferred the appeal before the District Court challenging the order passed by the C.J.S.D. There was delay and therefore she filed M.A.R.J.I. No.231/2017. Said matters are pending before the District Judge, Aurangabad.

6. It is contention of the applicant that the respondent nos.1 to 4 have not paid gratuity and commutation because of the Civil Suit filed by the respondent no.7. The applicant has not received the regular pension since April, 2017. Therefore, he approached the respondent no.4 requesting to disburse the amount to him. Respondent no.4 issued letter dated 09-11-2017 informing him that the said amount will be paid to him after finalization of the litigation pending before the Court. It is contention of the applicant that he retired on 31-01-2016 on attaining age of superannuation but he has not received the pensionary benefits. Therefore, he approached this Tribunal and prayed to direct the respondents to release the pensionary benefits to him. He has also challenged the impugned order dated 17-03-2017/05-06-2017 directing recovery of amount of Rs.16,605/- from his pensionary benefits. He has also prayed to direct the respondent no.4 to refund the said amount recovered from him in view of the direction given 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] by filing the present O.A.

7. Respondent nos.2 to 4 filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the pay of the applicant has been revised in view of the G.R. dated 01-09-2015 and as the excess payment has been made to the applicant due to wrong fixation of pay, respondent no.4 ordered to recover the same from the applicant. There is no illegality in the impugned order, and therefore, they have justified the impugned order.

8. It is their contention that JMFC, Paithan has passed order in Criminal Misc. Application No.92/2009 granting maintenance to respondent no.7 from the applicant. Said order has been modified in Criminal Misc. Application No.123/2011 by which maintenance of Rs.2000/- has been granted to the respondent no.7 i.e. the legally wedded wife of the applicant. Respondent no.7 has filed Civil Suit bearing R.C.S. No.147/2016 before the Civil Court and also filed M.A.R.J.I. No.231/2017 for condonation of delay. Because of the pendency of the litigation, respondents were confused and they had not passed necessary orders regarding disbursement of amount of pension to the applicant. It is their contention that delay caused for

passing the order is not intentional, and therefore, they prayed to dismiss the O.A.

9. Respondent no.4 has filed one more affidavit dated 05-07-2018 as per order of the Tribunal dated 05-04-2018 and contended that because of the pendency of the litigation in between the applicant and respondent no.7 there was misunderstanding and confusion, and therefore, he had not released the pensionary benefits to the applicant. He has submitted that during the pendency of the present O.A., he has disbursed the amount of DCRG to the tune of Rs.1,80,405/- to the applicant and he has issued "no dues certificate" to the applicant. It is his contention that there was no intention on his part to withhold the pensionary benefits payable to the applicant.

10. Respondent no.5 has also filed his separate affidavit in reply and resisted the contentions of the applicant. It is contended by the respondent no.5 that the Comptroller & Auditor General of India discharges his duties through field officers, i.e. Accountant General Offices in accordance with the provisions of Article 149 of the Constitution of India read with the Comptroller and Auditor General (Duties, Powers and Conditions of Service), Act, 1971. Its role is

only in respect of pension cases and limited to scrutiny of proposals received from Heads of Offices of the Government of Maharashtra / Pension Sanctioning Authorities in respect of persons who retired from various State Government Offices situated in Vidarbha and Marathwada Regions with reference to Maharashtra Civil Services (Pension) Rules, 1982 and other G.Rs. issued by the State Government from time to time. It authorizes pensionary benefits if found admissible as per rules. It is further submitted by the respondent that it does not act on its own volition but authorizes pensionary benefits only on receipt of proper pension papers duly attested by the Head of Office / Pension Sanctioning Authority of the State Government. This respondent is not in a position to authorize benefits if either the proposal is not received from the Head of the Office / Pension Sanctioning Authority in the prescribed format with requisite documents or if it is found not conforming to any of the provisions of Maharashtra Civil Services (Pension) Rules, 1982 and other G.Rs. issued from time to time.

11. It is further contention of the respondent no.5 that applicant has retired on 31-01-2016. Provisional pension @



Rs.6045/- for the first six months from 01-02-2016 to 31-07-2016 was sanctioned by the Pension Sanctioning Authority i.e. the respondent no.4 on 26-07-2016. After receiving the proposal for extension of provisional pension from respondent no.4 on 26-07-2016, respondent no.5 authorized extension of provisional pension @ Rs.6045/- w.e.f. 01-08-2016 to 30-04-2017 on 18-10-2016. Thereafter, pension proposal in respect of the applicant was forwarded to the respondent no.5 by the Pension Sanctioning Authority i.e. the Executive Engineer, Jayakwadi Irrigation Division, Nathnagar (North), Paithan, Dist. Aurangabad vide letter dated 21-06-2017 which was received by the office of respondent no.5 on 28-06-2017. Respondent no.5 finalized the pension case of the applicant within one month from the date of receipt of the pension proposal and accordingly authorized to grant pension, gratuity, and commutation value of pension on 21-07-2017. It is further contended by the respondent no.5 that there was no delay in finalization of the pension case of the applicant by respondent no.5.

12. It is further contended by the respondent no.5 that no enquiry certificate and Form-7 Column No.B stating the

details of recoveries on account of Government dues to be adjusted from Retirement Gratuity has been furnished by the Pension Sanctioning Authority i.e. respondent no.4 Executive Engineer, Jayakwadi Irrigation Division, Nathnagar (North), Paithan, Dist. Aurangabad and the respondent no.4 has stipulated condition of recovery of Rs.16,605/- from the overpayment of pay and allowances. It is contended by him that the applicant had given consent for recovery of excess payment of allowances, leave encashment etc. It is contended by respondent no.5 that it has acted on the basis of proposal submitted by respondent no.4 and not on its own motion. It is contended by him that he has no role to play in this regard. All the pensionary benefits have been authorized by him. On these grounds he has prayed to dismiss the O.A.

13. Respondent no.7 has filed affidavit in reply and contended that respondent no.4 has forwarded pension papers of the applicant to respondent no.5 by giving wrong information with *mala fide* intention and mentioned name of another lady as his nominee instead of her. It is her contention that she is legally wedded wife of the applicant. It is her contention that the respondent no.5 has failed to

verify the nomination form dated 16-05-1996. She is the nominee of the applicant and she has right to claim pensionary benefits. It is her contention that the respondent no.4 has rightly stopped regular pension and gratuity of the applicant as the applicant has submitted wrong information. It is her contention that she has filed Criminal Misc. Application No.92/2009 before JMFC, Paithan u/s.125 of the Criminal Procedure Code and it is allowed by the JMFC, Paithan. She has also produced copy of the decision in Criminal Misc. Application No.123/2011. It is her contention that respondent nos.4 and 5 may be directed to enter her name in the pension papers of the applicant on the basis of nomination form.

14. I have heard Shri Kakasaheb B. Jadhav learned Advocate for the applicant, Shri S.K.Shirse learned Presenting Officer for respondent nos.1 to 6 and Shri G.J.Pahilwan learned Advocate for respondent no.7. Perused the documents placed on record by both sides.

15. At the outset, it is material to note here that the learned Advocate for the applicant has submitted that the reliefs claimed by the applicant in prayer clause "X] C) & E)" have been satisfied as the respondents have sanctioned

pension and other pensionary benefits to the applicant during the pendency of the O.A., and therefore, the applicant does not want to proceed with the said reliefs. Likewise applicant is not pressing prayer clause "X] D)" and he is pressing prayer clause "X] B)" only i.e. regarding refund of amount of Rs.16,605/- recovered from the applicant.

16. Learned Advocate for the applicant has submitted that the applicant has retired as Labourer i.e. Class-IV employee from the establishment of respondent no.4. He has submitted that the respondent issued the impugned order dated 17-03-2017/05-06-2017 revising his pay at the time of his retirement. Because of the revision of pay, respondent no.4 directed to recover amount of Rs.16,605/- from the pensionary benefits of the applicant as excess payment was made to the applicant during the period w.e.f. 01-01-2006 to 31-01-2016. He has submitted that the applicant has played no role in getting pay fixation of which said recovery has been ordered. He has submitted that the respondent no.4 on his own accord fixed earlier pay of the applicant and it was the mistake on the part of the respondent no.4. He has submitted that excess payment

was made to the applicant for the period 01-01-2006 to 31-01-2016. Said amount of Rs.16,605/- has been recovered from the pensionary benefits of the applicant after his retirement. He has submitted that in view of the guidelines given by Hon'ble the Apex Court in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** reported in [AIR 2015 SC 696] such type of recovery is not permissible. He has further submitted that in view of the guidelines given by Hon'ble the Apex Court, such recovery is illegal. Therefore, he has prayed to allow the O.A. and prayed to direct the respondent no.4 to refund an amount of Rs.16,605/- recovered from the applicant.

17. Learned P.O. has submitted that the pay of the applicant had been fixed but while fixing the pay excessive grade pay of Rs.200/- has been granted to the applicant for which he was not entitled to. Because of the wrong pay fixation excess amount has been paid to the applicant from 01-01-2006. He has submitted that the said mistake has been noticed by the respondent no.4 at the time of preparation of the pension papers of the applicant, and therefore, respondent no.4 revised pay of the applicant and corrected the mistake. Because of the wrong fixation of pay

of the applicant excess payment of Rs.16,605/- has been made to the applicant during the period 01-01-2006 to 31-01-2016. He has submitted that revised pay has been fixed in view of the G.R. dated 01-09-2015 and there is no illegality in the same. Therefore, he has supported the impugned order.

18. Learned P.O. has further submitted that the applicant has given undertaking that excess payment made to him due to wrong pay fixation can be recovered from his retirement benefits. Since the applicant has given undertaking, the excess amount has been recovered from the pensionary benefits, and therefore, same cannot be refunded back to him. Therefore, he has prayed to dismiss the O.A.

19. On perusal of record, it reveals that the excess payment has been made to the applicant because of the wrong pay fixation made by the respondent no.4. Excess payment has been made to the applicant for the period commencing from 01-01-2006 to 31-01-2016. Wrong pay has been fixed by the respondent no.4 on his own accord and the applicant has not misled or played fraud on the respondent no.4 while getting fixed the wrong pay,

therefore, the applicant cannot be blamed for the same. Said recovery has been ordered by the impugned order when the applicant was on the verge of retirement. Excess payment made to the applicant has been recovered from the pensionary benefits of the applicant after his retirement. Such type of recovery is not permissible in view of the guidelines given 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] on which the applicant has placed reliance. In paragraph 12 of the said judgment, it has been observed by Hon'ble the 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."*

20. The applicant was serving as Labourer at the time of retirement. He was a Group-D employee. The amount has been recovered after his retirement. Case of the applicant is squarely covered by the guidelines given by Hon'ble the Apex Court in the abovesaid decision. Therefore, the impugned order directing recovery from the pensionary



benefits of the applicant issued by the respondent no.4 is not legal. Recovery of an amount of Rs.16,605/- made from the pensionary benefits of the applicant is not legal, and therefore, it is just to direct the respondent no.4 to refund the amount of Rs.16,605/- recovered from the pensionary benefits of the applicant by allowing the present O.A. In view of the discussion in the foregoing paragraphs, the O.A. deserves to be allowed. Impugned order directing recovery of an amount of Rs.16,605/- issued by the respondent no.4 is illegal and deserve to be quashed and set aside.

21. In view of the discussion in the foregoing paragraphs, the O.A. is allowed. The impugned order dated 17-03-2017 (05-06-2017) directing recovery of amount of Rs.16,605/- is hereby quashed and set aside. Respondent no.4 is directed to refund the amount of Rs.16,605/- to the applicant within 3 months from the date of the order; failing which, the amount shall carry interest @ 8.5% per annum from the date of order till its realization. There shall be no order as to costs.

**(B. P. Patil)**  
**MEMBER (J)**

**Place : Aurangabad**  
**Date : 09-04-2019.**

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