

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 138 OF 2021

DISTRICT : NANDED

Anant s/o Ramchand Rao Pande,)
Age : 59 years, Occu. : Pensioner,)
Dasganu Nagar, Near Gajanan Maharaj Mandir,)) **APPLICANT**
Malegaon Road, Nanded.

V E R S U S

1. **The State of Maharashtra,**)
Through Director General of Police,)
Mumbai, Lion Gate, Fort, Mumbai,)
Maharashtra.)
2. **The District Superintendent of Police,)**
Vazirabad, Nanded.) ... **RESPONDENTS**

APPEARANCE : Shri Sameer Kurundkar, Counsel for the
Applicant.

: Shri D.M. Hange, Presenting Officer for
respondent authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 18.06.2024

O R A L - O R D E R

1. Heard Shri Sameer Kurundkar, learned counsel appearing for the applicant and Shri D.M. Hange, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application is disposed of with the consent of both the parties at the admission stage.

3. By filing the present Original Application, the applicant is seeking directions to the respondents to refund an amount of Rs. 1,38,035/-, which has been recovered from the pensionary benefits of the applicant within stipulated period of time with interest.

4. Facts in brief as stated by the applicant giving rise to the present Original Application are as follows :-

(i) The applicant was appointed as Police Constable by respondent No. 2 by order dated 20.04.1981. The applicant was selected by following the due process of law. As he had put in unblemished service under respondent No. 2, he was promoted as Assistant Police Sub-Inspector, which is a Group-C post. The applicant retired from service on 30.06.2019 on attaining the age of superannuation as Assistant Police Sub-Inspector.

(ii) It is the case of the applicant that the respondents have recovered an amount of Rs. 1,38,035/- under the head of overpayment of pay and allowances, which is illegal and against the judgment of the Hon'ble Apex Court in a case of **State of Punjab Vs. Rafiq Masih, reported in (2015) 4 SCC 334**. The said amount is recovered without giving any

notice or knowledge to the applicant. The applicant was shocked to know that the huge amount of Rs. 1,38,035/- has been recovered from the pensionary benefits i.e. from gratuity. The respondent No. 2 has issued a Circular dated 05.09.2018 (Annexure A-3) informing all the concerned officials to take action as per the directions of the Hon'ble Apex Court in a case of **State of Punjab Vs. Rafiq Masih** (cited supra). The said Circular also refers to the orders passed by the Tribunal and orders passed by the Hon'ble High Court. Despite the said Circular and ignoring the directions given by the Hon'ble Apex Court, the recovery is made. The applicant has submitted representation dated 04.12.2020 (Annexure A-4) to respondent No. 2, but in vain. Hence, the present Original Application.

5. Learned counsel for the applicant submits that the applicant is class-III employee and it is not the case that the recovery is made because of some fault on his part. The applicant should not be penalized for no fault. No undertaking in respect of recovery of excess amount was sought from the applicant at any point of time.

6. Learned counsel for the applicant submits that the applicant is already retired from service and alleged recovery was

under the head of over payment of pay and allowances from the gratuity of the applicant. Thus, the action of recovery from the applicant is in violation of the judgment of the Hon'ble Apex Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334**. Learned counsel submits that the applicant is retired from the service and alleged recovery of over payment was ordered from his gratuity. Learned counsel submits that the present Original Application deserves to be allowed and respondents be directed to refund the amount recovered towards the over payment.

7. Learned counsel for the applicant in order to substantiate his contentions placed reliance on the judgment of the Hon'ble Apex Court in a case **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc., (2015) 4 Supreme Court Cases 334** and submits that the excess payment is made by mistake on the part of employer in case of Group-D and C employees, the same shall not be recovered.

8. On the basis of affidavit in reply filed on behalf of respondent Nos. 1 and 2, learned Presenting Officer submits that the office of the Accountant General Payment Verification Committee, Aurangabad vide letter dated 10.05.2019 raised an

objection regarding fixation of the pay scale of the applicant as per 01.01.1986 and hence, as per the G.R. dated 19.04.2017, the respondents have re-fixed the pay scale of the applicant. Learned P.O. submits that as per the Notification dated 19.05.2017, the pay band scale of Police Head Constable is fixed in the pay band of Rs. 5200-20200 + Grade Pay 2500. Learned P.O. submits that the applicant was Group-C employee having the same pay scale and hence, the respondents have fixed the pay scale of the applicant from 01.01.1986 and issued the order dated 19.05.2019. Learned P.O. submits that as the Accountant General Payment Verification Committee, Aurangabad raised some objection and the respondents have re-fixed the pay scale of the applicant, an excess amount of Rs. 1,38,035/- was paid to the applicant and therefore, the same has been recovered from the pension amount of the applicant. Learned Presenting Officer submits that considering the above facts and circumstances, the present Original Application deserves to be dismissed.

9. It is not disputed that the applicant is class-III employee and the fixation of pay was wrongly done. It further appears that the said wrong pay fixation was not due to the fault of the applicant. The applicant retired from the service on superannuation on 30.06.2019. In terms of the observations

and the ratio laid in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc.** (cited supra), the clause Nos. (i) to (iii) are applicable to the facts of the present case. The respondents have recovered the amount from the applicant, who is belonging to Class-III category and the said amount came to be recovered after his retirement from the pensionary benefits i.e. gratuity. It has certainly caused hardship to the applicant.

10. In a case **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc., (2015) 4 Supreme Court Cases 334**, the Hon'ble Apex Court in para No. 18 has laid down the following ratio :-

“18. 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."

11. In view of above discussions, the respondents have recovered an amount of Rs. 1,38,035/- illegally from the pensionary benefits i.e. gratuity of the applicant. In view of the same, the applicant is entitled for refund of the said amount along with interest @ 9% p.a. from the date of actual recovery till the date of refund. Hence, the following order :-

ORDER

- (i) The Original Application No. 138/2021 is hereby allowed.
- (ii) The respondents are directed to refund the amount of Rs. 1,38,035/- to the applicant within a period of three months from the date of this order with interest @ 9% p.a. from the date of actual recovery till the date of refund.
- (iii) In the circumstances, there shall be no order as to costs.
- (iv) The Original Application accordingly disposed of.

PLACE : Aurangabad.

DATE : 18.06.2024

KPB S.B. O.A. No. 138 of 2021 VKJ Recovery/ refund of recovered amount

(Justice V.K. Jadhav)

Member (J)