

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

**ORIGINAL APPLICATION NO. 224 OF 2023**

DIST. : NANDED

**Bhumanna S/o Maroti Achewad,** )  
Age 58 years, Occ. Retired Police Inspector,) )  
R/o Mukhed, Near Forest Office, )  
Tq. Mukhed, Dist. Nanded. ) .. **APPLICANT**

**V E R S U S**

- 1) **The State of Maharashtra,** )  
Through the Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 32. )
- 2) **The Director General of Police,** )  
Old Vidhan Bhavan, )  
Shahid Bhagatsing Marg, Kulaba,) )  
Mumbai - 39. )
- 3) **Superintendent of Police (Rural),)** )  
Nanded, Guru Gobind Singh Road,) )  
Vazirabad, Nanded-431601.) )
- 4) **The Principal,** )  
Regional Police Training School, )  
Jalna, J.E.S. College Road, )  
Jalna-431203. )
- 5) **The Accountant General-II,** )  
Civil Lines, Nagpur. ) .. **RESPONDENTS**

-----  
APPEARANCE :- Shri K.B. Jadhav, learned counsel for  
the applicant.  
: Smt. Resha S. Deshmukh, learned  
Presenting Officer for the respondent  
authorities.  
-----

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

**RESERVED ON** : **16.10.2024**  
**PRONOUNCED ON** : **11.11.2024**  
-----

### **ORDER**

1. Shri K.B. Jadhav, learned counsel for the applicant and Smt. Resha S. Deshmukh, learned Presenting Officer for respondent authorities.

2. The matter is finally heard with consent of both the sides at the admission stage.

3. By filing this Original Application, the applicant is seeking quashing and setting aside the impugned pay fixation order dated 12.08.2022 issued by the respondent no. 03 to the extent of directing the recovery of excess payments paid to the applicant for the period from January, 2010 to July, 2022 and also seeking quashing and setting aside the 'No Dues Certificate' dated 22.11.2022 issued by the respondent no. 04 to the extent of directing the pension Clerk to deduct the amount of Rs. 8,39,370/- from the DCRG/Gratuity of the applicant. The applicant is also seeking directions to the respondents to refund the amount of Rs. 8,39,370/- with interest which is recovered

from the DCRG/Gratuity of the applicant after his retirement and also seeking declaration that the action of respondent nos. 03 to 05 recovering the total amount of Rs. 8,39,370/- from the DCRG/Gratuity of the applicant after his retirement is illegal in view of guidelines issued by the Hon'ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer) etc. reported in (2015) 4 SCC 334** dated 18.12.2014 and guidelines issued by respondent no. 02 vide Circular dated 05.09.2018. The applicant is also seeking directions to the respondents to consider and decide the representation dated 11.03.2023 filed by the applicant for refund of amount of Rs. 8,39,370/-.

4. Brief facts as stated by the applicant giving rise to this Original Application are as follows:-

(i) The applicant came to be retired from the post of Police Inspector from the office of respondent no. 04 on 31.07.2022 on attaining the age of superannuation. Before retirement of the applicant, his service book was sent for verification to the Pay Verification Unit, Aurangabad. The Pay Verification Unit has taken the objection of the pay fixation of the applicant on 15.06.2022 with observation that the pay of the applicant

was not fixed on the basic pay and directed to take revision of pay of the applicant w.e.f. 01.01.1996. The respondent no. 03 re-fixed the pay of the applicant by order dated 12.08.2022 w.e.f. 23.02.1991 to 01.07.2022 and directed to recover the excess payment from the applicant w.e.f. 30.01.2010 on his basic pay. In view of the re-fixation order dated 12.08.2022 (Annexure A-2) the respondent no. 04 prepared the due and drawn statement of the applicant w.e.f. January, 2010 to July, 2022 and amount of Rs. 8,39,370/- is shown as paid to the applicant in excess (Annexure A-3).

(ii) The applicant further contended that in view of the re-fixation order and due & drawn statement that the respondent no. 04 has issued 'no due certificate' dated 22.11.2022 but directed to recover the said amount of Rs. 8,39,370/- from the DCRG/Gratuity of the applicant. The said amount is shown as overpayment of pay and allowances. After retirement of the applicant, the respondent no. 04 deducted the said amount of Rs. 8,39,370/- from the Gratuity of the applicant in the month of January, 2023. Though the applicant has orally requested to the respondent no. 04 not to deduct the said

amount from his Gratuity, but it was not considered. Thereafter, the applicant has submitted application/representation dated 11.03.2023 to the respondent no. 04 and requested to refund the amount of Rs. 8,39,370/- to him, which is recovered from Gratuity amount of the applicant after his retirement. The copy of said application/representation dated 11.03.2023 is placed on record by the applicant and marked as Annexure A-6. The said application/representation of the applicant is not decided. Hence, this Original Application.

5. The learned counsel for the applicant submits that in view of the ratio laid down by the Hon'ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer) etc.** reported in **(2015) 4 SCC 334** the recovery from the applicant after his retirement is impermissible. The applicant had not given any undertaking for refund of excess payments to the respondents. This Tribunal was pleased to consider the cases of Class-I and Class-II officers in terms of the directions issued by the Hon'ble Supreme Court in the aforesaid case and directed to refund the said amounts to the applicants therein. Though, the applicant is retired as Class-I officer, in terms of the consistent view taken by this Tribunal, as well as, by the

Hon'ble High Court, as per the ratio laid down by the Hon'ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer) etc.** (cited supra), the present Original Application deserves to be allowed.

6. The learned Presenting Officer has vehemently submitted that the applicant came to be retired as Class-I officer and, as such, the ratio laid down by the Hon'ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer) etc.** (cited supra) cannot be made applicable to the case of the applicant. The learned Presenting Officer submits that the wrong pay fixation was done and since the Pay Verification Unit has taken the objection at the time of retirement of the applicant, the re-fixation of the pay of the applicant was done by the respondents. The learned P.O. submits that there is no substance in the O.A. and the same is liable to be dismissed.

7. By filing this Original Application the applicant is not challenging the pay fixation order dated 12.08.2022 issued by the respondent no. 03, but he is challenging the said order to the extent of recovery of the excess payments paid to the applicant for the period from January, 2010 to July, 2022. Though the applicant has filed the application/representation

dated 11.03.2023 (Annexure A-6), no decision has been taken on it by the respondents. In my considered opinion, the purpose of filing the present application will be served, if the directions are issued to the respondents to consider the application/representation submitted by the applicant dated 11.03.2023 (Annexure A-6) in terms of the ratio laid down by the Hon'ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer) etc. reported at (2015) 4 SCC 334** and pass the appropriate order of refund of the amount of Rs. 8,39,370/- to the applicant on its own merits in a time bound manner. Hence, the following order:-

### **ORDER**

- (i) The Original Application no. 224/2023 is hereby partly allowed.
- (ii) The respondents are hereby directed to consider and decide the application/representation dated 11.03.2023 (Annexure A-6) filed by the applicant for refund of the amount of Rs. 8,39,370/- (Rs. Eight lacs, thirty nine thousand three hundred and seventy only) on its own merits in view of the guidelines issued by the Hon'ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer) etc.** reported in **(2015) 4 SCC 334** and the guidelines issued by the respondent no. 02 vide Circular dated 05.09.2018, within a period of 03 months from the date of this order.

- (iii) In the event, if any adverse order is passed by the respondents, the applicant is at liberty to approach this Tribunal.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application is accordingly disposed of.

**MEMBER (J)**

**Place : Aurangabad**

**Date : 11.11.2024**

ARJ O.A. NO. 224 OF 2023 VKJ RECOVERY-REFUND OF RECOVERED AMOUNT