

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

ORIGINAL APPLICATION NO. 258 OF 2023

DISTRICT : AURANGABAD

Subhash s/o Nivrutti Raut,)
Age : 60 years, Occu. : Nil (Pensioner),)
R/o Galli No. 3, Hanumannagar, Garkheda)
Parisar, Dist. Aurangabad.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Its Secretary,)
Irrigation Department, G.T. Hospital)
Complex, 9th Floor, Lokmanya Tilak Marg,))
M.S., Mantralaya, Mumbai -01.)
2. **The Executive Engineer,**)
Irrigation Department, Aurangabad)
Division, Dist. Aurangabad.)
3. **The Senior Treasury Officer,**)
Treasury Office, Near S.T. Colony,)
Aurangabad.)
4. **The Accountant General (A & E)-II,**)
Maharashtra State, Civil Lines,)
Nagpur- 440001.)

... **RESPONDENTS**

APPEARANCE : Ms. Preeti Wankhade, Counsel for Applicant.

: Shri A.P. Basarkar, Presenting Officer for
respondent authorities.

: Smt. Suchita Dhongde, counsel holding for
Shri Amit Dhongde, counsel for respondent
No. 2.

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

DATE : 24.07.2024

ORDER

1. Heard Ms. Preeti Wankhade, learned counsel appearing for the applicant, Shri A.P. Basarkar, learned Presenting Officer appearing for respondent authorities and Smt. Suchita Dhongde, learned counsel holding for Shri Amit Dhongde, learned counsel appearing for respondent No. 2.

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

3. By filing the present Original Application, the applicant is seeking declaration that the impugned action taken vide order dated 11.04.2022 by respondent No. 2 of re-fixation of his pay and recovering an amount of Rs. 3,23,158/- from the applicant is bad, illegal and unsustainable in law. The applicant is seeking directions to respondent No. 2 to refund the said amount of Rs. 3,23,158/- to the applicant along with interest @ 18% per annum from the date of recovery till realization within stipulated of period of time.

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

(i) The applicant had initially entered the service of respondent No. 2 on 01.02.1983 as Watchman and he has

worked as such till his retirement on superannuation on 31.05.2022.

(ii) The applicant contends that on 08.06.1995 (Annexure A-1) the G.R. was issued by the General Administration Department for removing stagnation amongst the employees, who were not promoted for more than 12 years.

(iii) The applicant further contends that he was working on an isolated post where there was no promotional avenue available. In view of policy of the State Government to remove stagnation by granting Time Bound Promotion having completed 12 years on the post of Watchman, the applicant was granted the said benefits in terms of G.R. dated 08.06.1995.

(iv) The applicant further contends that by G.R. dated 01.04.2010 issued by the Finance Department, the Government has formed the Scheme of Revised Assured Career Progress Scheme.

(v) It is the case of the applicant that on 11.04.2022 (Annexure A-3) i.e. hardly before one and half months from his retirement, the respondent No. 2 was pleased to issue

an order, thereby carrying out so-called re-fixation of pay of the applicant that too w.e.f. from 01.01.2006 and recovery of an amount of an amount of Rs. 3,23,158/-. The respondent No. 2 has re-fixed the pay of the applicant w.e.f. 01.01.2006.

(vi) It is the case of the applicant that the respondent No. 2 has recovered the aforesaid amount from DCRG amount of the applicant. The said action of recovery was ordered and taken by respondent No. 2 against the applicant on the ground that the applicant was paid excess amount from 01.01.2006 to 31.12.2015 and 01.01.2006 to 31.05.2022. Hence, the present Original Application.

5. Learned counsel for the applicant submits that the order dated 11.04.2022 was issued by respondent No. 2 in clear and utter violation of the principles of natural justice. Learned counsel submits that so far as so-called re-fixation effected by respondent No. 2 under order dated 11.04.2022 is concerned, it needs to be taken into consideration that whatever pay scale was granted to him about 15 years ago was by the respondent No. 2 on his own and it was not the case that the pay scale was granted to the applicant due to some misrepresentation on his

part. Learned counsel submits that being aggrieved by the order dated 11.10.2022, the applicant has made representation on 11.10.2022 and prayed for refund of the recovered amount of Rs. 3,23,158/- . However, the said representation did not bear any fruit.

6. Learned counsel for the applicant submits that the ratio laid down by the Hon'ble Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) reported in 2014 MhLJ Online (S.C.) 47 = 2015(4) SCC 334**, is squarely applicable to the facts and circumstances of the present case. Learned counsel submits that in view of the judgment delivered by the Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 11204/2015 (Mukund S/o Dattopant Pathak Vs. The State of Maharashtra and Ors.)** and other connected W.Ps., the recovery could not be made from the retiral/terminal benefits. The Hon'ble High Court allowed the said W.Ps. and pleased to direct the respondent to refund the amount recovered from the petitioners therein within three months from the date of order and in case the amount is not refunded within 12 weeks from the date of order, thereafter the petitioners therein would be entitled for the interest @ 9% p.a.

7. Learned counsel for the applicant submits that the action of re-fixation and recovery was taken against the applicant by respondent No. 2 without giving any notice or any opportunity of being heard and in disobedience of the judgment of Hon'ble Apex Court and the Hon'ble High Court. Learned counsel submits that the present Original Application deserves to be allowed.

8. On basis of affidavit in reply filed on behalf of respondent No. 3 learned Presenting Officer submits that the applicant has no cause of action to file the present Original Application against the respondent No. 3, as no any illegality has been committed by the said respondent. Learned P.O. submits the Treasury office is only pension related claims disbursing authority as per the payment authority sanctioned by the office of Accountant General-II, Nagpur and therefore, the office of respondent No. 3 is not entitled to give interest on DCRG payment.

9. On the basis of affidavit in reply filed on behalf of respondent No. 4, learned Presenting Officer submits that the office of respondent No. 4 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. Learned Presenting Officer submits that the relief sought by the applicant is purely administrative in nature and falls under the purview of respondent No. 2 being Pension Sanctioning Authority and therefore, the office of respondent No. 4 is not in a position to take any action in the instant matter.

10. Learned counsel appearing for respondent No. 2 submits that on 11.04.2022 the pay of the applicant was fixed and decided to recover an excess amount worth Rs. 3,23,158/-. Learned counsel submits that the applicant was working on isolated post and as per the G.R. dated 01.09.2015, the pay scale of the applicant was revised from 01.01.2006. The pay scale was revised by re-fixing the pay of isolated post as grade / pay scale. Learned counsel submits that the respondent No. 2 has issued order on 16.05.2021 after promulgation of G.R. dated 02.03.2019 by Finance Department for third benefit under Revised Assured Career Progress Scheme. The pay fixation was done as per Rule 13 of Maharashtra Civil Services (Revised Pay) Rules, 2019. Learned counsel submits that the respondent No. 2 is the subordinate authority and respondent Nos. 3 and 4 is higher authority. Learned counsel submits that as per the provisions of

G.R. dated 02.03.2019, the pay scale was revised and sanctioned for extension of IIIrd benefit to concerned Government servants. Learned counsel submits that the order of revision of pay scale as per the order of respondent Nos. 3 and 4 and as per the G.R. dated 02.03.2019, the pay scale is revised by the respondent no. 2 office, which is subordinate authority. Learned counsel submits that the judgments relied upon by the applicant are not applicable to the present case. Learned counsel submits that the pay fixation done by the office of respondent No. 2 as per the VIIth Pay Commission and as per G.R. dated 02.03.2019. Learned counsel submits that there is no substance in the present Original Application and the same is liable to be dismissed.

11. In view of the ratio laid down by 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**, the recovery from class-III and class-IV employees after their retirement is impermissible on certain conditions. The Hon'ble Apex Court in para No. 18 has made the following observations :-

“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."

The case of the applicant is fully covered under the clause Nos. (i), (ii) and (iii).

12. The applicant belongs to Class-IV category. The applicant came to be retired on attaining the age of superannuation on 31.05.2022 and the said recovery has been done after his retirement from his retiral benefits i.e. DCRG amount. It is also clear from the pleadings that the excess payment has been made on account of re-fixation of pay for the

period of 01.01.2006 to 31.12.2015 and thus the period is in excess of five years before the order of recovery is issued. It is also not disputed that neither the applicant is responsible for the said wrong pay fixation nor he has mislead the respondent authorities at any point of time in this regard.

13. So far as the issue of undertaking is concerned, the said undertaking seems to have been taken after retirement of the applicant and further the said undertaking (page No. 73 of the paper book) does not bear any place and date. It is also not clear as to whom the said undertaking has been submitted. It seems that the said undertaking has been taken after retirement merely to comply with the Government Circular dated 30.01.2019. Thus no importance can be given to the said undertaking.

14. So far as the action taken vide order dated 11.04.2022 by respondent No. 2 for re-fixation of pay of the applicant is concerned, the same is in consonance with the rules and only recovery after retirement in terms of the ratio laid down by the Hon'ble Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer)** (cited supra), since the applicant is Class-IV employee, is impermissible. In the result, the present

Original Application deserves to be partly allowed and the applicant is entitled for refund of the said recovered amount with interest @ 9% p.a. from the actual date of recovery till its realization, in case the amount is not refunded within the period of three months from the date of this order. Hence, the following order:-

O R D E R

- (i) The Original Application is hereby partly allowed.
- (ii) The impugned order dated 11.04.2022 to the extent of recovery of an amount of Rs. 3,23,158/- is hereby quashed and set aside.
- (iii) The respondents are hereby directed to refund the amount of Rs. 3,23,158/- to the applicant within a period of three months from the date of this order. In case the amount is not refunded within the said period, thereafter the applicant would be entitled for the interest @ 9% p.a. from the actual date of recovery till its realization.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application accordingly disposed of.

PLACE : Aurangabad.

DATE : 24.07.2024

(Justice V.K. Jadhav)

Member (J)

KPB S.B. O.A. No. 258 of 2023 VKJ Recovery