

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 525 OF 2021

(Subject:- T.B.P./A.C.P.S./Recovery)

DISTRICT:-OSMANABAD

Mr. Guruling Nagnath Tanwade,)
Age: 63 years, Occu:- Retired as Peon,)
R/o. Shantiniketan Colony,)
Bhanu Nagar, Osmanabad.)
Mobile No. 8408883282.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra**)
Through: Principal Secretary,)
Water Resources/Irrigation Department))
Mantralaya, Mumbai 32.)
2. **The Executive Engineer,**)
Osmanabad Minor Irrigation Division,)
Osmanabad.)
3. **The Superintendent Engineer,**)
Osmanabad Irrigation Circle Office,)
Osmanabad.)
4. **The Account Officer,**)
Pay Verification Unit,)
Aurangabad.)
5. **The Accountant General (A & E) II,**)
West High Court Road, Civil Lines,)
Nagpur.) **RESPONDENTS**

APPEARANCE : Smt. Suchita Dhonge, learned counsel
for the applicant.

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

: Shri D.T. Devane, learned counsel for
respondent No.3.

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

DATE : **15.04.2024.**

O R A L - O R D E R

Heard Smt. Suchita Dhongde, learned counsel for the applicant, Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities and Shri D.T. Devane, learner counsel for respondent No.3.

2. Learned counsel for the applicant submits short affidavit. The same is taken on record. By filing this short affidavit the applicant informs that he is not raising any objection for withdrawal of the one increment i.e. dated 01.07.2008 as in the application dated 03.08.2021, the applicant took objection regarding withdrawal of the said increment.

3. Heard finally with the consent of parties at admission stage.

4. By filing this Original Application the applicant is seeking quashing and setting aside the order dated 31.03.2021 issued by the respondent No.2 about recovery of Rs. 95,507/- which has been allegedly paid in excess to the

applicant. The applicant is also seeking direction to respondents to extend the 3rd benefit of Time Bound Promotion Scheme in terms of G.R. dated 02.03.2019.

5. Learned counsel for the applicant submits that the applicant was appointed as Class-IV employee on Group -D post i.e. Peon on 23.03.1984 under respondent No.3 and on attaining the date of superannuation he was retired from the service on 31.12.2018.

6. Learned counsel for the applicant submits that the applicant had submitted an application to respondent No.2 stating therein that on completion of 12 years of service on 23.03.1996, he has been extended benefit of 1st Time Bound Promotion and after completion of next 12 years of service on 23.03.2008, he has been extended 2nd benefit of Assured Career Progression Scheme. The applicant has thus requested the respondent No.2 to extend him the benefit of 3rd Time Bound Promotion in terms of G.R. dated 02.03.2019. Learned counsel for the applicant submits that there was no communication in this regard till the year 2020. However, by impugned order dated 31.03.2021, the respondents have issued recovery order of Rs. 95,507/- against the applicant on

the count that the applicant has been paid the excess amount due to wrong pay fixation.

7. Learned counsel for the applicant submits that the applicant came to be retired as Class-IV employee and in view of same, the ratio laid down by the Hon'ble Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** is squarely applicable to the facts and circumstances of the present case. Furthermore, in terms of affidavit in reply filed on behalf of respondent Nos. 2 & 3 it appears that the benefit of 3rd Time Bound Promotion was not given to the applicant for the reason that the applicant has been granted two increments in one year i.e. in the year 2008 itself and he was not entitled for the increment i.e. dated 01.07.2008. The applicant has raised an objection for withdrawal of the said increment and therefore, the proposal submitted by respondent No.2 to respondent No.3 for grant of 3rd Time Bound Promotion to the applicant was sent back.

8. Learned counsel for the applicant submits that this Original Application deserves to be allowed in terms of both the prayers.

9. Learned counsel for respondent Nos. 2 & 3 submits that the respondent No.2 has submitted the proposal to respondent No.3 for grant of 3rd Time Bound Promotion by withdrawing one increment i.e. dated 01.07.2008 and the same will be granted to him if he found eligible. However, the applicant has raised an objection for the same before the respondent No.3 for sanction of 3rd Time Bound Promotion by withdrawing the said increment and therefor, the proposal is sent back to the office of respondent No.2 (Annexure 'A-4').

10. Learned counsel for the respondent Nos. 2 & 3 submits that precisely this is a reason that the 3rd benefit of Time Bound Promotion is yet not granted to the applicant. Learned counsel for respondent Nos. 2 & 3 fairly accepted that though there is reference in the impugned order about filing of the undertaking by the applicant, however, the same is not available in the record.

11. I have also heard learned Presenting officer for the respondent authorities and he has also adopted the submissions made on behalf of respondent Nos. 2 & 3.

12. In the facts and circumstances of the present case and particularly the applicant is retired as Class-IV employee

and he is not responsible in any way for the wrong pay fixation, the case of the applicant is squarely covered by ratio laid down by the Hon'ble Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)**. The Hon'ble Apex Court in para No. 12 has made the following observations :-

“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.”

13. So far as the issue of 3rd Time Bound Promotion is concerned, the applicant has filed short affidavit today and in paragraph No. 3 has stated in unequivocal words that he is not raising any objection for withdrawing one increment i.e. dated 01.07.2008.

14. The said increment dated 01.07.2008 is an obstacle for grant of 3rd Time Bound Promotion to the applicant and since the applicant is now withdrawing his objection to the extent of said increment, as per reply filed by respondent Nos. 2 & 3 in terms of paragraph No. 13, the applicant would be entitled for the 3rd Time Bound Promotion in terms of G.R. dated 02.03.2019.

15. Learned counsel for the applicant submits that the respondent Nos. 2 & 3 may consider the case of the applicant about his 3rd Time Bound Promotion if he is found eligible, however, this stand is contrary to the affidavit in reply filed on behalf of respondent Nos. 2 & 3 in terms of paragraph No.13. If the applicant is now not raising any objection for withdrawing one increment i.e. dated 01.07.2008, there is no reason for the department to consider his proposal for grant

of 3rd Time Bound Promotion on some other grounds. Hence, the following order:-

ORDER

The Original Application is allowed in the following terms:-

- (A) The impugned order dated 31.03.2021 issued by office of respondent No.2 is hereby quashed and set aside.
- (B) The respondents are hereby directed to extend 3rd benefit of Time Bound Promotion Scheme as per G.R. dated 02.03.2019 to the applicant.
- (C) In the circumstances, there shall be no order as to costs.
- (D) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad
Date : 15.04.2024
SAS O.A. 525/2021(S.B.) Recovery