MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 575 OF 2022
(Subject – Refund of Recovered Amount)

DISTRICT :- NANDED

Yayati s/o Tukaram Ghorband,)
Age 61 years, Occu. Pensioner,)
R/o Shivalyan, Loha, Tq. Loha, Dist. Nanded.) .. **APPLICANT**

V E R S U S

1) The State of Maharashtra,)
Through its Secretary,)
Education Department,)
Mantralaya, Mumbai-32.)

2) The Deputy Director of Education,)
Latur Division, Latur.)

3) The Principal,)
Government Junior College of)
Education, Hadgaond, District Nanded.)

4) The Accounts Officer,)
Pay Verification Unit, Aurangabad.).. **RESPONDENTS**

APPEARANCE : Shri Anant D. Gadekar, counsel for the applicant.

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

CORAM : JUSTICE SHRI V.K. JADHAV, MEMBER (J)

DATE : 02.04.2024

O R A L - O R D E R

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

2. At the request and by consent of both the parties, the present Original Application is taken up for final disposal at the stage of admission itself.

3. By filing the present Original Application, the applicant is seeking directions against respondent Nos. 2 & 3 to refund the amount of Rs. 1,13,526/- deducted as excess payment from retirement gratuity of the applicant by the respondent No. 3 in view of the ratio laid down by the Hon'ble Apex Court in case of State of Punjab Vs. Rafiq Masih in Civil Appeal No. 11527/2014.

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

(i) The applicant was serving on the post of Assistant Teacher (Class-III) in the office of respondent No. 3 and he came to be retired on attaining the age of superannuation w.e.f. 30.09.2014. The applicant being a graduate candidate as B.A. B.Ed. was appointed on the post of Supervisor in the pay scale of Rs. 335-680 in the year 1979. Thereafter, in the year 1991 as per the order issued by Dy. Director of Education, Aurangabad, the applicant was absorbed on the post of Assistant Project Officer and

was given posting in the office of Adult Education Officer, Beed. It is the case of the applicant that the cadre of Supervisors in the said department was declared surplus and as per order dated 26.06.1991, he was absorbed on the post of Assistant Project Officer in the pay scale of Rs. 1400-2600.

(ii) It is the case of the applicant that the applicant possessed the educational qualification as B.A. B.Ed. and was accommodated on the post of Assistant Teacher /Assistant Project Officer in the pay scale of Rs. 1400-2600 by the order of Dy. Director of Education, Aurangabad, Aurangabad. The applicant had served at different places on the post of Assistant Teacher, as well as, Assistant Project Officer. As per the order dated 31.05.2012, the applicant was transferred from the office of Education Officer (Continuing Education), Zilla Parishad, Nanded to Govt. Junior College of Education, Hadgaon, Dist. Nanded on the post of Assistant Teacher.

(iii) It is the further case of the applicant that the applicant was awarded senior Grade of Rs. 6500-10500 in the 5th Pay Commission and after completion of 12 years' service on the post of Assistant Project Officer / Assistant

Teacher, time bound promotional pay scale was granted to the applicant i.e. 2000-3500 and after completion of 24 years' service, the second time bound promotion pay scale of Rs. 9300-34800, Grade Pay 4800 was awarded to the applicant.

(iv) The applicant was awarded the pay scale band of Rs. 9300-34800 and grade pay of Rs. 5400 in the 6th Pay Commission. The applicant submits that the Latur Division has been bifurcated from Aurangabad Division and the post of Dy. Director of Education, Latur came in existence and the services of the applicant were transferred to Latur Division from Aurangabad under the control of respondent No. 3 and thus till retirement the applicant had served under the control of the respondent Nos. 2 & 3. The posts of Assistant Project Officer, Programme Assistant and Assistant Teacher are one and the same i.e. identical and are inter-transferable.

(v) It is further case of the applicant that at the verge of retirement surprisingly in terms of the objections of the respondent No. 4, the respondent No. 3 has re-fixed the pay scale and pay fixation in the pay scale of Rs. 5000-

8000 cancelling the pay scale of Rs. 5500-9000 granted earlier to the applicant on completion of 12 years' service.

(vi) According to the applicant, he came to be retired on 30.09.2014 and excess payment amounting to Rs. 1,13,526/- was deducted from the retirement gratuity of the applicant as per Form-7 dated 16.08.2014. Hence, the present Original Application.

5. Learned counsel for the applicant submits that at the time of retirement of the applicant his service book was submitted for verification for the purpose of grant of pension and pensionary benefits to the office of respondent No. 4. However, the respondent No. 4 has raised certain objections in respect of grant of revised senior pay scale of Rs. 5000-8000. The respondent No. 4 also took objections in respect of pay fixation of the applicant in the revised senior grade.

6. Learned counsel for the applicant submits that the applicant came to be retired from Group-C post i.e. Class-III post and in terms of ratio laid down by the Hon'ble Apex Court in the judgment and order in **Civil Appeal No. 11527/2014 arising out of SLP (C) No. 11684/2012** in the case of **State of Punjab Vs. Rafiq Masih**, decided on 18.12.2014, the recovery

as done is impermissible. Learned counsel submits that the case of the applicant is fully covered by the aforesaid ratio laid down by the Hon'ble Apex Court in the case of **State of Punjab Vs. Rafiq Masih** (cited supra).

7. Learned counsel for the applicant submits that the applicant is not anyway responsible for the mistake committed by the competent authority in respect of wrongful grant of pay scales and salary. The applicant has not misled the authority in any manner. The applicant was granted the said benefit from the year 1996 to 2000, which exceeds the period of five years. Learned counsel submits that thus the present Original Application deserves to be allowed.

8. Learned Presenting Officer on the basis of the affidavit in reply filed on behalf of respondent No. 3 submits that while granting new pay scale to the employees, the employees have to give an undertaking in term of clause No. 15.6 of the Circular dated 29.04.2009 to the effect that if there would be any wrong fixation and if there would be any excess payment made to the employee due to wrong fixation, he / she would be liable to repay the same to the Government. Copy of the said Circular is marked as Exhibit R-1.

9. Learned P.O. further submits that due to wrong pay fixation as clarified by the Pay Verification Unit (Squad), Aurangabad, the Account Officer has pointed out the excess amount paid to the applicant to the tune of Rs. 1,13,526/-. The said amount has been recovered from retirement gratuity of the applicant on 16.08.2014. It is further submitted that while applying for pension a form of undertaking regarding over payment is attached by the applicant. Learned P.O. submits that ratio laid down in State of **Punjab Vs. Rafiq Masih, 2015-SCW-501** passed in **Civil Appeal No. 11527/2014** decided on 18.12.2014 is not at all applicable to the facts and circumstances of the present case. Learned P.O. submits that when service book of the applicant was sent to the Pay Verification Unit, Aurangabad, the respondent No. 4 has made objection that pay scale of Rs. 5500-9000 has wrongly granted to the applicant. In fact, the said pay ought to have been granted as Rs. 5000-8000 as per Government notification. Learned P.O. submits that the action of making recovery as per the rules and as per the undertaking given by the applicant on 03.08.2009 in terms of the Government Circular issued by the Finance Department dated 29.04.2009 and in view of the same, as per the judgment and order passed in Civil Appeal No. 3500/2006 passed by the Hon'ble Apex Court in a case of High

Court of **Panjab and Haryana vs. Jagdev Singh**, decided on 29.07.2016, the recovery is permissible. Learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed with costs.

10. The applicant was retired on 30.09.2014 while working on Class-III post. The same also not denied by the respondent authorities. It also appears that the said amount towards the excess payment has been recovered from the applicant after his retirement from his retiral benefits. The said amount has been paid to the applicant during the period from 1996 to 2000 i.e. almost for 5 years.

11. In view 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) etc. in Civil Appeal No. 11527 of 2014 (Arising out of SLP (C) No. 11684 of 2012)**, 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. 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."

The case of the applicant is fully covered under the clause Nos. (i), (ii) and (iii) of the above judgment of the Hon'ble Apex Court.

12. It appears that the said amount has been recovered from the gratuity amount of the applicant, which appears to be paid to the applicant in excess during the period from 01.01.1996 to 31.12.2000 towards the salary and allowances. The applicant is neither at fault, nor he has mislead the authorities in any manner for his pay fixation. Thus, the ratio laid down by the Hon'ble Apex Court, more particularly condition Nos. (i) to (iii) are squarely applicable to the facts and

circumstances of the present case. In view of the same, the recovery as against the applicant is impermissible.

13. It further appears that the respondent authorities have taken undertaking from the applicant on 03.08.2009 after issuance of Government Circular dated 29.04.2009 as the applicant was bound to give an undertaking to refund the amount to the Government, if paid in excess. However, the same has not been taken at the time of pay fixation. The pay fixation has done in the year 2014 and after the retirement of the applicant by Form-7 dated 16.08.2014 the recovery is sought from retirement gratuity of the applicant. The Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 14296/2023 (Gautam Sakharam Mairale Vs. State of Maharashtra and Ors.)** and along with connected matters, in the identical facts and circumstances in respect of the similarly situated employees in para Nos. 5 and 6 has made the following observations :-

> *"5. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it is in these circumstances that an undertaking has been extracted. The learned Advocate representing the Zilla Parishad as well as the learned A.G.Ps., submit that, once an undertaking is executed, the case of the Petitioners would be covered by the law laid down by the Hon'ble Supreme Court in the case of* ***High***

Court of Punjab and Haryana and others vs. Jagdev Singh, 2016 AIR (SCW) 3523*. Reliance is placed on the judgment delivered by this Court on 1.9.2021,* ***in Writ Petition No. 13262 of 2018 filed by Ananda Vikram Baviskar Vs. State of Maharashtra and others****.*

6. We have referred to the law laid down by the Hon'ble Supreme Court in ***High Court of Punjab and Haryana and others vs. Jagdev Singh (supra).*** *The record reveals that no undertaking was taken from these Petitioners when the pay scales were revised. An undertaking from some of them was taken at the stroke of their retirement. An undertaking has to be taken from the candidate when the revised pay scale is made applicable to him and the payment of such pay scale commences. At the stroke of superannuation of the said employee, asking him to tender an undertaking, practically amounts to an afterthought on the part of the employer and a mode of compelling the candidate to execute an undertaking since they are apprehensive that their retiral benefits would not be released until such undertaking is executed. Such an undertaking will not have the same sanctity as that of an undertaking executed when the payment of revised pay scale had commenced. We, therefore, respectfully conclude that the view taken* ***in High Court of Punjab and Haryana and others vs. Jagdev Singh (supra)*** *would not be applicable to the case of these Petitioners, more so since the recovery is initiated after their superannuation.*"

14. At the time of pay fixation, admittedly no undertaking has been given by the applicant. The respondent authorities have taken undertaking from the applicant on 03.08.2009 after issuance of Government Circular dated

29.04.2009 as the applicant was bound to give an undertaking. In view of the observations made by the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad, such an undertaking will not have the same sanctity as that of an undertaking executed when the payment of revised pay scale had commenced.

15. In view of the discussion in foregoing paragraphs, the present Original Application deserves to be allowed. Hence, the following order :-

O R D E R

(i) The Original Application No. 575/2022 is hereby allowed.

(ii) The respondent Nos. 2 & 3 are hereby directed to refund the amount of Rs. 1,13,526/- to the applicant within a period of three months from the date of this order .

(iii) In the circumstances, there shall be no order as to costs.

(iv) The Original Application is accordingly disposed of.

PLACE : Aurangabad. **(Justice V.K. Jadhav)**
DATE : 02.05.2024 **Member (J)**

KPB S.B. OA 575 of 2022 VKJ Refund of Recovered amount