IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.1067 OF 2024

DISTRICT : PUNE
SUB : Recovery

Shri Madhao Nilkanth Pande)
Age-59 years; Occu: Service)
R/at: B-7, Dwarka Sai Paradise,)
Shivsai Lane, Near Lotus Hospital,)
Pimple Saudagar, Pune-411 027.).....Applicant

Versus

1. The State of Maharashtra,)
Through Principle Secretary,)
Higher and Technical Education Dept.)
Govt. of Maharashtra, Mumbai.)

2. The Director, Technical Education)
Department-3, Mahapalika Marg,)
Dhobitalav Road, Mumbai-400 001.)

3. Joint Director, Technical Education)
Department, Regional Office Shivaji Nagar,)
Pune-411 016.)

4. The Principal, Govt. Polytechnic Awasari)
(kh), Tq. Ambegaon, Dist. Pune 412 405.).....Respondents

Shri K. S. Jadhav, learned Advocate for the Applicant.

Ms S. P. Manchekar, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman

Reserved on : 23.01.2025

Pronounced on : 28.01.2025

JUDGEMENT

Heard Shri K. S. Jadhav, learned Advocate for the Applicant and Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The Applicant was 'Lecturer' in Civil Engineering in Government Polytechnic, Amaravati. As per G.R. dated 18.07.2008 issued by the Higher and Technical Education Department of Government of Maharashtra, he was sent on deputation to Malviya National Institute of Technology, Jaipur for three years (from 23.07.2008 to 22.07.2011) for Ph.D under Quality Improvement Programme. After completing the period of deputation, he was relieved by order dated 22.07.2011. In this order, it was mentioned that his research work was well under progress. He joined his parent establishment on completion of deputation period and continued to discharge his duties satisfactorily. He could not, however, complete Ph.D for want of quality data inspite of his best efforts. By the impugned order dated 25.06.2024, recovery of Rs.51,27,469/- was directed from him due to his failure to complete Ph.D. From his salary for the months of June 2024 to October, 2024 the total amount of Rs.5,76,429/- was recovered. He retired on superannuation on 31.10.2024. According to the Applicant, the impugned recovery is impermissible in law. Hence, this Original Application.

3. According to the Respondents Clause 9 of G.R. dated 18.07.2008 empowered the employer to effect the impugned recovery and hence this Original Application is liable to be dismissed.

4. Clause 9 of G.R. dated 18.07.2008 replicates Clause 9 of G.R. dated 20.11.1998. The latter clause reads as under :-

> *"9. If the Applicant leaves the course incomplete or will not serve the State Government as per the undertaking given on the bond, in that case the total amount spent by the State Government will be recovered with the existing rate of interest".*

5. It was submitted by Shri Jadhav, learned Advocate for the Applicant that the Applicant had executed a bond, he honored it, thus there was compliance of Clause 9, though partial, and for pressing into service this clause, its total non-compliance was a condition precedent. In reply, it was submitted by learned C.P.O. that clause 9 envisages two

distinct contingencies viz abandonment of studies and failure to render services as per the bond, these contingencies must be read disjunctively because of use of word 'or' between two distinct limbs of the clause and hence even partial breach could legitimately give rise to recovery of pay and allowances for the period of deputation, with interest. Plain reading of Clause (9) suffices to accept this submission.

6. It was further submitted by Advocate Shri Jadhav that when the Applicant was relieved after completing deputation, the concerned Head of the Department had opined that research of the Applicant was well under progress and considering this aspect, recovery ought not to have been directed. Fact remains that the Applicant did not complete Ph.D till his retirement and nothing fruitful was gained by the Government by deputing him.

7. It was further submitted by Advocate Shri Jadhav that 13 years after his deputation had come to an end, the impugned order of recovery was passed against the Applicant. It was contended that such inordinate delay had foreclosed the option of recovery. In support of this submission, reliance is placed on the judgment of the Hon'ble Delhi High Court dated 07.12.2015 in ***W.P.(C) 277/2015 & CM No.430/2015 (Renu Gupta V/s University of Delhi & Anr.)***. In this case, it is held :-

> *"8. Now the only question that arises for consideration is, whether the College is within its right to make a recovery from the salary of the petitioner, the leave salary of the period October 26, 1987 to October 26, 1990. There is no dispute that the petitioner had not completed her study nor the College had taken steps to recover the amount in terms of the stipulation in the Study Leave Agreement dated October 26, 1987. Almost 25 years have elapsed pursuant to the Agreement and 22 years pursuant to her joining back the College after the study leave. In fact, it appears that the College had treated this issue as a closed one till it received communication dated October 19, 2012 from the University. The issue of recovery of benefits given to the employees, contrary to Rules, has been the subject-matter of various decisions of the Supreme Court.*
>
> *In the case in hand, there is a stipulation in the Study Leave Agreement. Such a stipulation was not in existence in the Rules at the relevant time. The petitioner having agreed to such a stipulation, surely is bound by the same. The Rules, at the relevant point of time did not expressly provide, that in such an eventuality, the study leave is not*

recoverable. The respondent No.2 College was within its right to invoke the Study Leave Agreement, but not after almost 22 years, after the petitioner had joined the College on the expiry of the study leave, in view of the judgment of the Supreme Court in the case of State of Punjab vs. Rafiq Masih (judgment No.2), wherein the Supreme Court has culled out the situations wherein recovery is held to be impermissible and the same would be harsh. Upholding the stipulation in the Study Leave Agreement dated October 26, 1987 for recovering all the sums spent by the College if the Teacher is unable to complete the study during the period of study leave, I hold that the recovery at this point of time is covered by situation Nos.(iii) "Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued" and (v) "In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, 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", (in the case of State of Punjab vs. Rafiq Masih."

(Emphasis supplied).

It was submitted by learned Advocate Shri Jadhav that in the instant case, recovery was directed 13 years after deputation had come to an end and hence the ratio in the case of ***Renu Gupta*** (supra) will apply with almost equal rigor. In reply, the C.P.O. relied on Para Nos.2 and 7 of the judgment in ***{State of Maharashtra & Others Vs. Rafiq Masih (White Washer)}, (2015) 4 SCC 334.*** These paras read as under :-

"2. All the private respondents in the present bunch of cases, were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay-scales; or for having been granted allowances, for which the concerned employee was not authorized. The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due.

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such

cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

(Emphasis supplied)

It was submitted by learned CPO that situations of hardship postulated by the Hon'ble Supreme Court in ***Rafiq Masih's case*** as under in para 12 are founded on what is observed in paras 2 and 7. Various situations of hardship postulated in para 12 of the judgment are as follows :-

"**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 hereinabove, 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 services (or Group 'C' and Group 'D' services).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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 employee, 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."

A conjoint consideration of Paras 2, 7 and 12 fully supports aforesaid submissions of the C.P.O.

8. Further reliance was placed by the CPO on ***Punjab & Haryana High Court and Ors. v/s Jagdev Singh 2016(14) SCC 267***. In this case it is held :-

> *"11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."*

It was submitted that when the Applicant was sent on deputation, he was clearly placed on notice that abandonment of study could invite recovery of amount spent by the State Government, with interest and hence ratio in the case of ***Jagdev Singh*** (supra) will apply. I find merit in this submission.

9. It was further submitted by Advocate Shri Jadhav that in W.P. No.12562/2024 filed by the Applicant against order of this Tribunal declining stay to recovery, the High Court had stayed the recovery and due weightage will have to be given to this circumstance. This submission cannot be accepted. The High Court, while passing the order of stay, had observed :-

> *"(ii) It is clarified that observations made herein are only for considering the prayer for interim relief. The Original Application shall be decided on its own merits and in accordance with law."*

10. The Applicant further relied on the judgment of the Hon'ble Bombay High Court dated 20.02.2024 in ***W.P. No.564/2023 (Smt. Varsha Doshi V/s the State of Maharashtra and 1 Anr.).*** In this ruling, it is held :-

> *"The situations summarized in para 12 of the said decision, insofar as the clause 1 is concerned is for class III and IV service employee, whereas with respect to the other situations it is applicable to all class of employees.*

The Applicant was a Class-I employee. However, this ruling will not help him keeping in view the foundation for observations made in

Rafiq Masih (supra). As mentioned earlier, the foundation for illustrative situations in Para 12 is to be found in Paras 2 and 7 of the judgement.

11. The CPO also relied on the judgment of the Hon'ble Bombay High Court dated 19.07.2019 in ***W.P. No.7929/2019 (Kiran Solanki V/s State of Maharashtra & Ors.)***. In this ruling, it is observed –

> *"The Tribunal has rightly observed that the Applicant herself was at fault and to be blamed for not passing examination within the stipulated period provided by the said Rules. Therefore, the ratio laid down by the Apex Court in the case of Rafiq Masih (supra) cannot be of any support to the petitioner."*

The Applicant in the instant case was himself at fault. He abandoned studies. He was clearly placed on notice that abandonment of study would entail recovery of salaries and allowances received during the period of deputation. Thus, the aforequoted observations fully support action of recovery initiated against the Applicant.

12. The CPO further relied on the judgment of the Bombay High Court dated 10.03.2017 in ***W.P. No.6191/2016 (Dr. Ravindra Darunte V/s the State of Maharashtra & Ors.).*** In this case, on facts, it was observed :-

> *" In fact, it was necessary for the petitioner to make out a specific case in the petition itself by pleading his financial condition and resultant hardship to which he would be subjected in the event of recovery of excess payment made to him. The petition is totally silent on this vital ground, which was one of the considerations before the Hon'ble Supreme Court in the case of State of Punjab vs. Rafiq Masih (supra), for banning recovery of excess payment made to the employees, who are retired or on the verge of retirement."*

These observations apply to the facts of the case. The Applicant has not pleaded that the impugned recovery is iniquitous and would cause extreme hardship to him.

13. According to the Applicant, if the impugned recovery is allowed, he would be deprived of his right to property. This submission cannot be accepted. In fact, by allowing recovery unjust enrichment would be prevented.

14. For the reasons discussed hereinabove, the Original Application is dismissed with no order as to costs.

Sd/-

(M. A. Lovekar)
Vice-Chairman

Place: Mumbai
Date: 28.01.2025
Dictation taken by: V. S. Mane
D:\VSM\VSO\2025\Judgment 2025\O.A.1067 of 2024 Recovery.doc