

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1565 OF 2023

DISTRICT : PUNE

Sub.:- Recovery

Shri Prakash Walu Mechkar.)
Age : 58 Yrs, Retired as 'Naik Police)
Constable' in the office of Superintendent)
of Police, Pune (Rural), Pashan-Aundh)
Road, Pune – 411 008.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Secretary,)
Home Department,)
9th Floor, New Mantralaya,)
G.T. Hospital Premises, Lokmanya)
Tilak Road, Mumbai.)
2. Director General of Police.)
M.S, Mumbai, Maharashtra Police)
Headquarter, Shahid Bhagat Singh)
Marg, Colaba, Mumbai – 400 001.)
3. Superintendent of Police, Pune)
(Rural), Chavan Nagar, Pashan)
Aundh Road, Pune – 411 008.)
4. Reserve Police Inspector.)
Superintendent of Police, Pune)
(Rural), Chavan Nagar, Pashan-)
Aundh Road, Pune – 411 008.) ...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

CORAM : Shri M.A. Lovekar, Vice-Chairman

DATE : 10.03.2025

JUDGMENT

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. Case of the Applicant is as follows. The Applicant joined the Respondent Department as 'Police Constable' from Ex-serviceman Quota on 18.09.2007. On 31.05.2023, he retired on superannuation as 'Police Naik' which is a Group-C post. By order dated 17.01.2023, Respondent No.4 communicated to Respondent No.3 that the Applicant had executed an 'Undertaking' that he would not object to any recovery of amount which was found to have been paid in excess to him. By letter dated 27.07.2023, pay of the Applicant was revised and increments which were withheld on account of not passing Computer Examination were released. By the impugned order dated 30.08.2023, recovery of Rs.13,26,368/- was directed from the Applicant. The impugned order stated that this recovery was to be made on account of excess payment received by the Applicant. The Applicant made Representations objecting to the proposed recovery. These Representations, however, went unheeded. The proposed recovery was directed to be made after the Applicant retired on superannuation from a Group-C post. The period of recovery of amount exceeded 5 years. By directing the recovery, legitimate expectation of the Applicant was thwarted. Before directing such recovery which has civil consequences, no opportunity of hearing was given to the Applicant. Claim of recovery is stale and unforceable. For all these reasons, the proposed recovery is impermissible in law. Hence, this Original Application.

3. Stand of Respondent Nos.3 and 4 is as follows. Payment in excess was made to the Applicant as per earlier pay fixation which was erroneous. The earlier pay fixation was not made as per Rule 162 of the

Maharashtra Civil Services (Pension) Rules, 1982 and GRs dated 06.08.2001 and 11.07.2012. The Applicant had executed an 'Undertaking' that he would be liable to refund excess amount, if any, received by him. Thus, he would be estopped from objecting to such recovery of excess payment. The doctrine of legitimate expectation will not be applicable where public money is involved. For all these reasons, the OA deserves to be dismissed.

4. It may be reiterated that the Applicant retired on superannuation from Group-C post of 'Police Naik' on 31.05.2023. The impugned order of recovery was issued on 30.08.2023. According to the Applicant, under such circumstances, the impugned recovery would be impermissible in law. In support of this submission, reliance is placed on the following Rulings.

(i) ***State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors. : (2015) 4 SCC 342.*** In this case, it is held –

“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, 9 based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the 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 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."

- (ii) ***Thomas Daniel Vs. State of Kerala & Ors.: 2022 SCC OnLine SC 536.*** In this case, it is held –

"13. In *State of Punjab v. Rafiq Masih (White Washer)* wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:

"8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover."

- (iii) ***Prasad V. Sohoni Vs. The Treasury Officer, Thane & Anr.*** (Judgment of the Hon'ble Bombay High Court dated 12.01.2022 in Writ Petition No.1192.2021. In this case, it is held –

"It is not in dispute that the petitioner retired from the service of this Court while holding a Class III post. Clause (i) of paragraph 18 of the decision in *Rafiq Masih* (supra) does hold that recoveries from retiral benefits of Class III employees would be impermissible. Mr. Kulkarni is right in his submission that clause (i) of paragraph 18 is immediately attracted, on facts and in the circumstances of the present case. Mr. Kulkarni is, however, not right in referring to clause (iii) of paragraph 18 barring recovery of excess payment which has been made for a period in excess of five years, before the order of recovery is issued. This is because there has been no one-time excess payment in favour of the petitioner prior to five years of the issuance of the order of

recovery but excess payment in his favour had continued, month by month, till the order of recovery was issued on May 28, 2019. The petitioner, being in receipt of excess payment till that date, clause (iii) would not apply. Nonetheless, in addition to clause (i), clause. (v) of paragraph 18 of the decision in Rafiq Masih (supra) holding that, 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, seems to be attracted here."

- (iv) ***Smt. Jayashree T. Takalkar Vs. The Chief Executive Officer, Z.P. Aurangabad & 1 Anr.*** (Judgment of the Hon'ble Bombay High Court dated 22.12.2017 in a batch of Writ Petitions). In this case, it is held –

"The case cited by the respondents bearing Civil Appeal No.3500 of 2006 by Apex Court in High Court Punjab and Haryana and others Vs. Jagdev Singh, is based on different facts, the petitioner therein was a Class-I employee (Civil Judge, Junior Division) and then was promoted as Additional Civil Judge, therefore definitely he was not within the exceptions. Further though in that case as well as in the present case, an undertaking was given by the petitioners yet the undertaking given by the present petitioners was subject to the legal proposition that has been laid down in Rafiq Masih's case. This was the exact view taken in Writ Petition No.6191 of 2016 by this Court when the petitioner therein was also not found to be a Class -III or Class -IV employee, therefore the view taken in those cases cannot be made applicable to the present case."

- (v) ***Tukaram R. Phavade Vs. The Resional Dairy Development Officer, Pune Region & Anr.*** (Judgment of the Hon'ble Bombay High Court dated 29.07.2021 in Writ Petition No.10401 of 2018). In this case, it is held –

"4. It has not been disputed before us that the petitioner was a Group 'C' employee when he retired on superannuation on 30th June 2016. Having regard to the law laid down in Rafiq Masih (supra), the Tribunal was right in observing that no recovery of amount paid to the petitioner in excess of his entitlements upon retirement could have been made. However, we hold that the Tribunal was entirely unjustified in observing that the petitioner had not sought for the relief of release of any amount that was withheld and, thus, was not entitled to succeed. Prayer (a) of the original application was to the effect that the order impugned dated 24th August 2016 be set aside and the petitioner be granted all consequential service benefits, as if the impugned order had not been passed. We are of the considered opinion that the relief sought in such terms did include a relief of release of withheld amounts as if the order dated 24th August 2016 had

ceased to have any effect. We, therefore, hold that the Tribunal fell in error in not granting relief to the petitioner on the ground as assigned by it.

5. In any event, the Tribunal failed to appreciate that the petitioner obtained the benefits of the two time bound promotions without practicing fraud on the respondents. If indeed the Government Resolution dated 8th June 1995 required the petitioner to attain a particular speed of shorthand writing and the petitioner was deficient, it was open to the respondents not to grant him such benefit. However, having granted the benefit and the petitioner having been allowed to continue in service ever after grant of the benefits of time bound promotions till his superannuation without any process for recovery initiated against him, the respondents were not quite justified in invoking the provisions of the said Government Resolution to deny the benefits which had been given to him with effect from 1st October 1994.”

- (vi) ***Babasaheb H. Dahifale Vs. The State of Maharashtra & 3 Ors.*** (Judgment of Aurangabad Bench of this Tribunal dated 04.01.2024 in OA No.630/2021). In this case, it is held –

“The applicant is Class-III employee and as per his stand, the said undertaking was tendered by him under the pressure of the office of respondent No. 3. The applicant has given the said undertaking under fear that he would not get the retiral benefits, if the undertaking is not submitted as informed to him by the office of respondent No. 3. Further the applicant was appointed as Police Constable and thereafter promoted on the posts of Police Naik and Police Hawaldar and finally retired as Assistant Sub-Inspector. In view of above, it is not expected from the employee of his cadre to question the superiors for tendering the undertaking, if so directed. Further such an employee may not understand the consequences of his undertaking.”

5. The contesting Respondents, on the other hand have relied on the Judgment of Aurangabad Bench of this Tribunal in –

(i) OA No.1062/2019 (Bhau S/o. Mahadu Khade Vs. The State of Maharashtra & 4 Ors.). In this case, excess payment was found to have been made on account of an error committed in fixing the Applicant in a higher pay scale to which he was not entitled. It was held that only on the ground of the proposed recovery being iniquitous, it could not be said to be illegal.

(ii) Judgment of Principal Bench of this Tribunal dated 09.02.2023 in OA No.1092/2022 (Arun H. Awad Vs. Government of Maharashtra & 1 Anr.). In this case, on the basis of an ‘Undertaking’ executed by the Applicant, it was held that the recovery could not be interdicted.

6. The Applicant retired from a Group-C post. Recovery was directed after his retirement. It is apparent that the proposed recovery would be iniquitous in nature. The 'Undertaking' said to have been given by the Applicant was subject to the legal propositions laid down in **Rafiq Masih's** case. It is not the case of the Respondents that the Applicant had practiced a fraud on his employer to secure benefits to which he was not entitled. Considering all these circumstances, the impugned order cannot be sustained as Clause (i), (ii) and (v) in Para 18 of **Rafiq Masih** would be attracted. I have referred to the ratio laid down in the case of **Tukaram Phavade** (supra). In this case, Hon'ble Bombay High Court held that relief in respect of release of withheld amounts which had nexus with the impugned order directing recovery ought not to have been denied by the Tribunal. Having regard to the factual and legal position discussed above, the OA is allowed in terms of Prayer Clause (a). No order as to costs. The issue of interest for delayed release of pensionary benefits is kept open.

Sd/-
(M.A. Loveker)
Vice-Chairman

Mumbai
Date : 10.03.2025
Dictation taken by :
S.K. Wamanse.

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