IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.866 OF 2022

DISTRICT : Pune
Sub.:- Recovery

Shri Machhindranath B. Jadhav.)
Age : 59 Yrs, Retired as Group Instructor)
from I.T.I, Aundh, Parihar Chowk,)
Pune – 61 and R/o. Prabhuprit,)
Road No.6, Sudarshan Nagar, Pimple)
Gurav, Pune – 61.)**...Applicant**

Versus

1. The Principal.)
Industrial Training Institute,)
Aundh, Pune – 67.)

2. The Joint Director,)
Vocational Education & Training,)
Pune Region, Pune and having)
Office at Ghole Road, Pune – 5.)**...Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. Archana B.K, Presenting Officer for Respondents.

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

Closed for
Order on : 10.03.2025

Pronounced on : 11.03.2025

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. Archana B.K, learned Presenting Officer for the Respondents.

2. Relevant facts are as follows. By order dated 28.09.1983, the Applicant was appointed as Craft Instructor (Diesel Mechanic) on a purely temporary basis. As per Clause (b) of this order, the appointment could be terminated at any time without notice or without assigning any reason. By Memorandum dated 14.07.1984, the Applicant was informed that his services will stand discontinued w.e.f. the date the substitute appointed in his place would join the duties. His substitute joined on 24.07.1984 whereupon his services were discontinued. On 17.08.1984, fresh appointment order was issued to him pursuant to which he joined again. On 07.02.1985, he made an application that break in his service from 24.07.1984 to 17.08.1984 be condoned. By treating his date of appointment as 04.10.1983, benefits of 1st and 2nd Time Bound Promotion as well as benefits of 7th Pay Commission were extended to him. On 01.01.2021, he again made a Representation to condone the break in his service from 24.07.1984 to 17.08.1984. By order dated 27.04.2021, he was informed that break in his service could not be condoned. He stood retired on superannuation on 31.05.2021. He again made Representations dated 03.01.2022 and 11.03.2022 to condone the break in his service. These Representations were rejected by citing Rule 48 (4) of 'The Maharashtra Civil Services (Pension) Rules, 1982'. Hence, this OA impugning the orders declining to condone the break in service, and two separate orders both dated 07.07.2022 revising/refixing pay of the Applicant and directing recovery of Rs.5,52,763/- stated to have been paid to the Applicant in excess from 01.01.1996 onwards.

3. Stand of Respondent Nos.1 & 2 is that the Applicant became entitled to get all service benefits from 18.08.1984, his previous appointment by order dated 28.09.1983 was purely temporary in nature and excess payment was made because while extending the benefits of 1st and 2nd Time Bound Promotion, as well as benefits of 7th Pay Commission, the date of appointment on purely temporary basis was erroneously taken to be the relevant date.

4. By order dated 24.071984, services of the Applicant were discontinued as his substitute joined on the post on that day. Fresh appointment order was issued to the Applicant on 17.08.1984.

5. The Applicant initially applied for condoning the break in service on 07.02.1985. Thereafter, he made a Representation only on 01.01.2021. By the time, the latter Representation was made, the grievance ventilated by the former Representation had become stale. Under the circumstances, principle of latches would be attracted.

6. First appointment order issued to the Applicant was purely temporary in nature. I have referred to Clause (b) of this appointment order. Service benefits were wrongly extended to the Applicant by proceeding on a footing that it was the relevant date. In fact, the relevant date was 18.08.1984 when he again joined on the post as per fresh appointment order dated 17.08.1984.

7. It was submitted by Advocate Shri A.V. Bandiwadekar that the first order of appointment of the Applicant dated 28.09.1983 was rightly held to be the relevant date for extending service benefits, accordingly all service benefits were extended to the Applicant, while issuing this appointment order the Applicant possessed requisite qualification and under such circumstances, there was no question of treating the subsequent order of appointment dated 17.08.1984 as the relevant date. Having regard to the contents of appointment orders dated 28.09.1983 and 17.08.1984, aforesaid submission cannot be accepted. It may be reiterated that the first appointment order of the Applicant dated 28.09.1983 was purely temporary in nature and the appointment was terminable at any point of time without notice and without assigning any reason. The day on which substitute of the Applicant joined on the post, services of the Applicant were discontinued and thereafter, subsequent appointment order dated 17.08.1984 was issued. In this factual

background, no fault can be found with revision of pay made by the Respondents on the basis of subsequent date of appointment i.e.17.08.1984. Consequently, the order dated 07.07.2022 revising/refixing pay of the Applicant cannot be interfered with. By this order, only errors committed earlier while extending service benefits on the basis of purely temporary order of appointment of the Applicant, were corrected.

8. However, the other impugned order dated 07.07.2022 directing recovery of amount paid in excess from the Applicant cannot be sustained. The Applicant retired on superannuation on 31.05.2021 from a Group-C post. Recovery was directed by order dated 07.07.2022. It is not the case of the Respondents that the Applicant had resorted to deception or fraud to secure unmerited monetary benefits. In these facts and circumstances, reliance may be 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."

In the facts of the case which are discussed above, Clauses (i), (ii) and (v) in Para 18 of ***Rafiq Masih*** (supra) would be attracted.

9. For the reasons discussed hereinabove, OA is partly allowed. The order dated 07.07.2022 directing recovery of Rs.5,52,763/- is quashed and set aside. The other impugned order also dated 07.07.2022 revising/refixing pay of the Applicant is maintained. Amount recovered,

if any, pursuant to the above referred order dated 07.07.2022 shall be refunded to the Applicant within two months from today. No order as to costs.

Sd/-
(M.A. Loveker)
Vice-Chairman
11.03.2025

Mumbai
Date : 11.03.2025
Dictation taken by :
S.K. Wamanse.
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