

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.351 OF 2023

**DISTRICT : MUMBAI
SUB : Recovery**

Shri. Suresh Pandurang Adivarekar)
Age: 59 years Occ.: Retired)
R/o: Vatsalya CHS, C Wing, 201,)
Charkop Sector-8, Kandivali (West))
Mumbai-400 067.).....Applicant

V/s

1. The Chief Secretary,)
State of Maharashtra, Mantralaya,)
Mumbai-400 032.)

2. The Principal Secretary. Public Health)
Department & Commissioner (Health Services),)
0th floor, G.T. Hospital Compound,)
Mumbai 400 001

3. The Commissioner, Health Services,)
3rd Floor, Arogya Bhavan, Saint Georges)
Hospital, Mumbai 400 001.)....Respondents

Shri P. L. Rathod, learned Advocate for the Applicant.

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

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

Date : 28.03.2025

JUDGEMENT

Heard Shri P. L. Rathod, learned Advocate for the Applicant and
Smt. Archana B. K., learned Presenting Officer for the Respondents.

2. By order dated 11.11.2010 the Applicant was promoted to the post of 'Senior Clerk'. He completed the age of 50 years on 19.03.2013. By order dated 31.03.2017 exemption was granted to him from passing/submitting certificate of knowledge of computer handling/operations. By order dated 12.04.2018 he was promoted to the post of 'Assistant Superintendent (Class-III)'. On 31.03.2021 the Applicant retired on superannuation. Since exemption as above was granted w.e.f. 19.03.2013, Annual Increments ought not to have been released falling due between 01.01.2008 to 18.03.2013. By order dated 27.09.2021 pay of the Applicant was refixed and payment made in excess on account of release of increments was directed to be recovered. By order dated 14.02.2022 said amount, which was quantified at Rs.1,38,804/-, was directed to be recovered. By this order, recovery of Rs.41,563/- towards occupation of Government Quarter was also directed. The Applicant is aggrieved only by recovery of Rs.1,38,804/-. He has no grievance with regard to refixation of pay and recovery of Rs.41,563/-. Hence, this Original Application.

3. According to the Respondents, the impugned recovery was necessitated by refixation of pay and since the Applicant has executed an undertaking on 16.06.2022, the recovery would be perfectly permissible.

4. The Applicant has relied on **{State of Punjab & Others Vs. Rafiq Masih (White Washer)}, (2015) 4 SCC 334**, wherein it is held -

"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."*

5. The Respondents have relied on the undertaking dated 16.06.2022. It was obtained as per Circular dated 22.11.2021 issued by the Finance Department of Government of Maharashtra. The Circular was issued pursuant to the directions issued by the Hon'ble Bombay High Court in W.P. No.3480/2020 on 15.09.2021. The Circular states –

“याद्वारे सर्व मंत्रालयीन प्रशासकीय विभाग/शासकीय कार्यालये/स्थानिक स्वराज्य संस्था /अनुदानित संस्था/स्वायत्त संस्था यांना सुचित करण्यात येते की, कर्मचा-याला कोणत्याही प्रसंगी जसे की, वेतननिश्चिती /वेतनवाढी/अथवा इतर कोणत्याही आर्थिक लाभाच्या/प्रदानाच्या अनुषंगाने अतिरिक्त प्रदान झाल्याची बाब भविष्यात शासनाच्या निदर्शनास आल्यास अतिप्रदानित रक्कम शासनास परत करण्याचे वचनपत्र (undertaking) संबंधित कर्मचा-याकडून त्यांच्या सेवाकालावधीत एकदाच घेण्यात यावे. जे कर्मचारी सदयःस्थितीत शासन सेवेत आहेत त्यांच्याकडून हे वचनपत्र या परिपत्रकाच्या दिनांकापासून ३ महिन्यांच्या आत घेण्यात यावे. तथापि जे कर्मचारी सेवानिवृत्त होत आहेत त्यांच्याबाबत तात्काळ त्यांच्या सेवानिवृत्तीपूर्वी घेण्यात यावे.”

6. It was rightly submitted by learned Advocate Shri P. L. Rathod for the Applicant that the Undertaking was obtained on 16.06.2022 i.e. after the Applicant had retired on superannuation on 31.03.2021 and hence, such Undertaking cannot be pressed into service to effect the impugned recovery.

7. As submitted by learned Advocate Shri P. L. Rathod for the Applicant, clauses (i), (ii) and (iv) of Para 12 of **Rafiq Masih** (supra) would be attracted rendering the impugned recovery impermissible. Clause (iii) would not, however, be attracted since excess payment was not made in lumpsum as held in **Prasad Vinayak Sohoni V/s Treasury Officer, Thane & Anr. in W.P. No.1192/2021, decided on 12.01.2022.**

8. For all these reasons, the Original Application is allowed in the following terms. The impugned order is quashed and set aside to the extent it directs recovery of Rs.1, 38, 804/-. The amount recovered, if any, pursuant thereto shall be refunded to the Applicant within two months from today failing which the unpaid amount shall carry interest at the rate of 6% per annum from today till payment. No order as to costs.

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

