

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 732 OF 2021**

**DISTRICT : JALNA**

**Dashrath s/o Deorao Jadhav,** )  
Age: 60 Years, Occu: Retired, )  
R/o. Choudhary Nagar, Behind Poddar School,) )  
Mantha Road, Jalna. )

.... **APPLICANT**

**V E R S U S**

- 1) **The State of Maharashtra,** )  
Through: The Secretary, )  
Home Department, )  
Mantralaya, Mumbai-32. )
- 2) **The Director General of Police,** )  
Old Vidhan Bhanvan, )  
Shahid Bhagatsing Marg, Kulaba, )  
Mumbai-39. )
- 3) **The Commandant,** )  
State Reserve Police Force, Group no. 3,) )  
Jalna. )

... **RESPONDENTS**

**APPEARANCE** : Shri K.B. Jadhav, Counsel for Applicant.

: Smt. Resha Deshmukh, Presenting Officer for  
respondent authorities.

**CORAM** : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**DATE** : **19.08.2024**

**O R D E R**

1. Heard Shri K.B. Jadhav, learned counsel for the applicant and Smt. Resha Deshmukh, learned Presenting Officer for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the parties at the admission stage itself.

3. By filing the present Original Application, the applicant is seeking quashing and setting aside impugned order dated 18.2.2016 issued by respondent No. 3 to the extent of directing recovery of excess payment from the applicant and also seeking directions to respondent No. 3 to refund the amount of Rs. 72,110/- with interest to the applicant in view of guidelines issued by the Hon'ble Apex Court in a case of **State of Punjab & others V/s Rafiq Masih in Civil Appeal No. 11527 of 2014, dated 18.12.2014.**

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

(i) The applicant was initially appointed on 04.02.1982 as a Constable and posted in the office of respondent No. 3. Thereafter, he was promoted as Police Naik on 29.8.1994 and then promoted as Head Constable on 10.8.1996. He was promoted on the post of Assistant Sub-Inspector on 24.7.2009. The applicant came to be retired from service on 30.6.2018 from the office of respondent No. 3. The post of

A.S.I. comes under Group-C/Class-III category. The service carrier of the applicant is unblemished.

(ii) It is the case of applicant that before his retirement, respondent No. 3 has issued order dated 18.2.2016 (Annexure A-1 collectively), thereby revised/re-fixed the pay scale of the applicant by order dated 18.2.2016 w.e.f. 01.01.1996 to 31.03.2016 and directed to recover the excess payment from the applicant, which was paid to the applicant due to wrong fixation pay scale during the said period. The respondents had prepared the fixation difference recovery statement from 01.01.1996 to 31.3.2016 and amount of excess payment is shown from August, 1996 to till March, 2016 of Rs. 72,110/- to the applicant during the said period, which is excess of 5 years before the order of recovery is issued and before one year of his retirement.

(iii) The applicant further contends that in pursuance to re-fixation, the respondent No. 3 directed to recover the amount of Rs.72,110/- towards the excess payment w.e.f. 1.1.1996 to 31.3.2016 from monthly salary of the applicant from the month of March, 2016 to till March, 2018. As per

the directions of the respondent no. 3, D. Company Nayak, SRPF Group No. 3, Jalna issued a letter to respondent No. 3 dated 28.3.2016, thereby giving the proposed details of recovery from the applicant from his monthly salary from the month of March, 2016 till March, 2018 in total 25 monthly installments. First installment of Rs. 2,894/- is shown and other 24 installments are shown to be recovered of Rs. 2,884/-. Accordingly, the respondent No. 3 has recovered total amount of Rs. 72,110/- from monthly salary of the applicant before his retirement. Hence, the present Original Application.

5. Learned counsel for the applicant submits that respondent No. 3 has deducted the amount from monthly salary of the applicant from the month of March, 2016 to March, 2018 and recovered total amount of Rs. 72,110/- without considering the ratio laid down by the Hon'ble Apex Court **State of Punjab and Others Vs. Rafiq Masih (White Washer)**. The applicant belongs to group-C category employee. Recovery is made when the applicant was due for retire within one year. The excess payment has been made for a period in excess of five years, before the order of recovery is issued and same is not permissible.

6. Learned counsel for the applicant submits that, on 05.09.2018 the Director General of Police, Mumbai issued Circular and directed not to recover the amounts of excess payments from the employee as per the directions of the Hon'ble Apex Court in case of **State of Punjab v/s Rafiq Masih** (cited supra). In-spite of specific directions issued by the Director General of Police, the respondent No. 3 has recovered the amount from the applicant.

7. Learned counsel for the applicant submits that, the applicant has submitted applications dated 10.03.2019 and 08.01.2021 to the respondent No. 3 requested therein to refund the amount of Rs. 72,110/- to him as per the directions of the Hon'ble Apex Court and the directions of the Director General of Police, Mumbai. The same are yet not decided by the respondent No. 3.

8. Learned counsel for the applicant submits that the ratio laid down by the Hon'ble Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) reported in 2015(4) SCC 334**, is squarely applicable to the facts and circumstances of the present case. Learned counsel for the applicant submits that respondent No. 3 has recovered the above

said amount from the applicant without giving any opportunity of being heard and without following the directions given by the Hon'ble Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer)** (cited supra). Learned counsel submits that the excess payment has been made to the applicant on account of re-fixation of pay for the period of 01.01.19996 to 31.03.2016 and thus the period is in excess of five years before the order of recovery is issued. Learned counsel submits that the present Original Application deserves to be allowed.

9. Learned counsel for the applicant in order to substantiate his contentions placed his reliance on following cases :-

- (i) O.A. No. 33/2019 (Shaikh Hakim Shaikh Abdulla Vs. The State of Maharashtra and Ors), decided on 24.07.2019.
- (ii) W.P. No. 1217/2024 (Vijay Namdeo Chaudhari Vs. The State of Maharashtra & Ors.), decided on 31.01.2024.
- (iii) W.P. No. 14296/2023 (Gautam Sakharam Mairale Vs. The State of Maharashtra & Ors) & other connected W.Ps., decided on 09.11.2023.
- (iv) W.P. No. 3700/2023 (Shakuntala Pramod Barhate Vs. The State of Maharashtra and Ors) and other connected W.Ps., decided on 31.03.2023.

- (v) O.A. No. 189/2020 (Sanjeev G. Vispute (died) through his LRs. Vs. State of Maharashtra and Ors.), decided on 12.10.2022.
- (vi) W.P. No. 1217/2024 (Vijay Namdeo Chaudhari Vs. The State of Maharashtra and Ors), decided on 31.01.2024.
- (vii) Syed Abdul Qadir and others Vs. State of Bihar and Others, (2009) 3 Supreme Court Cases 475.
- (viii) Jagdish Prasad Singh Vs. State of Maharashtra and Others in Civil Appeal No. 1635/2013, decided on 08.08.2024.
- (ix) Thomas Daniel Vs. State of Kerala and others, 2022 SCC OnLine SC 536.

10. Learned Presenting Officer on basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 submits that respondent No. 2 sought guidance from respondent No. 1 vide its letter dated 09.12.2019 (Annexure R-2) and the same is pending before the respondent No. 1 and respondent No. 1 is the competent authority to take decision on the same. Learned P.O. submits that the recovery was effected as per Rule 132, sub-rule (1)(2)(3)(B) of the Maharashtra Civil Services (Pension) Rules, 1982 and the respondent No. 3 has made recovery by way of preparing recovery statement, thereby mentioning the amount as per the record of respondent No. 3. Learned P.O. submits that as per directions issued by the Accountant General (A&E), Nagpur,

21.06.2018 (Annexure R-3), the recovery has been made and the same is legal, proper and according to the provisions of law. Learned P.O. submits that there is no provision to give an opportunity of hearing before issuing the re-fixation order, as it is not punishment and there is no provision in the MCS (Pay) Rules, 1981.

11. Learned Presenting Officer submit that the applicant has himself also given an undertaking regarding recovery before his retirement and therefore, the judgment delivered by the Hon'ble Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc.** (cited supra) is not applicable to case of the applicant for the reason that the applicant has submitted undertaking dated 06.05.2018 (Annexure R-4) before respondent No. 3., wherein it is specifically undertaken that 'any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies notice subsequently will be refunded by me to the government either by adjustment against future payment due to excess or otherwise.' Learned P.O. submits that the order passed by respondent No. 3 is legal, proper and as per the rules and provisions of law. Learned P.O. submits that there is no



substance in the present Original Application and the same deserves to be dismissed with costs.

12. Learned counsel for the applicant on the basis of rejoinder affidavit submits that the respondent Nos. 1 to 3 in para No. 7 of affidavit in reply submits that the letter is pending before respondent No. 1. However, the same is incorrect. Learned counsel submits that respondent No. 1 has taken the decision and directed to the subordinate authority to revise the pay of the Police Personals as per Rule 11-1-A of MCS (Pay) Rules, 1981 and therefore, now there is no question of recovery. Learned counsel submits that the applicant had not given any undertaking to the respondent authorities for repayment of excess payment at the time of pay fixation and therefore, the so-called undertaking cannot be taken into consideration.

13. Learned counsel for the applicant submits that during pendency of the present Original Application, the respondent No. 2 has issued letter dated 29.1.2021 to respondent No. 1 requesting therein that grade pay of Rs. 2400/- were granted to the Head Constables in the 6<sup>th</sup> Pay Commission and same is increased as per the Govt. Notification dated 19.5.2017 from 2400/- to 2500/-. Learned counsel submits that as per letter

dated 05.03.2015 issued by the Dy. Director of (Pension/pay verification), Directorate, Accounts and Treasuries, Mumbai, the pay of Police Head Constables is revised and they are given the Grade Pay Rs. 2500/- and Special pay of Rs. 500/- and therefore, requested to fix the pay of the Head Constables as per Rule 11 (1) (A) of the M.C.S. (Pay) Rules, 1981 and to give the directions to the Dy. Director of Accounts and Treasuries, Mumbai.

14. Learned counsel for the applicant submits that now the respondent No. 2 has clarified by issuing letter/circular dated 28.3.2022 that, the P.H.C. promoted from the post of Police Naik are entitle for one additional increment and they are entitle for pay fixation as per Rule 11 (1) (A) of the M.C.S. (Pay) Rules, 1981. It is also directed that, the pay fixation done as per the Rule 11 (1) (A) of the M.C.S. (Pay) Rules, 1981 is correct and therefore, the head of the office are directed to re-fix the pay of the employees and same may be verified from the Pay Verification Units. Therefore, the recovery of said benefits of increments from the applicant after retirement cannot be made. Therefore, now the impugned order passed by the respondent no. 3 cannot be taken in to consideration and same needs to be revised in view of the subsequent developments. Learned counsel submits that the

applicant is entitle for grant of benefits one increment as per Rule 11 (1) (A) of the M.C.S. (Pay) Rules, 1981.

15. Learned counsel for the applicant submits that the applicant is entitled for increments, which are already granted to him after the promotion on the post of Police Head Constable. Therefore, in view of the subsequent developments and directions issued by the respondent Nos. 1 and 2, the respondent no. 3 be directed to re-fix the pay of the applicant as per the Rule 11 (1) (A) of the M.C.S. (Pay) Rules, 1981 and refund the amount recovered from the applicant.

16. Learned Presenting Officer on the basis of sur-rejoinder affidavit filed on behalf of respondent Nos. 1 to 3 submits that the Pay Verification Unit, Aurangabad has raised an objection to the pay fixed by the respondents. Learned P.O. submits that when the applicant came to know about the objection raised by Pay Verification Unit, Aurangabad, he himself has filed an application before the authorities for re-fixation of his pay. Learned P.O. submits that the pay of the applicant was fixed as per G.Rs. dated 19.05.2017 on 15.01.2018 and this pay fixation was done according to the recommendation of 6<sup>th</sup> Pay Commission and it can be made applicable to the applicant. It

means that the applicant is not eligible to receive increments granted to him when he was Police Hawaldar before 01.01.2006 i.e. in between 1996 to 2005. Learned P.O. submits that the recovery order passed by the respondent authorities is legal proper and in accordance with the provisions of law and hence, the applicant is not entitled for the relief as claimed in the present Original Application.

17. In view of the ratio laid down by the Hon'ble Apex Court in a case **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc., (2015) 4 Supreme Court Cases 334**, 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. 18 has made the following observations :-

*“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, 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).

18. The applicant belongs to Class-III category. The applicant came to be retired on attaining the age of superannuation on 30.06.2018 and the said recovery has been done before his retirement from monthly salary of the applicant from March 2016 to March 2018. It is also clear from the pleadings that the excess payment has been made on account of re-fixation of pay for the period of 01.01.1996 to 31.03.2016 and thus the period is in excess of five years before the order of recovery is issued. It is also not disputed that neither the applicant is responsible for the said wrong pay fixation nor he has mislead the respondent authorities at any point of time in this regard.

19. So far as the issue of undertaking is concerned, the said so-called undertaking dated 06.05.2018 seems to have been taken before retirement of the applicant and the said undertaking has been given by the applicant after recovery from his monthly salary. Thus no importance can be given to the said undertaking.

20. In the result, the present Original Application deserves to be allowed and the applicant is entitled for refund of the said recovered amount with interest @ 9% p.a. from the actual date of recovery till its realization, in case the amount is not refunded within the period of three months from the date of this order. Hence, the following order:-

**ORDER**

- (i) The Original Application is hereby allowed.
- (ii) The order dated 18.2.2016 issued by the respondent No. 3 to the extent of directing recovery of excess payment from the applicant is hereby quashed and set aside.
- (iii) The respondents are hereby directed to refund the amount of Rs. 72,110/- to the applicant within a period of three months from the date of this order. In case, the amount is not refunded within the said period, thereafter the applicant would be entitled for the interest @ 9% p.a. from the actual date of recovery till its realization.

- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application accordingly disposed of.

**PLACE : Aurangabad.**

**DATE : 19.08.2024**

**(Justice V.K. Jadhav)**

**Member (J)**

**KPB** S.B. O.A. No. 732 of 2021 VKJ Recovery/refund of recovered amount