

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**MISC APPLICATION NO.09 OF 2021
IN
ORIGINAL APPLICATION NO.25 OF 2021
WITH
MISC APPLICATION NO.10 OF 2021
IN
ORIGINAL APPLICATION NO.26 OF 2021**

DISTRICT: THANE

M.A. NO.09 OF 2021 IN O.A. NO.25 OF 2021

Smt Subhadra W. Pawar w/o)
Late Shri Waman Babu Pawar,)
R/o. Sai nagar, Birwadi, Post. Bhatsa Nagar,)
Tal. Shahapur, Dist. Thane.) ... **Applicant**

WITH

M.A. NO.10 OF 2021 IN O.A. NO.26 OF 2021

Shri Suresh Ananda Bachhav)
R/o. Sai nagar, Birwadi, Post. Bhatsa Nagar,)
Tal. Shahapur, Dist. Thane.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through the Secretary,)
Water Resources Department,)
Mantralaya, Mumbai-32.)
- 2) Executive Engineer,)
Bhatsa Dam Maintenance Division,)
Bhatsa Prkalp Wasahat,)
Bhatsa Nagar, Tal. Shahapur, Dist. Thane)
Old Name: Bhatsa Dam Division No.1)
Pin- 421 603.)

- 3) Treasury Officer,)
 Dist. Treasury Office, Court Naka,)
 Collector Office Compound, Thane (W) -400 601.)
- 4) Accountant General (A&E)-I,)
 Maharashtra State, 101, Maharshi Karve Road,)
 Mumbai 400 020.)...**Respondents**

Shri Chandrakant T. Chandratre, learned Advocate for the Applicants.

Shri Ashok J. Chougule, learned Presenting Officer holding for Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : A.P. Kurhekar, Member (J)

DATE : 22.03.2022.

JUDGMENT

1. O.A. No.25/2021 is filed by the Applicant challenging order dated 17.12.2018 whereby treasury officer issued direction to recover excess amount of Rs.1,08,661/- (Rupees One Lakh Eight Thousand Six Hundred and Sixty One Only) from the monthly pension of the Applicant. Since, O.A. is not filed within limitation of one year from the date of impugned order dated 17.12.2018, M.A. is filed for condonation of delay stating that delay is of 3 years and 5 months. In fact there is no such delay of 3 years and 5 months, which will be clarified a little later. During the pendency of O.A. No.25/2021, the Applicant Shri Waman Babu Pawar died and his widow Smt. Subhandra W. Pawar is brought on record.

2. Whereas, O.A. No.26/2021 is filed challenging order dated 18.01.2017 whereby directions were issued by treasury officer to recover excess amount of Rs.1,53,279/- (Rupees One Lakh Fifty Three Thousand Two Hundred and Seventy Nine Only) from monthly pension of the Applicant. Since O.A. is not filed within limitation of one year from the date of impugned order dated 18.01.2017 it is filed along with M.A. stating that delay is 3 years and 4 months and prayed to condone the

delay. In this O.A. also there is no such delay of 3 years and 4 months which will be clarified during discussion.

3. Undisputedly, the Applicant in O.A. No.25/2021 retired on 30.06.2010 as Wireless Machine Operator (Group 'C' employee) and after retirement his pension was fixed Rs.5,560/- per month and accordingly it was being paid. However, later it was revealed that the Applicant was not entitled to special pay and allowance which is given to the Government servants serving in Tribal and Naxalite area. Therefore, treasury officer by order dated 17.12.2018 directed for recovery of Rs.1,08,661/- (Rupees One Lakh Eight Thousand Six Hundred and Sixty One Only) from monthly pension. Earlier pension was fixed at Rs.6,555/- (Rupees Six Thousand Five Hundred and Fifty Five Only) but it was reduced to Rs.5,560/- (Rupees Five Thousand Five Hundred and Sixty Only) and excess amount towards pension which was paid from 01.07.2010 sought to be recovered from monthly pension starting from December 2016 as seen from letter of treasury officer dated 17.12.2018.

4. Whereas, in O.A. No.26/2021 the Applicant stands retired on 31.05.2012 from the post of Light Vehicle Operator (Group 'C' employee). After retirement his pension was fixed at Rs.6,115/- considering his last drawn pay which was fixed by giving additional pay for serving in Tribal and Naxalite area. However, later it was found that the Applicant was not entitled to said special allowance, and therefore his last pay as well as pension was revised. Treasury officer, therefore by letter dated 18.01.2017 directed to recover excess amount of Rs.1,53,279/- (Rupees One Lakh Fifty Three Thousand Two Hundred and Seventy Nine Only) paid to the Applicant from monthly pension of the Applicant.

5. Learned Advocate for the Applicant submits that the Applicants being old retired person were suffering from heart ailments and diabetes, and therefore could not approach the Tribunal immediately and they tried to redress the grievances by making representation to the

Department. He further clarified that he is not challenging revised pension but challenge is to the recovery only and prayed for direction to refund amount already recovered from pension. He has also raised issue of non opportunity of hearing or issuance of notices to the Applicants before making any such recovery from the pension. As regard, impermissibility of recovery from Government servant or pensioners, he placed reliance on the decision of Hon'ble Supreme Court reported in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**.

6. Per Contra, learned P.O. sought to support the impugned action *inter-alia* contending that the Applicants were aware about recovery from pension but did not take any steps within reasonable time, and therefore the ground of illness is not sufficient to condone the delay. According to him there was communication of revised and downgrading pension to the Applicants but they did not choose to approach the Tribunal at the earliest, and therefore in absence of cogent and sufficient ground delay cannot be condoned.

7. During the course of argument, learned Advocate for the Applicant has pointed out that though as per impugned order recovery was to be continued upto month of June, 2021 and April, 2023 respectively. However, entire amount has been recovered from the arrears of 7th Pay Commission in August 2019. This position is not disputed.

8. In view of above, question posed for consideration in given set of facts, can delay be condoned and secondly whether the Applicants are entitled to the refund of amount already recovered from the pension.

9. In first place there is no compliance of Rule 134(a) of Maharashtra Civil Services (Pension) Rules, 1982 which *inter-alia* provides for issuance of notices to the pensioners before deduction of any such amount from pension. The issuance of Show Cause Notice is mandatory

as seen from first proviso of Rule 134(a) of Maharashtra Civil Services (Pension) Rules, 1982. In present case admittedly no such Show Cause Notice was given to the Applicant and directly amount was deducted initially from monthly pension and remaining recovered in lump sum from arrears of 7th Pay Commission paid in August, 2019.

10 True, the Applicants can be said aware about the monthly deduction from pension but they have not approached the Tribunal when the recovery was started. However, fact remains that the Applicants made representation with the Executive Engineer on 21.07.2020 and were pursuing the concerned authorities. There was continuous deduction from pension and lastly recovery was finished in August, 2019. As such, it was the case of continuous wrong and cause of action since in view of deduction, the Applicants were getting less pension. As such, it will have to held that there was continuous and recurring cause of action upto August, 2019. Whereas O.As. are filed on 08.01.2021. Since, lastly the cause of action accrued in August, 2019, O.A. ought to have been filed on or before 30.08.2020. There is no denying that in view of surge of COVID-19 Pandemic situation there was lockdown throughout the country and Hon'ble Supreme Court has passed order for excluding the period of Pandemic situation from the period of limitation. Hon'ble Supreme Court in M.A. No.665/2021 in SMW(C) No.3/2020, Suo-Moto passed order on 08.03.2021, which is as under:-

“In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.”

Later Hon'ble Supreme Court again extended the period and held that while computing the period of limitation for any suit, appeal, application or proceeding period from 15.03.2020 to 02.10.2021 shall stand excluded as seen from the order dated 23.09.2021.

11. In view of above, there is no such delay of 3 years as mentioned in M.A. Delay is much less and it needs to be condoned particularly having regard to the fact that the Applicants are 69 / 70 years old retired employees.

12. As regard, permissibility of excess payment as stated above, Shri C.T. Chandratre, learned Advocate for the Applicants has fairly stated that he is not challenging downgrading of pension and challenge is restricted to the refund amount recovered from the Applicants. Insofar as permissibility of recovery from retired employee is concerned, the issue is no more *res-integra* in view of the decision of Hon'ble Supreme Court in **Rafiq Masih's case (cited supra)**. In Para. 12, Hon'ble Supreme Court has culled out certain situation where recovery from employee is impermissible.

“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 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 belong 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.”

13. Now turning to the facts of present case, admittedly the Applicants stand retired as Group 'C' employee. Excess payment has been made for period of 5 years, secondly recovery is made without giving notices as mandated under Rules 134(a) of M.C.S. (Pension) Rules, 1982. Indeed, recovery from the pension itself was not permissible in view of the decision in **Rafiq Masih's case (cited supra)** but it is recovered high handedly without giving any opportunity of hearing. Suffice to say the Applicants are squarely covered under clause (i) and (iii) of Para 12 of the judgment.

14. Learned Advocate for the Applicants sought to place reliance on the decision of Hon'ble High Court in **Writ Petition No.5367/2016, Ravindra Ramchandra Patil v/s. State of Maharashtra decided on 18.07.2017**. In that case the Applicants stood retired on 31.05.2012 and after retirement sum of Rs.1,02,554/- (One Lakh Two Thousand Five Hundred and Fifty Four Only) was recovered from Gratuity towards excess payment paid during the period of service on account of wrong fixation of pay. The petitioner therein filed Writ Petition in 2016 and Hon'ble High Court allowed the Writ Petition in view of the decision in **Rafiq Masih's case (cited supra)** and issued direction for refund of amount with interest.

15. In the aforesaid discussion, in my considered opinion, delay deserves to be condoned and the Applicants are entitled for refund of the amount recovered from their pension and arrears of 7th Pay Commission. Hence the Order.

ORDER

- A) M.A. and O.A. are allowed.
- B) Impugned order of recovery dated 17.12.2018 and 18.01.2017 are quashed and set aside.
- C) Respondents are directed to refund sum of Rs.1,08,661/- (Rupees One Lakh Eight Thousand Six Hundred and Sixty One Only) to the Applicant in O.A. No.25/2021 and

shall refund sum of Rs.1,53,279/- (Rupees One Lakh Fifty Three Thousand Two Hundred and Seventy Nine Only) to the Applicant in O.A. No.26/2021 within a month from today.

D) No order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 22.03.2022
Dictation taken by: N.M. Naik.

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