

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO. 176 OF 2019
(SUBJECT : RECOVERY)

DISTRICT : PUNE

Shri Husen Suleman Inamdar)
Aged 59 yrs, Occu.: Retired,)
R/at At Post Ghodegaon, Taluka Ambegaon,)
Dist. – Pune.)

....Applicant

Versus

1. The Conservator of Forest,)
(Wild Life) Van Bhavan, 3rd Floor,)
Pune-4110163.)
2. The Accountant General (I) Maharashtra,)
101 Maharshi Karve Road,)
Mumbai – 400 021.)
3. The Treasury Officer, Collector Office)
Compound, Pune – 411 001.)

...Respondents.

Appearance : Shri V. V. Joshi, Advocate for the
Applicant
Smt. Archana B. K., learned Presenting
Officer for the Respondents

Date : 16.04.2019

CORAM : SHRI A. P. KURHEKAR , MEMBER (J)

J U D G M E N T

1. In the present Original Application, the Applicant has challenged the recovery of Rs.2,91, 868/- from gratuity and pension invoking the jurisdiction of this Tribunal u/s 19 of the Administrative Tribunal Act.

2. Shortly stated facts giving rise to the O.A. are as follows:-

The Applicant was appointed as Watchman in 1977 and stands retired on 31.07.2018 from the post of Forest Guard, Class-IV category. After retirement, it was noticed by the department that sum of Rs.2,91,868/- was paid in excess

during the period from 2006 to 31.01.2018. Therefore, the Respondent No.1 by impugned order dated 04.10.2018 directed for recovery of Rs.2,91,868/- from gratuity as well as pension of the Applicant. Accordingly his entire gratuity of Rs.2,14,005/- was adjusted towards excess payment and remaining amount of Rs.77,863/- has been recovered from his pension. The Applicant has therefore, approached this Tribunal challenging the impugned order of recovery and for refund of amount of Rs.2,91,868/-.

3. The Respondent No.1 has filed Affidavit-in-Reply *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondent No.1 sought to justify the recovery contending that as excess payment was found made to the Applicant, it has been rightly recovered from the gratuity and pension.

4. Heard Shri V.V. Joshi, learned Advocate for the Applicant and Ms N. G. Gohad, learned Presenting Officer for the Respondents.

5. Admittedly, sum of Rs.2,91,868/- has been recovered from the Applicant from his gratuity and pension after his retirement.

6. In so far as the recovery from retiral benefits is concerned, this issue is no more *res-integra* in view of the judgment in *Civil Appeal No.11527/2014 (State of Punjab and others Vs. Rafiq Masih (White Washer))*, decided on 18th December, 2014 wherein the Hon'ble Apex Court has summarized the situation where recovery from the employee would be impermissible in law. Here it would be apposite to reproduce Para No.12 of the Judgment, which reads as follows:-

"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, summarise 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 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."

7. In the present case, the recovery was made on account of excess payment paid to the Applicant from 01.04.2006 to 31.01.2018. The department has committed mistake while fixing pay and allowances from the Applicant which resulted in excess payment of Rs.2,91,868/-. No fraud or malafide is attributed to the Applicant and it was due to sheer mistake of the department, the excess payment has been made. This being the position, the present case is squarely covered by Clause Nos.(iii) and (iv) of the *Rafiq Masih's case* (cited supra).

8. The learned Advocate for the Applicant further placed reliance on the Judgment of Hon'ble High Court in *Writ Petition No.1010/2015 (Grace George Pamoorickal Vs. Municipal Corporation of Gr. Mumbai and Ors.)* decided on 20.04.2018 wherein placing reliance on the Judgment of Hon'ble Apex Court in *Rafiq Masih's case*, the recovery after retirement of the employee is held not permissible in law and accordingly, the order of recovery has been quashed. Suffice to say, the recovery from retirement benefits, if the case falls within the parameters laid down by Hon'ble Apex Court in *Rafiq Masih's case* (cited supra) is not permissible in law. The matter in hand fall within Clauses (1) and (3) of Para 12 of the Judgment in *Rafiq Masih's case*.

9. The necessary corollary of aforesaid discussion leads me to sum-up that the Original Application deserves to be allowed and the Applicant is entitled to the refund of Rs.2,91,868/-. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondents are directed to refund the amount of Rs.2,91,868/- within two months from today, failing which, amount shall carry interest @9% p.a. till the actual payment.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai

Date : 16.04.2019

Dictation taken by : V. S. Mane

E:\VSD\2019\Order and Judgments\April 19\O.A. 176-19.docx

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

Original Application No.

of 20

DISTRICT

..... Applicant/s

(Advocate

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
---	-------------------

Date : .16.04.2019.

O.A.No.176 of 2019

H. S. Inamdar

....Applicant

Versus

The State of Maharashtra & Ors.

..Respondents.

1. Heard Shri V.V. Joshi, learned Advocate for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.
2. Today, the learned P.O. for the Respondents has filed reply on behalf of the Respondent No.1. It is taken on record.
3. Arguments are heard.
4. The matter is disposed of by way of judgment.

Sd/-

(A.P. Kurhekar)
Member(J)

vsm