

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 781 OF 2015

DIST. : AHMEDNAGAR

Dattatraya s/o Namdeo Avhad,
Aged 60 years, Occu. Retired Govt. Servant,
R/o Dnyaneshwar Nagar, Nr. Baijabai Society,
Pipeline Road, Sawedi, Dist. Ahmednagar. --

APPLICANT

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
Mantralaya, Mumbai 400 001.
2. The Assistant Accountant General,
Sr. Accounts Officer,
Mantralaya, Mumbai 400 001.
3. The Superintendent of Police,
Office of Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.
4. The Treasury Officer /
Pay & Accounts Officer,
Ahmednagar, Dist. Ahmednagar.--

RESPONDENTS

APPEARANCE : Shri Vijay R. Autade, learned Advocate for
the applicant.

: Smt. Sanjivani Deshmukh Ghate, learned
Presenting Officer for respondents.

**CORAM : HON'BLE SHRI J. D. KULKARNI,
MEMBER (J)**

DATE :- 11.11.2016

J U D G M E N T

1. The applicant has challenged the impugned order of recovery, whereby an amount of Rs. 73,311/- has been recovered from the D.C.R.G. on the allegation that the said amount was overpaid to the applicant because of wrong fixation of pay. The applicant has claimed that the said order is illegal, arbitrary, irrational and violative of principles of natural justice. The applicant has also claimed that the res. nos. 2, 3 & 4 be directed to repay the deducted amount to him along with interest. The applicant has further claimed that the order of revised pay fixation and the recovery of excess payment passed by the res. no. 3 on 2.6.2013 be quashed and set aside and also to declare that the verification of his pay fixation as per the recommendations of 6th Pay Commission carried out by the Pay Verification Unit, Nasik as null and void.

2. The applicant was appointed as a Police Constable on 1.8.1977 and thereafter in due course he was promoted as a Assistant Police Sub Inspector. On 31.5.2013, the applicant got retired from the post of Assistant P.S.I. after serving 36 years in the Police Department. At the time of retirement, the applicant was deputed at Police Control Room at Ahmednagar.

3. On 3.3.2014, the res. no. 3 issued the order, whereby an amount of Rs. 73,311 has been recovered from the applicant without giving him any opportunity.

4. The res. no. 3 resisted the claim of the applicant and denied that the order of recovery is illegal. It is stated that the service record of the applicant was submitted to the Pay Verification Unit, Nashik for pay verification as the applicant was due to retire on superannuation on 31.5.2013. The said Pay Verification Unit raised an objection on 18.1.2013 and in view of that objection the revised pay fixation order was issued on 2.6.2013. It was noticed that an amount of Rs. 73,311/- was overpaid to the applicant and hence, same was recovered. The res. no. 3 has justified the recovery made from the applicant and has made submission as under :-

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Applicant was deputed at Police Control Room and applicant retired on 31.5.2013 as Assistant P.S.I. Before that as applicant was going to retire from service, his service sheet was send to Pay Verification Unit, Nasik for verification on 3.7.2012. The Pay Verification Unit, Nasik sent back the service sheet of applicant on 18.1.2013 by raising the objection that the pay fixation needs to

be verified. Accordingly, Pay Verification Unit Nasik submitted their report and in which pay scale of applicant was fixed from 1.6.2006 as Rs. 9490/- and from the date of increment i. e. from 1.7.2006 as Rs. 9850/-. Again the service sheet of applicant was send back by Pay Verification Unit, Nasik on 18.5.2013 by raising the same objection. Hence by making the compliance about the objections, on 2.6.2013 the service sheet of applicant was sent back to Pay Verification Unit, Nasik for verification. As approved service sheet was not returned to respondent office, reminder letters were given on 6.8.2013 & on 28.8.2013 to Pay Verification Unit, Nasik. In spite of reminder letter as the service sheet of applicant was not sent, a letter by hand was sent on 22.10.2013. After that on 23.10.2013 approved service sheet of applicant was received by the respondent.

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Respondent further submits that the pension department submits the proposal to A.G. Mumbai for pension on the basis of pay Scale fixed by the Pay Verification Unit, Nasik. This report is not at all challenged by the applicant. Now it is admitted fact that applicant is getting the excess pay. Applicant is challenging the recovery only on the ground that opportunity is not given to him which is only a technical aspect. As per 132 (2) of

***Maharashtra Civil Services (Pension) Rules 1982,
Respondent has every right to recover the excess
amount from the pension of applicant.***

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5. Heard Shri Vijay R. Autade, learned Advocate for the applicant and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for respondents. I have also perused the affidavit, affidavit in reply and various documents placed on record by the respective parties.

6. The only material point to be considered in this O.A. is whether the pay fixation of the applicant, in view of the objection raised by the Pay Verification Unit, Nashik, is legal and proper and whether the recovery of excess amount is legal and proper ?

7. Admittedly, the respondents are recovering the amount on the ground that same has been paid in excess due to wrong pay fixation. The applicant has not placed on record any material to show that the objection raised by the Pay Verification Unit was wrong or illegal or with mala-fide intention and, therefore, there is no merits in the contention of the applicant that re-fixation of pay of the applicant was improper. The only question, therefore,

remains as to whether the recovery of excess amount is legal and proper ?

8. Perusal of the order of revised pay fixation shows that the Pay Verification Unit has verified the fixation of pay of the applicant from time to time. This seems to be from 1.1.1996 till 11.4.2013. Admittedly the applicant has got retired on superannuation on 31.5.2016 and the recovery has been made after retirement of the applicant. Admittedly no show cause notice was issued to the applicant before passing the recovery order. Admittedly, the applicant was not responsible for getting the pay fixed from time to time. There is nothing on the record to show that the revision of the pay scale from time to time was at the instance of the applicant. Admittedly, applicant is Group – C employee. In such circumstances, the recovery of the entire amount after retirement of the applicant that too without giving any opportunity to him to explain as to why the amount shall not be recovered from him, is illegal.

9. The learned Advocate for the applicant has placed reliance on the judgment reported at **(2009) 3 SCC 475 {SYED ABDUL QADIR AND OTHERS VS. STATE OF BIHAR AND OTHERS}**, wherein it has been held that generally recovery has been prohibited by the Courts where there was no misrepresentation or

fraud on employee's part and excess payment has been made by applying a wrong principle or wrong interpretation of a rule / order.

10. Recently The Hon'ble Apex Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No. 11527 of 2014 (arising out of SLP (C) No. 11684 of 2012)** has observed in para 12 as under:-

“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.***

- (ii) Recovery from retired 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."***

11. In view of above discussion, it will be clear that the objection raised by the Pay Verification Unit, Nashik may be true, but the recovery of the so called amount, after retirement on superannuation of a Class – III employee, is not legal and proper. Hence, I pass following order :-

ORDER

- (i) The Original Application is partly allowed.

- (ii) The order dated 2.6.2013 issued by the res. no. 3 (Annex. A-2.2) as regards recovery of excess payment amounting to Rs. 73,311/- only is quashed and set aside.
- (iii) The respondents are directed to refund the amount of Rs. 73,311/- to the applicant, which is already recovered from his D.C.R.G. amount.
- (iv) The said amount of Rs. 73,311/- shall be refunded to the applicant within a period of one month from the date of this order.
- (v) If the said amount is not refunded to the applicant within one month, then the applicant will be entitled to claim interest as per admissible rules thereon from the date of its recovery till the date of actual repayment.

There shall be no order as to costs.

MEMBER (J)