

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 292 OF 2019
(Subject – Refund of Excess Amount)**

DISTRICT : AURANGABAD

Shri Jagdish Bhaskarrao Dabhade,)
Age : 59 years, Occu. : Pensioner,)
R/o : Namantar Colony, Hudco,)
N-12, Aurangabad)
Tq. & Dist. Aurangabad.)

.. **APPLICANT**

V E R S U S

1) The State of Maharashtra,)
Through its Principal Secretary,)
School Education Department,)
Mantralaya, Mumbai-32.)

2) The Divisional Deputy Director)
of Education, Aurangabad)
Division, Aurangabad.)

3) The Education Officer (C.E.))
Zilla Parishad, Aurangabad,)
Tq. & Dist. Aurangabad.)

.. **RESPONDENTS**

APPEARANCE : Shri P.B. Salunke, learned Advocate holding
for Shri V.G. Salgare, Learned Advocate for the
applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
Presenting Officer for the respondents.

CORAM : **B.P. PATIL, ACTING CHAIRMAN.**

RESERVED ON : **28.11.2019.**

PRONOUNCED ON : **30.11.2019.**

ORDER

1. By filing the present Original Application the applicant has approached this Tribunal for issuing directions to the respondent Nos. 2 and 3 to refund the amount of Rs. 2,26,143/- recovered from his retiral benefits.

2. The applicant was initially appointed on the post of Supervisor in the Adult Education Office, District Beed in the pay scale of Rs. 335-680 by an order dated 18.06.1986. Thereafter, he was regularized on the said post. The applicant was serving as Supervisor in the office of the respondent No. 3, Education Officer (C.E.) Zilla Parishad, Aurangabad. He retired on 31.10.2018 on attaining the age of superannuation from the said post.

3. As per the recommendation of 4th Pay Commission, pay scale of Rs. 1200-2040 was granted to the post of Supervisor. The applicant was granted Senior Grade of Rs. 1400-2600 and thereafter from 01.01.1996 he was granted senior pay grade of Rs. 4500-7000. Thereafter, revised senior grade pay scale of Rs. 5000-8000 was granted to the applicant as per Vth Pay Commission by order dated 24.02.2005 issued by the respondent

No. 2 viz. Divisional Deputy Director of Education, Aurangabad. Thereafter, again revised senior grade of Rs. 5500-9000 instead of Rs. 5000-8000 was given to the applicant after completion of 12 years' service on the post of Supervisor by order dated 26.06.2008 issued by the respondent No. 2, Deputy Director of Education, Aurangabad Division, Aurangabad. His pay was fixed in the senior grade pay having pay scale of Rs. 5500-9000 by the order dated 30.07.2008 issued by respondent No. 3. As per the recommendation of the 6th Pay Commission, pay band of Rs. 9300-34800 with grade pay of Rs. 4400 was granted to the applicant.

4. At the time of retirement of the applicant his service record was submitted to the Pay Verification Unit. The Pay Verification Unit has raised objection and held that the applicant was entitled to get pay scale of Rs. 5000-8000 in the senior pay scale but he was wrongly granted pay scale of Rs. 5500-9000 by an order dated 26.06.2008. On the basis of objection raised by the Pay Verification Unit, the respondent No. 3, the Education Officer (C.E.), Zilla Parishad, Aurangabad revised the pay scale of the applicant and directed to recover the amount of Rs. 2,26,143/- from the pensionary benefits of the applicant and the said amount has been recovered from the gratuity amount of the

applicant. It is contention of the applicant that he was not responsible for the wrong pay fixation made by the respondents. He had not played any role in getting the said pay scale. He has contended that he had never practiced fraud on the respondents or misrepresented them in getting the pay scale of Rs. 5500-9000, to which he was not entitled. Therefore, he cannot be blamed. It is his contention that due to the mistake committed by the respondents, excess payment was made to him and, therefore, he cannot be held responsible for the same. It is his contention that the amount of Rs. 2,26,143/- has been paid to him in excess due to wrong pay fixation done by the respondents on their own accord, to which he is not entitled and the said amount has been recovered from the pensionary benefits of the applicant. Such act on the part of the respondents is illegal and impermissible in view of the guidelines given by the Hon'ble Apex Court in 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)** decided on 18.12.2014 [**2015 (4) SCC 334**]. Therefore, he approached this Tribunal and claimed refund of the said amount recovered from his pensionary benefits by the respondents.

5. Respondent Nos. 1 & 2 have filed affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the applicant was confirmed in the post of Supervisor. They have admitted that the applicant has been retired on 31.10.2018 on attaining the age of superannuation from the post of Supervisor. It is their contention that the applicant was entitled to get senior grade pay in the pay scale of Rs. 5,000-8,000, but wrongly his pay has been fixed in the pay scale of Rs. 5,500-9,000 and, therefore, excess payment has been made to him. It is their contention that after retirement the said fact has been noticed by the respondent No. 3 when Pay Verification Unit raised objection in that regard. The mistake has been corrected by the respondent No. 3 and accordingly the pay of the applicant has been re-fixed in the pay scale of Rs. 5,000-8,000 and, therefore, excess amount of Rs. 2,26,143/- paid to the applicant has been recovered from the pensionary benefits of the applicant. It is their contention that the applicant has given undertaking at the time of getting pension and undertook to refund the excess amount if any paid to him. It is their contention that in view of the Circular dated 29.04.2009, the applicant is liable to repay the excess payment made to him and, accordingly, they recovered the said amount from the

pensionary benefits of the applicant. It is their contention that there is no illegality in the impugned order. Therefore, they prayed to dismiss the present Original Application.

6. It is their further contention that the applicant was bound by undertaking and in view of the undertaking given by him the said recovery has been made and this is legal in view of the decision rendered by the Hon'ble Supreme Court in case of High Court of Punjab & Haryana Vs. Jagdev Singh decided on 29.07.2016 (Civil Appeal No. 3500/2006). Therefore, they justified the impugned order and prayed to reject the present Original Application.

7. I heard Shri P.B. Salunke, learned Advocate holding for Shri V.G. Salgare, learned Advocate for the applicant and Smt. Sanjivani Deshmukh-Ghate, learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed on behalf of respondent Nos. 1 & 2. I have also perused the documents placed by both the parties.

8. Admittedly, the applicant was initially appointed on the post of Supervisor in the Adult Education Office, District Beed in the pay scale of Rs. 335-680 by an order dated 18.06.1986. His services were confirmed in the said post. Admittedly, the

applicant was serving as Supervisor in the office of the respondent No. 3, Education Officer (C.E.) Zilla Parishad, Aurangabad. As per the recommendation of 4th Pay Commission, pay scale of Rs. 1200-2040 was granted to him. Thereafter, he was granted senior grade pay of Rs. 1400-2600 and from 01.01.1996 he was granted senior pay grade of Rs. 4500-7000. Thereafter, revised senior grade of Rs. 5000-8000 was granted to the applicant as per the recommendation of 5th Pay Commission. The respondent No. 2 thereafter granted revised senior grade pay scale of Rs. 5500-9000 to the applicant after completion of 12 years' service on the post of Supervisor by order dated 26.06.2008.

9. Thereafter, as per the recommendation of the 6th Pay Commission, pay band of Rs. 9300-34800 with grade pay of Rs. 4400 was granted to the applicant. Admittedly, the applicant was retired on 31.10.2018 on attaining the age of superannuation from the post of Supervisor. At the time of his retirement the service record was submitted to the Pay Verification Unit. The Pay Verification Unit has raised objection regarding grant of senior pay scale in the pay scale of Rs. 5,500 - 9,000 instead of pay scale of Rs. 5,000-8,000. On the basis of the objection raised by the Pay Verification Unit, the respondent

No. 3, the Education Officer (C.E.), Zilla Parishad, Aurangabad re-fixed the pay of the applicant and directed recovery of Rs. 2,26,143/- from the pensionary benefits of the applicant. Accordingly, the amount of Rs. 2,26,143/- has been recovered from the gratuity amount of the applicant by the respondents .

10. Learned Advocate for the applicant has submitted that wrong pay scale has been given to the applicant in the pay scale of Rs. 5,500-9,000 instead of Rs. 5,000-8,000 and, therefore, excess amount has been paid to him. He has submitted that the applicant has never misrepresented the respondents in getting the senior pay scale of Rs. 5500-9000. He has submitted that the applicant never practiced fraud on the respondents in getting the excess payment. The pay of the applicant in the pay scale of Rs. 5,500-9,000 has been fixed by the respondents and, therefore, the excess payment has been made to the applicant. Therefore, the applicant cannot be blamed for the mistake committed by the respondents. He has submitted that after retirement of the applicant the excess payment made to the applicant due to wrong pay fixation in the tune of Rs. 2,26,143/- has been recovered from the gratuity amount of the applicant. He has submitted that the applicant was serving on the post of Supervisor at the time of retirement. The post of Supervisor falls

under group 'C' category. The recovery made from the pensionary benefits of the applicant after his retirement is against the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer)** (supra). He has submitted that such type of recovery from the pensionary benefits of the applicant after his retirement is not permissible, but the respondents have illegally recovered the amount of Rs. 2,26,143/- from the pensionary benefits of the applicant. Therefore, he has prayed to allow the present Original Application and direct the respondents to refund the amount of Rs. 2,26,143/- recovered from the pensionary benefits of the applicant.

11. Learned Advocate for the applicant has further submitted that this Tribunal has already dealt with the similar issue involved in case of similarly placed person in case of **Shri Bhikaji Dhondiba Gadekar Vs. the State of Maharashtra and others decided on 14.03.2019 [O.A. No. 791/2017]** and granted similar relief to the applicant therein. He has submitted that the present case of the applicant is squarely covered by the above cited decision. Therefore, he has prayed to allow the present Original Application.

12. Learned Presenting Officer for the respondents has submitted that the applicant was serving as Supervisor. On completion of his 12 years' service in the cadre of Supervisor, he was granted benefit of time bound promotion scheme and the pay scale of promotional post has been granted to him. She has submitted that the pay scale of promotional post was Rs. 5000-8000 in view of the recommendation of 5th Pay Commission, but the respondents had wrongly granted him pay scale of Rs. 5500-9000 by the order dated 30.07.2008. Because of wrong fixation of pay, the excess payment was made to the applicant during the period from 18.06.1998 onwards. She has submitted that excess payment was made to the applicant due to wrong fixation of pay. She has submitted that the said mistake committed by the respondents has been noticed by the Pay Verification Unit, when the service record of the applicant has been sent to the Pay Verification Unit for verification at the time of his retirement. The Pay Verification Unit raised objection in that regard. Therefore, the respondents had re-fixed the pay of the applicant and directed recovery of Rs. 2,26,143/- from the pensionary benefits of the applicant. On the basis of the said order the amount of Rs. 2,26,143/- has been recovered from the pensionary benefits of the applicant. She has submitted that

there is no illegality in the impugned order directing the recovery from the pensionary benefits of the applicant as the applicant had given undertaking while processing his pension case and undertook to refund the excess amount if any paid to him. She has submitted that the applicant is bound by the undertaking and, therefore, there is no illegality in the recovery made by the respondents. In support of her submissions, she has placed reliance on the judgment delivered by the Hon'ble Supreme Court in case of **BRIJESH KUMAR AND OTHERS VS. STATE OF HARYANA AND OTHERS [SPECIAL LEAVE PETITION (CIVIL) NOS. 6609-6613 OF 2014** decided on 24th March, 2014. She has also placed reliance on the Circular dated 29.04.2009 in that regard. She has submitted that recovery has been made as per the Circular dated 29.04.2009 and there is not illegality in the impugned order. Therefore, she supported the action on the part of the respondents recovering the excess amount from the pensionary benefits of the applicant and prayed to reject the present Original Application.

13. On perusal of the record, it reveals that on completion of 12 years' continuous service of the applicant he was granted benefit under time bound promotion scheme. On granting said benefit, the applicant was entitled to get pay scale of promotional post as

per the recommendation of 5th Pay Commission w.e.f. 24.02.2005. The pay scale of promotional post was Rs. 5000-8000 but the respondents have wrongly granted senior pay scale of Rs. 5,500-9,000 to the applicant. Because of the wrong pay fixation excess payment was made to the applicant. The said mistake has been noticed by the Pay Verification Unit when the service record has been sent to it for verification of pay. On the basis of the objection raised by the Pay Verification Unit, the respondent No. 3 re-fixed the pay of the applicant and directed recovery of Rs. 2,26,143/- from the pensionary benefits of the applicant. The record shows that the respondents committed mistake in fixing the pay of the applicant and because of the wrong pay fixation made by the respondents excess payment was made to the applicant. There was no misrepresentation or fraud practiced by the applicant while getting the said pay. Therefore, the applicant cannot be blamed for it. The applicant retired w.e.f. 31.10.2018 on attaining the age of superannuation from the post of Supervisor. The post of Supervisor falls under the Group 'C' category. The amount of Rs. 2,26,143/- has been recovered from the pensionary benefits of the applicant after his retirement. Such type of recovery from the applicant from his pensionary benefits that too after his retirement is impermissible

in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc. (supra), wherein** it has been observed 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, 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.”

14. The case of the applicant is squarely covered by the principles laid down by the Hon'ble Apex Court in the above cited decision. The recovery of excess amount from the pensionary benefits of the applicant, who is Group 'C' employee after his

retirement, is illegal. Therefore, the applicant is entitled to get refund of the said amount. Not only this, but the case of the applicant is squarely covered by the order and judgment delivered by this Tribunal in O.A. No. 791/2017 decided on 14.03.2019 [Shri Bhikaji Dhondiba Gadekar Vs. the State of Maharashtra and others]. The issue involved in the instant case and issue involved in the aforesaid decision is similar. In view of the principles laid down in the above cited decision also the applicant is entitled to get refund of the amount recovered from his pensionary benefits.

15. There is nothing on record to show that the applicant undertook to refund the excess amount paid to him and the said undertaking had been given by the applicant at the time of fixing his pay in the pay band of Rs. 5,500-9,000. In the absence of the document or documentary evidence, the contention of the respondents in that regard cannot be accepted. Therefore, the decision of the Hon'ble Apex Court in case of **BRIJESH KUMAR AND OTHERS VS. STATE OF HARYANA AND OTHERS** (supra) is not much helpful to the respondents in this case. Therefore, I find no substance in the submission advanced by the learned Presenting Officer for the respondents in that regard.

16. The respondents have recovered the amount of Rs. 2,26,143/- from the pensionary benefits of the applicant after his retirement. The said recovery is impermissible in view of the Hon'ble Apex Court in case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc. (supra)**. Therefore, the applicant is entitled to get refund of the said amount by allowing the present Original Application.

17. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The respondents are directed to refund the amount of Rs. 2,26,143/- to the applicant within three months from the date of this order, failing which the amount shall carry interest @ 9% p.a. from the date of this order till its realization.

There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

PLACE : AURANGABAD.

DATE : 30.11.2019.