

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1009 OF 2018

DISTRICT : PUNE

Shri Ashok Mahadev Bharate.)
Deputy Commissioner of Police (Retd.))
R/at : 402, Pratik Apartment, Swanand)
Society, Galli No.1, Sahakar Nagar No.2,)
Pune – 411 009.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner.)
State Intelligence Department (SID),)
M.S, Old Council Hall, 2nd Floor,)
Colaba, Mumbai – 400 001.)
3. The Accountant General-I,)
101, Old CEO Building, Maharshi)
Karve Road, Mumbai – 400 020.)...**Respondents**

Mr. A.R. Joshi, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 07.10.2019

JUDGMENT

1. The Applicant has challenged the impugned order dated 15.05.2018 for recovery of Rs.1,97,949/- paid to him as excess Pay and Allowances from his gratuity and other retiral benefits invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as under:-

The Applicant stands retired from the post of Deputy Commissioner of Police on 31.10.2017. After his retirement, it was noticed that during the period from 01.06.2007 to 31.10.2017, the excess payment of Rs.1,97,949/- was made to him, to which he was not entitled. The Applicant himself by his letter dated 08.12.2017 requested Respondent No.2 – Commissioner, State Intelligence Department to release retiral benefits stating that if excess payment is found made to him, he undertakes to deposit the same. Later, the Respondent No.2 issued impugned order dated 15.05.2018 issuing direction for recovery of excess payment of Rs.1,97,949/- paid to him during the period from 01.06.2007 to 31.10.2017 from gratuity or other retiral benefits of the Applicant. The Applicant has challenged this communication dated 15.05.2018 contending that the recovery is not permissible after retirement in view of the decision of Hon'ble Supreme Court in **AIR 2015 SC 696 (State of Punjab Vs. Rafiq Masih (White Washer))**. He contends that the excess payment was made due to mistake on the part of Department and no fraud or misrepresentation is attributable to him. As regard letter/undertaking dated 08.12.2017, he submits that it was given under compelling circumstances. It is invalid and the same cannot be acted upon. With this pleading, the Applicant prayed to quash the impugned order dated 15.05.2018.

3. The Respondents resisted the application by filing Affidavit-in-reply inter-alia denying that the recovery of Rs.1,97,949/- by impugned communication dated 15.05.2018 suffers from any illegality. The Respondents sought to justify the impugned action contending that the Applicant is Group 'A' Officer and he himself had given undertaking by letter dated 08.12.2017 stating that if excess payment is found, he will deposit the same. As such, on verification of Service Book, the sum of Rs.1,97,949/- was found paid in excess during the period from 01.06.2007 to 31.10.2017 and in view of undertaking given by Applicant himself, the recovery is sought from his retiral benefits. With this pleading, the Respondents prayed to dismiss the O.A.

4. Shri A.R. Joshi, learned Advocate for the Applicant submits that even if the Applicant is Group 'A' Officer, the situation is covered by the decision of Hon'ble Supreme Court in **Rafiq Masih's** case, particularly Para 12(ii) of the Judgment, which *inter-alia* provides that the recovery from retired employees or employees who are due to retire within one year of order of recovery is not permissible. As regard undertaking dated 08.12.2017, he submits that it was given under duress, as the Applicant's retiral benefits were withheld by the authorities, and therefore, in compelling situation, he had submitted undertaking. He, therefore, canvassed that it cannot be acted upon particularly in the light of decision of Hon'ble Supreme Court in **Rafiq Masih's** case.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that the Applicant being Group 'A' Officer and in view of undertaking submitted by him, the decision of Hon'ble Supreme Court in **Rafiq Masih's** case is not applicable and the situation is squarely covered by the subsequent Judgment of Hon'ble Supreme Court in **Civil Appeal No.3500/2006 (High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh) decided on 29.07.2016.**

6. As such, the issue posed for consideration is whether the action of recovery from the Applicant who is Group 'A' Officer is permissible in view of undertaking submitted by him. There is no denying that the Applicant's stand retired from the post of Deputy Commissioner of Police, which is Group 'A' post on 31.10.2017. It is also not in dispute that the recovery sought pertain to the excess payment made to the Applicant due to wrong fixation of pay during the period from 01.06.2007 to 31.10.2017. Besides, there is no denying that the Applicant himself submits undertaking on 08.12.2017 stating that he undertakes to deposit the excess payment, if found made while in service.

7. The issue of recovery of excess payment made to the employees without having any fraud or mistake on their part has been considered by Hon'ble Supreme Court in **Rafiq Masih's** case and held that it would be iniquitous and harsh to recover excess payment after a long period. The Hon'ble Supreme Court held that while it is not possible to postulate all situations of hardships where payments have mistakenly made to the employee, in following situations, the recovery would be impermissible in law (as held in Para No.12 of the Judgment), which is 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 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."*

8. True, as pointed out by the learned Advocate for the Applicant that the benefit of decision is also extendable not only to Group 'C' and Group 'D' employees and recovery is impermissible from the retired employees or employees who are due to retire within one year of the order of recovery irrespective of Group or Cadre of the employee, as contemplated in Para 12(ii) of the decision, as reproduced above.

9. However, in the present case, admittedly, the Applicant himself has given undertaking on 08.12.2017, which is at Page No.17 of O.A. Its' contents are as follows :-

“विषय :- अतिप्रदान झालेली रक्कमेबाबत.

उपरोक्त विषयास अनुसरून नम्र विनंती करतो की, मी अशोक महादेव भरते सेवानिवृत्त, उप आयुक्त, या पदावरून दि.३१/१०/२०१७ रोजी राज्य गुप्तवार्ता विभाग, मुख्यालय, मुंबई येथून नियत वयोमानानुसार सेवानिवृत्त झालो आहे. सबब क्र.रागुवि/आस्था-१/उप आ भरते/सुधारीत-वेनि/२०१७-५१८६ दि.१४/११/२०१७ अन्वये सुधारीत वेतननिश्चीती करण्यात आली होती. सेवापुस्तकातील सध्याच्या (तफावत झालेल्या / चुकिच्या) नोंदवलेल्या वेतनवाढीचे अवलोकन केले असता, दि.०१/०६/२००७ पासून दि.३०/१०/२०१७ पर्यंत वेतनाची रक्कम अतिप्रदान झालेली आहे.

तसेच अतिप्रदानाची रक्कम गणना करण्यासाठी माझ्या पूर्वीच्या कार्यालयाकडून आपण माहिती मागविली असल्याने अतिप्रदानाची रक्कम निश्चित झाल्यानंतर सदर रक्कम शासन जमा करण्याची मी हमी देत आहे.

तरी माझ्या सेवानिवृत्तीचे प्रकरण मा.महालेखापाल-१, मुंबई यांना सादर करावे जेणेकरून माझे निवृत्तीवेतनासाठी प्रतीक्षा करावी लागणार नाही, ही विनंती.”

10. As such, the Applicant at his own volition voluntarily submitted an undertaking though after retirement. It is on his undertaking, the recovery is sought. Thus, where the Applicant who belongs to Group 'A' cadre undertakes to deposit excess payment found against him and thereby acknowledged the right of Government to recover the

same, in such situation, he is estopped from turning around and to contend contrary to the undertaking given by him. He is Group 'A' Officer and consciously submitted an undertaking knowing fully well its import as well as effect. In other words, he acquiesced to the right of Respondents to recover the excess payment made to him.

11. The learned P.O. rightly referred to the decision of Hon'ble High Court in **Jagdev Singh's** case (cited supra) wherein the issue was of recovery of excess payment from Group 'A' Officer in view of his undertaking. The Hon'ble Supreme Court in **Jagdev Singh's** case considered its earlier decision in **Rafiq Masih's** case and held that in view of undertaking given by Group 'A' Officer, the action of recovery cannot be faulted with and he is bound by the undertaking. Para No.11 of the Judgment is material, which is as follows :-

“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

12. True, in **Jagdev Singh's** case, undertaking was given when he opted for revised pay scale that he would be liable to refund any excess payment made to him, as pointed out by the learned Advocate for the Applicant. Whereas, in the present case, the undertaking in question is given by the Applicant on 08.12.2017 i.e. after retirement when his pension papers were in process. I am not in agreement with the submission advanced by the learned Advocate for the Applicant that there being no undertaking at the initial stage when the excess payment was made, the decision in **Jagdev Singh's** case is not attracted. In my considered opinion, even if undertaking is given by the Applicant at later stage, he is bound by the undertaking. The Applicant consciously submitted an undertaking and there is nothing to show that it was submitted in duress or distress or by coercion.

The Applicant is senior retired Police Officer of Group 'A', who is not supposed to submit an undertaking in duress or without knowing its contents or its implications. Thus, where a person gives an undertaking knowing fully aware and the same is acted upon by the Government, then the Applicant cannot be allowed to resile from the undertaking and the principle of estoppel is attracted.

13. This is not a case where it could be said that the recovery of sum of Rs.1,97,949/- from Group 'A' Officer would be said harsh or arbitrary or iniquitous to such an extent as would far outweigh equitable balance of Respondents' right to recover. Indeed, the very foundation of the decision of Hon'ble Supreme Court in **Rafiq Masih's** case is based on the principle that the recovery of excess payment from the employees after a long period from their retiral dues would be equitable and inequitable. Whereas in the present case, the Applicant himself consciously furnished an undertaking and acquiesced the right of Respondents to recover the amount. The excess payment was made to him mistakenly to which he was not entitled and the situation is covered by the subsequent decision of Hon'ble Supreme Court in **Jagdev Singh's** case.

14. Shri Joshi, learned Advocate for the Applicant referred to the decision passed by this Tribunal in **O.A.No.1102.2015 (Syed M. Hashmi Vs. Govt. of Maharashtra & Ors.) decided on 14.06.2016**, wherein the recovery of amount wrongly paid was quashed in the light of decision in **Rafiq Masih's** case. In that case, there was no issue of undertaking, and therefore, this Judgment is of little assistance to the Applicant.

15. Similar is the situation about the decision in **O.A.No.79/2017 (Babusha G. Tambe Vs. The Special Inspector General of Police) decided on 23.03.2018**. In that case also, there was no undertaking, and therefore, in view of Judgment in **Rafiq Masih's**

case, recovery was quashed. Whereas, the decision in **O.A.820/2016 (Dilip M. Diwane Vs. The Accounts Officer & Ors.) decided on 13.06.2017** not relate to Group 'A' employee and the same is also of no assistance to the Applicant.

16. The totality of aforesaid discussion leads me to conclude that in view of undertaking submitted by the Applicant, he cannot challenge the impugned action of recovery and order dated 15.05.2018 cannot be faulted with. I, therefore, see no merit in the O.A. and it deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

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

Mumbai
Date : 07.10.2019
Dictation taken by :
S.K. Wamanse.