

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1232 OF 2022

**DISTRICT : SOLAPUR
SUBJECT : RECOVERY**

Shri Isak Kashim Attar,)
Aged: 59 years, Occ : Retired,)
R/at At. Post, Tadwal, Tal, Akalkoat, Dist.)
Solapur.)... **Applicant**

Versus

- 1) The Govt. of Maharashtra, through)
The Secretary (Revenue), Revenue)
& Forest Dept. Mantralaya, Mumbai)
400 032.)
- 2) The Collector, Solapur, Siddheshwar)
Peth, Solapur 413 001.)
- 3) Tahsildar, Akkalkot, Siddheshwar)
Peth, Solapur - 413 001.)
- 4) Accountant General (A & E)-I, M.S.)
101, Maharashi Karve Road,)
Mumbai 400 020.)...**Respondents**

Shri C. T. Chandratre, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

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

DATE : 23.03.2023

JUDGMENT

1. The Applicant has challenged the order dated 26.04.2022 issued by the Respondent No.3- Tahsildar, Akkalkot thereby seeking recovery of Rs.1,74,923/- from his retirement benefits and also sought direction to

Respondents to disburse his retiral benefits invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Following are the facts giving rise to the Original Application :-

The Applicant was working as Circle Officer (Group-C) employee on the establishment of Respondent No.2 - Collector, Solapur. He stands retired on attaining the age of superannuation on 31.05.2022. He contends that at the time of retirement, there was neither departmental proceeding nor criminal prosecution pending or instituted against him. On 26.04.2022, the Respondent No.3 - Tahsildar, Akkalkot issued order to the effect that there was neither D.E. nor criminal prosecution pending against him but ordered for recovery of Rs.1,74,923/- paid to him towards excess pay and allowances from his gratuity which is under challenge in the present O.A.

3. Heard Shri C.T. Chandratre, learned Counsel for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

4. In Affidavit in Reply, the Respondents all that sought to contend that D.E. was initiated alleging certain dereliction in duties by issuance of charge sheet dated 10.01.2023 and sum of Rs.1,74,923/- was found paid to him in excess from 2004. These are the reasons for not releasing remaining retirement dues. The GPF and GIS is already paid.

5. In view of submissions and pleadings, the question posed for consideration is whether subsequent initiation of D.E. by charge sheet dated 10.01.2023 could be the ground to withhold regular pension, gratuity and leave encashment.

6. True, in terms of Section 130(1) (c) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules, 1982)', no gratuity shall be paid until the conclusion of departmental or judicial proceedings and issue of final orders thereon. In present case, admittedly, the charge sheet was issued on 10.01.2023 whereas the Applicant stands retired on 31.05.2022. As such, on the date of

retirement, there was no initiation of D.E. against the Applicant. Indeed, the Tahsildar, Akkalkot in order dated 26.04.2022 itself certified that neither there was any initiation of D.E. nor criminal prosecution was pending against the Applicant. It is only in case of initiation of D.E. before retirement, final regular pension and gratuity can be withheld. In that event, a Government servant is entitled to provisional pension till the conclusion of departmental or judicial proceeding as clarified in Rule 130 of 'Pension Rules, 1982'. Rule 130 of 'Pension Rules, 1982' needs to be read along with Rule 27 of 'Pension, Rules 1982'. As per this provision, if the departmental proceedings are instituted while Government servant was in service, it has to be continued after retirement of a Government servant and shall be deemed to be proceedings under this Rule. Whereas as per Rule 27(6) of 'Pension Rules, 1982', the departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to Government servant or pensioner.

7. Whereas in present case, admittedly, the charge sheet has been issued on 10.01.2023 though the Applicant stands retired on 31.05.2022. Learned P.O. also fairly concedes that there was no initiation of D.E. before retirement of the Applicant. This being so, the withholding of regular pension and gratuity as well as leave encashment is totally impermissible.

8. True, in terms of Rule 27 (2)(b) of 'Pension Rules, 1982', the departmental proceedings, if not instituted while a Government servant was in service, it can be instituted with the sanction of appointing authority and it shall not be in respect of any event which took place more than four years before such institution. In present case, though the D.E. is initiated on 10.01.2023, in law, its scope is very limited. If a Government servant is found guilty, the Government is empowered to withhold or withdraw pension as deems fit as provided under Rule 27(1) of 'Pension, Rules 1982'. As such, at this stage, the Respondents cannot

withhold gratuity, regular pension and leave encashment. Once the Government servant stands retired without there being any initiation of judicial proceeding or departmental proceeding, his right to receive retiral benefits stands crystalized and such rights cannot be kept in abeyance on the ground of initiation of D.E. after retirement.

9. Insofar as the issue of recovery of Rs.1,74,923/- is concerned, it was sought to be recovered because of excess payment made to the Applicant from 2004. The excess payment was made to the Applicant by the Department mistakenly without there being any fault or misrepresentation by the Applicant. This being so, the recovery is not at all permissible after retirement from retiral benefits in view of the decision of the Hon'ble Supreme Court in **Civil Appeal NO.11527/2014 {State of Maharashtra & Others Vs. Rafiq Masih (White Washer)}**, decided on 18th December, 2014.

10. The issue of recovery of excess payment made to Government servant during their service period and it's impermissibility is no more *res-integra* in view of the decision in **Rafiq Masih's** case (cited supra). The Hon'ble Supreme Court has culled out certain situations wherein recovery is held impermissible. Para No.12 of the judgment is as held 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, 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."*

11. The totality of the aforesaid discussion leads me to sum up that recovery of Rs.1,74,923/- is totally bad in law and liable to be quashed. The Respondents are also liable to release regular pension, gratuity and leave encashment to the Applicant as per his entitlement in rules. Hence, the following order:-

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 26.04.2022 to the extent of recovery of Rs.1,74,923/- is quashed and set aside.
- (C) The Respondents are directed to release regular pension, gratuity and leave encashment to the Applicant within two months from today, failing to which, the amount shall carry interest at the rate 8% per annum from the date of default till the date of actual payment.
- (D) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 23.03.2023
Dictation taken by: Vaishali S.Mane
D:\VSM\VSO\2023\ORder & Judgment\March\Recovery\O.A.1232 of 2022.doc

