

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.359 OF 2022

DISTRICT : PUNE

Shri Ramchandra Krishna Tanpure.)
Age : 67 Yrs, Occu. : Retired,)
R/at Flat No.30, Behind Saibaba Mandir,)
S.No.63, Kharadi, Chandan Nagar,)
Lane No.3, Pune – 411 014.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Commissioner of Police,)
Near G.P.O, Sadhu Vaswani Road,)
Pune – 411 001.)
2. The Accountant General,)
(Accounts & Entitlements)-I,)
Old CGO Building, 101, Maharshi)
Karve Road, Mumbai – 400 021.)...**Respondents**

Smt. Savita Suryawanshi, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 11.11.2022

JUDGMENT

1. The Applicant has filed the present Original Application challenging the communication dated 28.02.2022 thereby seeking recovery of excess payment of Rs.1,00,700/- in 20 instalments starting from February, 2022 upto September, 2003 with last instalment of Rs.700/- from his pension and further sought direction to refund the

amount of Rs.15,000/- recovered in pursuance of the said communication.

2. The Applicant stands retired from the post of Police Sub-Inspector on 30.05.2013. On retirement, his monthly pension was fixed at the rate of Rs.9,120/- per month. However, he availed 40% commutation of pension. He was paid sum of Rs.3,66,449/- towards commutation which was to be recovered in 15 years by monthly deduction of Rs.3,648/- from his regular pension. However, mistakenly, instead of deduction of 3,648/- p.m. Rs.2,648/- p.m. was deducted towards commutation. As such, for the period from 10.09.2013 to 31.01.2022, sum of Rs.1,00,700/- was less deducted. When Respondent No.3 – Treasury Officer, Pune noticed it, he called the Applicant in the Office and that time, Applicant allegedly consented to deduct amount of Rs.1,00,700/- in monthly installments of Rs.5,000/- in 20 installments. Accordingly, Respondent No.3 – Treasury Officer passed order which was received by the Applicant in person on 04.03.2022. It is in pursuance of the order dated 28.02.2022, the Respondents started recovery of Rs.5,000/- p.m. and till date, recovered Rs.15,000/-.

3. It is on this background, the Applicant has filed the present O.A. on 19.04.2022 challenging the communication dated 28.02.2022 and also sought direction to refund Rs.15,000/- already recovered from pension *inter-alia* contending that recover is impermissible in view of decision of Hon'ble Supreme Court in **(2015) 2 SCC (L & S) 33 [State of Punjab & Ors. Vs. Rafiq Masih & Ors.]**.

4. Shri S.T. Suryawanshi, learned Advocate for the Applicant sought to assail the impugned communication dated 28.02.2022 placing reliance on the decision of Hon'ble Supreme Court in **Rafiq Masih's** case. She further sought to contend that Applicant never gave consent, as Respondent No.4 alleged in communication dated 28.02.2022. As regard impermissibility of recovery of excess payment from pensioner, a

reference is also made to the decision of Hon'ble Bombay High Court delivered in **Writ Petition No.1192/2021 (Prasad Sohoni Vs. Treasury Officer, Thane) on 12.01.2022.**

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer pointed out that indisputably, excess payment of Rs.1,00,700/- has been made to the Applicant inadvertently and Applicant consented for recovery of the same in monthly installment of Rs.5,000/- and it is on his request, recovery is made in installments. She has further emphasized that the Undertaking has been given by the Applicant at the time of retirement (Page Nos. 56 and 57 of Paper Book) in which on Affidavit stated that where in case of excess payment is made, he will refund the same to the Government.

6. Now, issue posed for consideration is whether amount of recovery of excess payment can be interdicted.

7. True, Hon'ble Supreme Court in **Rafiq Masih's** case carved out 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. Indisputably, Applicant availed commutation pension amount of Rs.3,66,449/- which was to be deducted at the rate of Rs.3,648/- p.m. But instead of it, deduction was made at the rate of Rs.2,648/- p.m. mistakenly. Therefore, recovery of the said amount of Rs.1,00,700/- in 20 installments is sought by the impugned order.

9. No doubt, there was no fraud or misrepresentation attributed to the Applicant and it was sheerly due to mistake of the Department less amount was deducted from the pension. In **Rafiq Masih's** case, Hon'ble Supreme Court carved out exception where recovery would be impermissible considering hardship likely to be caused to retired Government servant. Hon'ble Supreme Court observed that where recovery would be iniquitous or harsh or arbitrary to such an extent as would far outweighed the equitable balance of the employees' right to recover, it is not permissible. In other words, to strike equitable balance in certain situation, recovery is held impermissible. This relief is granted not because of any right of employee, but it is granted in equity exercising judicial discretion.

10. Notably, in the present case, the Applicant has given Undertaking at the time of retirement stating on Affidavit that if any excess payment is made to him, he would refund the same to Government. This Undertaking is given specifically in reference to pension order whereby commutation and pension is granted to him. As such, once Applicant has given Undertaking on Affidavit to refund the excess amount, he cannot be allowed to contend that recovery is impermissible or iniquitous. This is statutory Undertaking requires to be given by pensioner, as seen from Undertaking at Page No.56 of Paper Book.

11. Apart, as specifically noted in impugned order dated 28.02.2022, the Applicant had also consented of recovery in monthly installment of Rs.5,000/-. The perusal of order dated 28.02.2022 (Page No.55 of P.B.) reveals that the said order was acknowledged by the Applicant on

04.03.2022. That time, he did not raise any grievance about the contents of order dated 28.02.2022 wherein there is specific reference of the request and consent given by the Applicant for deduction in monthly installment of Rs.5,000/-. However, later by filing this O.A, he sought to challenge the recovery.

12. It is thus explicit from the record that Applicant has given statutory Undertaking in terms of Treasury Rules at the time of retirement, thereby taking responsibility of excess payment if any and agreed to repay the same to the Government, if an excess payment is found made to him and in addition to it, he has also given consent to recover the same in monthly installment of Rs.5,000/-. Therefore, now Applicant cannot be allowed to resile from statutory Undertaking given by him as well as consent for deduction in monthly installments of Rs.5,000/-.

13. In **Rafiq Masih's** case, there was no such issue of Undertaking given by the employer. Therefore, in my considered opinion, the decision of Hon'ble Supreme Court in **Rafiq Masih's** case is of no assistance to him in the facts and circumstances of the present case.

14. Indeed, subsequent to decision in **Rafiq Masih's** case, Hon'ble Supreme Court in **Civil Appeal No.3500 of 2006 [High Court of Punjab and Haryana Vs. Jagdev Singh]** upheld the action of recovery in view of Undertaking given by the Respondent Jagdev Singh. Hon'ble Supreme Court held that the proposition laid down in **Rafiq Masih's** case would not apply where Government servant is put on notice that any payment found to have been made in excess, would be required to be refund and Government servant is bound by Undertaking. The Judgment of Hon'ble Supreme Court in **Jagdev Singh's** case is thus squarely attracted to the present situation. Only because Applicant is retired from Group 'C' employee, that hardly make any difference in view of his statutory Undertaking.

15. Reliance placed by learned Advocate for the Applicant on the decision of Hon'ble High Court in **Prasad Sohoni's** case (cited supra) is misplaced since in that case also, there was no Undertaking of the employee. Hon'ble High Court quashed the recovery and directed to refund the excess amount already recovered in the light of decision of Hon'ble Supreme Court in **Rafiq Masih's** case. As such, in my considered opinion, the Judgment of Hon'ble Supreme Court in **Prasad Sohoni's** case is clearly distinguishable and is of no assistance to the Applicant.

16. The learned Advocate for the Applicant further made reference to the decision of Hon'ble High Court in **Writ Petition No.7154 of 2019 [State of Maharashtra Vs. Mrs. Rekha Dubey & Ors.] decided on 24.09.2021**. In that case, the decision of the Tribunal quashing recovery was challenged. The issue of Undertaking was also raised before Hon'ble High Court. However, Hon'ble High Court in Para No.9 held that the learned Counsel for the Government was not able to show that the original Applicants gave declaration/undertaking in pursuance of the statutory rules and not having shown so, the contention raised by the Government on the basis of Judgment in **Jagdev Singh's** case was rejected. Hon'ble High Court, however, made it clear that the question as to whether **Jagdev Singh's** case would apply to cases of Class-III (Group 'C') employees who by giving declaration/undertaking to refund any sum received in excess of their entitlement is kept open.

17. Whereas in the present case, as stated above, the Applicant has given statutory Undertaking as required under the Treasury Rules at the time of retirement in reference to pension order that he would refund any sum received in excess of his entitlement. The Applicant has, admittedly, paid excess amount than his entitlement. He had already received commutation amount which was to be deducted monthly at the rate of Rs.3,648/-, but actually deducted at the rate of Rs.2,648/- entailing excess payment that is nothing but wrongful enrichment.

Suffice to say, the Applicant though not entitled has pocketed tax payers amount in excess of his entitlement.

18. At this juncture, it would be apposite to refer recent decision of Hon'ble High Court in **Writ Petition No.3480/2020 [Akram Khan Vs. Zilla Parishad, Jalgaon & Anr.] decided on 15.09.2021**, wherein taking note of importance of Undertaking and to facilitate the recovery, directions were issued to take Undertakings from the employees that they would refund excess amount, if subsequently found to have been paid in excess. Para Nos.9 and 10 of the Judgment is material, which is as under :-

“9. Before parting with this matter, we deem it appropriate to record that we are coming across such cases practically everyday. Most of the cases are in connection with the various zilla parishads and Stste instrumentalities. In most of the cases, there is no undertaking executed by the beneficiary. We cannot ignore the fact that in such cases, the employee, though disentitled, has pocketed the tax payers amount.

10. We, therefore, deem it appropriate to direct the Chief Secretary of the State of Maharashtra to issue appropriate directions to all the departments of the State Government and local authorities/bodies, to mandate executing of undertakings from employees, who would be beneficiaries of pay fixation or calculations of increments or any similar calculations with regard to monetary benefits. It shall be stated in such undertakings that they would refund excess amounts if subsequently found to have been paid in excess. This would be in the interest of the State Exchequer and would also control excess payments which cannot be recovered subsequently. The Chief Secretary shall consider the judgment delivered by the Hon'ble Apex Court in Jagdev Singh (supra), wherein Hon'ble Apex Court has concluded that if an undertaking is executed by such a beneficiary at the time of receiving monetary benefits, he would be liable to repay the said amount to the employer.”

19. In compliance of the direction given by the Hon'ble High Court, the Government through Finance Department accordingly issued Circular dated 07.10.2022 for taking Undertakings from the employees. As such, the purport of the decision of Hon'ble High Court in Writ Petition No.3480/2020 is that where Undertaking is given by the employee, the recovery cannot be interdicted.

20. The totality of aforesaid discussion, thus, leads me to conclude that in view of Undertaking as well as consent given by the Applicant, the challenge to the order of recovery is devoid of merit. The question of issuance of Show Cause Notice prior to recovery does not survive in view of Applicant's Undertaking as well as consent. Therefore, the submission advanced by the learned Advocate for the Applicant that recovery order is bad for want of prior notice holds no water. Hence, the order.

ORDER

- (A) The Original Application stands dismissed.
- (B) Interim relief stands vacated.
- (C) No order as to costs.

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

Mumbai
Date : 11.11.2022
Dictation taken by :
S.K. Wamanse.

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