

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 152 OF 2021

(Subject:- Recovery)

DISTRICT:-BEED

Vishnu S/o Suryabhan Misal,)
Age : 58 years, Occ: Retired)
as Head Constable,)
R/o. House no. 24, Limba Ganesh)
Cop. Society, Charatha, Beed,)
Tq. & Dist. Beed.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra**)
Through: the Secretary,)
Home Department,)
Mantralaya, Mumbai- 32.)
2. **The Director General of Police,**)
Old Vidhan Bhavan,)
Shahid Bhagatsing Marg, Kulaba,)
Mumbai-39.)
3. **The Superintendent of Police,**)
Beed.)
4. **The Accountant General –II,**)
Civil Lines, Nagpur.) **RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, learned Counsel
for the applicant.

: Shri A.P. Basarkar, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

DATED : **29.02.2024.**

ORAL-ORDER

Heard Shri K.B. Jadhav, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application the applicant is seeking quashing and setting aside the order dated 17/23.02.2021 issued by the respondent No.3 to the extent of directing recovery of excess payment from the applicant.

3. Learned counsel for the applicant submits that the applicant was initially appointed as a Constable on 15.02.1988 and posted in the office of respondents. He was granted Time Bound Promotional Pay Scale by order dated 08.05.2000. Thereafter, in the year 2008 he came to be transferred in the office of Anti-Corruption Bureau, Beed. He was promoted as Head Constable by order dated 27.01.2012. The applicant retired from the service on 30.09.2020 on attaining the age of superannuation from the post of Head Constable from the office of respondent No.3. Learned counsel for the applicant submits that the post of Head Constable comes under the Group- C/Class-III category.

4. Learned counsel for the applicant submits that the pension case of the applicant was submitted before the respondent No.4 by the respondent No.3 and the respondent No.4 has sanctioned the pension case of the applicant by P.P.O. dated 29.12.2020. The office of respondent No.3 has issued No Dues Certificate dated 14.01.2021 to the Treasury Officer, Beed with the direction to pay the regular pension to the applicant. The respondents have paid the retirement benefits to the applicant and he is getting the regular pension.

5. Learned counsel for the applicant submits that the respondent No.3 has issued impugned order dated 17/23/02.2021 for fixation of his pay and revised/refixed the pay scale of the applicant w.e.f. 01.07.2010 to 01.07.2020 and directed to recover the excess payment from the applicant which was paid to the applicant due to wrong fixation of scale/increments during the said period.

6. Learned counsel for the applicant submits that the Director General of Police, Mumbai has issued circular dated 05.09.2018 directing therein not to recover the amounts of

excess payments from the employees as per the directions of the Hon'ble Apex court in the case of **State of Punjab & Ors. Vs. Rafiq Masih, in Civil Appeal No.11527/2014 decided on 18.12.2014.** In spite of the said specific directions, the respondent No.3 was recovering the amount from the applicant which has been stayed by this Tribunal by passing the interim order after filing the Original Application.

7. Learned counsel for the applicant submits that even though the excess amount allegedly paid to the applicant for the period of 01.07.2010 to 01.07.2020, the undertaking has been taken from the applicant not at the time of pay fixation (wrong pay fixation as claimed by the department), but taken on 13.11.2017. Learned counsel for the applicant submits that in view of the observations made by the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad by order dated 09.11.2023 in **Writ Peittion No. 14296 of 2023** and other connected matters therein, such an undertaking will not have the same sanctity as that of an undertaking executed when the payment of revised pay scale had commenced.

8. Learned counsel for the applicant submits that the ratio laid down by the Hon'ble Apex Court in a case of **State of Punjab & Ors. Vs. Rafiq Masih** (*supra*) is squarely applicable to the facts and circumstances of the present case. The said recovery of excess amount of Rs. 2,47,435/- is impermissible. Learned counsel for the applicant submits that this Original Application deserves to be allowed.

9. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 submits that the respondent No.3 has issued the revised pay fixation order of the applicant dated 23.02.2021 which is in accordance with law. The said revised order has been issued as per the directions issued by the Accountant General, Nagpur vide order dated 29.12.2020. Further, due and drawn statement copy was also sent to the applicant separately on 23.02.2021.

10. Learned P.O. submits that in terms of the revised pay fixation as stated above, the action about the recovery of excess amount paid to the applicant is necessary. The applicant has also given undertaking while his pay fixation order was issued that if the excess amount is paid to the applicant, he shall refund the said amount to the

Government. Annexure 'R-3' is the copy of the aforesaid undertaking.

11. Learned P.O. on the basis of affidavit in reply filed by respondent No.4 submits that after receiving the pension papers of the applicant on his retirement on superannuation on 30.09.2020, the office of respondent No.4 has done the scrutiny of the proposal and also verified the pay fixation done by the department upon his promotion from Police Naik to Police Hawaldar on 27.01.2012. It is suspected to be incorrect. The pensionary benefits were released by the office of respondent No.4 on 29.12.2020, however, while issuing the said authorities, the office of respondent No.4 inserted a caution to check the pay regulation. Accordingly, the pension sanctioning authority has re-examined the same by their order dated 23.02.2021 and accordingly, directed recovery of excess payment from the applicant. Learned P.O. submits that there is no substance in the Original Application and the same is liable to be rejected.

12. The Hon'ble Apex Court in a case **State of Punjab & Ors. Vs. Rafiq Masih, in Civil Appeal No.11527/2014** **decided on 18.12.2014** in paragraph No. 12 has

summarized few conditions wherein the recovery from the employees is impermissible. The said paragraph No. 12 of the judgment is reproduced herein 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.

(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.”

13. In the instant case the applicant is retired Class-III employee and after his retirement on 30.09.2020, on 17/23.02.2021 the pay fixation was done and accordingly, the recovery of excess amount has been done. The said excess payment has been allegedly paid to the applicant w.e.f. 01.07.2010 to 01.07.2020 which exceeds the period of 5 years. In view of the same, condition as elaborated in paragraph No. 12 of the aforesaid case of **State of Punjab & Ors. Vs. Rafiq Masih** (*supra*) is squarely applies to the facts and circumstances of the present case and as such recovery from the applicant by impugned order dated 17/23.02.2021 is impermissible.

14. So far as the issue of undertaking filed by the applicant is concerned, on perusal of Annexure 'R-3' it appears that the said undertaking has been given on 13.11.2017. In a case **Gautam Sakharam Mairale Vs. the State of Maharashtra & Ors.** in **Writ Petition No. 14296 of 2023** and other connected matters the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad by order dated 09.11.2023 in the identical facts of the case in paragraph Nos. 5 & 6 has made the following observation.

“5. In some cases, at the stroke of retirement, a condition was imposed that they should execute an undertaking and it is in these circumstances that an undertaking has been extracted. The learned Advocate representing the Zilla Parishad as well as the learned A.C.Ps., submit that, once an undertaking is executed, the case of the Petitioners would be covered by the law laid down by the Hon’ble Supreme Court in the case of **High Court of Punjab and Haryana and others Vs. Jagdev Singh, 2016 AIR (SCW) 3523**. Reliance is placed on the judgment delivered by this Court on 1.9.2021, in **Writ Petition No. 13262 of 2018 filed by Ananda Vikram Baviskar Vs. State of Maharashtra and others**.

6. We have referred to the law laid down by the Hon’ble Supreme Court in High court of Punjab and Haryana and others Vs. Jagdev Singh (supra). The record reveals that no undertaking was taken from these Petitioners when the pay scale were revised. An undertaking from some of them was taken at the stroke of their retirement. An undertaking has to be taken from the candidate when the revised pay scale is made applicable to him and the payment of such pay scale commences. At the stroke of superannuation of the said employee, asking him to tender an undertaking, practically amounts to an afterthought on the part of the employer and a mode of compelling the candidate to execute an undertaking since they are apprehensive that their retiral benefits would not be released until such undertaking is executed. Such an undertaking will not have the same sanctity as that of an undertaking executed when the payment of revised pay scale had commenced. We, therefore, respectively concluded that the view taken in High Court of Punjab and Haryana and others Vs. Jagdev Singh (Supra) would not be applicable to the case of these petitioners, more so since the recovery is initiated after their superannuation.”

15. In view of the aforesaid observations made by the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad, the undertaking given in the instance case by the applicant much after his payment of revised pay scale has commenced, will not have the same sanctity

16 In view of above, this Original Application deserves to be allowed. Hence, the following order:-

ORDER

The Original Application No. 152 of 2021 is hereby allowed with the following terms:-

- (A) The order dated 17/23.02.2021 issued by the respondent No.3 to the extent of directing recovery of excess payment from the applicant is hereby quashed and set aside.
- (B) In the circumstances there shall be no order as to costs.
- (C) The Original Application stands disposed of in aforesaid terms.

MEMBER (J)

Place:-Aurangabad

Date : 29.02.2024

SAS O.A. 152/2021 (S.B.) VKJ Recovery.