

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,

BENCH AT AURANGABAD.

OA Nos.287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299 & 300 ALL OF 2016.

(N.N. Andhale & Ors. Vs. The State of Maharashtra & Ors.)

CORAM : HON'BLE SHRI J. D KULKARNI, MEMBER (J).

DATE : 14.09.2016.

COMMON ORDER

1. Applicants in these Original Applications were serving on various posts as mentioned in the following chart and they got retired on superannuation on the dates mentioned in the chart. After their retirement the pension papers were sent to the competent authority and as per the objections taken by the Pay Verification Unit, their pay scales were revised and in view of the said revision of pay various amounts have been recovered from them. The said recovery orders are challenged in this Original Applications.

2. The chart giving details of the post, date of retirement, amount recovered and the date of impugned order in respect of various applicants in the various O.As. are as under :-

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Sr. No.	O.A.Nos.	Name of the applicant.	Post	Date of order of recovery	Amount Recover-ed. (Rs.)	Date of order of revised pay.	Date of superannuation.
1)	287/16	Shri N.N. Andhale	Asstt./Teacher/Asstt. Project Officer	10.07.12	1,35,437/-	5.7.12	30.6.12
2)	288/16	Shri M.V. Kadam	Asstt. Project Officer	Exh.A-5	2,30,751/	23.9.12	31.8.12
3)	289/16	Shri M.W. Ghodekar	Asstt. Teacher	16.7.13	1,45,414/	27.10.12	30.9.13
4)	290/16	Shri S.K. Ambhire	Asstt. Project Officer	Annex. A-5	2,78,423/-	18.9.12	30.4.11
5)	291/16	Shri K.B. Londhe	Asstt. Project Officer	Annex. A-4	1,71,868/	Nil, Page-18	30.6.10
6)	292/16	Shri P.V. Chavan	Asstt. Project Officer	26.11.12	1,83,159/	18.9.12	28.2.10
7)	293/16	M.U. Waghmare	Asstt. Teacher	5.2.13	1,49,121/	13.9.12	31.7.10
8)	294/16	Shri H.N. Bhole	Asstt. Project Officer	24.12.12	1,67,332/	18.9.12	30.6.11
9)	295/16	S.R. Malge	Asstt. Project Officer	28.12.12	3,02,004/-	18.9.12	30.6.10
10)	296/16	V.M. Surwase	Asstt. Project Officer	23.5.13	1,88,351/-	Nil	30.6.11
11)	297/16	S.G. Gandale	Asstt. Project Officer	20.11.13 , 4.10.13	1,66,397/-	Nil	31.10.10
12)	298/16	G.D. Pawal	Supervisor	31.1.13 Page Nos. 21 & 22	1,73,040/-	25.4.12	30.6.10
13)	299/16	B.C. Patil	Asstt. Project Officer	6.2.13	1,73,040/-	25.4.12	31.5.10

14)	300/16	S.N. Jadhav	Asstt. Project Officer	Nil	2,11,210/-	28.5.12	30.6.11
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3. According to the applicants the excess amount recovered from their retirement gratuity is in contravention of the judgment delivered by Hon'ble Apex Court in the case of **State of Punjab V/s Rafiq Masih** in **Civil Appeal No.11527/2014** decided on 18.12.2014.

4. The Respondents by filing reply affidavits in various O.As. have justified the recovery. It is submitted that in the Govt. Circular dated 29.4.2009 clause No.15.6, it was clearly mentioned that the excess amount will be recovered if paid due to wrong pay fixation.

5. Heard Shri A.D. Gadekar, learned Advocate for the applicants in all these matters and Shri M.S. Mahajan – learned Chief Presenting Officer for the respondents in all these matters. Shri B.S. Mundhe – learned Advocate for respondent No. 3 (**absent**) in O.A. No. 288/2016. I have also perused the application, affidavit in reply so also the various documents placed on record.

6. The only material point is to be considered is whether the applicants' cases are covered by the judgment delivered by Hon'ble Apex Court in **Civil Appeal No.11527/2014 arising out of SLP (C) No.11684 of 2012 & ors.** in the matter of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.**

7. The Hon'ble Apex Court in the aforesaid case has considered various aspects as regards recovery of the amount from the employees. Hon'ble the Apex Court in para 12 of the said judgment observed 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 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.”

8. Perusal of the various impugned orders clearly show that, the pay scale of the applicants were revised vide various pay fixation orders and the period covered under such order is from 1989 or so till passing of such orders. All the pay fixation orders have been passed after the retirement of the applicants. There is no dispute that the applicants are Group "C" employees and have retired long back and there is nothing on the record to show that the applicants were responsible for such wrong pay fixation. In fact, the applicants have played no role in such wrong pay fixation and therefore, the order of recovery of excess amount is absolutely illegal in view of the judgment delivered by the Hon'ble Apex Court as cited supra.

9. The learned Chief Presenting Officer submits that in some cases opportunity to explain as to why the recovery shall not be made due to wrong pay fixation as provided under Rule 134-A of the M.C.S. Pension Rule, 1982 was given and therefore, the recovery is legal.

10. It seems that, in some cases the amount was refunded in view of the order passed by the Tribunal wherein Respondents were to give an opportunity to the applicants to explain as to why the amount shall not be recovered, but in view of the directions of the Hon'ble Apex Court even for the sake of argument it is accepted that, such opportunity was given if the recovery comes within the purview of impermissible recovery

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as held by the Hon'ble Apex Court in the case cited supra, the same can not be recovered. Hence the following orders.

ORDER

- i) All the Original Applications are allowed.
- ii) The Respondents are directed to refund the amount recovered from the applicants after their superannuation vide impugned orders, if not refunded to them.
- iii) In case the amount is refunded the Respondents shall not recover the same again from the applicants.
- iv) No order as to costs.

MEMBER (J).

O.A.NOS.287 to 300 of 2016(hdd)-2016