MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 321/2021 (S.B.)

Dr. Naresh S/o Ganpatrao Tirpude,
Aged about 63 years,
Occ. Service, R/o Dean's Bunglow, Boys and Girls Hostel,
Near B.G.W. Hospital, Civil Lines,
Gondia.

Applicant.

Versus

1) The State of Maharashtra,
Through it's Secretary,
Medical Education and Drugs Department,
9th Floor, G.T. Hospital Campus Building,
New Mantralaya, Mumbai- 400 001.

2) Director of Medical Education and Research,
Government Dental College and Hospital Building,
4th Floor, St. Georges Hospital Compound,
P.D.'Mello Road, Fort,
Mumbai-440 001.

3) Dean,
Government Medical College,
Nagpur.

4) Dean,
Swami Ramananda Tirtha Rural Government Medical College,
Ambejogai, District Beed.

Respondents

Shri N.D.Thombre, ld. Advocate for the applicant.

Shri M.I.Khan, ld. P.O. for the respondents.

Coram :- **Hon'ble Shri M.A.Lovekar, Member (J).**

JUDGMENT

Judgment is reserved on 21st June, 2024.

Judgment is pronounced on 26th June, 2024.

Heard Shri N.D.Thombre, ld. counsel for the applicant and Shri M.I.Khan, ld. P.O. for the Respondents.

2. The applicant was Professor of Anaesthesiology from 04.12.2007 to 06.06.2011 on the establishment of respondent no. 4. He stood retired on superannuation on 31.12.2021. By the impugned order dated 25.02.2021 (A-2) respondent no. 4 intimated respondent no. 3 that an amount of Rs. 7,63,727/- was to be recovered from the applicant towards excess payment of non-practising allowance for the period from 04.12.2007 to 06.06.2011. According to the applicant, the impugned order, being contrary to law laid down by the Hon'ble Bombay High Court and the Hon'ble Supreme Court, cannot be sustained. Hence, this Original Application.

3. Respondents 1 to 3 have resisted the O.A. on the following grounds:-

A. Clause 15.6 of Circular dated 29.04.2009 (A-R-I) issued by Finance Department of Government of Maharashtra lays down as under:-

15.6 In the absence of pre-check there is likelihood of the arrears being wrongly calculated resulting in over-payment which might have to be recovered subsequently. The Drawing and Disbursing officers should make it clear to the Government servants under them, while crediting the arrears in Provident Fund Account that the credits are being made subject to adjustment of any amounts due from them subsequently in the light of discrepancies noticed later. For this purpose every employee will be required to give an undertaking in the proforma given in Annexure II in writing, while receiving first salary in the revised pay structure or thereafter to the effect that any excess credit that may be found to have been made as a result of fixation of pay will be refunded by him to Government, either by adjustment against future payment or otherwise.

Accordingly, the applicant had given an undertaking on 01.12.2009 (A-R-II).

B. The proposed recovery is in consonance with Rules 132 and 134-A of The Maharashtra Civil Services (Pension) Rules, 1982.

C. Section 72 of Contract Act prohibits unjust enrichment it being opposed to public policy. Since excess payment was made to the applicant the proposed recovery is consistent with this provision.

D. The applicant is a Group-A Officer. Therefore, there is no legal impediment in recovering amount from him which was paid in excess.

4. The applicant has relied on **State of Punjab & Ors. Vs. Rafiq Masih & Ors., (2015) 4 SCC, 334** wherein it is held:-

> "*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 hereinabove, 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.*"

5. The applicant has further relied on the judgment of **Hon'ble Bombay High Court dated 26.04.2019 in a batch of four W.Ps. 6261,**

9302 & 9446/2017 & 11911/2018 (Vaishali Bhagwantrao Bhagwat & 3 Ors. Vs. State of Maharashtra & Ors.). In this ruling it is held:-

> *15. Some of the petitioners have been paid non-practicing allowance at the revised rate with effect from 01.09.2008 and some from 01.01.2006. It appears that Government Resolution dated 10.11.2009 was interpreted by the authorities to the effect that the non-practicing allowance would be paid from 01.09.2008. It appears that the authorities interpreted Clause 10(i) of Government Resolution dated 10.11.2009 in a manner that non-practicing allowance also would be included in the special allowance and shall take effect from 01.09.2008. The said interpretation was erroneous. However, some of them have been given the benefit of non practicing allowance from the earlier date than prescribed under the Government Resolution dated 24.07.2012.*
>
> *16. We do not find that petitioners in any way had misrepresented the authorities. It is probably on interpretation (though erroneous) of the Government Resolution dated 10.11.2009 the benefit was accorded to some of the petitioners of payment of non-practicing allowance as per the revised pay scale. In view of that, we direct that if the recovery has not been made by the respondents from petitioners regarding the excess amount of non practicing allowance paid, the same shall not be made as the same would be inequitable.*

6. The respondents, on the other hand, have relied on **Hon'ble High Court Punjab & Haryana and Ors. Vs. Jagdev Singh (2016) 14 SCC 267.** In this ruling it is held:-

> *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.*

7. The respondents have further relied on **Ananda Vs. State of Maharashtra & Ors. 2021 SCC Online BOM 2549** wherein the Bombay High Court, by relying on Jagdev Singh (supra) held:-

> *10. We have a similar case in hand. The petitioner has specifically given an undertaking prior to his retirement that if he has received any amount in excess to what he was legitimately entitled to, the said amount would be repaid or can be recovered. Such undertaking, if ignored, would be reduced to the value of a waste paper. An undertaking has it's own meaning and effect. If an undertaking is not to bind a person issuing it, there would be no sanctity to an undertaking. We cannot accept such an argument canvassed by an employee that an undertaking is a mere formality and should be ignored, lest, we ourselves would be party to neutralising the value of an undertaking.*

8. It is a matter of record that the applicant was holding a Group-A post. Therefore, proposition (i) In Rafiq Masih (supra) will not be applicable. So far as proposition (ii) is concerned, undertaking was given by the applicant on 01.12.2009. The period of payment which is stated to have been made in excess commences from 04.12.2007. Thus, the undertaking dated 01.12.2009 appears to be having no nexus with payment of non practicing allowance. The impugned order was issued on 25.02.2021 for recovery which covered the period from 04.12.2007 to 06.06.2011. Thus, proposition (iii) is also applicable. In Judgment dated 26.04.2019 i.e. Vaishali Bhagwantrao Bhagwat & 7 Ors. (supra) recovery from similarly situated persons was held to be inequitable. Thus, proposition (v) will also be applicable. Jagdev Singh (supra) places an

embargo on granting relief prohibiting recovery only in cases covered by proposition (ii) in Rafiq Masih. As mentioned above, in this case propositions (iii) and (v) are applicable.

9. In his Rejoinder the applicant has stated (at P. 60) that pursuant to the impugned order no recovery has been effected.

10. For the reasons discussed hereinabove, I hold that the proposed recovery is impermissible in view of ratio laid down in Rafiq Masih (supra). **The O.A. is accordingly allowed.** The impugned order dated 25.02.2021 (A-2) is quashed and set aside. No order as to costs.

Member (J)

Dated :- 26/06/2024
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno	:	Akhilesh Parasnath Srivastava.
Court Name	:	Court of Hon'ble Member (J).
Judgment signed on and pronounced on	:	26/06/2024
Uploaded on	:	27/06/2024