

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**  
**BENCH AT AURANGABAD.**

**DIST. BEED.**

**ORIGINAL APPLICATION NO.491/2016.**

Angad s/o Pandurang Khande,  
Age 59 years, Occupation-Retired,  
Resident of At Post Mhalas Jawala,  
Tq. & Dist. Beed.

-- APPLICANT.

**V E R S U S**

1. The State of Maharashtra,  
Through its Secretary,  
Irrigation Department,  
Mantralaya, Mumbai 400 032.
2. The Executive Engineer,  
Majalgaon Irrigation Division,  
Parali Vaijinath, Dist. Beed.
3. The Deputy Executive Engineer,  
Majalgaon Irrigation Division,  
Parali Vaijinath, Dist. Beed.
4. The District Treasury Officer,  
Treasury office, Beed.
5. The Senior Account Officer,  
Office of the Accountant General,  
Accountant And Entitlements-1,  
Pension Wing Old Building,  
Civil Line, Nagpur-440 001.

(Copy to respondent no.1 be served  
upon the Ld. Presenting officer, MAT,  
Bench at Aurangabad.)

-- RESPONDENTS.

**APPEARANCE** : Shri SS Dambe, learned Advocate  
for the Applicant.  
: Shri SK Shirse, Learned Presenting  
Officer for Respondents.  
**CORAM** : **Hon'ble Shri JD Kulkarni, Member (J).**  
**DATE** : 04.10.2016.

**ORAL ORDER.**

1. Heard Shri SS Dambe, learned Advocate for the applicant and Shri SK Shirse, learned P.O. for the Respondents.
2. The Applicant has prayed for a direction that the order of recovery dated 29.12.2015 (Annexure A-2) as per clause no.6 of order dated 21.3.2016 i.e. Annexure A-3 be quashed and set aside and the Respondents be directed to refund the amount worth Rs.2,30,539/- along with interest, which was recovered from the applicant.
3. It is admitted fact that, applicant is a Class III employee and joined the services on the post of Canal Tapali vide order dated 16.8.1976. He passed departmental examination in the year 1979-80 i.e. 4.7.1979. He was promoted as a Patkari vide order dated 25.1.1980 and thereafter, he was appointed as a Measurer

and accordingly he joined as Measurer on 01.04.1982. He was promoted on the post of Daptar Karkun on 5.9.1989. He was granted upper pay scale of Rs.1200-30-1441ER30-1800 in the higher pay of Rs.1320/- as per 5<sup>th</sup> Pay Commission from 18.11.1997 with retrospective effect from 1.1.1996 and thereafter got various increments. From 2006 he was given pay as per 6<sup>th</sup> Pay Commission.

4. According to the applicant the pay fixation was done as per revised pay rules from 1.1.2006 and thereafter, on 29.12.2015. Vide impugned order dated 21.3.2016 the Respondents directed the applicant to repay amount of Rs.2,30,539/-, which was wrongly paid to him due to wrong pay fixation, and the said amount has been recovered. The applicant is claiming that, the said recovery is illegal.

5. Admittedly, the applicant is a Class III employee and has already retired on superannuation on 31.12.2015 i.e. prior to passing of impugned order. The amount has been recovered from his G.P.F. amount.

6. The respondents no.1 to 3, and 5 have resisted the claim and submitted that, at the time of pay fixation undertaking was given by the applicant praying that if the wrong pay fixation was done then he will be liable to pay the excess.

7. Learned Advocate for the applicant has placed reliance on a judgment delivered by Honble the Apex Court in the matter of **State of Punjab and Ors. Etc. Vs. Rafiq Masih (White Washer) etc.** reported in **[(2015)4 SCC 334]**. In the said judgment the Hon'ble Apex Court has given guide-lines at paper book page no.18 as under :-

*“18. 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. The learned Presenting Officer submitted that the judgment of the Hon'ble Apex Court in the case of "State of Punjab and Ors. Etc. Vs. Rafiq Masih (White Washer) etc." (supra) is not applicable in the present case, since the applicant has given undertaking.

9. I have perused the judgment passed by the Hon'ble Apex Court in "Civil Appeal No.3500 of 2006" decided on 29.7.2016. It is material to note that, in the said case the

applicant was a Class I Officer i.e. a Judge, whose recovery was held legal since at the time of pay fixation he has given undertaking that, if the excess amount is paid he will be liable to return it.

10. In the present case, the applicant is a Class III employee, his pay was already fixed long back in 2009, whereas the undertaking was obtained from him in 2013 and not at the time of fixation of pay. Secondly, his pay has been refixed in view of the objection taken by Accounts Officer, Pay Verification Unit subsequently, and that he has already retired. In view of the said circumstances the present case has to be considered as per guidelines issued by Hon'ble Apex Court in the case of "State of Punjab and Ors. etc. Vs. Rafiq Masih (White Washer) etc." (Supra), the recovery against the applicant is therefore, not legal and proper.

11. Learned Advocate for the applicant submits that, the amount shall be paid along with interest, however, the said request can not be accepted as the recovery was as per the

pay fixation and the applicant is protected because of the judgment of the Hon'ble Apex Court there can not be any mala fides attributed to the respondents in recovering the amount and so he is not entitled to any interest. Hence, the following order.

ORDER.

- i) The O.A. is allowed.
- ii) The Respondent authorities are directed to repay the amount vide order dated 21.3.2016 within two months from the date of this order.
- iii) No order as to costs.

**MEMBER (J)**

OA-491-2016-ATP

