

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.468 OF 2017

DISTRICT : PUNE

Smt. Sairandhri Vilas Bhagat,)
Additional Superintendent of Police (Retired),)
58 years, R/at Yash Orchid Building, Flat No.03,)
S.No.14/15/1/1A/2, Anandnagar, Wadgaon Bk.,)
Pune 411041)..Applicant

Versus

1. The State of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai 32)
2. The Director General of Police,)
Shahid Bhagat Singh Road, Mumbai 400001)
3. The Additional Director General of Police (CID),)
M.S., Pashan, Pune 411028)
4. The Accountant General-I,)
101, Maharshi Karve Road, Old CEO Building,)
Mumbai 400020)..Respondents

Shri A.R. Joshi – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Member (A)

DATE : 14th February, 2018

J U D G M E N T

1. Heard Shri A.R. Joshi, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. The applicant has filed the present OA challenging the order dated 23.3.2017 passed by the respondents whereby recovery is sought to be made in view of excess payment made to the applicant.

3. The applicant was appointed as Police Sub Inspector in 1987 and was promoted from time to time and retired on superannuation as an Additional Superintendent of Police from State CID on 31.3.2017.

4. The grievance of the applicant is that by the impugned order respondents have sought to recover an amount of Rs.2,88,449/- paid in excess as emoluments for the period from 2004 to 2016, from her gratuity.

5. Shri A.R. Joshi, learned Advocate for the applicant contended that the excess payment made to the applicant is neither because of any misrepresentation by the applicant nor on account of any fraud on applicant's part. Ld. Advocate further contended that the excess payment made to the applicant is consequent upon a mistake committed by the concerned competent authority in determining the emoluments payable to the applicant and as such the applicant cannot be held guilty for such a mistake of the respondents and cannot be penalized by recovering such a huge amount from her gratuity after her retirement. It is the contention of the Ld. Advocate for the applicant that the action of recovery from the

applicant is per se illegal, bad in law and deserves to be quashed and set aside.

6. The respondents have filed their affidavits-in-reply and contested the claim of the applicant. Ld. PO contended that the applicant has given an undertaking for recovery in case any excess payment is made to the applicant. In reply thereto the applicant has filed the affidavit-in-rejoinder.

7. The Ld. Advocate for the applicant has relied on the judgment of the Hon'ble Supreme Court in **STATE OF PUNJAB AND OTHERS VERSUS RAFIQ MASIH (WHITE WASHER) AND OTHERS (2015) 2 SCC (L&S) 33 : (2015) 4 SCC 334**. Relying on the said judgment the Ld. Advocate for the applicant contended that recovery from retired employees, or employees who are due to retire within one year, of the order of recovery would be impermissible in law. He further contended that the Hon'ble Supreme Court in Rafiq Masih's case has forbidden any recovery of excess amounts paid to the employee for a period in excess of five years, before the order of recovery is issued.

8. The Ld. Advocate for the applicant further relied on the **judgment and order dated 13.6.2017 passed by this Tribunal in OA No.820 of 2016 (Shri Dilip M. Diwane Vs. The State of Maharashtra & Ors.)** wherein the judgment of Hon'ble Supreme Court in Rafiq Masih is referred to.

9. Smt. Archana B.K., Ld. PO has relied on the judgment of the Hon'ble Supreme Court in **HIGH COURT OF PUNJAB AND HARYANA AND OTHERS VERSUS JAGDEV SINGH, CIVIL APPEAL NO.3500 OF 2006 DECIDED ON 29.7.2016**. Relying on the judgment in Jagdev Singh, the Ld. PO contended that the judgment in Rafiq Masih (supra) is

not applicable in the present case where an undertaking was given for recovery in case of excess payment.

10. At the time of hearing Shri A.R. Joshi, Ld. Advocate for the applicant stated that recovery cannot be made even though the applicant has given undertaking dated 29.3.2017. Ld. PO states that there was genuine mistake in calculating the pay and the Pay Verification Unit has insisted on recovery from the applicant. The applicant was informed about the same and the applicant gave an undertaking, which was not under duress, to make recovery before her retirement and therefore, it cannot be said that it is arbitrary or without her knowledge. It is with full knowledge of the applicant and with consent. The Ld. PO stated that the recovery is yet to be started.

11. After hearing both the sides it is observed that the applicant belongs to Class I service. The judgment of Hon'ble Supreme Court in Rafiq Masih (supra) cited by the Ld. Advocate for the applicant does not apply in this case as the applicant in the present case belongs to Class I service. The law of limitation cited also has no reference as the Pay Verification Unit has come to conclusion about the excess payment in December, 2016 and thereafter the applicant has been intimated immediately. The Ld. Advocate for the applicant insisted that applicant is not interested in making repayment even in installments.

12. In the result, the OA deserves to be dismissed and is dismissed with no order as to costs.

Sd/-
(P.N. Dixit)
Member (A)
14.2.2018

Dictation taken by: S.G. Jawalkar.

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