

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.726 OF 2024

DISTRICT : SATARA

Hanamant Gulabrao Sawant,)
Age 58 years, occ. Retired Civil Engineering Assistant,)
R/at Dahivadi, Tal. Man, District Satara 415508)..Applicant

Versus

1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Public Works Department, Mantralaya, Mumbai)
2. The Superintending Engineer,)
Public Works Department, Central Building)
(Extension), Pune 411001)
3. The Executive Engineer,)
Public Works Department, West Division, Satara)..Respondents

Shri M.B. Kadam – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri Atulchandra M. Kulkarni, Member (A)

DATE : 7th January, 2025

J U D G M E N T

1. Heard Shri M.B. Kadam, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The applicant after working for close to 40 years, retired on 31.5.2024 from the post of Civil Engineering Assistant, Group-C in the Public Works Department (PWD), Maharashtra State. Vide impugned communication dated 20.5.2024 issued by the respondent no.3, the applicant was directed to deposit excess amount of Rs.11,65,289/- towards payment made to him due to wrong pay fixation.

3. Ld. Advocate for the applicant contended that in the light of judgment of the Hon'ble Supreme Court in **State of Punjab & Ors. Vs. Rafiq Masih (While Washer) & Ors. (2015) 4 SCC 334** (Civil Appeal No.11527/2014 decided on 18.12.2014) and the letter dated 13.7.2021 of PWD, Mantralaya, Mumbai to several authorities in PWD across the State regarding recovery of excess payment to retired Civil Engineering Assistants as an outcome of revised pay fixation; no recovery can be made from the applicant as he has retired.

4. Ld. Advocate for the applicant on the point of recovery relied on the judgments of this Tribunal in **OA No.783/2018 Shri Pradeep G. Dalvi Vs. The State of Maharashtra** decided on 19.3.2019 and in **OA No.1269/202 Shri Ratikant P. Mane Vs. The State of Maharashtra & Ors.** decided on 19.4.2023.

5. Ld. PO opposed the submissions made by the Ld. Advocate for the applicant and insisted on recovery and relied on the affidavit in reply dated 25.11.2024 filed by Rajendra Kashinath Pawar, Dy. Engineer in the office of PWD Division Satara and referred to circular dated 22.11.2021 of

Finance Department regarding getting undertaking from the government employees in respect of excess payment.

6. As regards recovery, the legal position is no more *res-integra* in view of the judgment of the Hon'ble Supreme Court in *Rafiq Masih's* case. Considering the hardship faced by retired Government servant, the Hon'ble Supreme Court after considering its various earlier decisions has culled out certain situations in clause nos.(ii) and (v) of Para 12 wherein recovery is held impermissible. Para No.12 of the judgment is 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 belong to Class-III and Class-IV services (or Group 'C' and Group 'D' services).

(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."

7. In the light of the judgment of the Hon'ble Supreme Court in *Rafiq Masih* (supra) and the above judgments of this Tribunal relied upon by the Ld. Advocate for the applicant, the following order is passed.

ORDER

(A) The Original Application is allowed.

(B) The impugned communication dated 20.5.2024 issued by the respondent no.3 is quashed and set aside.

(C) The Respondents are directed to release the retirement benefits of the applicant without withholding any amount including the recovery amount of Rs.11,65,289/- within two months from today.

(D) No order as to costs.

Sd/-
(A.M. Kulkarni)
Member (A)
7.1.2025

Dictation taken by: S.G. Jawalkar.