

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 64 OF 2016

DISTRICT: LATUR

1. Madhukar S/o Digambar Madarase,
Age: 62 years, Occu: Nil (Retd. Govt. Servant),
R/o : Adiram Nivas, Vikas Nagar, Behind
H.P. Urdu School, Barshi Road, Latur,
Tq. & Dist. Latur
2. Abdul Razak Abdul Karim Patel,
Age: 62 years, Occu: Nil (Retd. Govt. Servant),
R/o : Pathan Nagar, Ambejogai Road,
Behind Green Park Hotel, Latur,
Tq. & Dist. Latur.

.. APPLICANTS

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai-32.
(Copy to be served on Presenting
Officer of the State of Maharashtra
Administrative Tribunal, Aurangabad)
2. The Superintendent of Engineer,
Public works Department,
Samatanagar, Osmanabad.
3. The Executive Engineer,
Public Works Department,
Main Road, Latur.
4. The Assistant Engineer,
Graded-I, Public Works Department,
Sub-Div. No. 1, Latur.

.. RESPONDENTS

APPEARANCE : Shri- R.P. Bhumkar, learned Advocate for
the Applicants.

: Shri I.S. Thorat, learned Presenting
Officer for the Respondents.

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

DATE : 23.08.2016

ORAL ORDER

Heard Shri R.P. Bhumkar learned Advocate for the Applicants and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. In this Original Application, the applicants are claiming that the order issued by the respondent no. 3 dated 8.10.2015 confirming earlier order dated 28.03.2011 be quashed and set aside and the amount recovered under said order, shall be refunded along with interest @ 9% per annum. They have also claimed declaration that the recovery order is against the view taken by the Hon'ble Apex Court in the case of State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. Vide impugned orders the respondent no. 3

recovered Rs. 3,23,439/- and 3,12,229/- respectively against the applicants.

3. The respondents tried to justify the orders of the applicants by filing affidavit in reply.

4. The learned Presenting Officer invited my attention to the earlier order passed in O.A. Nos. 590/2012 and 591/2012. The said O.As. were filed by the present applicants and the Hon'ble Tribunal was pleased to quash the earlier order of recovery issued by the respondent no. 3 on 28.03.2011 and the respondents were directed that a show cause notice be issued to the applicants and after receiving their replies, if any, may pass a fresh order of recovery, if it is concluded that, excess payment was made to them.

5. According to the learned Presenting Officer, in spite of show cause notices issued to the applicants, the applicants did not reply and therefore, the impugned orders have been passed and the recovery has been made.

6. Perusal of the impugned orders at paper book page nos. 42 to 44 (both inclusive) shows that vide order dated 8.10.2015 (Annexure A-7) the respondents found that the excess amount was paid to the applicant granting various pay scale from 1980 till 2010 of applicant Shri Madhukar Madarase and Vide order dated 8.10.2015 at paper book page nos. 45 to 77 (both inclusive), the applicant Abdul Razak Abdul Karim Patel was paid excess amount due to wrong pay fixation and the period of these wrong fixation relates to 8.12.1980 till 1.7.2010. The applicant Shri Madhukar Madarase, has retired on superannuation on 31.01.2011, whereas applicant Abdul Razak Abdul Karim Patel got retired on superannuation on 28.02.2011 and the amounts have been recovered in the year 2015 i.e. almost four or five years after their retirement.

7. The Hon'ble Apex Court in the case of ***State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No. 11527 of 2014 (arising out of SLP (C) No. 11684 of 2012)*** has 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, 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.***
- (ii) Recovery from retired 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."

8. In view of the aforesaid observations, the cases of both the applicants fall within the cadre of recoveries which would be impermissible in law. Admittedly, in this case the applicants belong to Class-III service or Group-C service and they have already retired and the recoveries, if allowed, may pertain to the period in excess of five years. Considering all these aspects, though the applicants have been given opportunity to explain as to why the recovery shall not be made as per the direction of this Tribunal, in view of this further development recovery orders cannot be sustained.

9. The learned Advocate for the applicant claimed interest on the amount and for that purpose he has placed

reliance on the judgment passed by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in the case of ***Associate of College and University Superannuated Teachers (Maharashtra) Vs The State of Maharashtra (W.P. No. 9054/2010)***. The learned Advocate for the applicant invited my attention to paragraph no. 6 of the said order as under:-

“6. The impugned communication dated 10.03.2008 and 18.03.2010 are therefore quashed and set aside. It is held that the respondents are not entitled to recover the amount from the pension of the petitioners. Insofar as the amount which is already recovered from the pension of the members of the petitioner-association, it is directed that such amount shall be returned to the employees from whom it is deducted within a period of three (3) months from today alongwith the interest at the rate of 12% per annum.”

10. In the present case, the recovery orders were challenged earlier and directions were given by the Tribunal, whereby the notices were given to the applicants to explain as

to why the excess amount shall not be recovered. The applicants even did not reply said notices. In view thereof, the applicants might not have been entitled to claim amount as per existing service rules but they are entitled to claim amount in view of the judgment delivered by the Hon'ble Apex Court in the case of *State of Punjab and others etc. Vs. Rafiq Masih (White Washer), etc.* In such circumstances, I do not find it a fit case to grant interest to the applicants. Hence, I pass following order:-

ORDER

1. The Original Application is partly allowed.
2. The impugned order dated 8.10.2015 issued by the respondent no. 3 confirming earlier order dated 28.03.2011 is quashed and set aside.
3. The respondent no. 3 is directed to refund the amount recovered from the applicants within four weeks from the date of this order.
4. If the amount is not refunded to the applicants within four weeks, the applicant will be entitled to file representation for interest for the period from expiry of such four weeks till actual realization of amount as per rules.

There shall be no order as to costs.

MEMBER (J)