

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.45 OF 2021

**DISTRICT: THANE
SUBJECT: RECOVERY**

Shri Hambirrao Dinkar Patil,)
Age 59 years, Occ. Retired ASI,)
R/o. Motilal Shukla Chawl, R. No.9,)
Near Doshi J. Bhai High School, Majas Tekadi,)
Mumbai-400 060.)... **Applicant**

Versus

1) The State of Maharashtra,)
through the Addl. Chief Secretary,)
Home Department, Mantralaya, Mumbai-32.)

2) The Commissioner of Police,)
Thane City, Thane.)...**Respondents**

Shri R.M. Kolge, learned Advocate for the Applicant.

Smt Archana B.K., learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 20.12.2021.

JUDGMENT

1. The Applicant has challenged order issued by Respondent No.2 in the month of May 2019 thereby seeking recovery of Rs.3,50,295/- (Rupees Three Lakhs Fifty Thousand Two Hundred and Ninety Five Only) from the retiral benefits of the Applicant who stands retired on 31.05.2019.

2. The Applicant stand retired as Assistant Sub Inspector (A.S.I.) on 31.05.2019. In 2010 his pay was wrongly fixed while grating benefits of Time Bound Promotion which continued till his retirement. It is only at the verge of retirement it was noticed that he was not entitled to the said

benefits given to him in 2010 and accordingly sum of Rs.3,50,295/- (Rupees Three Lakhs Fifty Thousand Two Hundred and Ninety Five Only) was found paid in excess and it sought to be recovered from his retiral benefits by order issued in month of May 2019 (without specifying particular date).

3. The Applicant therefore challenged impugned order *inter-alia* contending that recovery was sought without giving notices and secondly it is impermissible in view of decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**.

4. Heard Shri R.M. Kolge, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

5. Undisputedly, the Applicant stands retired on 31.05.2019 on the post of A.S.I. and it is only at the verge of retirement mistake in pay fixation was noticed. It is in 2010 he was wrongly given benefit of Time Bound Promotion and Pay scale was up-graded which he availed till retirement. Undisputedly, any such notice or opportunity was not given to the Applicant before recovery. No fraud or misrepresentation is attributable to the Applicant. It is Department who mistakenly granted pay scale to the Applicant to which he was found not entitled at the verge of retirement.

6. Indeed, issue of permissible recovery is no more *res-integra*, in view of decision in **Rafiq Masih's case** cited supra. Hon'ble Supreme Court in para 12 culled out situations where recovery particularly from Group 'C' & 'D' at the verge of retirement would be impermissible which 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. Thus, Clause No.(i), (iii) & (v) from the para. 12 of Judgment is clearly attracted. It would be harsh and iniquitous to recover such amount of the retiral benefits of a Government servant. Impugned order of recovery is therefore liable to be quashed. Hence, the order.

ORDER

- A) O.A. is allowed.
- B) Impugned order of recovery is quashed at set aside.
- C) Amount if any recovered in pursuance of the said order of recovery be refunded within two months from today.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 20.12.2021
Dictation taken by: N.M. Naik.