

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.525 OF 2021**

**DISTRICT: MUMBAI  
SUBJECT: RETIREMENT DUES  
AND RECOVERY**

Smt. Sharayu Shyam Rajadhyaksha, )  
Age 60 years, Occupation: Retired Govt. service )  
Retired as Clerk Typist, Tribal Development Department )  
Mantralaya, Mumbai 400 032. )  
Residing at B-504, Veena Vihar, Dahanukar Wadi, )  
Datta Mandir Road, Kandivli (W), Mumbai 400067. )... **Applicant**

**Versus**

- 1) The State of Maharashtra through )  
The Principal Secretary, )  
Tribal Development Department, )  
Mantralaya, Mumbai-32. )
- 2) The Pay Verification Officer, )  
O/O. Director of Accounts & Treasuries, )  
3<sup>rd</sup> Floor, Thackersey House, Shoorji Vallabhdas )  
Marg, Balliard Pier, Mumbai 400 001. )... **Respondents**

Shri U.V. Bhosale, learned Advocate for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

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

DATE : 20.12.2021.

**JUDGMENT**

1. This is second round of litigation for direction to release retiral benefits. Earlier Applicant has filed O.A. No.625/2020 for grant of retiral benefits which was disposed of by order dated 30.03.2021 directing the Respondents to update service book of the Applicant and to take necessary steps as per entitlement in accordance to law within two months.

2. However, Respondent No.1 issued communication dated 15.07.2021 stating that sum of Rs.4,30,789/- (Four Lakhs Thirty Thousand Seven Hundred and Eight Nine Only) was to be recovered on ground of failure of the Applicant to pass Departmental Examination as well as Marathi Typing Examination within stipulated period, which is challenged in present O.A.

3. The Applicant retired as Clerk Typist w.e.f. 03.01.2017 (Voluntary Retirement from establishment of Respondent No.1). She was appointed in service in 1979 and her service was regularized in the year 1981, later she was declared surplus and was transferred by order dated 07.07.2003. She was then transferred to establishment of Respondent No.1 in 2011. She was to pass Departmental Examination as well as Marathi Typing Examination within stipulated period in terms of Rules and in case of failure to do so she was not entitled to increments. However, increments were released regularly, later Government by order dated 11.07.2017 exempted the Applicant from passing Departmental Examination on attaining age of 45 years as well as also exempted her from passing Marathi Typing Examination on attaining age of 50 years. By order dated 11.07.2017 directions were also issued to release the increments withheld though infact all increments were released as if the Applicant has passed required examination.

4. Shri U.V. Bosale, Learned Advocate for the Applicant submits that since the Applicant stands retired as Group 'C' employee no recovery after three years from the date of Retirement is permissible in view of decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**. He further pointed out that as per Affidavit-in-Reply filed by Respondent No.1 they have sought opinion for Law and Judiciary Department and it opined by letter dated 11.10.2021 that Applicant is covered by propositions in Clause No.1 & 2 in **Rafiq Masih's Case (cited supra)**.

5. Whereas, Smt K.S. Gaikwad, learned P.O. submit that now steps are being taken to finalize pension papers in view of opinion given by Law and Judiciary Department and the same will be processed soon.

6. Indeed, the Applicant is deprived of retiral benefits for long time. She has taken voluntary retirement w.e.f. 03.01.2017. She was not entitled to increments on account of non passing examination within prescribed time limit but it was released and paid. Later she was exempted on attaining prescribed age. Be that as it may, there is no denying that the Applicant received increments due to sheer mistake of the Department and no fraud or misrepresentation is attributable to the Applicant.

7. Indeed, issue of recovery from retired Government servant particularly Group 'C' and 'D' is no more *res-integra* in **Rafiq Masih's Case (cited supra)** wherein Hon'ble Supreme Court culled out five situations wherein recovery will be impermissible in law considering hardship likely to be faced by Government servant. In para 12 Hon'ble Supreme Court held 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."*

8) As such case of the Applicant squarely falls within Clause No.(i), (ii), (iii) & (v) of the decision in ***Rafiq Masih's Case (cited supra)***, it would be harsh and iniquitous to recover the amount from the retiral benefits of the Applicant. Impugned order dated 15.07.2021 is therefore unsustainable in law and liable to be quashed.

9. Learned Advocate for the Applicant also raised grievances about fixation of pension in terms of 7<sup>th</sup> Pay Commission. In so far as, this aspect is concerned Respondent No.1 to examine the case of the Applicant and if found entitled to 7<sup>th</sup> Pay Commission then benefits of the same be extended to her while finalizing pension and other retiral benefits.

### **ORDER**

- A) The Original Application is allowed partly.
- B) Impugned order dated 15.07.2021 seeking recovery of Rs.4,30,789/- (Four Lakhs Thirty Thousand Seven Hundred and Eight Nine Only) is quashed and set aside.
- C) Respondent No.1 is directed to finalize the pension and other retiral benefits of the Applicant and to ensure actual payment of the same as per her entitlement within two months from today.
- D) No order as to costs.

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

Place: Mumbai

Date: 20.12.2021

Dictation taken by: N.M. Naik.