

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.834 OF 2019

**DISTRICT : SANGLI
SUBJECT : RECOVERY**

Mr. Sangramsingh Bhausahab Patil)
Age : 59 years, residing at Plot No.11,)
Parshwanathnagar, Sangli Kupwad Road,)
Sangli 416 415.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through Secretary,)
Forest Department, Mantralaya,)
Nariman Point, Mumbai 32.)
- 2) The Additional Chief Conservator of)
Forest, (Human Resources))
Van Bhavan, Ramgiri Road,)
Civil Line, Nagpur)
- 3) Chief Conservator of Forest,)
Forest Department, Opp. Post Office,)
Tarabai Park, Kolhapur)
- 4) The Deputy Conservator of Forest (T))
Forest Campus, Hanuman Nagar,)
Kupwad, Tal Miraj, Dist. Sangli)... **Respondents**

Smt. Rajnana Todankar, learned Advocate for the Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 30.09.2022.

JUDGMENT

1. Heard Smt. Rajnana Todankar, learned Advocate for the Applicant and Smt Archana B.K., learned Presenting Officer for the Respondents.

2. The Applicant has filed present O.A. challenging notice dated 22.05.2019 whereby Respondents sought recovery of Rs.4,71,918/- (Rupees Four Lakhs Seventy One Thousand Nine Hundred and Eighteen Only) paid to him towards increment which was not required to be released for not passing of Marathi Language Examination. However, during the pendency of O.A. Respondents have recovered the said amount from leave encashment of the Applicant. He retired on 31.05.2019 as Stenographer (Lower Grade) (Group 'C' employee). In addition to it, Respondents have also recovered sum of Rs.2,57,647/- (Rupees Two Lakhs Fifty Seven Thousand and Six Hundred and Forty Seven Only) towards interest with penal charges of Home Loan. The Applicant therefore amended O.A. and sought direction to the Respondents to refund Rs.4,71,918/- & Rs.2,57,647/- (Total 7,29,565/- (Rupees Seven Lakhs Twenty Nine Thousand Five Hundred and Sixty Five Only)).

3. Today, when the matter is taken up for hearing, learned Advocate for the Applicant fairly stated that she is not pressing claim of recovery of Rs.2,57,647/- which is recovered towards penal interest on home loan. She is restricting her claim for amount of Rs.4,71,918/- only. The Applicant's counsel further fairly stated that she is not challenging refixation of pay and allowances of Rs.4,71,918/-. In this behalf, learned Advocate for the Applicant placed reliance on the Judgment of **(2015) 2 SCC (L & S) 33 [State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors.]**.

4. Per Contra, learned P.O. submits that the Applicant was required to pass Marathi Language Examination within four years from the date of appointment as Steno-Typist but he fail to do so. However,

increments were wrongly released. Indeed, when the Applicant failed to pass examination, increments were required to be withheld. However, increments were paid which was noticed by the Department when the Applicant was on the verge of retirement. He retired on 31.05.2019 and before 8 days of retirement notice of recovery was slapped on 22.05.2019.

5. There is no denying that the Applicant stands retired as group 'C' Government servant. Furthermore, no fraud or mis-representation is attributable to the Applicant for getting increment released. It was due to mistake of the Department, increment were released which was noticed at the fag end of the service.

6. Indeed, the issue of impermissibility of recovery from retired Government servant is no more res-integra in view of decision of Hon'ble Supreme Court in **(2015) 2 SCC (L & S) 33 [State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors.]**. In Para No.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, summarise 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. The Applicant's case is squarely falls in Clause Nos.(i), (ii), (iii) and (v). Since Applicant already stands retired from Group 'C' cadre, in my considered opinion, it would be iniquitous and harsh to such an extent as would outweigh the equitable balance of the employer's right to recover the excess payment. Hon'ble Supreme Court granted relief to the retired Government servant, particularly Group 'C' on the principle of equity and financial constraints to be faced by such Government servants who are solely depending upon the retiral benefits in the evening of their life.

8. As such, in view of decision of Hon'ble Supreme Court in **Rafiq Masih's** case, the impugned action of recovery will have to be held impermissible in law and consequently, recovery order is liable to be quashed. Hence, the following order.

ORDER

- A) The Original Application is allowed partly.
- B) Respondents are directed to refund Rs.4,71,918/- (Rupees Four Lakhs Seventy One Thousand Nine Hundred and Eighteen Only) to the Applicant within six weeks from today.
- C) No order as to costs.

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

Place: Mumbai
Date: 30.09.2022
Dictation taken by: N.M. Naik.
Uploaded on: _____