

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1077 OF 2017

DISTRICT : SOLAPUR

Shri Channaya Sharnayya Swami.)
Age : 59 Years, Occu.: Retired as Multipurpose)
Health Worker on 31.05.2017 and residing at 13,)
Vedant Nagar, Akkalkot Road, Opp. L.P.Gas,)
Solapur.)...Applicant

Versus

1. The State of Maharashtra.)
The Secretary, Health Department,)
Mantralaya, Mumbai.)
2. The Director.)
Public Health Department, Arogya Bhavan,)
Mumbai.)
3. The Joint Director.)
Health Services (Malaria & Filaria, Water)
Bourne Diseases), Arogya Bhavan,)
Parivartan Building, Opp. Vishrantwadi)
Police Station, Pune. – 6.)
4. The Assistant Director.)
Arogya Bhavan, Parivartan Building,)
Opp. Vishrantwadi Police Station, Pune – 6.)
5. The District Malaria Officer.)
Ujani Vasahat, Opp. Datta Mandir,)
Pandharpur, Dist : Solapur 413 304.)
6. The Senior Accounts Officer.)
Indian Audit and Accounts Dept.,)
Office of the Accountant General)

(Accounts & Entitlements)1, Pratishta)
Bhavan, Old CGO Building, 101, Maharshi)
Karve Marg, Mumbai – 20.)...Respondents

Mr. K.R. Jagdale, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 27.11.2018

JUDGMENT

1. In the present Original Application, the challenge is to the impugned communications/orders dated 28.11.2015 and 04.05.2017 issued by Respondent No.5 whereby the amount of Rs.4,33,620/- from the pensionary benefits were ordered to be recovered.

2. The Applicant was initially appointed as Field Worker (Group 'D') on 24.04.1984 and was posted at Pandharpur, District Solapur. He was placed in the pay scale of Rs.2550-55-2660-60-3200. Thereafter, he had passed S.S.C. Examination in 1986. By order dated 10.01.2008, the benefit of first Time Bound Promotion was granted to him w.e.f.01.05.1996 with pay scale of Rs.4000-100-6000 for the post of Multipurpose Health Worker (MPHW) Group 'C' post in terms of G.R. dated 08.06.1995. Thereafter, on 31.01.2008, regular promotion / functional promotion in the post of MPHW was granted and he was posted as Filaria Officer at Akkalkot, District Solapur. However, abruptly on 28.11.2015, the Respondent No.5 by impugned order withdrawn the pay scale of Rs.4000-100-6000 as MPHW granted to him under Time Bound Promotion Scheme and he was fixed in lower pay scale of Rs.2610-60-2910-65-3300-70-4000 on the ground that the post of Field Worker was an isolated post, and therefore, he was not entitled to the benefit of Time Bound Promotion. Thus, after about 9 years, the

benefit of Time Bound Promotion sought to be withdrawn without giving him an opportunity of hearing. Being aggrieved thereby, the Applicant made representation on 11.12.2015 contending that the benefit of Time Bound Promotion granted was rightly granted and it was inconsonance with the Notification dated 19.03.2003. As per the said Notification, the appointment to the post of MPHWH shall be by promotion and nomination in the ratio of 10:90. In fact, the Respondent No.3 has promoted some of the employees under 10% quota as per Notification dated 19.03.2003. However, the Applicant is subjected to discrimination and the benefit of Time Bound Promotion is now sought to be withdrawn after the gap of 9 years, which is in contravention of the Judgment of Hon'ble Supreme Court in **State of Punjab & Ors. Vs. Rafiq Masih (WhiteWasher) reported in AIR 2015 SC 696.**

3. On this pleading, the Applicant prayed to quash and set aside the impugned communications /orders dated 28.11.2015 and 04.05.2017 issued by Respondent No.5 and also sought direction to refund Rs.20,000/- already recovered from the Applicant.

4. Respondent Nos. 1 to 5 resisted the application by filing reply *inter-alia* denying the entitlement of the Applicant to the relief claimed. Respondents sought to contend that, at the time of retirement of the Applicant, the service book was submitted to Pay Verification Unit and in view of the objections raised by the Pay Verification Unit, the orders of recovery have been issued in view of revised pay fixation. It is not in dispute that the Applicant was appointed as Field Worker and by order dated 31.01.2008, the benefit of Time Bound Promotion on the higher scale of Rs.4000-100-6000 was granted to the Applicant. In this behalf, the Respondents sought to contend that it was mistakenly granted from 01.05.1996 instead of 19.03.2003. In this behalf, the Respondents contend that the post of MPHWH has become promotional post of feeder cadre of Field Worker

only after the implementation of Notification dated 19.03.2003 having 10% quota in the promotions. As such, the benefit of Time Bound Promotion Scheme granted w.e.f. 01.05.1996 was incorrect as the Notification is applicable w.e.f. 19.03.2003 and has no retrospective effect. As such, the excess payment of Rs.4,33,620/- was made and it needs to be recovered. The Respondents, therefore, prayed to dismiss the application.

5. The Applicant has filed Affidavit-in-rejoinder reiterating the contentions raised in the application and re-affirmed that the order of recovery and impugned communication dated 28.11.2015 as well as 04.05.2017 is not sustainable in law and facts.

6. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.

7. In view of the pleadings and the contentions raised by the learned Advocates, the issue involved in the present application is, whether the impugned order of recovery of Rs.4,33,620/- is sustainable in law and facts and the answer is in negative in view of settled legal position. Admittedly, the Applicant stands retired on 31.05.2017 from the post of MPHWS and the recovery is being ordered from the pensionary benefits of the Applicant.

8. The stand taken by the learned P.O. that the recovery was ordered after giving notice / communication dated 28.11.2015 it was in pursuance of objection of Pay Verification Unit, and therefore, it cannot be faulted with, is not all sustainable. It is true that, in 2003, the complainant had filed complaint before Industrial Court, Solapur under MRTTP ULP Act challenging the order dated 13.08.2003 regarding deduction of pay. The perusal of complaint reveals that the deduction was ordered on the ground that the pay scale granted at the time of benefit of Time Bound Promotion Scheme was incorrect. That complaint was

withdrawn and accordingly disposed of. This proceeding is absolutely of no assistance to the learned P.O. in the present context, as now the recovery is being ordered after the retirement of the Applicant from his retiral benefits.

9. In fact, the issue whether such recovery is permissible from the retiral benefits is well settled by various Judgments passed by this Tribunal based upon the law laid down by the Hon'ble Supreme Court in *Rafiq Masih's* case (cited supra). 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 decision referred to hereinabove, 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 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.
- (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."

10. Learned Advocate for the Applicant also referred to *O.A.No.923/2015 (Shri Balkrishna B. Nikam Vs. Govt. of Maharashtra & 3 Ors.) decided on 18.02.2016* which has been maintained by the Hon'ble Bombay High Court in Writ Petition No.7404/2016 decided on 03.10.2016. The Hon'ble Bombay High

Court upheld the Judgment passed by this Tribunal and rejected the contention raised by the State in view of the law laid down by the Hon'ble Supreme Court in **Rafiq Masih's** case. Before the Hon'ble High Court, the stand was taken by the State that the State is not recovering any amount from the Respondents, but re-fixing the emoluments of Respondent-employee, which he received for the purpose of benefits of service, was rejected. The Hon'ble Bombay High Court observed that the State has taken 24 years to realize that some mistake occurred in counting 12 years period of giving the Time Bound Promotion to the Respondent that also when the Pay Verification Unit raised the issue.

11. As such, the benefit even if given mistakenly for no fault or misrepresentation on the part of Applicant employee cannot be withdrawn and the amount cannot be recovered from the pensionary benefits. In the present case also, no *malafide* or misrepresentation or fraud is attributable to the Applicant. He was admittedly appointed as a Group 'D' employee and later was promoted as MPHW in Group 'C'. At the time of retirement, he was holding Group 'C' post. This being the position, the present case is squarely covered by the principles laid down by the Hon'ble Supreme Court in **Rafiq Masih's** case.

12. Again, this was followed by this Tribunal in **O.A.No.144 of 2017 with O.A.Nos.154, 576, 624 & 629 of 2017 (Shri Mahadeo N. Jagdale & Ors. Vs. Government of Maharashtra and Ors.) decided on 07.09.2017** as rightly pointed out by Shri K.R. Jagdale, learned Advocate for the Applicant.

13. Reliance was also placed on the Judgment of Hon'ble Bombay High Court in **2017(2) ALL M.R. 177 (Lata G. Wankhede Vs. State of Maharashtra)** wherein again, it has been held that the State is not entitled to recover the excess amount paid to the employee towards the salary and other benefits after retirement, if no misrepresentation or fraud is attributable to the employee. Suffice to say that the amount mistakenly paid to an employee in excess while in service, there

being no misrepresentation or fraud on the part of employee cannot be recovered from the employee after his retirement.

14. In view of this settled legal position, particularly in view of law laid down by the Hon'ble Supreme Court in **Rafiq Masih's** case, the impugned communication dated 28.11.2015 as well as order of recovery dated 04.05.2017 is not at all sustainable and it requires to be quashed.

15. The necessary corollary of above discussion leads me to sum-up that the O.A. deserves to be allowed. Hence, the following order.

ORDER

The Original Application is allowed. The impugned communication / order dated 28.11.2015 as well as 04.05.2017 is hereby quashed and set aside. The Respondents are directed to refund Rs.20,000/- recovered from the Applicant within three months from today, failing which it shall carry interest at the rate of 9% from today till realization.

The retiral benefits of the Applicant be paid to him without affecting any recovery within three months from today. No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 27.11.2018

Dictation taken by :

S.K. Wamanse.