

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1083 OF 2014

DISTRICT : THANE

Shri Bhagwat Mokinda Lambture,)
Retired Senior Clerk,)
O/o I.T.I. Mulund, Mumbai)
R/at 001, Ratnasagar CHS Ltd.,)
Katrap, Badlapur (E), District Thane)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Vocational Education & Training,)
Mantralaya, Mumbai)
2. The Director (Training),)
Vocational Education and Training,)
M.S, Mumbai-1)
3. The Deputy Director,)
Vocational Education and Training,)
Regional Office, 49 Kherwadi,)
Aliyavar Jung Marg, Kherwadi,)
Bandra (E), Mumbai 400051)

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4. The Principal,)
I.T.I Mulund, Balasaheb Thakur Wadi,)
Mithagar Road, Mulund (E), Mumbai)..Respondents

Shri M.B. Kadam – Advocate for the Applicant

Shri K.B. Bhise – Presenting Officer for the Respondents

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 25th April, 2016

J U D G M E N T

1. Heard Shri M.B. Kadam, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents.

2. This OA has been filed by the Applicant, who was initially appointed as Peon on 4.11.1985 and was promoted as Junior Clerk on 29.12.2003. He was promoted as Senior Clerk by order dated 8.10.2010. He retired on superannuation on 31.5.2014. He is challenging orders passed by the Respondent No.4 dated 10.10.2014 and 18.12.2014 ordering recovery of Rs.21,742/- and Rs.74,642/- towards excess payment made to him.

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3. Learned counsel for the Applicant argued that the Applicant retired on superannuation on 31.5.2014. If any excess payment was made to him, it was not his fault. He has never misrepresented nor committed any fraud to get any payment which was not his due. In the case of **STATE OF PUNJAB & OTHERS ETC. VERSUS RAFIQ MASIH (WHITE WASHER) ETC., AIR 2015 SC 696**, Hon'ble Supreme Court has held that no recovery could be made from retired employees of any excess payment made to them by mistake.

4. Learned Presenting Officer (PO) argued on behalf of the Respondent that the Applicant was given promotion to the post of Junior Clerk, though he did not fulfill the requisite qualification for such promotion. It was, therefore, ordered that excess payment made to him should be recovered from him. Learned PO stated that now regular pension and gratuity has been sanctioned to the Applicant by order dated 21.4.2015. It is stated that a total amount of excess payment of Rs.74,640/- has been recovered from the Applicant (Rs.52,890/- from gratuity and Rs.21,742/- was paid by the Applicant). Learned PO argued that all dues of the Applicant have been paid and nothing survives in this OA.

5. I find that Para 7 of the affidavit filed by the Respondent No.4 reads:

“7. I say and submit that the total amount due from the Applicant was Rs.74,640/- out of which Rs.21,742/- was paid by the Applicant. I further say and submit that as per the order dated 29.12.2014, an amount of Rs.1,14,540/- has been paid to the Applicant, after withholding the further due amount of Rs.52,898/- from the total gratuity amount of Rs.1,67,438/-.”

6. It is seen that regular pension and gratuity has already been paid to the Applicant. However, a total of Rs.74,640/- have been recovered from him on account of excess payment. It is not claimed by the Respondents that the Applicant got promotion as Junior Clerk by order dated 23.12.2003 by misrepresentation or by fraud. As held by Hon'ble Supreme Court in Rafiq Masih's case (supra), no recovery can be made from a Government servant after his retirement. The orders of recovery in the present case were issued after the retirement of the Applicant and therefore orders dated 10.10.2014 and 18.12.2014 are quashed and set aside. The amount of excess payment recovered from the Applicant may be refunded to him within three months from the date of this order. This OA is allowed accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman
25.4.2016

Dictation taken by: S.G. Jawalkar.

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